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

**INTERIM APPLICATION NO. 1 OF 2020
IN
COMMERCIAL IP SUIT (L) NO. 195 OF 2020
WITH
LEAVE PETITION (L) NO. 70 OF 2020**

Bajaj Electricals Ltd.

..Applicant/Plaintiff.

Vs

Gourav Bajaj and Anr.

..Defendants

.....

Mr. Hiren Kamod a/w Rahul Dhote, Aditya Mahadevia and Mr. Prem Khullar i/b Literati Juris for the Applicant/Plaintiff

None for the Defendants.

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**CORAM : B. P. COLABAWALLA, J.
DATED :- 3rd MARCH, 2020.**

P.C. :-

1 Mr. Kamod, Ld. Advocate for the Plaintiff submits that the papers and proceedings in the present matter alongwith the notice of today's application have been duly served upon the Defendants on 24th February 2020 and 25th

1/12

February 2020. He has tendered an affidavit of service dated 2nd March 2020 proving service of documents upon the Defendants. Despite service, no one is present on behalf of the Defendants.

2 This is an action for infringement of the Plaintiffs' registered trademarks, copyrights combined with a cause of action for passing off. The Plaintiff's Clause XIV Leave Petition seeking leave under Clause XIV of the Letters Patent (Bombay) to combine the cause of action for passing off with the cause of action for infringement of trade marks and copyrights is allowed. The Plaintiff is presently only pressing for *ad-interim* reliefs in terms of prayer clauses (a), (b) and (c) of the Interim Application and are not pressing for the remaining reliefs at this stage.

3 It is stated that the Plaintiff is a public limited company duly incorporated under the Indian Companies Act, 1913 and deemed to exist within the purview of the Companies Act, 2013. It is stated that the Plaintiff is a part of the Bajaj conglomerates of businesses and industries, one of the oldest

business groups in India. It is stated that the Plaintiff has diversified business interests and is *inter alia* engaged in manufacturing, marketing and selling of various consumer household and industrial goods including electric lamps and bulbs, lighting fittings and electric domestic appliances like irons, fans, air-coolers, pressure cookers, ovens, toasters, heaters, geysers, mixer grinders and parts thereof, water purifier, water filters, pumps and industrial items like high masts, towers and other like goods and services thereof. It is stated that the Plaintiff also provides superior quality services in respect of purchase and sale of electrical and electronic appliances and goods through various outlets all over India. It is stated that the Plaintiff has 19 branch offices spread in different parts of the country called 'BAJAJ WORLD' and approximately 462 customer care centers. Few photographs of the Plaintiff's retail outlets bearing the Plaintiff's mark BAJAJ WORLD are at Exhibits B-1 to B-4 to the Plaintiff.

4 It is stated that in or about January 1961, the Plaintiff honestly, independently and in a *bona fide* manner adopted and commenced use of the trade mark / name / house

mark BAJAJ in relation to its said goods and services. It is stated that to secure its statutory rights in its BAJAJ marks / trade name, the Plaintiff has applied for and secured several trade mark registration of its BAJAJ marks across numerous classes viz. Class 7, 8, 9, 11, 16, 21, 35, 37, 41, 42 and 45. A table detailing the trade mark registrations obtained by the Plaintiff in respect of its BAJAJ marks is at Exhibit-C to the Plaintiff. Copies of few registration certificates in respect of the Plaintiff's said registered BAJAJ marks are at Exhibit-D to the Plaintiff. A list of the Plaintiff's foreign trade mark registrations in respect of its BAJAJ marks is at Exhibit-E to the Plaintiff.

5 It is stated that over the course of years, the Plaintiff has used various unique and artistic labels, wherein the mark BAJAJ forms a prominent part, in respect of its said goods and services to distinguish them from those of others. It is stated that the Plaintiff is the owner of the copyright subsisting in the said Artistic Labels. It is stated that the Plaintiff has also secured statutory registration of the said Artistic Labels under the provisions of the Copyright Act, 1957 bearing registration Nos.A-73100/2005, A-73126/2005, A-

80572/2007, A-90380/2011, A-90381/2011, A-85245/2009, A-1110/2007 and A-90395/2011. A table detailing the copyright registrations obtained by the Plaintiff in respect of its said Artistic Labels is at paragraph 11 of the Plaint. Copies of few copyright registration certificates in respect of the said Artistic Labels are at Exhibits F-1 to F-6 to the Plaint.

