

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

INTERIM APPLICATION NO. 1466 OF 2021

IN

COMMERCIAL IP SUIT NO. 195 OF 2021

Mauj Mobile Private Limited

...Applicant

IN THE MATTER BETWEEN :

Mauj Mobile Private Limited

...Plaintiff

Versus

Mohalla Tech Private Limited & Ors.

...Defendants

* * *

- Mr. Sharan Jagtiani, Senior Counsel a/w Mr. Himanshu W. Kane, Mr. Kunal Dwarkadas, Mr. Vishal Narichania, Mr. Ashutosh Kane, Ms. Vedangi Soman and Ms. Ananya Mohapatra i/by W.S. Kane & Co., for the Applicant/Plaintiff.
- Mr. Hiren Kamod, Mr. Prem Khullar, Mr. Aditya Chitale, Mr. Prashant Shetty and Mr. Sumedh Ruikar i/by RK Dewan Legal Services, for Defendant Nos. 1 and 4.
- Mr. Virag Tulzapurkar, Senior Counsel a/w Mr. Aditya Chitale, Mr. Prashant Shetty and Ms. Sumedh Ruikar i/by RK Dewan Legal Services, for Defendant Nos. 2, 3, 5 and 6.

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CORAM : MANISH PITALE, J

RESERVED ON : 17th APRIL, 2023.

PRONOUNCED ON : 05th JUNE, 2023.

JUDGMENT:

1. The Applicant/Plaintiff has filed the instant Suit and application for interim reliefs in the context of its registered trademark "MAUJ". The said trademark of the Plaintiff is registered in various Classes, including 38, 41 and 42. The grievance of the Plaintiff is that the Defendants have infringed upon the said registered trademark of the Plaintiff by using a deceptively similar

trademark “MOJ”. The Plaintiff alleges phonetic and structural similarity between the two marks and it also claims that the Defendants have committed the tort of passing off.

2. A perusal of the pleadings shows that, according to the Plaintiff, the predecessor-in-title of the Plaintiff had started using honestly and bona fide the mark “MAUJ” in and around the year 2003, in relation to software programming, entertainment and content distribution business. In the year 2003 itself domain name www.mauj.com was also registered. An application was submitted on 11th February, 2005, for registration of the trademark “MAUJ” in Class 42 for engaging in the business of computer programming, computer software, internet medium and developing computer and wireless software. Registration was granted on 17th November, 2006. Such an application was also made on the same date i.e. on 11th February, 2005, for registration of the trademark “MAUJ” in Class 38 in respect of telecommunications, media and technology, which was granted on 20th November, 2006.

3. It is stated on behalf of the Plaintiff that pursuant to a scheme approved by this Court, the MAUJ business division of the predecessor of the Plaintiff, including all trademarks, domain name and goodwill was demerged and transferred as a going concern to the Plaintiff. On this basis, the Plaintiff claims proprietary right in

respect of the said registered trademark “MAUJ”. On 25th November, 2008, the Plaintiff applied for registration of the trademark “MAUJ Mobile” in Class 41 under the category “Entertainment”. Registration on the basis of the said application was granted on 30th August, 2016. The Plaintiff further applied on 22nd December, 2009, for registration of trademark “mauj.com” in Class 38 in respect of “Telecommunications”. Such registration was granted on 18th March, 2011. On 10th November, 2010, the Plaintiff applied for registration of trademark “MAUJ” in Class 41 in respect of “Entertainment” and such registration was granted on 30th August, 2016. It is on the strength of such registrations of its trademark “MAUJ” and its variants in the aforementioned Classes that the Plaintiff is asserting its proprietary rights.

4. According to the Plaintiff, it continued to engage in the business of digital content distribution and providing value added services in the mobile industry, including mobile applications for a considerable period of time, thereby earning substantial goodwill in the market. The Plaintiff has stated that it entered into contracts with 27 mobile operators, having presence in 14 countries including India, further stating that the cumulative revenue of the plaintiff for last about 10 years exceeds Rs. 241 Crores. In this backdrop, the Plaintiff claims its presence in the public domain for a considerable

period of time.

5. The Plaintiff has stated that the Defendant No. 1 was incorporated in January, 2015 and that in the year 2016, one of the directors of the Plaintiff was introduced to a director of Defendant No. 1. By relying upon an email dated 22nd September, 2016, whereby one of the directors of the Plaintiff was so introduced, it is claimed that the Defendants were specifically made aware about the business of the Plaintiff, which included the business pertaining to the said registered trademark “MAUJ” and also “Shadi.com” of the Plaintiff. According to the Plaintiff, email correspondence was exchanged between parties and on each occasion, the words “MAUJ Mobile-leading mobile Content and Commerce Company” were stated beneath the name and signature of the director of the Plaintiff. On this basis, the Plaintiff claimed that the Defendants were specifically aware about the said registered trademarks of the Plaintiff and the nature of business in the context of which the trademarks were being used.

6. The material on record shows that on 29th June, 2020, the Defendant No. 1 launched its app “MOJ”, being a short video social media App. On 01st July, 2020, the said App of Defendant No. 1 was made available on Google play store and Apple store. The said App provided a platform to users to upload their short videos of up to 60 seconds duration, along with background music/score, for which

options were provided by the Defendant No. 1.

