

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

**INTERIM APPLICATION No. 1 OF 2019
IN
COMMERCIAL IP SUIT (L) No. 1265 OF 2019**

Yogi Ayurvedic Products Pvt. Ltd. ...Applicant

In the matter between

Yogi Ayurvedic Products Pvt. Ltd. ...Plaintiff

Vs.

**Sanskar Ayurvedic Life Care Pvt.Ltd.
(Formerly known as Aryan Ayur Life
Care Private Limited and Anr.**

....Defendants

Mr. Alankar Kirpekar a/w. Ms. Jaya Manghwani a/w. Mr. Shekhar
Bhagat i/b. MAG Legal for Applicant/Plaintiff

CORAM : S.C. GUPTE, J.

DATE : NOVEMBER 29, 2019

P.C.:

1. Heard learned counsel for the plaintiff.
2. This interim application is made in a Commercial IP Suit. The suit is in respect of infringement of registered trade marks and passing off of goods. The plaintiff is a register proprietor of several trade marks bearing the word “YOGI”, both as word marks and device marks, in Classes 3 and 5 of fourth schedule of the Trade Marks Act, 1999. The plaintiff manufacturers and markets ayurvedic and herbal medicines and cosmetic preparations under these different trade marks. All, as noted above, have the word “YOGI” as an important and distinctive part of them. The word “YOGI” is also a part of the trading name of the plaintiff. The plaintiff produces copies of registration certificates of the trade marks along with the plaint. The plaintiff claims that it has been continuously, extensively and openly using these trade marks since 1999. The plaintiff relies upon certified statements of its sales, as also its sale

promotion expenses since the year 2009 onwards. The Plaintiff's grievance is that the defendants are marketing similar goods, using the word "YOGI" as part of their alleged trade mark.

3. Learned counsel for the plaintiff produces before the Court samples of rival products manufactured by the plaintiff and the defendants for comparison. It is submitted that the defendants are not only infringing the registered trade marks of the plaintiff, but also passing off their goods as goods of the plaintiff.

4. Ordinarily, the court would have expected a plaintiff such as the one before it, to have given at least a short notice before considering any ad-interim application, which has the effect of restraining the defendants from marketing their products under the particular marks used by them. The plaintiff, however, makes out a special case for applying reliefs, particularly, the relief of appointment of Court Receiver for the purpose of inventory of the defendants' goods, on an urgent ex-parte basis. It is submitted that originally the defendants' unauthorized use of the mark "YOGI" was noticed by the plaintiff in 2016. Upon it being noticed, a cease and desist notice was issued by the plaintiff to the defendants. It is submitted that the defendants closed their premises, from which they were marketing the offending goods. It is submitted that suddenly, i.e. just before filing of the present suit, it was noticed by the plaintiff that the defendants had changed their address as also their trading name and were marketing the same goods for which originally a cease and desist notice was given to them and in response to which, they had stopped marketing of infringing goods. It is submitted that if a notice of ad-interim application is now served on the defendants, they may once again stop their business, move to a new place and continue to conduct the same business in breach of the plaintiff's intellectual property rights.

5. The approach of the plaintiff to this court for emergent and ex-parte relief, considering the circumstances noted above, appears to be

justified. On the facts noted above, there will be an ad-interim order in terms of prayer clause (b), which is quoted below for a limited period of two weeks from today:

“(b) that pending the hearing and final disposal of the Suit the Defendants by themselves, through their Directors, agents, servants, stockists, dealers and/or distributors, partners, exporters, assignees or otherwise be restrained by an order of temporary injunction of this Hon’ble Court from infringing the Plaintiff’s registered trademarks bearing registration Nos. 836921, 1240305, 1514090, 3727330 in Class 3 and or 836920, 974590, 1240304, 3727336, 3961590 in Class 5 by using the impugned trade mark “YOGI” and/or any other deceptively similar trade mark to the Plaintiff’s Trade Mark Nos. 836921, 1240305, 1514090, 3727330 in Class 3 and/or 836920, 974590, 1240304, 3727336, 3961590 in Class 5 as shown in Exhibit “B” to “B8” hereto, so as to infringe the registered trade mark of the Plaintiff in any manner whatsoever.”

6. There will also be an ad-interim order in the following terms :
 - (i) Court Receiver, High Court, Bombay shall make an inventory of the offending goods bearing the impugned marks and packaged in the impugned packaging material and lying with the Defendants or within the Defendants premises at the address given in the cause title;
 - (ii) The Court Receiver shall submit a report of such inventory to this Court;
 - (iii) The Plaintiff shall serve a copy of the Notice of Motion and plaint along with the documents relied upon by the Plaintiff, at the time and place, when and where the Court Receiver makes inventory of the impugned products;
 - (iv) It will be open to the Court Receiver to seek assistance of

local police, if necessary;

(v) Liberty is granted to the Defendants to apply for variation of the present order after giving 24 hours' notice to the plaintiff;

(vi) The Plaintiff is permitted to renew its ad-interim application on 13th December, 2019 after notice to the Defendants;

(vii) Court Receiver to act on the authenticated copy of this order;

(viii) Stand over to 13th December, 2019.

[S.C. GUPTE, J.]