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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN IT'S COMMERCIAL DIVISION
INTERIM APPLICATION NO. 1 OF 2019

IN

COMIP (L) NO. 1115 OF 2019

Meher Distilleries Private Limited) Applicant.

In the matter between :-

Meher Distilleries Private Limited) ...Plaintiff.

Versus

Raisen Marketing Private Limited and Anr.) .. Defendants.

Mr. Himanshu Kane a/with Ms. Shaziya Tyabji i/by W.S.
Kane & Co. for the Plaintiff.

None for the Defendants.

CORAM : B.P. COLABAWALLA, J

DATE : 17TH OCTOBER, 2019.

P.C. :-

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 defendants. On comparing the two, it is quite clear that the

plaintiff's mark is clearly seen embossed on the bottle of the defendants. The defendants 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.

4] It is the case of the Plaintiff that 2nd defendant is a habitual infringer and that in the past, various actions have been initiated against 2nd defendant's group company Som Distilleries & Breweries Limited for its misappropriation of someone else's intellectual property rights, including actions involving the group company's use of bottles embossed with someone else's trade mark. The orders obtained by the third parties are annexed at **Exhibits "I-1" to "I-8"** to the plaint.

5] 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 the pending petition for leave under clause XIV of the Letters Patent, the present reliefs are confined to the reliefs in

infringement.

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

- (a) that pending the hearing and final disposal of the suit the Defendants by themselves, their directors, servants, agents, stockists, distributors, dealers and all persons claiming under them 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 a 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; and

- (b) that pending the hearing and final disposal of the suit the Defendants by themselves, their directors, servants, agents, stockists, distributors, dealers and all persons claiming under them 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 alcoholic beverages 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 alcoholic beverages or similar goods or in any other manner whatsoever;

7] 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.

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

9] List the matter for further ad-interim reliefs along with the petition for leave under Clause XIV of the Letters Patent on 22nd November, 2019.

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

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

Digitally
signed by
Rudhakishan S. Ladda
Date:
2019.10.17
15:25:41
+0530

(B.P. COLABAWALLA, J)