

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

**COMMERCIAL NOTICE OF MOTION NO.64 OF 2015
IN
COMMERCIAL IP SUIT NO.265 OF 2015**

Eureka Cosmo Pvt. Ltd. and Anr.Applicants/Plaintiffs

Vs.

Laxmi Beauty Product Pvt. Ltd.Defendant

**WITH
COMMERCIAL NOTICE OF MOTION NO.67 OF 2015
IN
COMMERCIAL IP SUIT NO.269 OF 2015**

Laxmi Beauty Product Pvt. Ltd.Applicant/Plaintiff

Vs.

Eureka Cosmo Pvt. Ltd. and Anr.Defendants

Mr. H.W. Kane a/w. Mr. Aasif Navodia i/b. W.S. Kane and Company for applicants/plaintiffs in COMIP/265/2015 and for defendants in COMIP/269/2015.

None for defendant in COMIP/265/2015 and for applicant/plaintiff in COMIP/269/2015.

**CORAM : K.R.SHRIRAM, J.
DATE : 04.06.2019**

P.C.:

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1 None for defendant, who is plaintiff in COMIP No.269 of 2015.

By a letter dated 16th August 2016, defendant, who was plaintiff in the counter claim, has been informed by the registry to make alternate arrangement to appoint an Advocate and also remain present in Court on 19th September 2016 and if not present, the suit filed by defendant may get

dismissed and the suit filed against defendant may be decreed without further notice. The copy of the letter is on record.

2 None appears for Laxmi Beauty Product Pvt. Ltd. Therefore, notice of motion no.67 of 2015 and COMIP No.269 of 2015 stand dismissed.

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3 Plaintiffs are seeking to restrain defendant by itself/ directors/agents/servants etc. from infringing plaintiffs' registered trade marks as stated in Exhibit "A" and "D" to the plaint. According to plaintiffs, the trade mark as mentioned in the register of trade marks at Exhibit "A" and "D" to the plaint belongs to plaintiffs and defendant has been infringing the trade marks. Nobody is appearing for defendant but affidavit in reply has been filed opposing the notice of motion on the ground that defendant has been using the trade mark much before plaintiffs claim to have registered the same. Defendant has to prove that in trial.

4 As provided in Section 28 of the Trade Marks Act, 1999, registration of a trade mark shall give to the registered proprietor of the trade mark the exclusive right to the use of the trade mark in relation to the goods or services in respect of which the trade mark is registered and to obtain relief in respect of infringement of the trade mark in the manner

provided by the said Act. Therefore, plaintiffs have made out a *prima facie* case for the relief as prayed for in the notice of motion.

5 In the circumstances, notice of motion is allowed and accordingly disposed in terms of prayer clauses – (a), (b) and (c) which read as under :

(a) that pending the hearing and final disposal of the suit the defendant by itself, its directors, agents, servants, stockists, distributors, dealers and all persons claiming through it be restrained by a temporary order and injunction of this Hon'ble Court from infringing the plaintiffs' registered trade marks bearing registration Nos.1652922 in class 08 and 1809481 in class 16 by using the impugned trade mark label or any other trade mark containing the word STAG or any other trade mark deceptively similar to the plaintiffs' registered trade mark bearing registration no.1652922 in class 08 and 1809481 in class 16 upon or in relation to scissors or similar goods or in any other manner whatsoever;

(b) that pending the hearing and final disposal of the suit the defendant by itself, its directors, agents, servants, stockists, distributors, dealers and all persons claiming through it be restrained by an order and temporary injunction of the Hon'ble Court from infringing the plaintiffs' copyright in its said artistic work by reproducing and/or publishing and/or using and/or communicating to the public the impugned trade mark label or by reproducing and/or publishing and/or using and/or communicating to the public any other work which is a reproduction of the plaintiffs' said artistic work and/or substantial part thereof in any material form or in any other manner whatsoever;

(c) that pending the hearing and final disposal of the suit the defendant by itself, its directors, agents, servants, stockists, distributors, dealers and all persons claiming through it be restrained by an order and temporary injunction of the Hon'ble Court from manufacturing, importing, marketing, selling,

exhibiting for sale and/or distributing, keeping in possession and/or advertising, trading in and/or otherwise dealing with the impugned goods or similar goods bearing the impugned trade mark label or under any other trade mark containing the word STAG and/or device of STAG or under any other trade mark identical with or deceptively similar to the plaintiffs' trade mark STAG and/or to the plaintiffs' said trade mark label so as to pass off or enable others to pass off the defendant's goods as and for the plaintiffs' well-known goods or in any other manner whatsoever.

6 Plaintiffs to forward a copy of this order to defendant.

7 Mr. Kane states that the Prothonotary and Senior Master has already transferred this suit vide an order dated 3rd August 2016 to the list of undefended suits.

8 Registry may place the suit under the caption of undefended suits before the appropriate Court.

(K.R. SHRIRAM, J.)