6 It is stated that by virtue of the good quality, reliability and effectiveness and excellent quality of the said goods and services of the Plaintiff, its trade name, said BAJAJ marks and the said Artistic Labels have gained wide acceptance among the members of trade and public at large. It is stated that the said goods and services bearing the said trade name, said BAJAJ marks and / or the said Artistic Labels have accrued large sales and have acquired tremendous reputation and goodwill. It is stated that the Plaintiff has also taken efforts to popularize its said trade name, said BAJAJ marks and the said Artistic Labels and has spent substantial sums of money on advertisement and sales promotional efforts. It is stated that the said trade name, said BAJAJ marks and the said Artistic Labels are therefore exclusively associated with the

Plaintiff and its said goods and services. The Plaintiff's Chartered Accountant's Certificate certifying its annual sales turnover and promotional expenses in respect of its BAJAJ marks from the year 1960 till 2019 is at Exhibit H to the Plaint. It is stated that the Plaintiff is also the owner of the domain name www.bajajelectricals.com. Printouts of few pages from the Plaintiff's official website www.bajajelectricals.com are at Exhibit G to the Plaint. Copies of sales invoices and promotional material in respect of the Plaintiff's goods and / or services bearing its BAJAJ marks /Artistic Labels are at Exhibits I and J to the Plaint, respectively.

7 It is further stated that the Plaintiff's BAJAJ trade mark has also been declared as a well-known mark by this Court in the case of *Bajaj Electricals Limited vs. Metals & Allied Products & Anr. reported in AIR 1988 BOM-167*. A copy of the said order is at Exhibit K-1 to the Plaint. Printout from the official website of the trade marks registry showing the entry in respect of the the Plaintiff's BAJAJ trade mark in the list of well-known trade marks is at Exhibit K-2 to the Plaint.

8 According to the Plaintiff, in or about January 2020, the Plaintiff came across the Defendant No.1's impugned trade mark application in respect of the impugned label



bearing application No.4133164 in Class 35. Printout from the official website of the trade marks registry in respect of the impugned trade mark application bearing application No.4133164 in Class 35 filed by the Defendant No.1 and the online status of the same are at Exhibits L-2 and L-1 to the Plaint, respectively. It is stated that in his preliminary examination report, the Registrar of Trade Marks has cited a few of the Plaintiff's Bajaj marks as trade marks conflicting with the impugned application. Copy of the Preliminary Examination Report dated 17th May 2019 issued by the Registrar of Trade Marks is at Exhibit-M to the Plaint. It is stated that the Defendant No.1 has not filed a reply to the said preliminary examination report till date. It is stated that the Defendants are operating two retail electronic and electrical appliances stores at Abohar, Punjab under the impugned trade name / impugned mark "APNA BAJAJ STORE". Photographs of

the said two retail electronic and electrical appliances stores operated, run and managed by the Defendants at Abohar, Punjab are at Exhibits N-1 and N-2 to the Plaint. It is stated that the Defendants are also operating a website under the impugned domain name www.apnabajajstore.com. A copy of the business card of Defendant No.1 is at Exhibit-O to the Plaint.

9 Mr. Kamod submitted that the impugned name / mark “APNA BAJAJ STORE”, the impugned label and the impugned domain name adopted and used by the Defendants in respect of the impugned services are a slavish reproduction of the Plaintiff’s well known mark BAJAJ, its said trading name, said BAJAJ marks and its said Artistic Labels. He submitted that the dishonesty of the Defendants is apparent from the fact the Defendants use the expression “**Powered By: BAJAJ**” upon their impugned label so as to suggest that they are sponsored and / or endorsed by the Plaintiff. He submitted that even the defense of use of personal name is of no consequence as the very adoption and use of the impugned name and mark by the Defendant is dishonest. He submitted that in any event the use

of personal name is no defence in a passing off action. He submitted that in such circumstances it is absolutely just and necessary that an *ad interim* order be passed restraining the Defendants from infringing the Plaintiff's registered trade marks and copyright and from passing off their impugned goods / services as that of the Plaintiff's.

