

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL ORIGINAL JURISDICTION**

**INTERIM APPLICATION NO. 1 OF 2019
IN
COMMERCIAL IP SUIT NO. 1093 OF 2019
WITH
NOTICE OF MOTION NO. 2070 OF 2019
WITH
NOTICE OF MOTION NO. 2456 OF 2019
IN
NOTICE OF MOTION NO. 2070 OF 2019
IN
COMMERCIAL IP SUIT NO. 1093 OF 2019**

Unilever Plc and Anr.

...Applicants/Plaintiffs.

vs.

Maahi37 and 12 Ors.

...Respondents/Defendants.

Mr. Vinod Bhagat a/w Ms. Zaher Shah and Ms. Saloni Palkhiwala i/b G.S. Hegde & V.A. Bhagat, for Plaintiffs in IA/1/2019.

Mr. Atmaram Patade, for Defendant No.5/Applicant in NMCD/2456/19.

Mr. D. N. Kher, Court Receiver present.

CORAM : S.C. GUPTE, J.

DATE : 11 NOVEMBER 2019

P.C. :

1. This Interim application, made in a commercial IP suit, seeks amendment of the plaint as well as notice of motion. The interim application has not been served as yet on all defendants. The interim application is accordingly stood over to 3 December 2019.

2. Notice of motion No. 2070/19 is taken out in the commercial IP suit by the Plaintiff. It seeks various reliefs concerning the offending goods with the use of the impugned mark 'Indulekha' and the impugned U-logo, which

are registered trade marks of the Plaintiffs.

3. Learned Counsel for Defendant No.5 submits to the orders of the court. Learned Counsel submits that his client has already made a disclosure in terms of prayer clause (e). It is submitted that the Defendant is not a manufacturer of the offending goods, but that he is a trader, who has bought these goods from a market, known as 'Manish Market', in Mumbai. It is submitted that the Defendant does not know the name of the shop from which the goods have been bought. It is, further, submitted that Defendant No. 5 shall be in position to identify the person from whom he has bought the offending goods. Learned Counsel for the Defendant also confirms that the Defendant has been trading in these goods on the Snapdeal platform not only in its name, but in seven other names, namely, Brandsoon & Co., Belizzi Exp, Touchme Enterprise, Dev Enterprise, Jay Khodiyar, Karelian Heritage and Bhavyaa Fashion. Learned Counsel submits that his client shall abide by the order of the court not only for the entity designated as Defendant no.5 in the present suit but also on behalf of all seven entities referred to above.

4. Accordingly, the notice of motion is made absolute in terms of prayer clauses (a) to (d) of the notice of motion against Defendant No. 5. Defendant No.5 shall identify the person from whom he has been buying the offending goods referred to above to the Court Receiver's representative in the presence of a representative of the plaintiffs. Defendant No. 5 is also agreeable to have the goods, taken in custody by the Court Receiver in terms of prayer clause (d) of the notice of motion, destroyed. The goods shall be so destroyed by the Court Receiver, after retaining a few samples for the purposes of the present suit as may be requested by the Plaintiffs.

Destruction of the goods shall be carried out in the presence of the representative of the Plaintiffs.

5. The Plaintiff will be at liberty to adopt such steps as they may be advised against the person identified by Defendant no. 5 as the vendor of the offending goods.

6. The companion notice of motion, being Notice of Motion No. 2456/19, has been taken out by Defendant no.5. The Court Receiver was appointed to take charge of the infringing goods stored by Defendant No.5 at his premises at Surat in Gujarat. When the Receiver's representative went to the site to take custody of the goods, no one was found at the premises to let the receiver's representative know or identify the goods. In the premises, the Court Receiver's representative sealed the premises itself. The present notice of motion has been taken out by Defendant no. 5 praying for de-sealing the premises. Defendant No.5 is agreeable to identify the offending goods within the premises and allow the Court Receiver's representative to make inventory the same and seize the same in the presence of the Plaintiffs' representative.

7. Accordingly, Notice of Motion No. 2456/19 is made absolute in terms of prayer clause (a) thereof. The Court Receiver's representative shall visit the premises of shop No. 125, referred to the prayer clause (a), in the presence of a representative of the Plaintiffs. The Receiver's representative shall carry out the exercise in terms of prayer clause (a) in the presence of the Plaintiff's representative. Before destroying the goods in accordance with this order, the Receiver's representative shall preserve a few samples of the goods as may be indicated by the Plaintiffs' representative for the

purposes of the present suit. The samples may be taken charge of and kept under a seal by the Court Receiver's representative for the purposes of the present suit.

8. Learned Counsel for Defendant No.5 also states that he shall surrender the other goods, namely, Lakme Eyeconic Kajal, Axe Deodorants and Brut Deodorants, noted in the inventory as found at site when the representative visited the same in pursuance of this order. As in the case of hair oil and shampoo under the trade name 'Indulekha' in respect of which an order has been passed in terms of prayer clause (a), the same interim injunction shall operate in respect of these other goods, namely, Lakme Eyeconic Kajal, Axe Deodorants and Brut Deodorants. Notice of motion No. 2070/19 is disposed of accordingly.

9. The Plaintiffs shall arrange to take the Receiver's representative to shop no. 125 for executing the present order. The costs of the Receiver's visit and the work to be carried out in terms of this order, shall be borne by Defendant no.5. The receiver may indicate such costs to Defendant No.5, and the latter shall bear the same affront to enable the receiver's representative to travel to and fro. The arrangements in this behalf shall be made in coordination of the Plaintiffs and Defendant no.5.

(S.C. GUPTE, J.)