

OIP-17

IN THE HIGH COURT AT CALCUTTA
ORIGINAL SIDE
(Intellectual Property Rights Division)

IP-COM/15/2024
IA NO: GA-COM/3/2025

KAMAL KUMAR HIRAWAT
VS
MARUTI POLY FILMS AND ORS

BEFORE:
The Hon'ble JUSTICE RAVI KRISHAN KAPUR
Date : 10th June, 2025.

Appearance:
Mr. Sarosij Dasgupta, Adv.
Mr. Biswaroop Mukherjee, Adv.
Mr. Gopal Das, Adv.
...for the plaintiff

The Court: This is an application filed under Order XIII A of the Code of Civil Procedure, 1908 for summary judgment.

Despite the order dated 7th March, 2025 the respondents remain unrepresented. There is also no affidavit which has been filed by them despite to earlier directions of Court.

Briefly, the petitioner has been carrying on business under the name and style of M/s. Hirawat Trading Company as a sole proprietor, inter alia, engaged in the marketing and distribution of all kinds of adhesive tapes, adhesive masking tapes, adhesive tapes for industrial use etc. The petitioner has been carrying on its business since 1995 and has been selling its goods under the mark "Fighter" along with the phrase 'Self-Adhesive Tape'. The word "Fighter" forms a principal and distinct part of the said trade name of the petitioner. With the passage of time, in order to obtain statutory protection over the mark

“Fighter”, the petitioner had filed an application No. 1752406 in class 17 under the Trademarks Act, 1999. Upon filing of such application, the petitioner obtained registration of the mark and has been continuously, uninterruptedly and exclusively using the same since then. By virtue of the long and continuous use, the mark “Fighter” has become synonymous with that of the petitioner.

The petitioner relies on its extensive sale figures. It is also alleged that the purchasing public and members of the trade easily identify the goods sold under the mark “Fighter” to have originated and have become exclusively connected with the petitioner and none else. The petitioner has also obtained copyright registration of the mark “Fighter” in a particular stylized manner and is an original artistic work within the meaning of the Copyright Act, 1957.

In or about January 2024, the petitioner came to learn of a deceptively similar trademark “*Fitter*” being applied to the same category of goods as that of the petitioner. The petitioner has also filed two notices of opposition as against the said applications for the registration of the marks “Fitter” both as a device and also as a word mark by the respondents and the same are pending before the Registrar.

It is obvious that the respondents have deliberately and intentionally adopted a deceptively similar trademark by simply replacing two letters i.e., “GH” with the letter “T” being used by the petitioner. The sole and *malafide* intent of the respondents is to create a false impression amongst customers. The adoption of the mark “Fitter” is with the sole aim to confuse and deceive the public.

For convenience, the rival packaging of both the products is set out herein below:



In the above background, the petitioner was compelled to file the instant suit seeking a decree for perpetual injunction and other consequential reliefs. Upon filing of the suit, the petitioner also filed an interlocutory application seeking interim reliefs. By an ad interim order dated 5th July, 2024, a Co-ordinate Bench had passed restraint orders insofar as the respondents are concerned. Thereafter, the interim application being GA-COM/1/2024 was disposed of by confirming the interim order dated 5th July, 2024. The respondents have also chosen not to file any Written Statement.

In such circumstances, the petitioner prays for a relief under Order XIII A of the Code of Civil Procedure, 1908. It is submitted on behalf of the petitioner that the defendants have no intention of defending the suit. The respondents have neither filed their Vakalatnama nor their Written Statements and have deliberately chosen to remain unrepresented.

Upon an examination of the facts and circumstances, it is evident that the respondents have deliberately adopted a deceptively similar trademark “Fitter” to derive illegal gain at the cost of the reputation and goodwill attached

to the mark “Fighter” which belongs to the petitioner. Both the goods are similar in nature and are sold through the same trade channels to the same class of customers. In such circumstances, there is every likelihood of confusion and deception amongst the members of the public.

It is also obvious that the defendants are not seriously in defending this proceeding. A summary judgment can be passed at any stage of the proceedings if the Court finds that the defendant has no real intent of defending the claim. There is no requirement nor necessity of oral evidence being led and the suit should be disposed of by way of a summary judgment as prayed for in the suit. In such circumstances, reference may be had to the following decisions: *Make My Trip (India) (P) Ltd. v. Owners of <https://www.makemytripmood.com>* : 2022 SCC OnLine Del 4105, paras. 24 to 26, 28 to 30, 32], *Sun Parma v. Mylan Laboratories* : 2023 SCC OnLine Del 4661 : (2024) 98 PTC 157, paras. 10 to 12, 16, 17, *Sandisk LLC v. Amit & Ors.* : 2023 SCC OnLine Del 2060, paras. 6, 12 to 19 and *Syrma Technology Pvt. Ltd. vs. Powerwave Technologies Sweden Ad.*

It is a well settled law that resemblance between two marks ought to be assessed both visually and phonetically i.e., by reference to the eye as well as the ear. A comparison of the two marks would make it evident that both are phonetically similar. There is every likelihood of third parties being deceived. In deciding such questions, the Court should approach such issues from the viewpoint of a man of average intelligence and imperfect recollection. Ordinarily, the beginning of a word is often the most crucial for assessing phonetic similarity and likelihood of confusion. However, in this case, the overall

structural and phonetic similarity between the two marks are deceptively identical and likely to cause confusion and deception.

In view of the above, the plaintiff has been able to demonstrate a strong case in its favour. The balance of convenience and irreparable injury is also in favour of orders being passed as prayed for therein.

In such circumstances, there shall be an order in terms of prayers (a) to (d) of the plaint. The defendants are also directed to take necessary steps for delivery up and cancellation of all cash memos, bills, challans, invoices, vouchers etc. bearing the impugned mark “Fitter” or any mark which is identical or deceptively similar to the same.

With the above directions, GA-COM/3/2025 stands disposed of.

In view of the above, nothing survives in the application, IP-COM/15/2024 stands decreed in the above terms.

Let a decree be drawn up accordingly in terms of the above.

(RAVI KRISHAN KAPUR, J.)