

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY AND ORIGINAL CIVIL JURISDICTION
COMMERCIAL NOTICE OF MOTION (L) NO.1618 OF 2019
IN
COMMERCIAL IP SUIT (L) NO.749 OF 2019**

Arun Mohanlal Joshi ..Plaintiff
Vs.
Royal International Co. & Ors ..Defendants

WITH
LEAVE PETITION (L) NO.265 OF 2019
IN
COMMERCIAL IP SUIT (L) NO.749 OF 2019

Mr. Hiren Kamod a/w Mr. B. N. Poojari, Ms. Srishiti Poojari, Ms. Nidhi Bangeria I/b Asian Patent Law for Plaintiff/Applicant

None for Defendants

**CORAM : K.R.SHRIRAM, J.
DATE : 9th JULY 2019**

P.C.:

1 Heard the counsel.

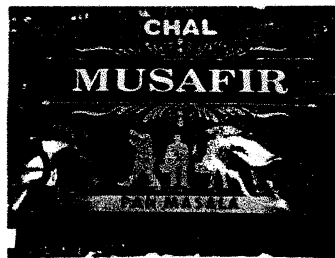
2 Plaintiff seeks to move without notice to Defendant for the reasons set out in paragraph 25 of the plaint. This is an action for infringement of copyright combined with cause of action for passing off. Mr. Kamod states that Leave Petition under clause 14 of Letters Patent (Bombay) has been lodged and pending hearing of the Leave Petition, at least ad-interim relief in terms of (a) and (d) be granted.

3 It is stated that Plaintiff is a proprietor of trademark "MUSAFIR" and its label in relation to Pan Masala by virtue of its original

and honest adoption and prior continuous use since April 2018. Defendant nos.1 to 3 are alleged to be infringing plaintiff's copy right and also passing off goods by specification, adoption and use of identical or similar mark and label in relation to same or similar goods. Plaintiff came to know of infringement and passing off on or by 25th June 2019. Mr. Kamod states that impugned packing of defendants was found in West Bengal and affidavit to that effect will be filed separately. Plaintiff manufactures and sells Pan Masala since 2018. Plaintiff states that in or about April 2018 plaintiff engaged the services of one Mr. Akhlaque Siddique to create design and develop an original and distinctive artistic works, i.e., "MUSAFIR" trademark labels to be used in relation to Pan Masala for a lawful consideration. Plaintiff has been using the same since 2018. A specimen of the trademark used by Plaintiff and its packing for ease of reference, is scanned and reproduced below:



4 It is alleged that Defendants with a view to mislead the trade and public has deliberately been manufacturing and marking Pan Masala bearing the trademark "MUSAFIR" but on top of "MUSAFIR" the word "CHAL" in white alphabets have been inserted. Floral designs and graphical representation of three travelers, depiction of Pan Masala at the bottom and background color are identical with and/or deceptively similar to the floral designs etc., of plaintiff's trademark. Defendants impugned product label is also scanned and reproduced below:





5 I have perused the plaint and also seen plaintiff's packing as well as the impugned packing of defendants. Prima facie, it does appear to be almost identical to plaintiff's copy right / mark and in all likelihood a purchaser will not be able to make out the difference. There is no manner of doubt that rival marks are almost identical or deceptively similar and the same are being used in the identical goods, i.e., Pan Masala. Prima facie, it

8

appears that the adoption and use of the impugned mark is deliberate and dishonest.

6 Therefore, a strong case for grant of adinterim relief is made out, balance of convenience also lies in favour of Plaintiff and unless relief as prayed is not granted, Plaintiff may suffer irreparable loss and injury.

7 One more point which require mentions is that in plaintiff's product there is a FSSAI (Food Safety and Standards Authority of India) licence number mentioned. In defendants' product in one packing nothing is mentioned, whereas in the other it is stated A/F which, I would assume, means 'applied for'. These are Pan Masala which anyway, is not good for health but somebody is manufacturing the same without licence from FSSAI, that would be dangerous if consumed.

