

SHRIKANT
SHRINIVAS
MALANI

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by SHRIKANT
SHRINIVAS
MALANI
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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION NO. 2764 OF 2022
WITH
COURT RECEIVER'S REPORT NO. 126 OF 2022
IN
COMMERCIAL IP SUIT NO. 243 OF 2022

Hindustan Unilever Limited

...Applicant/Plaintiff

Versus

Uttam Gorai

...Defendant

- Mr. Vinod Bhagat, Mr. Karan Khilani i/by G.S. Hegde and V.A. Bhagat for Plaintiff.

CORAM : MANISH PITALE, J

DATE : 14TH DECEMBER, 2022.

P. C. :

1. In this application by order dated 30th March, 2022, this Court granted *ex-parte* ad-interim reliefs in favour of the Plaintiff. The order was executed and the Court Receiver's Report is on record.

2. On 09th November, 2022, this Court allowed the Leave Petition, in the light of the fact that the Defendant was served. Thereupon, ad-interim relief concerning action of passing off was also granted and the application was directed to be listed for final disposal today.

3. Even today, despite service, the Defendant has chosen not to appear before this Court. In this situation, the learned Counsel for the Plaintiff is pressing for the ad-interim reliefs to be made absolute

and the application to be allowed.

4. This Court has considered the material on record, particularly the comparison of the impugned product of the Defendant and the impugned trademark, with the product of the Plaintiff bearing the registered trademark. It is found that the impugned trademark of the Defendant is not only deceptively similar to the registered trademark of the Plaintiff, but, the colour scheme, trade dress and the depiction on the package of the impugned product, copies the essential and prominent features of the registered trademark and trade dress of the Plaintiff. The impugned trademark is found to be phonetically and structurally similar as the registered trademark of the Plaintiff which is 'Surf Excel', while that of the Defendant is 'Super Excel'.

5. All these factors were recorded in detail in the orders dated 30th March, 2022 and 09th November, 2022, passed by this Court when the ad-interim reliefs were granted for the action of infringement as well as passing off.

6. The Defendant has not appeared to deny any specific allegations made by the Plaintiff. This Court is convinced that a strong *prima facie* case is made out in favour of the Plaintiff. The balance of convenience is also in favour of the Plaintiff, for the reason

that unless such interim reliefs are granted, the Plaintiff is likely to suffer grave and irreparable loss. In the light of the above, the ad-interim reliefs granted by this Court are made absolute and the application stands allowed in terms of prayer clauses (a), (b) and (c).

7. In the light of the above, the Court Receiver's Report is disposed of and the Court Receiver is discharged, without passing up of accounts.

(MANISH PITALE, J.)