7. The Plaintiff claims that it became aware about the said App of the Defendant No. 1 using the mark “MOJ”, in September, 2020 and that immediately on 07th September, 2020, the Plaintiff issued cease and desist notice to Defendant No. 1. By this notice, the Plaintiff gave details about its business, as also adoption and registration of the trademark “MAUJ” along with registration of the domain name www.mauj.com. The Defendant No. 1 was called upon to desist from using the mark “MOJ” for its App in the light of the goodwill and reputation already acquired by the Plaintiff in the context of its registered trademark “MAUJ” and its variants.

8. On 21st September, 2020, the Defendant No. 1 sent a reply to the notice and claimed that the mark “MOJ” was derived from the expression “Moments of joy”. It was submitted that the Plaintiff is not entitled to claim monopoly over the word “MAUJ”, which is a common Hindi word. It was further claimed that the registrations of the Plaintiff were for a different mark, offering completely distinct and different services as compared to the service offered by the Defendant no.1 in the context of its mark “MOJ”. On 12th November, 2020, the Plaintiff sent a further communication to the Defendant No. 1, repudiating its claims and it was stated that for an average consumer, confusion was bound to occur between the two marks. It was further

claimed on behalf of the Plaintiff that the Defendant No. 3 reached out to the founder director of the Plaintiff to discuss user acquisition for “shadi.com” through advertisements on the platform of Defendant No. 1 – Sharechat and that during the said conversation, the Defendant No. 3 suggested that the dispute between the parties could be resolved amicably.

9. In this backdrop, the Plaintiff was shocked to come across advertisements in January, 2021, pertaining to trademark applications filed by Defendant No. 1 for the said mark “MOJ” in classes 9, 35, 38, 42 and 45. On 19th January, 2021, the Plaintiff issued notices of opposition and thereafter on 18th March, 2021, the Plaintiff filed the present suit. The present application for interim reliefs was also filed in the said suit. The defendants were put to notice. Thereafter, pleadings were completed, which have stretched up to sur-rejoinder affidavit. The application was taken up for hearing and the parties referred to and relied upon the detailed pleadings and documents placed on record.

10. Mr. Sharan Jagtiani, learned Senior Counsel appearing for the Applicant/Plaintiff submitted that in the present case, the material on record, on the face of it, demonstrated deceptive similarity of the impugned trademark “MOJ” of the Defendant No. 1 with the registered trademark “MAUJ” and its variants of the

Plaintiff. It was submitted that the mark “MOJ” being used by Defendant No. 1 was phonetically similar to the registered trademark “MAUJ” of the Plaintiff. It was submitted that by merely changing the spelling, the pronunciation of the mark did not change, thereby indicating that a strong *prima facie* case for infringement was made out under Section 29(9) of the Trade Marks Act, 1999. It was further submitted that the impugned mark of the Defendant No. 1 is also structurally similar to the registered trademark of the Plaintiff and the idea conveyed by the two marks is identical. The word “MAUJ” and the similarly sounding “MOJ”, depict the state of having fun and enjoyment. Since the Plaintiff and its predecessor had been using the said word in the context of its services from the year 2003 onwards, it had attained distinctiveness in the public domain and the memory of consumers, which the Defendant No. 1 was seeking to illegally exploit by using the deceptively similar mark “MOJ”.

11. It was specifically contended that the Plaintiff having registration in Class 41 specifically for “Entertainment”, coupled with the nature of business carried out by the Plaintiff, clearly indicated that the Defendant No. 1 by using the infringing mark “MOJ” for similar services pertaining to entertainment had indulged in a deliberate act to ride over the goodwill of the Plaintiff. It was submitted that mere change of spelling and using an emoji with the

mark “MOJ” could not absolve the Defendant No. 1 from the consequences of infringing the registered trademarks of the Plaintiff i.e. “MAUJ” and its variants. It was specifically submitted that as per the law laid down by the Hon’ble Supreme Court in the case of *K.R. Chinna Krishna Chettiar Vs. Sri Ambal & Co., Madras & Anr.*¹ and judgments of this Court in the case of *Encore Electronics Limited Vs. Anchor Electronics and Electricals Pvt. Ltd.*,² *Jagdish G. Kamath and Ors. Vs. Lime and Chilli Hospitality Services*³ and *Emcure Pharmaceuticals Ltd. Vs. Corona Remedies Pvt. Ltd.*⁴, the rival mark ought to be considered with reference to the ear as well as eye and that ocular comparison cannot always be the decisive test.

12. It was further submitted on behalf of the Plaintiff that search on google.com for “MAUJ” showed links to the App of the Defendant No. 1 available on Google play store for the impugned trademark “MOJ”. It was further submitted that a search on the Google play store for the mobile application of the Plaintiff “MAUJ”, the App of the Defendant No. 1 bearing the impugned trademark appeared as the first result. On this basis, it was submitted that the Defendant No. 1 had clearly indulged in infringement of the registered trademark of the Plaintiff. The learned Senior Counsel appearing for the Plaintiff dealt with the stand taken on behalf of the Defendants in

1 (1969) 2 SCC 131

2 2007 (35) PTC 714

3 2015 (62) PTC 23

4 2014 (60) PTC 32

their reply and submitted that the contentions raised on behalf of the Defendants were in the teeth of the settled position of law laid down in various judgments in trademark jurisprudence.

