

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

INTERIM APPLICATION NO. 1671 OF 2025

IN

COMMERCIAL IP SUITS NO. 327 OF 2024

Asian Paints Limited ...Applicant/Plaintiff

Versus

Galaxy Paints Private Limited ...Defendant

WITH

COMMERCIAL IP SUITS NO. 327 OF 2024

WITH

COURT RECEIVER'S REPORT NO. 507 OF 2024

Asian Paints Limited ...Applicant/Plaintiff

Versus

Galaxy Paints Private Limited ...Defendant

WITH

LEAVE PETITION (L) NO. 31800 OF 2024

Asian Paints Limited ...Applicant/Plaintiff

Versus

Galaxy Paints Private Limited ...Defendant

Mr. Vinod A. Bhagat a/w Ms. Prachi Shah & Ms. Twisha Singh i/b Vinod Bhagat
for Plaintiff.

Mr. Deepak Bhalerao, 2nd Assistant to the Court Receiver.

CORAM : ARIF S. DOCTOR, J.

DATE : 20th SEPTEMBER 2025

P.C.

1. The matter is on board today for ad-interim relief.

2. Heard Mr. Bhagat, learned counsel appearing on behalf of the applicant/plaintiff who points out that this Court had vide an order dated 24th October 2024 granted the applicant/plaintiff *ex-parte* ad-interim relief in terms of prayer clauses (a), (b) and (d) of the interim application.

3. Mr. Bhagat then points out that during the course of execution of the said order the offending products were seized by the Additional Special Receiver appointed by this Court. He has further placed reliance on an affidavit of service dated 10th February 2025 to prove due service of the orders passed by this Court as also the papers and proceedings upon the defendant.

4. Mr. Bhagat today submits that despite service, the defendant has failed to enter appearance before this Court. It is in this backdrop of facts that he today presses that the Leave Petition filed by the applicant/plaintiff seeking leave of this Court under the provisions of Clause XIV of the Letters Patent, be allowed and applicant/plaintiff be permitted to combine the causes of action for infringement along with passing off.

5. Having due regards to this submission made and having perused the record, I am satisfied that the defendants are served and that none has appeared.

6. Having heard Mr. Bhagat, having perused the averments in the Leave Petition in my view, the same would have to be allowed and is accordingly allowed in terms of prayer clause (a) which reads thus.

"a) That the Petitioner be granted Leave under Clause XIV of the Letters Patent of this Hon'ble Court to file the accompanying Plaint by way of a suit against the Respondent and combine the cause of action for passing off with

the cause of action for infringement of its trade mark and copyright and direct that the cause of action for passing off be tried alongwith the cause of action for infringement of trade mark and copyright in the same suit;"

7. Mr. Bhagat at this stage also presses for interim relief in terms of prayer clause (c) which the prayer for passing off.

8. In support of the prayer for passing off, Mr. Bhagat has invited my attention to the paragraph Nos.8, 19 & 25, the following paragraphs of the plaint which reads thus :

*"8. The Plaintiff states that the trade mark TRACTOR SHYNE emulsion has been in continuous use since August 2017 as aforementioned and the goods sold thereunder have become distinctive off the Plaintiff's goods and have come to be associated both by the traders and the members of the public exclusively with the Plaintiff's merchandise. A yearwise statement of the sales turnover and the amounts spent on advertisement by the Plaintiff relating to its trade mark TRACTOR SHYNE is hereto annexed and marked as **EXHIBIT D**. Further, copies of the sales invoices, advertisement cuttings randomly drawn, etc. evidencing use of the trade mark TRACTOR SHYNE are hereto annexed and marked as **EXHIBIT E** wherein the Plaintiff's goods are sold and advertised under the Plaintiff's trade mark. The Plaintiff submits that copies of its sales invoices as appended hereinabove are print outs taken from the Plaintiff's SAP software and hence the said invoices do not bear any signatures therein.*

19. The Plaintiff states that being the prior user and the registered proprietor of its trade mark and original artistic work, the Plaintiff alone has the exclusive right to the use thereof and any use by a third party of either deceptively similar trade mark using identical/substantially similar artwork and trade dress to that of the Plaintiff amounts to infringement of the Plaintiff's registered trade mark and original artistic work and is likely to result in confusion and deception being created in the minds of the public and in the trade as to the source of its origin. The Plaintiff submits that it has not authorized, nor permitted, nor licensed the said Defendant to use the impugned pirated artwork or trade dress which is

deceptively/substantially/confusingly/closely similar to its reputed, registered and prior used trade mark and original artistic work as aforementioned. The Defendant by its said acts has thus passed off its goods and business and is likely to pass off its inferior quality goods and business as and for those of the Plaintiff or in some way associated with the Plaintiff.

