

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMIP (L) NO.798 OF 2018
WITH
NOTICE OF MOTION (L) NO.1437 OF 2018
WITH
LEAVE PETITION NO.190 OF 2018**

Unilever PLC and Anr.	...	Plaintiffs
versus		
Kothari Food Products	...	Defendant

Mr. Vinod Bhagat with Ms. Laher Shah I/by G.S.Hegde and V.A.Bhagat for Plaintiffs.
Mr. Rohan Cama with Mr. Abhay Dhadiwal, Mr. Harsh Moorjani I/by M/s. Jayakar and Partners, for Defendant.

CORAM: S.J. KATHAWALLA, J.

DATE: 29th JUNE, 2018

P.C.:

1. The learned Advocate for the Defendant undertakes to file Vakalatnama within one week from today. The undertaking is accepted.

2. Heard the learned Advocates for the parties and by consent, the following order is passed :

(i) Leave under Clause XIV of the Letters Patent is granted.

(ii) The Suit is decreed in terms of prayer clauses (a), (b) and (c) which are reproduced hereunder :

“(a) the Defendant by himself, his proprietor/Partners, legal heirs, servants, agents, stockists, distributors, dealers, assignees and all

those connected with the Defendant in his business be restrained by a perpetual order and injunction of this Hon'ble Court from manufacturing, marketing, distributing, packaging, selling and/or using in any manner whatsoever in relation to its ice-creams, frozen desserts and any other like goods, the impugned mark CORNETTO or any mark identical with and/or deceptively similar to the first Plaintiff's trade mark CORNETTO so as to infringe upon the first Plaintiff's said trade mark CORNETTO registered under Nos.516822 and 811097 both in class 30;

(b) the Defendant by himself, his proprietor/partners, legal heirs, servants, agents, stockists, distributors, dealers, assignees and all those connected with the Defendant in his business be restrained by a perpetual order and injunction of this Hon'ble Court from manufacturing, marketing, distributing, packaging, selling and/or using in any manner whatsoever in relation to its ice-creams, frozen desserts and any other like goods, the impugned mark CORNETTO or any mark identical with and/or deceptively similar to the first Plaintiff's trade mark CORNETTO so as to pass off its goods and business as and for those of the Plaintiff or in some way connected or associated therewith;

(c) the Defendant by himself, proprietor/partners, legal heirs, servants, agents, dealers, distributors, assignees and all those connected with him in his business be ordered to deliver up to the Plaintiff for destruction of all the impugned goods, labels, covers, wrappers, hoardings, cartons, bill book, visiting cards, pamphlets, literature, stamps, seals, printing, packing and advertising material and other things bearing the impugned mark CORNETTO and/or

any other mark containing the word CORNETTO and/or any other word deceptively similar thereto and/or any other mark deceptively similar to the first Plaintiff's said well known trade mark CORNETTO;”

(iii) The sole Proprietor of the Defendant who is present in Court, undertakes to pay on or before 13th July, 2018 costs towards damages of Rs.2,00,000/- by way of demand draft drawn in favour of the Prothonotary and Senior Master of this Court.

(iv) The Court Receiver stands discharged without passing accounts, but upon payment of his costs, charges and expenses by the Plaintiffs.

(v) The material found/seized by the Court Receiver shall be destroyed in the presence of the representative/s of the Plaintiffs.

(vi) The Suit is accordingly disposed of. Refund of Court fees, if any, as per rules. Notice of Motion is also disposed of.

(vii) Though the Suit and Notice of Motion are disposed of, place the same on 13th July, 2018 to report compliance of clause (iii) above.

(S.J.KATHAWALLA, J.)