13. It was submitted that the Defendants were wrong in claiming that the registration of trademarks obtained by the Plaintiff was wide and overbroad and that since the Plaintiff had not used the registered trademarks for the services which the Defendant No. 1 was providing, no grievance in that regard could be raised. According to the learned Senior Counsel appearing for the Plaintiff, the said contention is absolutely fallacious, for the reason that the scheme of the aforesaid Act allows the registered proprietor of a trademark to exclusively use such a registered trademark in the context of the goods/services for which such mark is “registered” and not in relation to goods/services for which it is “used”.

14. In support of the said proposition, reliance was placed on judgments of the Hon’ble Supreme Court in the case of *Vishnudas Trading as Vishnudas Kishendas Vs. Vazir Sultan Tobacco Co., Ltd., Hyderabad & Anr.*⁵ and *Gujarat Bottling Co., Ltd. & Ors. Vs. Coca Cola Co. & Ors.*⁶. The learned Senior Counsel appearing for the Plaintiff specifically referred to Sections 7, 18, 28, 29 and 47 of the aforesaid Act to emphasize upon the scheme thereof, as recognized in various

⁵ (1997) 4 SCC 201

⁶ (1995) 5 SCC 545

judgments.

15. It was further submitted that the judgment of the Hon'ble Supreme Court in the case of *Vishnudas Trading as Vishnudas Kishendas Vs. Vazir Sultan Tobacco Co., Ltd., Hyderabad & Anr.* (supra) was being misread by the Defendant No. 1 and it was conveniently ignored that the said judgment was in the context of a rectification proceeding and not where a registered proprietor of a trademark was pressing for grant of reliefs. The judgment of the Hon'ble Supreme Court in the case of *Nandhini Delux Vs. Karnataka Co-Operative Milk Producers Federation Ltd.*⁷ was also sought to be distinguished on the basis of a similar argument.

16. It was further submitted that the judgment of this Court in the case of *International Foodstuffs Co. LLC, a limited liability company incorporated under the Laws of U.A.E. Vs. Parle Products Pvt. Ltd. A company incorporated under the Indian Companies Act, 1956 & Anr.*⁸ was also not applicable to the facts of the present case because in all such cases, the Plaintiff had registration under a Class which covered various categories and the Plaintiff was using the registered trademark in respect of the goods/services pertaining to only one category while the defendants in those cases were using their marks in respect of different categories under the same Class.

⁷ (2018) 9 SCC 183

⁸ 2016 SCC OnLine Bom. 2038

17. It was emphasized that in the present case, the Plaintiff has registration under Class 41 for the specific category “Entertainment” and also most crucially for the category “Telecommunications” under Class 38. The Plaintiff was using such registered trademark for services pertaining to these specific categories and when the Defendant No. 1 was using the infringing trademark in respect of the services within the very same categories, the Plaintiff was clearly entitled to proceed against the Defendant No. 1 to seek reliefs, including interim reliefs as sought in the present application. The learned Senior Counsel appearing for the Plaintiff sought to distinguish each and every judgment upon which the Defendants placed reliance and reference shall be made to the same while considering the rival submissions.

18. Without prejudice to the aforesaid contentions, the learned Senior Counsel appearing for the Plaintiff alternatively submitted that even if the Plaintiff is required to show user of the registered trademark in relation to the services for which it is registered, there is ample material on record to show that the Plaintiff has engaged in the business of providing services, including online services, not only to businesses but to individual end consumers also. Detailed references were made to the documents placed on record to explain the nature of services of the Plaintiff, in

order to demonstrate that, by using a deceptively similar mark, the Defendant No. 1 had indeed indulged in infringement. The contention of the Defendants that the Plaintiff was only providing business to business services on the basis of bespoke agreements, was refuted on the part of the Plaintiff and it was asserted that the plethora of services made available by the Plaintiff while using the registered trademark reached out to individual consumers and such services were accessible from handheld devices like mobile phones. On this basis, it was submitted that the case for granting interim relief in the context of the cause of action of infringement was clearly made out.

19. Insofar as the tort of passing off is concerned, the learned Senior Counsel referred to the basic ingredients of the said tort of passing off, contending that the Plaintiff had a strong *prima facie* case to demonstrate that all such ingredients were made out in favour of the Plaintiff. Reference was made to the extent of goodwill earned by the Plaintiff in the context of said registered trademarks and the possibility of deception due to the use of the impugned trademark “MOJ” by the Defendant No. 1, which was causing damage to the Plaintiff and it was likely to further cause damage and loss. Reliance was placed on judgments of this Court in the case of *Harish Motichand Sariya Vs. Ajanta India Limited & Anr.*⁹, *M/s. Eagle*

⁹ 2004 (28) PTC 42

*Potteries Private Ltd., Vs. M/s. Eagle Flask Industries Pvt. Ltd.*¹⁰,
Encore Electronics Limited Vs. Anchor Electronics and Electricals Pvt. Ltd., (supra).

