

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****NOTICE OF MOTION NO.584 OF 2019****IN****COMMERCIAL IP SUIT NO.274 OF 2019****WITH****NOTICE OF MOTION NO.1027 OF 2019****IN****COMMERCIAL IP SUIT NO.274 OF 2019**

Twin Impex

...Plaintiff

vs.

Syncom Formulations (I) Ltd.

...Defendant

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Ms. Sonal, i/b. Mr. Vivek M. Sharma, for the Plaintiff.

Dr. Birendra Saraf, a/w. Mr. Rohan Savant, Mr. Deepakar Livingston,
Mr. R.P. Shirole, Mr. Kamlesh Mali, i/b. Deepakar Livingston, for the
Defendant.

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

. Notice of Motion No.1027 of 2019 is the Defendant's motion under Order 7 Rule 11 for rejection of plaint for non-disclosure of a cause of action. The Commercial IP Suit is in respect of infringement of trademark as well as copyright and passing off of goods. The Plaintiff claims to be a proprietary concern of one Vijay Devnani. The Plaintiff claims to be exporting pharmaceutical products to various countries since 1993. The proprietor of the Plaintiff was earlier said to be a

partner of Twin Exports, who was the registered proprietor of the trademarks as well as owner of copyright in material used in connection with the goods exported. The trademarks infringed or used for passing off goods are said to be five different trademarks. The Plaintiff claims proprietorship of all 5 trademarks. Two of these trademarks are registered trademarks whilst three are not.

2. The present motion is on the footing that the plaintiff does not indicate how the Plaintiff, as a sole proprietary concern of Vijay Devnani, has come to own the subject trademarks.

3. In the present case, the Plaintiff has come to the Court with a case that he has been exporting since around 1998 pharmaceutical products under different trademarks, also having copyright in particular trade dress or packaging material used for marketing goods under these trademarks. The sole proprietor of the Plaintiff is claimed to be originally a partner in M/s. Twin Exports, a firm of Mr. Vijay Devnani and his mother Chandra Devnani and aunt Laxmi Devnani. The two registered trademarks are owned by M/s. Twin Exports. It is said that after the death of Vijay Devnani's mother and aunt, he started exporting pharmaceutical goods in the name of his proprietary concern M/s. Twin Exports using these trademarks and with the use of his copyright. He also claims to have allowed his wife to export pharmaceutical goods using these trademarks and copyrights owned by him in the name of her proprietary concern M/s. Garuda Exports. Insofar as 5 trademarks, which are the subject matter of the present suit, are concerned, the Plaintiff has shown how the particular marks were coined and adopted by the Plaintiff. Assertions have been made in respect of each of these

trademarks showing the Plaintiff's proprietorship of the trademarks. These averments clearly amount to a pleading as to the Plaintiff's alleged ownership of the trademarks in question and its entitlement to the copyright in the trade dress or packaging material used. Whether, either as a matter of pleading or as part of trial, the Plaintiff has correctly traced his or her ownership of the trademarks, is not really material for the Defendant's application under Order 7 Rule 11 of Civil Procedure Code. The Plaintiff after all claims to be a proprietor of trademarks in dispute; whether he does so rightly or wrongly is immaterial. The Defendant may very well question the Plaintiff's claim of proprietorship of the subject trademarks, but that is part of the trial. The Defendant may even question the Plaintiff's proprietorship at the *prima facie* stage by questioning it in an interim application but that is far different from saying that the plaint does not disclose any cause of action to go to trial and must be rejected. There is, accordingly, no merit in the notice of motion. The notice of motion is dismissed.

4. The companion notice of motion, Notice of Motion No.584 of 2019, is the Plaintiff's motion for interim reliefs. Learned Counsel for the Defendant seeks time to respond to the notice of motion. The notice of motion is, accordingly, stood over to 21 January 2020. It is ordered that the pleadings filed by the parties, including reply and the rejoinder in Notice of motion No.1027 of 2019, shall be used for deciding Notice of Motion No.584 of 2019.

(S.C.GUPTE, J.)