10 I have heard the submissions in detail and perused the record. The material produced before me, *prima facie*, shows that the Plaintiff are the proprietors of Plaintiff's registered BAJAJ trade marks / trade name and Plaintiff's said Artistic Labels and that the Plaintiff has also acquired rights in the Plaintiff's registered BAJAJ marks and Plaintiffs' said Artistic Labels. *Prima facie*, there is no matter of doubt that the impugned trade mark / trade name, impugned label and impugned domain name used in respect of the impugned goods / services of the Defendants are nearly identical, and in any event, deceptively similar to the Plaintiff's well-known BAJAJ mark, registered BAJAJ marks, said Artistic Labels and its said website used in respect of the Plaintiff's goods / services. *Prima facie*, The impugned label is a substantial



reproduction of the Plaintiff's said Artistic Labels. Considering the identity / close and deceptively similarity in the rival trade marks / names and nature of goods / services, the possibility of confusion and deception among the general public cannot be ruled out, particularly in view of the fact that in the rival trade marks / names / labels, BAJAJ is the only leading, essential and prominent feature.

11 The Plaintiff has been using the name and mark BAJAJ since 1961; BAJAJ has been recognized as a well-known mark, both by Courts as well as by Registry; Plaintiff has hundreds of registration for their mark BAJAJ and marks derived from BAJAJ issued in their favour; Plaintiffs turnover runs into crores; while examining the Defendants' mark, the Registrar has cited Plaintiff's marks. All these factors support the contention of the Plaintiff that the adoption and use by Defendants of their impugned name and mark is dishonest. I am of the opinion that the use of the impugned trade mark / name BAJAJ, impugned label and the impugned website address www.apnabajajstore.com cannot be said to be honest.

In these circumstances, a strong *prima facie* case for the grant


of *ad-interim* reliefs is made out. Unless reliefs as prayed for are granted, the Plaintiff is likely to suffer injury. Despite notice, none has appeared on behalf of the Defendants. The balance of convenience is in favour of the Plaintiff. The Plaintiff is also likely to suffer irreparable injury if the Defendants' acts of infringement continue.

12 There will thus be an *ad interim* order in terms of prayer clauses (a), (b) and (c) of the Interim Application, which read as follows:

- “a. that pending the hearing and final disposal of Suit, the Defendants by themselves, their servants, agents, licensees, franchisees, partners, proprietors and/or otherwise howsoever, be restrained by an order and injunction of this Hon'ble Court, from in any manner using in relation to the impugned services or impugned business activities, the impugned name / mark BAJAJ EXCELLENT / APNA BAJAJ STORE,
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- the impugned label , the impugned domain name “www.apnabajajstore.com” which are identical with and/or deceptively similar to the Plaintiff's registered trade marks listed as Exhibit-C, more particularly in respect of the Plaintiff's registered trade marks in Class 35, hereto or any of them and/or its logo, colour combination and get up in any manner whatsoever so as to infringe the Plaintiff's registered trademarks inter alia containing the word BAJAJ at Exhibits-C hereto;
- b. that pending the hearing and final disposal of Suit, the Defendants by themselves, their servants, agents, licensees, franchisees, partners, proprietors and/or otherwise howsoever, be restrained by an order and injunction of this Hon'ble Court from infringing the Plaintiff's copyright in its said Artistic Labels shown at Exhibits-F1 to F6 hereto by reproducing and/or publishing and/or communicating to public and/or using in manner whatsoever the impugned label shown at Exhibits-L1, L2 and L3 hereto or any other label which is a reproduction of the Plaintiff's said Artistic Labels shown at Exhibit-N1 and N2 hereto or

substantial part thereof or in any other manner whatsoever;

- c. *that pending the hearing and final disposal of Suit, the Defendants by themselves, their servants, agents, licensees, franchisees, partners, proprietors and/or otherwise howsoever, be restrained by an order and injunction of this Hon'ble Court, from using the impugned name / mark BAJAJ EXCELLENT / APNA BAJAJ STORE, the impugned*

 label *अपना बजाज स्टोर*, the impugned domain name "www.apnabajajstore.com" and/or or any other impugned mark/domain name/business name/trading style/label containing the word BAJAJ and/or any other trade mark, domain name or business name/trading style or label identical with and/or deceptively similar to the Plaintiff's well-known trade mark "BAJAJ" in respect of their business and/or impugned services and/or same or similar services or otherwise so as to pass off or enable others to pass off the Defendants' impugned services and/or business as and for the Plaintiff's well known services and/or business, or in any other manner whatsoever;"

13 List the Interim Application for hearing and final disposal as per its turn. Liberty to apply in case of changed circumstances.

(B.P. COLABAWALLA, J.)