20. The learned Senior Counsel appearing for the Plaintiff also vehemently denied the allegations made on behalf of the Defendants that over a period of time and particularly after filing of the present suit, the Plaintiff had taken steps to come as close as possible to the services provided by the Defendant No. 1 to its consumers. It was submitted that the allegations made against the Plaintiff with regard to the contents of its websites were misplaced. It was submitted that the Defendant No. 1 had irresponsibly made such allegations, because the material on record did not demonstrate as to how it could be said that the Plaintiff was seeking to move as close as possible to the services provided by the Defendant No. 1, in order to claim interim reliefs from this Court.

21. The contentions raised on behalf of the Defendants on the aspect of delay were refuted by pointing out that the moment the Plaintiff became aware of the app of the Defendant No. 1, the Plaintiff immediately issued cease and desist notice on 07th September, 2020 and eventually filed the present suit. On this basis, it was submitted that this Court may grant interim reliefs as prayed, in the interest of

¹⁰ AIR 1993 Bom. 185

justice.

22. On the other hand, Mr. Kamod, learned Counsel appearing for the Defendants submitted that the nature of business and the services provided by the Plaintiff, from the very inception, were completely distinct and distinguishable from the unique service evolved by the Defendant No. 1 for use by its consumers. The fundamental difference projected on behalf of the Defendants was that the contents in the App of the Defendant No. 1 were consumer driven and uploaded by the consumers. It was submitted that the entire service provided by the Defendant No. 1 and its business is based on the aforesaid mobile App bearing the mark “MOJ”, with distinct emoji. The Plaintiff on the other hand has been in the business of providing digital services to businesses and the nature of business of the Plaintiff does not involve any outreach to individual consumers/customers. It was emphasized that the nature of services provided by the Plaintiff has all along been business to business and not business to consumers. On this basis, it was submitted that if the manner in which the contents of the websites of the Plaintiff have been tweaked, is taken into consideration, it would become clear that the Plaintiff started taking steps only recently to create an impression before the Court that the services provided by the Plaintiff were identical to those of the Defendant No. 1.

23. It was submitted that merely by registering its trademark “MAUJ” under various classes in an overbroad manner, the Plaintiff could not be permitted to destroy the business of entities like the Defendant No. 1, which had innovatively come up with services reaching out directly to individual consumers. If the assertions made on behalf of the Plaintiff were to be accepted, no such innovation would ever take place and entities like the Plaintiff, having obtained overbroad registrations would not only destroy the business of inventors like Defendant No. 1, but they would eventually enter into such business and services, which were not even in contemplation. On this basis, it was submitted that the Defendants are not seeking to raise contentions against the settled position in trademark jurisprudence, but, the Defendants are seeking to demonstrate the unreasonable lengths to which the Plaintiff is seeking to enjoy protection of exclusive use of its registered trademark.

24. In this regard, the learned Counsel appearing for the Defendant No. 1 placed reliance on judgments of the Hon’ble Supreme Court in the case of *Vishnudas Trading as Vishnudas Kishendas Vs. Vazir Sultan Tobacco Co., Ltd., Hyderabad & Anr. (supra)* and *Nandhini Delux Vs. Karnataka Co-Operative Milk Producers Federation Ltd. (supra)* and judgment of this Court in the case of *International Foodstuffs Co. LLC, a limited liability company*

incorporated under the Laws of U.A.E. Vs. Parle Products Pvt. Ltd. A company incorporated under the Indian Companies Act, 1956 & Anr. (supra), as also judgments of other High Courts in the cases of Technova Tapes (I) Pvt. Ltd. Vs. TechNova Imaging Systems Pvt. Ltd.¹¹, Shammi Narang & Anr. Vs. Pindrop Music App Private Limited. (Delhi) and Veerumal Praveen Kumar Vs. Needle Industries (India) Ltd.¹².

25. The learned Counsel appearing for the Defendant No. 1 further submitted that the Plaintiff cannot claim phonetic similarity between the rival marks as the spellings of the two marks are completely different and the idea conveyed cannot be said to be similar. It was emphasized that use of the emoji along with the trademark “MOJ” of the Defendant No. 1 was a distinguishing feature, which ought to be taken into consideration. By referring to the manner in which the registered trademark of the Plaintiff is depicted and comparing the same with the trademark of the Defendant No. 1, it was emphasized that there could not be said to be any structural similarity and applying the test of the ear and the test of the eye would indicate that the Plaintiff has not made out a *prima facie* case in its favour for considering the prayers made in the present application.

¹¹ (2019) SCC OnLine Mad 38987 (Madras)

¹² 93 [2001] DLT 600 (Delhi)

26. Much emphasis was placed on the contents of the agreements executed between the Plaintiff and its clients who are business corporates, to indicate that the nature of services provided were completed different and that therefore, even from the said angle, the Plaintiff could not claim similarity or identity of services between the rival parties. On this basis, it was submitted that the application deserved to be dismissed, particularly when the Defendant No. 1 had continued in business for sufficient period of time and earned substantial goodwill in its exclusive area of services pertaining to consumer content being uploaded on the App.

27. Heard learned Counsel for the rival parties and perused the material on record to examine as to whether the Plaintiff is entitled to claim interim reliefs in respect of the infringement of its registered trademarks and whether appropriate direction can be issued against the Defendants on the ground that they are *prima facie* indulging in the tort of passing off. In order to examine the question as to whether *prima facie* case is made out by the Plaintiff in the present case, the aspect of deceptive similarity would have been gone into, on the touchstone of the provisions of the aforesaid Act and the law laid down in that context in various judgments. But, before examining the said aspect of the matter, it would be necessary to deal with specific contentions raised on behalf of the rival parties on the

aspect of the effect of registration of the trademark of the Plaintiff in the context of its use regarding certain services and the claim of the Defendants that the services provided by them are so distinct that non-use of the registered trademark of the Plaintiff in the context of such distinct services of the Defendants, disentitles the Plaintiff from pressing for interim reliefs.

