

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION**

**NOTICE OF MOTION NO.2226 OF 2019
IN
COMMERCIAL IP SUIT (L) NO.876 OF 2019
ALONG WITH
NOTICE OF MOTION NO.1520 OF 2019**

Arshad Mojawalla and Kanji Dhila
Trading a M.R. Cosmetics and Jai
Mataji Cosmetics

... Applicant/
Org. Defendant No.8

In the matter of :

Unilever Plc
And Another
Versus
Dilip Vala Varchand
And Others

... Plaintiffs

... Defendants

.....

Ms. Parveen Anand a/w Ms. Saloni Palkhiwala i/b G.S. Hegde and
V.A. Bhagat for the Plaintiffs/Applicants in Notice of Motion No.1520
of 2019.

Ms. Suvama Joshi for Defendant No.5.

Mr. Saurabh Rane i/b Mr. Maroof M. Khan for Defendant No.8 and
for the Applicant in Notice of Motion No.2226 of 2019.

Mr. Rajesh Singh a/w Mr. Inftekhar Sayed for Defendant No.9.

Mr. Govind R. Honmane, representative of Court Receiver present.

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CORAM : S.C. GUPTE, J.

DATE : 25 NOVEMBER 2019

P. C. :

. This notice of motion, namely, Notice of Motion No.2226 of

2019 has been taken out by Defendant No.8, whose premises have been sealed by the court receiver's office in execution of an order passed by this court in a commercial IP suit on 9 April 2019. The commercial IP suit is in respect of infringement of trade Marks as well as passing off of goods. It was the case of the Plaintiffs, who are registered proprietors of a house mark "UNILEVER" with an artistic device of letter "U" placed above the word UNILEVER, which is termed as "U" logo, and also of trade marks using the word "LAKME", some with different other words including, particularly, the word "EYECONIC", that the Defendants were marketing counterfeit products by use of trade mark "LAKME EYECONIC" along with counterfeit packaging materials bearing deceptive similarity to the Plaintiffs' packaging materials and also bearing pirated artwork including "U" logo. On the Plaintiffs' application, this court, by an order dated 9 April 2019, granted urgent *ex parte* ad-interim reliefs in terms of prayer clauses (a) to (f). Prayer clause-(e) sought appointment of a court receiver for searching the premises of the Defendants without notice to them, so as to locate the counterfeit products, make an inventory and take custody/possession of the products by sealing them at the Defendants' premises under the lock and key of the receiver. It appears that the receiver's representative visited *inter alia* Warehouse No.66, which was said to be a godown of Defendant No.8. Since a huge inventory of counterfeit products was found there, considering the difficulty of sealing such a huge inventory, with consent of both parties, receiver's representatives sealed the entire godown. The main door of the godown was closed and sealed with

the receiver's lock and key. All windows were also closed and electrical switches turned down.

2 The present notice of motion has been taken out by the Applicant/Defendant No.8 complaining *inter alia* that as result of sealing of the entire godown, he has been unable to carry on any work therein and his entire business has come to a standstill. It is submitted that the offending goods lying within the godown cover merely about 25 per cent of the the godown space. It is submitted that if the sealing order is restricted to this space, the remaining godown, which is free space, may be used by the Defendant for legitimate business purposes. The request seems to be in order. After all, the order requires sealing of goods; if such sealing could be achieved without having to seal the entire godown, that should certainly suffice. Having regard to the photographs of the interiors of the godown, where the goods are shown scattered all over, it is ordered that the receiver's representative may arrange the offending goods at one side of the godown, place them in racks on the particular side of the godown and then devise a way of sealing the goods including with the use of wooden planks to close the designated space for safe custody of the sealed goods. This exercise must be accomplished in the presence of representatives of both Plaintiffs and Defendant No.8. The expenses for making this arrangement so as to seal the goods within Defendant No.8's godown, shall be borne by Defendant No.8. The de-sealing of the godown and sealing of the goods in the manner proposed above, shall be accomplished within

two weeks from today.

3 Liberty to the parties to move this court in case this arrangement is either not possible or any particular difficulty is encountered whilst making such arrangement. The notice of motion is disposed of accordingly.

4 The other notice of motion, that is, Notice of Motion No.1520 of 2019, taken out by the Plaintiffs in the commercial IP suit shall come up in due course. The notice of motion has been duly served on Defendant No.8, whose application is disposed of as above. The motion has also been served on Defendant Nos.5 and 9, who have filed their respective replies to the motion. Defendant No.9 appears through counsel and waives service of writ of summons. Defendant No.9 may file a written statement within eight weeks from today.

5 Learned Counsel for the Plaintiffs informs the court that attempts of service on Defendant No.1 to 4 and 7 have been unsuccessful, since no one has been found at the respective addresses of these Defendants given in the cause title. Learned Counsel, accordingly, seeks an order of substituted service. The writ of summons and the interim application may accordingly be served on these Defendants by publication in two local newspapers, namely, Free Press Journal in English and Mumbai Samachar in Gujrathi, circulating in Mumbai, with the returnable date to be communicated as “17 December 2019”.

(S.C. GUPTE, J.)