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

**INTERIM APPLICATION NO.1 OF 2019
IN
COMMERCIAL IP (L) NO.1051 OF 2019**

Meher Distilleries Private Ltd. ... Applicant/plaintiff

IN THE MATTER BETWEEN.

Meher Distilleries Private Ltd. ... Plaintiff.

V/s.

Agribiotech Industries Limited ... Defendant

- Mr. H.W. Kane a/w Ms. Vedangi Soman i/by W.S. Kane and Co., for the Plaintiff/applicant.
- None for defendant

CORAM : B. P. COLABAWALLA, J.

DATE : 9th October, 2019.

PC. :

1] Mr. Kane, learned counsel appearing on behalf of plaintiff seeks to move for ad-interim reliefs without notice, for the reasons set out in paragraph 19 of the plaint. The present action is brought for infringement of the trade mark and copy right along with passing off.

2] The plaintiff manufactures and sells country liquor. It has been doing

so for many years. It is the case of the plaintiff that in the year 1983-84. it conceived and adopted an artistic trade mark. A representation of this is shown almost everywhere in the plaint. The device is of an oval shield surrounded by decorative leaves or vines. In the middle of the oval are the letters “MD” representing the initials of the first two words of the plaintiff’s corporate name. These letters are written in a unique Gothic font. This mark, one that is now registered to the plaintiff, is also embossed on the glass bottle in which plaintiff sells it’s country liquor product.

3] It is the case of the plaintiff that it has been openly, continuously and extensively using this mark on these bottles for a considerable period of time. Exhibit “D1” and “D2” to the plaint are images of the plaintiff’s bottle and Exhibit “H1” and “H-2” show rival bottles used by the defendant. On comparing the two, it is quite clear that the plaintiff’s mark is clearly seen embossed on the bottle of the defendant. The defendant can have no conceivable connection with the plaintiff’s mark and there can be no doubt that the plaintiff has copyright in the device and it’s artistic work and the plaintiff holds a subsisting trade mark registration in respect of the mark as well. In view thereof in my opinion a strong prima facie case is made out for grant of ad-interim injunction in infringement of the trade mark and copy right. In view pending petition under clause XIV of Letters Patent,

present reliefs are confined to the reliefs in infringement.

4] In these circumstances, there will be ad-interim relief in terms of prayer clause (a) and (b) which reads thus :-

“(a) that pending the hearing and final disposal of the suit the Defendant by itself, its directors, servants, agents, stockists, distributors, dealers and all persons claiming under it be restrained by a temporary order and injunction of this Hon’ble Court from infringing the Plaintiff’s copyright in its artistic



work registered under No. A-60223/2001 by using the impugned bottles at Exhibits “H-1” and “H-2” to the Plaintiff or by reproducing and/or publishing and/or using and/or communicating to the public the Plaintiff’s said artistic work in any other manner whatsoever and/or publishing and/or using and/or communicating to the public any other work which is reproduction of the Plaintiff’s artistic work registered under No. A-60223/2001 and/or substantial part thereof in any material form or in any other manner whatsoever;

(b) that pending the hearing and final disposal of the suit the Defendant by itself, its directors, servants, agents, stockists, distributors, dealers and all persons claiming under it be restrained by an order and temporary injunction of the Hon’ble Court from infringing the Plaintiff’s registered trade mark bearing Registration No. 2217448 in Class 33 by using the



bottles embossed with the impugned trade mark for filling in, bottling, packing, selling and/or distributing country liquor or by otherwise using the said trade mark or any other trade mark deceptively similar to the Plaintiff's trade mark bearing Registration No. 2217448 in Class 33, upon or in relation to country liquor or similar goods or in any other manner whatsoever"

5] The plaintiff will comply with the provision of Order XXXIX Rule 3 of the Code of Civil Procedure, 1908, within 7 days of this order being uploaded.

6] Liberty to the defendant to apply for variation, modification and/or recall of this order with 24 hours prior notice to the Advocate for the plaintiff.

7] List the matter for further ad-interim reliefs along with the petition for leave under Clause XIV of the Letters Patent on 15.11.2019.

8] The learned advocate for the plaintiff is directed to serve copy of this order on the defendant as soon as it is made available.

9] All parties are directed to act on a copy of this order duly authenticated by the Associate of this Court.

[B. P. COLABAWALLA, J]