25. *By using the impugned trade dress on its MAGIC TOUCH interior emulsion container, used in relation to identical description of goods, the Defendant is likely to misrepresent its goods and business as the goods and business of the Plaintiff or in any way connected, associated or affiliated with them. The Plaintiff states that the Defendant is and was at all material times aware of the use of the Plaintiff's trade/label mark and trade dress depicted on its TRACTOR SHYNE emulsion label and further of the immense goodwill and reputation acquired by the Plaintiff in the same. The same can be confirmed from the fact that the Defendant is in the same trade and has started dealing in the same goods only recently upon being well aware of the immense goodwill and reputation acquired by the Plaintiff. The Defendant thus appears to have adopted the impugned label mark and the impugned trade dress of MAGIC TOUCH interior emulsion being deceptively similar to the reputed trade/label mark and trade dress of the Plaintiff, in relation to identical and/or same description of goods, with a view to pass off their goods and business as and for the goods and business of the Plaintiff thereby leading to confusion and deception in the minds of the purchasing public and in the trade. The Plaintiff therefore submits that it is entitled to a perpetual order and injunction of this Hon'ble Court restraining the Defendant by themselves, their directors, servants, agents, assignees, stockists, distributors and all those connected with them in their business from manufacturing, marketing, distributing, selling, offering for sale and/or using in any manner whatsoever in relation to their emulsion, paints or other like goods used in the paint industry, the impugned label mark and the impugned trade dress of MAGIC TOUCH interior emulsion or from using any mark or trade dress identical with and/or deceptively similar to the Plaintiff's distinctive and prior used trade mark and trade dress depicted on its TRACTOR SHYNE emulsion label so as to pass off the Defendant's goods and business as and for those of the Plaintiff or in some way connected or associated therewith."*

9. It is also useful at this stage to extract below images of the rival products the same as follows.

PLAINTIFF'S LABEL	DEFENDANT'S LABELS
 The image shows a white plastic paint can with a grey lid. The label is primarily purple and green. On the left, 'asianpaints' is written vertically in white on a purple background. The main label features a green and yellow checkered pattern. Overlaid on this pattern is the text 'TRACTOR' in large, bold, black letters, followed by 'EMULSION' in smaller black letters, and 'SHYNE' in large, bold, black letters. To the right of the text is a small illustration of a purple lamp.	 The image shows a white plastic paint can with a white lid. The label is primarily green and yellow. On the left, 'Galaxy Paints' is written vertically in white on a black background. The main label features a green and yellow checkered pattern. Overlaid on this pattern is the text 'GALAXY' in small black letters, followed by 'MAGIC' in large, bold, black letters, 'TOUCH' in smaller black letters, and 'INTERIOR EMULSION' in black letters. Below this, it says 'SMOOTH FINISH' in white letters on a black background. To the right of the text is a small illustration of a lamp.

10. From the above, Mr. Bhagat points out that there can be no manner of doubt that defendant has dishonestly and willfully adopted these trade dress associated with the plaintiff/plaintiff's product namely Tractor Shyne and in respect of which the applicant/plaintiff every registered trademark holder and has a subsisting copyright in the artistic work. He therefore submits that it is clear that the defendant is attempting to pass off its product as that of the plaintiff.

11. After having heard Mr. Bhagat and having perused the rival products to my mind *prima facie* there can be no doubt that this is a fit case for passing off.
12. Further more, the defendants though served, have not even appeared to oppose the case as set out by the plaintiff/applicant.
13. Hence, in my view, the plaintiff/applicant has made out more than a *prima faice* case in support of the relief for passing off.
14. Hence in addition to the reliefs earlier granted by order dated 24th October 2024. I further direct that there shall be interim order in terms of prayer clause (c) which reads thus.

c. pending the hearing and final disposal of the suit, the Defendant by themselves, their directors, servants, agents, assignees, stockists, distributors and all those connected with the Defendant in their business be restrained by an order and temporary injunction of this Hon'ble Court from manufacturing, marketing, distributing, selling, offering for sale and/or using in any manner whatsoever in relation to their emulsion, paints or other like goods used in the paint industry, the impugned label mark and the impugned trade dress of MAGIC TOUCH interior emulsion or from using any mark or trade dress identical with and/or deceptively similar to the Plaintiff's distinctive and prior used trade mark and trade dress of TRACTOR SHYNE emulsion label so as to pass off the Defendant's goods and business as and for those of the Plaintiff or in some way connected or associated therewith;

PLAINTIFF'S LABEL	DEFENDANT'S LABELS
 The image shows a white plastic bucket of Asian Paints Tractor Emulsion Shyne. The label features a purple vertical band on the left with 'asianpaints' written vertically. The main label has a green and yellow checkered pattern. The text 'TRACTOR EMULSION SHYNE' is prominently displayed in bold, black letters. Below the text is an illustration of a purple lamp. The bucket has a white lid.	 The image shows a white plastic bucket of Galaxy Paints Magic Touch Interior Emulsion. The label is primarily green and yellow. It features the 'GALAXY' logo at the top, followed by 'MAGIC TOUCH' in large, bold letters, and 'INTERIOR EMULSION' below it. A 'SMOOTH FINISH' banner is also present. An illustration of a sofa is shown on the right side of the label. The bucket has a white lid.

15. Let a copy of this Order be served upon the defendant.
16. Stand the matter over to **8th October 2025**.
17. It is made clear that if on the next date, none appears on behalf of the defendant, the Court shall proceed to take up the Interim Application for final disposal.
18. Let notice of this fact be served upon the defendant and supported with an affidavit of service.

(ARIF S. DOCTOR, J.)