

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INTERIM APPLICATION (L) NO.9512 OF 2022
WITH
LEAVE PETITION NO.66 OF 2022
IN
COMMERCIAL IP SUIT NO.284 OF 2022

Great White Global Pvt. Ltd. ... Applicant / Plaintiff
Vs.
Mukesh Prasad and others ... Respondents / Defendants

Mr. Vaibhav Bhure a/w. Roma Naik, Ms. Apporva Maurya and Ms. Sneha Nagda i/
b. Mr. Vikrant Parashurami for Applicant / Plaintiff.

CORAM : MANISH PITALE, J.
DATE : FEBRUARY 17, 2023

P.C. :

- . Heard learned counsel for the applicant / plaintiff.
2. The present suit and the application for interim reliefs are filed by the plaintiff in the context of its registered trademark 'GreatWhite' and also the registered device mark bearing a logo along with the words 'GreatWhite'.
3. The plaintiff is in the business of manufacturing and selling various range of electrical switches, sockets, circuit breakers etc. The trademark of the plaintiff 'GreatWhite' and device mark are registered in classes 5, 9, 11 and 35 under the Trademarks Act, 1999. The details regarding registration of the said trademark as also the device mark and logo are given in paragraphs 5 and 7 of the plaint.
4. The registrations date back to the year 2007 and onwards. The plaintiff claims to be in the market for a considerable period of time and

in support thereof, the sales figures show that for the year 2019-20, the sales turnover was to the tune of Rs.742.52 crores and an amount of Rs.94.29 crores was spent on advertisement and sales promotion.

5. The plaintiff submits that when a search was carried out in the Trademarks Registry, the plaintiff came across a trademark registration application filed by the defendants for the impugned mark / logo, which is deceptively similar to the registered trademark / device mark and logo of the plaintiff. It is submitted that counterfeit products are being sold by the defendants in the market by using the trademark 'GreenWhite', which is written in the same manner as the registered trademark of the plaintiff. It is submitted that the defendants were put to notice but all of them refused to accept the notice, thereby indicating their conduct.

6. This Court has perused the material on record. The registration certificates pertaining to the trademark and device mark of the plaintiff are placed on record, which indicate that registrations are from the year 2007 onwards. The sales turnover figures do indicate the considerable goodwill earned by the products of the plaintiff bearing the registered trademark and the device mark. A bare comparison of the impugned marks being used by the defendants would show that the defendants have simply replaced the word 'Great' with 'Green', while all the fundamental and essential features of the registered trademark of the plaintiff are copied. There is structural similarity and the logo is also copied. *Prima facie*, it appears that the defendants are seeking to illegally take advantage of the goodwill and reputation of the plaintiff, which appears to be active in the market for a considerable period of time. The record shows that the defendants refused to accept notice, which amounts to good service. There is no response on their part as regards the allegations levelled by the plaintiff. This Court is convinced that there is sufficient material on record for the applicant / plaintiff to

press for grant of ad-interim reliefs as regards the cause of action of infringement as well as the action of passing off. Since the defendants are deemed to have been served, the leave petition can be taken up for consideration.

7. In the interest of justice, leave petition is allowed, particularly to avoid multiplicity of proceedings in order to combine the cause of action of infringement with the action of passing-off.

8. The plaintiff has pleaded in paragraphs 21 and 22 as regards the cause of action of passing-off. A strong *prima facie* case is indeed made out by the plaintiff for grant of ad-interim reliefs. If such reliefs are not granted, the plaintiff is likely to suffer grave and irreparable loss, thereby indicating that the balance of convenience is in favour of the plaintiff.

9. In view of the above, there shall be ad-interim relief in favour of the plaintiff in terms of prayer clauses (a) and (b) which read as follows:-

“(a) Pending the hearing and final disposal of the accompanying suit, the Defendant by himself or through his proprietary concern and / or his partners, C & F and other agents, stockists, and / or all other persons claiming through, or under them or controlled by him be restrained by a temporary order and injunction of this Hon’ble Court from using, in any manner from, directly or indirectly and in respect of any goods or services, the Impugned Mark / Logo **GreenWhite** “GreenWhite” being Exhibit I annexed to the Plaint in the above-mentioned Suit by itself or in combination with any word / mark or prefix / suffix or any other similar / deceptively similar mark thereto or similar / deceptively similar to the Applicant’s registered trademark / logo “GreatWhite”, so as to infringe the Applicant’s registered trademark / logo “GreatWhite”,

(b) Pending the hearing and final disposal of the accompanying suit, the Defendant by himself and / or through his proprietary concern and / or his partners, C & F and other agents, stockists, and / or all other persons claiming through, or under them or controlled by him be restrained by a temporary order and injunction of this Hon'ble Court from using, in any manner from, directly or indirectly and in respect of any goods or services, the Impugned Mark / Logo

GreenWhite “GreenWhite” being Exhibit I annexed to the Plaintiff in the above-mentioned Suit by itself or in combination with any word / mark or prefix / suffix or any other similar / deceptively similar mark thereto or similar / deceptively similar to the Applicant’s registered trademark / logo “GreatWhite”, so as to pass off or enable others to pass off the goods of the Defendant as and for the goods of the Applicant or as being associated with or as emanating from or having any connection or association with the Applicant.”

10. List the application for further consideration on 05.04.2023.
11. The ad-interim order shall continue to operate till then.
12. Liberty is reserved for the plaintiff to press for ad-interim relief in terms of prayer clause (d).

(MANISH PITALE, J.)

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