8 Therefore, in view of what is stated in the plaint and particularly paragraph 25 of the plaint, I am satisfied, if prior notice of the application is granted, the object of granting ad-interim relief will be defeated. Accordingly, ad-interim relief in terms of prayer clauses (a) and (d) of the Notice of Motion is granted. Prayer clauses (a) and (d) read as under:

“(a) Pending the hearing and final disposal of the suit, an order and injunction of this Hon'ble Court restraining the defendant nos.1,2 and 3 and/or their servants, agents, representative and/or any person(s) claiming under or through the defendant nos.1 or 2 or 3 from infringing the plaintiff's copyright in the label at Exhibit-A hereto by adopting and/or using in any manner the labels at Exhibits

“E” and/or “F” hereto incorporating therein any of the characteristics identical with or similar to the artistic characteristics in the plaintiff's trademark label at Exhibit-A hereto including the word “MUSAFIR” or any similar word as trademark or otherwise in relation to Pan Masala or similar goods or any goods or services.

(d) Pending hearing and final disposal of the suit, Court Receiver, High Court, Bombay or any other fit and proper person be appointed as Receiver of the manufactured stock of Pan Masala or similar goods in any form bearing or intended to bear the impugned mark/labels at Exhibits E and/or F hereto including word “MUSAFIR” with or without prefix or suffix or any mark/label incorporating label at Exhibit A hereto including the word “MUSAFIR” and such other articles, packaging materials, and other paraphernalia used and employed by defendant nos.1, 2 and 3 in infringing the copyright and passing off goods by manufacturing, packing, selling, advertising and distributing the Pan Masala or similar goods bearing or intended to bear the offending mark/labels at Exhibits “E” and/or “D” hereto including the word “MUSAFIR” with or similar to with the plaintiff's trademark/label at Exhibit A hereto with all powers under Order XL Rule 1 of the Code of Civil Procedure, 1908 with directions to seize and take into custody all materials, finished goods, semi-finished goods, labels, and/or packed materials, wherever they are found and the defendant nos.1, 2 and 3 be ordered and decreed to deliver up to the plaintiff for destruction all such labels and materials bearing or intended to bear the offending mark/labels at Exhibits E and/or F hereto including the word “MUSAFIR” with or without prefix or suffix or any reproduction thereof.”

9 The Court Receiver, High Court, Bombay shall keep the impugned goods under his seal in the safe custody of Defendant. The Court Receiver is authorized to seek police assistance, if required and the police authorities of the concerned police station shall render all possible assistance as requested by the Court Receiver including deployment of such number of police personnel as required on production of an authenticated copy of this order. The Court Receiver to submit report to this Court by 1st August 2019.

10 The Advocates for Plaintiff will lodge an authenticated copy of

this order with the office of the Court Receiver within two days of an authenticated copy being made available. Upon an authenticated copy being lodged with the Court Receiver, compliance with Rule 596 of the Bombay High Court (OS) Rules is dispensed with.

11 This order is not to be uploaded until the execution of this order by the Court Receiver.

12 This order will operate till 6th August 2019. List the above Notice of Motion for further reliefs along with Clause XIV Leave Petition on 5th August 2019.


13 Liberty to Defendant to apply for variation of this order within 24 hours prior notice to Plaintiff.

14 All parties including the Court Receiver are directed to act on an ordinary copy of this order, duly authenticated by the Associate of this Court.

15 Within three weeks all office objections to be removed in the suit as well as notice of motion and the suit as well as notice of motion to be numbered, failing which, the suit as well as notice of motion will stand dismissed without further reference to the court.

Sd/-
(K.R. SHRIRAM, J.)

TRUE COPY


DNYANESHWAR G. PATWE
ASSOCIATE
HIGH COURT, O.S. BOMBAY
Date: 1/1 JUL 2019