

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

INTERIM APPLICATION NO. 1673 OF 2025

IN

COMMERCIAL IP SUIT NO. 162 OF 2024

Tenet Poly Plast

... Applicant

IN THE MATTER BETWEEN

Apple Thermo Sanitation Pvt Ltd

... Plaintiff

Versus

Tenet Poly Plast

... Defendant

Mr. Vikrant Raje & Mr. Vinit Raje for Plaintiff.

Mr. Hirent Kamod, Mr. Rahul Punjabi & Mr. Prem Khullar for the Defendant.

Coram : Sharmila U. Deshmukh, J.

Date : July 24, 2025.

P. C. :

1. Interim Application has been preferred under Order VII Rule 10 of the Code of Civil Procedure, 1908 (CPC) seeking return of the plaint for presentation to the proper Court.
2. The Application is premised on the ground that the Defendant neither resides nor carries on business for gain within the territorial jurisdiction of this Court and the cause of action even if construed as per the pleadings in the plaint would arise in Palghar, Thane and under Section 20(b) of CPC the appropriate Court would be Palghar.
3. Mr. Kamod, would submit that the suit has been filed by the

Plaintiff seeking relief of injunction against passing off which is common law remedy and therefore the benefit of the jurisdictional provision of the Trade Marks Act, 1999 are not available to the Plaintiff.

4. *Per contra*, learned Counsel appearing for the Respondent-Original Plaintiff would submit that the prayer clauses are not confined only in respect of relief of passing off but also seeks action for infringement of the registered mark. He would further submit that under Section 134 of the Trade Marks Act this Court would have the jurisdiction as the suit can be instituted at the business address of the Plaintiff which is within the jurisdiction of this Court. He submits that in addition he has also filed an application under Clause XIV of Letters Patent for combining cause of action. He has taken this Court in detail through the pleadings in the plaint and would submit that the suit is for infringement of trade mark as well as copyright which would lie within the jurisdiction of this Court.

5. I have considered the submissions and perused the record.

6. The prayer clause (a) of the plaint seeks relief in respect of passing off of the goods however the pleadings in the plaint when considered holistically would indicate that the pleadings are in respect of infringement of trade mark as well as passing off. Paragraph 1 of the plaint makes it clear that the Plaintiff is filing the suit against infringement of Plaintiff's registered mark and passing off. In the plaint

there are separate pleadings which are dedicated to the action for passing off and as regards the infringement of the trade mark. The Plaintiff has sufficiently pleaded about the deceptive similarity of the rival marks as well as the trade dress to submit that the Defendant's are infringing the registered trade mark as well as the copyright of the Plaintiff and that both the marks are phonetically, visually, and structurally identical. Necessary averments to that effect can be found from paragraph 13 onwards.

7. The pleadings in the plaint when read holistically would make it evident that the suit is for infringement of trade mark as well as passing off. The filing of the Clause-XIV Petition under Letters Patent (Bombay) is also indicative that the Plaintiffs are aware of the statutory provisions and have sought leave for combining cause of action of passing off with cause of action for infringement of trademark and copyright.

8. The Applicant has relied upon selective pleadings in order to file the present application under Order VII Rule 10 which is unsustainable as the suit is clearly for infringement of trade mark and copyright.

9. In light of the above, the Interim Application is dismissed.

[Sharmila U. Deshmukh, J.]