

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO. 1061 OF 2014
IN
SUIT NO. 376 OF 2014**

Edelweiss Financial Services Ltd.	...Plaintiffs
<i>Versus</i>	
Edelweiss Research Pvt. Ltd. & Ors.	...Defendants

Mr. Sanjay Kher, *a/w Ms. Pranali Adangale, i/b Mr. Amit Gharte,*
for the Plaintiffs.
None *for the Defendants.*

CORAM: G.S. PATEL, J
DATED: 31st March 2016

PC:-

1. Heard Mr. Kher for the Plaintiffs. None appears for the Defendants although the names of the Defendant No. 1 and the names of the Advocates for all the Defendants are correctly shown. As an additional precaution, the names of all of the Defendants and their Advocates are called out by the Associate. None appears.
2. There is an Affidavit in Reply and an Affidavit in Rejoinder. There is also a Written Statement.

3. The record indicates that an ad-interim order was passed on 12th March 2014 (S. J. Kathawalla J), on a *prima facie* finding that the mark adopted by the Defendants, ‘EDELWIESS’ is identical or deceptively similar to the Plaintiffs’ registered trade mark, viz., ‘EDELWEISS’. As Mr. Kher points out, the only difference between the two marks is that the 1st Defendant seems to have interchanged, wholly illogically, the ‘i’ and the ‘e’ in the second part of the name. Structurally, visually and phonetically there is no distinction. Anyone, perhaps even the most careful and cautious, is bound to be misled and will inevitably mistake one mark for the other.

4. Mr. Kher is at pains to point out that the plaint itself demonstrates actual confusion. Exhibit “O”¹ is an email showing just such confusion. Exhibit “P”² is a reproduction of a news report that appeared on the popular financial website, moneylife.in on 31st March 2015 raising questions and referring to the the 1st Defendant’s illicit mark. This report shows³ that only a careful investigation revealed that the 1st Defendant has nothing to do with the 2nd Defendant. Read as a whole, that news article itself demonstrates the confusion, misrepresentation and deception of which the Plaintiff speaks. Mr. Kher points out in addition that the problems for the Plaintiffs were further exacerbated because the 1st Defendant seems to have floated a ‘Ponzi’ scheme.

5. Neither the Affidavit in Reply nor the Written Statement provide any worthwhile defence or explanation as to the adoption of

¹ Plaint, *p.* 226

² Plaint, *p.* 238

³ Plaint, *p.* 231, paragraph 2

the competing mark or why it is that the 1st Defendant thought it necessary to interchange the two vowels, or even on what basis the 1st Defendant claims that the two marks are distinguishable. I do not think they are in the least distinguishable. Even the most conscientious investor might easily mistake one for the other. There is, as I have already said, enough material to show this. The absence of the Defendants is hardly surprising.

6. The previous ad-interim order in terms of prayer clauses (a), (b) and (c) must be continued. It is confirmed as the final order on the Notice of Motion. The Notice of Motion is disposed of in these terms. The Plaintiffs will be entitled to recover the costs of the Notice of Motion at the time of the final hearing of the Suit.

(G. S. PATEL, J.)