28. At the root of the aforesaid contentions raised on behalf of the Defendants is the assertion that the registration obtained by the Plaintiff for its trademark “MAUJ” is overbroad and if the contentions of the Plaintiff are to be accepted, it would amount to thwarting innovation and also restraining entities from providing services under the broad classification, which were not even contemplated by the Plaintiff. As against this, it is vehemently submitted on behalf of the Plaintiff that if the contentions raised on behalf of the Defendants are to be accepted, it would turn the settled position of law on its head, by emphasizing upon “use” rather than “registration” of trademark while granting to such proprietary rights.

29. It would be appropriate to refer to the relevant provisions of the aforesaid Act to examine the correctness of the contention raised on behalf of the rival parties. Section 7 of the Act provides for classification of goods and services and sub-section (1) thereof states that the registrar shall classify goods and services as far as may be, in

accordance with the international classification of goods and services for the purposes of registration of trademarks. There is no dispute between the parties that the Nice classification applies and contentions have been raised on behalf of the rival parties by referring to such classification.

30. Section 28 provides for rights conferred by registration, indicating the exclusive right of the registered proprietor of a trademark to use the same in respect of the goods or services for which it is registered. Section 29 of the Act defines as to what amounts to infringement of registered trademarks. This provision elaborately provides as to what amounts to infringement of a registered trademark, specifically stating that the registered trademark is infringed when a mark is used, which is similar to the registered trademark for similar goods or services and it is likely to cause confusion in the mind of the public. Section 47 of the Act provides for removal of a registered trademark from the register, *inter-alia*, on the ground that for a continuous period of five years, the trademark has not been used in relation to the goods or services for which it is registered.

31. In the case of *Cluett Peabody & Co., Inc. Vs. Arrow Apparals*¹³, this Court held that the proprietor of a mark gets

¹³ (1997) SCC OnLine Bom. 574

perpetual and exclusive right in respect of the goods or services by way of registration, user or assignment of such mark. It was specifically held that registration of trademark enables the proprietor to sue for infringement of such registered trademark, irrespective of the fact as to whether it is used or not, further recording that such registration confers on the proprietor a monopoly right over the use of the mark. In the case of *Gujarat Bottling Co., Ltd. & Ors. Vs. Coca Cola Co. & Ors.(supra)*, the Hon'ble Supreme Court held that statutory rights accrue to proprietors upon registration of the trademark and it enables them to sue for infringement, irrespective of whether or not that mark is used.

32. Thus, it becomes clear that, as per the provisions of the said Act and the law laid down in that context, registration of a trademark confers statutory rights on the proprietor of such mark, which can be asserted while alleging infringement, the emphasis being on valid registration and not use of such trademark. It is only if a proprietor fails to bona fide use such registered trademark for a continuous period of five years that under Section 47 of the Act, it can be removed from the register.

33. The learned Counsel appearing for the Defendants stated in this context that the Plaintiff, in the facts and circumstances of the present case, could assert its rights in respect of its registered

trademark "MAUJ", only in respect of the services that it was providing and not for other services. The specific contention of the Defendants in this regard was that under the broad classification of "Entertainment", the Plaintiff could not be permitted to assert its proprietary rights in the registered trademark for services that it never provided and which were never in contemplation when the trademark was registered. It was sought to be demonstrated that the Plaintiff was seeking to bring to a halt the business of the Defendant, although the Plaintiff has nothing to do with the nature of services provided by the Defendants. In that sense the Defendants emphasized upon non-use of the registered trademark for the specific services provided by the Defendant No. 1.

34. Much emphasis was placed on the judgment of the Hon'ble Supreme Court *Vishnudas Trading as Vishnudas Kishendas Vs. Vazir Sultan Tobacco Co., Ltd., Hyderabad & Anr. (supra)* on behalf of the Defendants. A perusal of the said judgment shows that the dispute between the parties arose in rectification proceedings. The Plaintiff is justified in highlighting this distinction in the facts of the present case. This Court is of the opinion that the nature of the present proceedings being an interim application in a suit for injunction filed by the Plaintiff, considerations are different from those where the Court is considering a claim for rectification of a registered

trademark. It is in the context of such dispute arising out of rectification proceedings that the Hon'ble Supreme Court held in the case of *Vishnudas Trading as Vishnudas Kishendas Vs. Vazir Sultan Tobacco Co., Ltd., Hyderabad & Anr. (supra)* as follows:

