

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.1520 OF 2019

IN

COMMERCIAL IP SUIT NO.876 OF 2019

Unilever PLC. And Anr.

...Plaintiffs

vs.

Dilip Vala Varchand And 9 Ors.

...Defendants

.....

Mr. Vinod Bhagat, a/w. Ms. Saloni Palkhiwala, i/b. G.S. Hegde and V.A. Bhagat, for the Applicants/Plaintiffs.

Mr. Hardik Sajnani, i/b. Ms. Suvarna Joshi, for Defendant No.5.

Ms. Farhana Shah, for Defendant Nos. 6 and 7.

Mr. Rajesh Singh, a/w. Ms. Priti R. Mahajan, for Defendant No.9.

Mr. D.G. Chaudhari, representative of the Court Receiver present.

.....

CORAM : S.C. GUPTE, J.

DATE: 17 DECEMBER 2019

P.C.:

. This notice of motion has been taken out in a Commercial IP Suit complaining of infringement of registered trade marks and passing off of goods.

2. As this Court has observed in its ad-interim order dated 9 April 2019, the Plaintiffs' registered trade marks involving the word "LAKME" and their logo mark with an artistic device using the letter "U"

placed above the word “Unilever”, which is their house mark, have prima facie been infringed by the Defendants. The Defendants, in fact, prima facie appear to be dealing in counterfeit goods with the use of the Plaintiffs’ registered trade marks as also the artwork in connection with the trade dress or packing material of their goods. In pursuance of the ad-interim order, the Court Receiver’s office has searched the Defendants’ premises and found infringing goods. These have been reported in site reports prepared by the Court Receiver's office.

3. Defendant Nos. 5, Defendant Nos. 6 and 7, and Defendant No.9 appear today through Counsel. It is submitted by learned Counsel for Defendant No.5 that his client is merely a job worker, carrying out manufacturing job for others. It is submitted that in the written statement filed on behalf of Defendant No.5, particulars of the parties, for whom job work is being done by Defendant No.5, have been submitted. Defendant No.5 submits to the orders of the Court on the notice of motion. Learned Counsel for Defendant Nos. 6 and 7 seeks time to file a written statement on behalf of her clients. She also submits to the orders of the Court on the notice of motion. So far as Defendant No.9 is concerned, the Receiver's report indicates that at least two products, namely, Lakme 9 to 5 Weightless Housse Foundation and Lakme 9 to 5 Complexion Care Cream, were found by the Court Receiver at the Defendants’ premises. Only one piece each of these two products was found by the Court Receiver’s representative at site. It is submitted that these products were being used by Defendant No.9 for his personal use. The other infringing product found at site was TRESemme Styling Spray. About 236 pieces of this product were found

at site. The only other product found at site was Iconic London Illuminator (228 pieces). It is submitted that this product was marketed by a Chinese party and has nothing to do with the Plaintiffs' registered trade mark "LAKME EYECONIC". The trade dress of the two products is also completely different. So far as the trade marks "Lakme 9 to 5" or "Lakme 9 to 5 CC" as well as "TRESemme" are concerned, Defendant No.9 submits to the orders of the Court on the notice of motion. Even as regards the other registered trade marks of the Plaintiffs, including the trade mark LAKME EYCONIC, learned Counsel for Defendant No.9 submits to the orders of the Court.

4. Accordingly, the ad-interim order passed on 9 April 2019 is confirmed as an interim order on the notice of motion. It is made clear that so far as prayer clause (c) is concerned, the same has already worked out, since the Receiver has visited the Defendants' premises and seized the offending goods.

5. The notice of motion is disposed of accordingly.