

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****INTERIM APPLICATION NO.1 OF 2020****IN****COMMERCIAL IP SUIT (L) NO.20 OF 2020**

Cargill India Pvt. Ltd.

...Plaintiff

vs.

Warsi Agro Pvt. Ltd.

...Defendant

.....

Mr. Rohan Kadam, a/w. Ms. Chaitrika Patki and Ms. Ruhani Sanghvi,
i/b. Anand And Anand And Khimani, for the Plaintiff.

Mr. Subhradeep Banerjee, i/b. Darryl P. Barretto, for the Defendant.

Mr. Sameer Salim Siddique, Director of Defendant present.

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CORAM : S.C. GUPTE, J.**DATE: 13 JANUARY 2020****P.C.:**

. This Commercial IP Suit complains of infringement of a registered trademark as also breach of copyright in packaging material or trade dress of goods and a case of passing off.

2. The Plaintiff's registered trademark is "GEMINI" with or without additions (GEMINI marks). The grievance of the Plaintiff is that the Defendant has adopted an identical or deceptively similar mark as also the same trade dress or packaging material as the Plaintiff's goods. Learned Counsel for the Defendant submits that his client agrees not to

use the trademark “GEMINI” or the trade dress or packaging material complained about in the suit or any other identical or deceptively similar packaging material or trade dress or pass off its goods as the goods of the Plaintiff. Learned Counsel states that the Defendant has, in fact, desisted using both the offending marks and the offending packaging material or trade dress with effect from 3 January 2020. Learned Counsel submits that his client has no inventory left of the offending packaging material or trade dress, since all goods have been already distributed. Learned Counsel for the Defendant also states that his client shall withdraw the application made to the Trademarks Registry, being Application No.3898829, for registration of the mark “GEMINE” within a period of four weeks from today and produce evidence of having so applied for withdrawal by submitting a copy of the acknowledgment received by the Trademarks Registry in that behalf to the Plaintiff. The statements of the Defendant are noted and accepted. In view of these statements, which are accepted by the Court, learned Counsel for the Plaintiff does not press prayer clauses (e) and (f). Learned Counsel submits that appropriate costs may be ordered as against the Defendant in the facts of the case. Learned Counsel for the Defendant leaves the matter of costs to the Court. In view of the Defendant's statements recorded above, effectively there is a decree in accordance with prayer clauses (a) to (d). In the premises, the Commercial IP Suit is disposed of by accepting the Defendant's statements. The Defendant shall pay costs quantified at Rs.1 lakh to Tata Memorial Cancer Hospital within a period of four weeks from today.

(S.C.GUPTA, J.)