“47. The Respondent Company got registration of its brand name “Charminar” under the broad classification “manufactured tobacco”. So long such registration remains operative, the Respondent Company is entitled to claim exclusive use of the said brand name in respect of articles made of tobacco coming under the said broad classification “manufactured tobacco”. Precisely for the said reason, when the Appellant made application for registration of quiwam and zarda under the same brand name “Charminar”, such prayer for registration was not allowed. The Appellant, therefore, made application for rectification of the registration made in favour of the Respondent Company so that the said registration is limited only in respect of the articles being manufactured and marketed by the Respondent Company, namely, cigarettes. In our view, if a trader or manufacturer actually trades in or manufactures only one or some of the articles coming under a broad classification and such trader or manufacturer has no bona fide intention to trade in or manufacture other goods or articles which also fall under the said broad classification, such trader or manufacturer should not be permitted to enjoy monopoly in respect of all the articles which may come under such broad

classification and by that process preclude the other traders or manufacturers from getting registration of separate and distinct goods which may also be grouped under the broad classification. If registration has been given generally in respect of all the articles coming under the broad classification and if it is established that the trader or manufacturer who got such registration had not intended to use any other article except the articles being used by such trader or manufacturer, the registration of such trader is liable to be rectified by limiting the ambit of registration and confining such registration to the specific article or articles which really concern the trader or manufacturer enjoying the registration made in his favour. In our view, if rectification in such circumstances is not allowed, the trader or manufacturer by virtue of earlier registration will be permitted to enjoy the mischief of trafficking in the trade mark.”

35. It is in the context of such dispute pertaining to rectification proceedings that the Hon'ble Supreme Court made observations as to why a proprietor cannot be permitted, by virtue of an earlier registration, to enjoy the mischief of trafficking in a trademark. If the Defendants herein had raised such contention in the context of a rectification proceeding, the same could perhaps have been considered, but in the present case the Plaintiff does have valid registration under various Classes including Class 41 for its

registered trademark, in the specific category of “Entertainment”. It is the case of the Defendants that the Hon’ble Supreme Court in the case of *Nandhini Delux Vs. Karnataka Co-Operative Milk Producers Federation Ltd. (supra)* accepted the contention sought to be canvassed before this Court as regards the entitlement of the Plaintiff to grant of interim reliefs. In the said case, the Hon’ble Supreme Court held that even if the trademark “NANDINI” was registered, the same appeared to be in respect of all goods in the broad classification of Class 29, while the proprietor of the said trademark was using it only for milk and Milk products.

36. In such situation, it was held that when the rival party sought registration of its trademark “NANDHINI” for a distinct category of goods i.e. meat and meat products covered in the broad classification, such registration could not be denied. But, it has to be appreciated that the said judgment arose out of opposition proceedings and it was not an action for infringement of a registered trademark or of passing off. The Hon’ble Supreme Court rendered findings in the facts of the said case, considering the nature of dispute between the parties. This Court is of the opinion that the same can be distinguished on the basis that the proceedings arose out of rectification/opposition proceedings as opposed to an action for infringement or passing off.

37. Similarly, reliance placed on behalf of the Defendants in this regard on the judgment of this Court in the case of *International Foodstuffs Co. LLC, a limited liability company incorporated under the Laws of U.A.E. Vs. Parle Products Pvt. Ltd. A company incorporated under the Indian Companies Act, 1956 & Anr. (supra)* also known as the “London Dairy” case, appears to be misplaced. In the said case the registration of trademark of the Plaintiff covered all categories of items in Class 30 of the Nice classification, which included coffee, tea, cocoa and substitutes; rice, pasta and noodles; Ice cream, sorbets and other edible ices; bread, pastries and confectionery etc. It is in this backdrop that while considering the case of the rival parties, this Court found that the categories of ice creams and confectioneries were distinct, within the broad classification under Class 30 and in that context it was held that the Plaintiff could not claim monopoly of use for all the categories of goods covered under Class 30 of the Nice classification.

38. There is substance in the contention raised on behalf of the Plaintiff in the context of the said judgment that it is distinguishable from the facts of the present case, because the Plaintiff has registration for the category “Entertainment” under Class 41 of the Nice classification, which includes four categories i.e. Education; providing of training; entertainment; sporting and

cultural activities. There is *prima facie* substance in the contention raised on behalf of the Plaintiff that when the Defendants also claim that their service is covered under the specific category of entertainment and the Plaintiff does have registration for the said specific category within Class 41 of the Nice classification, the Plaintiff is indeed entitled to assert its proprietary right with regard to the registered trademark. It would have been a different matter if the defendants claimed that their service was covered under any of the other aforementioned categories, within Class 41 of the Nice classification.

39. On this basis, the aforesaid judgment in the case of “London Dairy” is distinguishable and the Plaintiff is justified in contending that the Defendants cannot resist interim reliefs by relying upon the said judgment. In that sense, *prima facie*, the registration of the trademark of the Plaintiff cannot be said to be overbroad, enabling it to stifle the business of the Defendants or to discourage innovation of services on the part of various entities. It would be appropriate to keep in mind the fact that the present proceedings are concerned with the allegations of infringement made on behalf of the Plaintiff and the present proceedings are not rectification proceedings. The other judgments on which the Defendants have placed reliance, including *Technova Tapes (I) Pvt.*

Ltd. Vs. TechNova Imaging Systems Pvt. Ltd. (supra), Shammi Narang & Anr. Vs. Pindrop Music App Private Limited. (Delhi) (supra) and Veerumal Praveen Kumar Vs. Needle Industries (India) Ltd. (supra) can also be distinguished on the same lines, thereby demonstrating that the Defendants cannot claim that the Plaintiff has not made out a *prima facie* case on the strength of registration of its trademark “MAUJ” under the category “Entertainment”, within Class 41 of the Nice classification.

40. In this regard, it is also necessary to take into consideration the fact that the Plaintiff has registration for its trademark in Class 38 of the Nice classification, which pertains to telecommunication services. A perusal of Class 38 shows that the nature of services indicated therein include transmission of digital files and electronic mail, streaming of data, providing internet chatrooms and online forums; transmission of broadcasting, providing user access to global computer networks. This indicates that the Plaintiff indeed has registration in the context of, not only the category “Entertainment” under Class 41, but also for “Telecommunication services” covered under Class 38, indicating that the Plaintiff is entitled to assert its proprietary right when it finds that a deceptively similar trademark is being used for identical or similar services by any party. Hence, this Court is inclined to

accept the contention raised on behalf of the Plaintiff that its registration of the trademark cannot be labeled as overbroad and that a strong *prima facie* case is indeed made out on the part of the Plaintiff in seeking interim reliefs on the strength of such registration of the trademark “MAUJ”.

41. Having held in favour of the Plaintiff on the said aspect of the matter, on the basis that the Plaintiff is indeed entitled to assert its proprietary rights based on registration of the trademark, it would strictly not be necessary to deal with the elaborate submissions made on behalf of the Defendants to indicate that the nature of services provided by it are completely distinct and different from the nature of services of the Plaintiff. But, this Court is inclined to examine the said aspect of the matter also. The Defendants claimed that while services provided by the Plaintiff are business to business, with no outreach to individual customers, the service provided by the Defendants, not only reaches out to individual customers, but it provides a platform for them to upload their short video and audio content. According to the Defendants, such a service provided through their App is so unique and different that there is no possibility of confusion amongst the consumers.

42. In this regard, the Defendants have relied upon various judgments, including judgment of the Delhi High Court in the case of

*FDC Limited Vs. Docsuggest Healthcare Services Pvt. Ltd. & Ors.*¹⁴, to contend that this Court must examine the aspect of the nature of services of the rival parties, intended purpose thereof, the users of such services, the trade channels of such services and also the reputation earned by the Defendants in the context of their service.

43. This Court has considered the said line of judgments, including the aforementioned judgment of Delhi High Court in this context. It is found that even if the said tests are to be applied, *prima facie* it appears that the Plaintiff cannot be denied interim reliefs. It is found that the distinction sought to be made on behalf of the Defendants between the rival services, at this stage cannot be said to be so distinct that despite registration obtained by the Plaintiff, it cannot assert its proprietary rights. There is some material brought to the notice of this Court to indicate that the services provided by the Plaintiff do reach out to individual customers, apart from services being provided to certain businesses. In any case, it would be a matter for trial. At this stage, it can't be said that the intended users of such services or trade channels are so distinct that the Plaintiff cannot assert its proprietary rights in respect of the registered trademark.

44. The aspect of reputation allegedly earned by the

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Defendants in the context of their services cannot be of much relevance, when it is clear that the Plaintiff is entitled to assert its proprietary rights based on the registered trademark. It is settled law that when an entity decides to use a mark for its goods or services, it is incumbent upon such an entity to make proper inquiries to find out whether an identical or similar mark is already registered or is being used in respect of such goods or services. As held by this Court in *Bal Pharma Limited Vs. Centaur Laboratories Limited*¹⁵, if such an entity decides to use such a mark, it does so at its own risk and peril.

45. Now comes the stage to examine as to whether the Plaintiff is justified in claiming that the Defendants are using a deceptively similar mark, which is likely to cause confusion in the minds of the public. The Plaintiff asserts that the impugned mark “MOJ” of the Defendants is phonetically and structurally similar to the registered trademark “MAUJ” of the Plaintiff and that it conveys the same idea. This is denied by the Defendants.

46. It is settled law that the Court is expected to consider the rival marks as a whole, in order to arrive at *prima facie* finding with regard to the similarity or deceptive similarity between the rival marks. The Hon’ble Supreme Court in the case of *K.R. Chinna*

¹⁵ 2002 (24) PTC 226 (Bom)

Krishna Chettiar Vs. Sri Ambal & Co., Madras & Anr. (supra) held that ocular comparison is not always the decisive test. This becomes relevant in the light of the contentions raised on behalf of the Defendants that visual impact of their mark “MOJ”, due to the manner in which it is written along with an associated emoji, is visually dissimilar to the registered trademark “MAUJ” of the Plaintiff. This Court is of the opinion that mere use of an emoji along with the trademark of the Defendants cannot help them escape the consequences of using a mark, which can be said to be deceptively similar to the registered trademark of the Plaintiff. In that sense, the Plaintiff is justified in relying upon the said judgment of the Hon’ble Supreme Court in the case of *K.R. Chinna Krishna Chettiar Vs. Sri Ambal & Co., Madras & Anr. (supra)*.

47. Phonetic similarity does assume significance in the facts of the present case, for the reason that merely by changing the spelling, the pronunciation or sound of the rival marks cannot be said to be dissimilar. The pronunciation of the registered trademark “MAUJ” of the Plaintiff and the impugned trademark “MOJ” of the Defendants is similar and it can lead to confusion in the minds of the public, thereby indicating deceptive similarity of the impugned trademark of the Defendants with the registered trademark of the Plaintiff. The Plaintiff has indeed placed material on record to show

that when a Google search is carried out in respect of the registered trademark of the Plaintiff “MAUJ”, the results lead to the impugned trademark and services “MOJ” of the Defendants.

48. There is also substance in the contention raised on behalf of the Plaintiff that the idea that the impugned trademark of the Defendants conveys, is the same as that of the registered trademark of the Plaintiff. The Hindi word from which the registered trademark of the Plaintiff and even the impugned trademark of the Defendants arises, conveys the idea of having fun, further hinting at the aspect of entertainment i.e. the specific category for which the trademark of the Plaintiff is registered under Class 41 of the Nice classification. Thus, this Court is of the opinion that a strong *prima facie* case is indeed made out by the Plaintiff in its favour for claiming deceptive similarity between the rival marks.

49. Another aspect highlighted on behalf of the Plaintiff is also relevant, to the effect that the Defendants have failed to come forward with a bona fide or honest explanation for adoption of their mark. The explanation sought to be given before this Court that “MOJ” stands for “Moments of Joy”, *prima facie* appears to be an afterthought, as none of the material relied upon by the Defendants indicates use of such expression in conjunction with the impugned trademark “MOJ”. In the absence of bona fide explanation for adoption of the impugned

mark, it can be said that the Plaintiff has indeed made out a strong *prima facie* case to assert that adoption of the impugned trademark by the Defendants is dishonest in nature and that therefore, interim reliefs in respect of infringement can be granted.

50. As regards the aspect of passing off, the Plaintiff is required to demonstrate, at this stage, use of its trademark over a period of time and the goodwill generated in the context thereof, as also the likelihood of damages that it may suffer if the Defendants are permitted to use the impugned trademark. The Plaintiff has placed on record sufficient material to indicate that that its predecessor and thereafter the Plaintiff itself, openly and continuously used its trademark "MAUJ" from the year 2003 onwards. There is sufficient material placed on record to demonstrate the extent of goodwill earned by the Plaintiff in the context of its trademark and the services provided in that context. It is found that the Plaintiff has also placed on record sufficient material to indicate that if the interim reliefs as prayed are not granted, it will suffer loss of business, due to the similarity in the rival marks, as also the similarity of services pertaining to entertainment provided by the rival parties. This Court has already discussed the factors indicating similarity of services and likelihood of deception being in favour of the Plaintiff and for the same reasons it is found that the Plaintiff is entitled to press for interim

relief in the context of passing off also.

51. This Court is of the opinion that the balance of convenience can certainly be said to be in favour of the Plaintiff, for the reason that when the Plaintiff is found to be the owner of registered trademark and all other aspects are found in its favour, it would require unusual circumstances for balance of convenience to tilt in favour of the Defendants, as held by this Court in the case of *Express Bottlers Services Pvt. Ltd. & Anr. Vs. Pepsico Inco*¹⁶. This Court does not find any unusual circumstances to hold that despite the aforesaid findings rendered in favour of the Plaintiff, the balance of convenience could be said to be tilted in favour of the Defendants. In the case of *Bal Pharma Limited Vs. Centaur Laboratories Limited (supra)*, it was held that when an entity uses a mark without taking necessary steps to inquire as to whether a similar mark is already in use or registered for identical or similar services and yet invests money in its mark, it cannot claim balance of convenience to be in its favour. In the light of the findings rendered hereinabove, this Court is of the opinion that the balance of convenience cannot tilt in favour of the Defendants, in the facts and circumstances of the present case. In fact, it has indeed tilted in favour of the Plaintiff.

52. There is every likelihood of the Plaintiff continuing to

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suffer grave and irreparable loss if such interim reliefs are not granted and therefore, this Court is inclined to allow the present application.

53. In the light of the above, the application is allowed and interim reliefs are granted in favour of the Plaintiff in terms of prayer clauses (a) and (b), which read as follows:

- “a) that pending the hearing and final disposal of the suit, the Defendants by themselves, and/or their directors and/or servants and/or agents and/or officers and/or affiliates and/or any other person claiming through and/or under such Defendants, be restrained by a temporary order and injunction of this Hon’ble Court from in any manner using the impugned mark “MOJ” and/or any other name and/or mark and/or expression identical and/or deceptively or confusingly similar, in any manner whatsoever, the Plaintiff’s “MAUJ” marks and/or marks containing “MAUJ”, so as to infringe the Plaintiff’s registered trademark bearing nos. 1338037, 1338033, 2051800m 1757690m 1899385 being Exhibit “D” to the plaint;
- b) that pending the hearing and final disposal of the suit, the Defendants by themselves, and/or their directors and/or servants and/or agents and/or officers and/or affiliates and/or any other person claiming through and/or under such Defendants, be restrained by a temporary order and injunction of this Hon’ble Court from passing off and/or enabling

others to pass off their impugned products and/or impugned services and/or business and/or commercial activities as and for that of the Plaintiff and/or their name or mark “MAUJ”, by use of the impugned mark “MOJ” and/or use of any other name and/or mark and/or expression identical with and/or deceptively and/or confusingly similar to, in any manner whatsoever, the Plaintiff’s name or mark “MAUJ”.

54. The application stands disposed of in above terms.

(MANISH PITALE, J.)