

jsn

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

INTERIM APPLICATION (L) NO.29615 OF 2023

IN

COM IPR SUIT (L) NO.29378 OF 2023

Patanjali Foods Ltd.

...Applicant /  
Plaintiff

*Versus*

SE Oil Products Pvt Ltd. & Anr.

...Defendants

-----  
Mr. Prathamesh Kamat with Kayush Zaiwalla, Avinash Lalwani,  
Tanvir Kazi i/b. Mr. Apoorv Srivastava for the Applicant / Plaintiff.  
-----

CORAM : R.I. CHAGLA J

DATE : 27TH OCTOBER, 2023

ORDER :

1. The Plaintiff seeks to move without notice for reasons set out in paragraph nos. 21 and 22 of the Plaint and paragraph Nos. 24 and 25 of the Interim Application. There are sufficient disclosures in the Plaint for considering the prayers made for

the grant of *ex-parte* ad-interim reliefs. This is an action for trademark infringement combined with a cause of action for passing off. Mr. Kamat, Learned Counsel for the Plaintiff submits that since 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 trademark is not obtained, the Plaintiff is presently only pressing for reliefs in respect of infringement of trademark and appointment of Court Receiver, and shall press for relief for passing off after obtaining such leave.

2. The Plaintiff is stated to be a leading manufacturer and marketer of a healthy range of edible oils and a pioneer of Soya foods in India. The Plaintiff was previously known as Ruchi Soya Industries Ltd.
3. The Plaintiff is a proprietor of the registered trademark “TULSI” and the Plaintiff claims to be an exclusive user of its Trademark “TULSI GOLD”. A list along with the registration certificates / online status is at Exhibit-B and C to the Plaint. The trademark “TULSI GOLD” is stated to be used in respect of

Edible Oils and Fats under class 29. It is stated that the Plaintiff has been using the trademark “TULSI GOLD” since 2006. A colour representation of the Plaintiff’s goods bearing the said trademark “TULSI GOLD” is at Exhibit-A to the Plaintiff.

4. It is stated that the Plaintiff has affected large sales and has spent substantial sums of money on advertisement and sales promotional efforts in respect of their goods bearing “TULSI GOLD” trademarks in India. The Plaintiff has relied upon its Chartered Accountant’s certificate certifying its annual sales and turnover for the last 5 years. The same shows substantial sales by the Plaintiff using its Trademark “TULSI GOLD”. A copy of the said Chartered Accountant’s certificate in support of the annual sales and turnover is at Exhibit-F to the Plaintiff.
  
5. According to the Plaintiff, in the month of June 2023, the Plaintiff through various market sources came across goods bearing the impugned trademark/word mark “TULSI GOLD”. A Colour representation of the goods bearing the impugned Trademark/wordmark is at Exhibit-N to the Plaintiff.

6. Mr. Kamat, Learned Counsel for the Plaintiff submitted that on enquiry, the Plaintiff learnt about various facts pertaining to the application by Defendant Nos. 2 to the Trademark registry, Mumbai seeking registration for the mark “TULSI GOLD”. Mr. Kamat Submitted that Defendant No.2 had filed an application on 18<sup>th</sup> September 2008, in the trademark registry seeking registration of the mark “TULSI GOLD” under class 29. The Registrar of Trademarks raised objections to the registration of the said mark and called upon Defendant No.2 to submit its reply. Defendant No.2 on 12<sup>th</sup> October 2015, unconditionally withdrew the application for registration of the mark “TULSI GOLD”.

7. Mr. Kamat, also invited my attention to a 2<sup>nd</sup> application by Defendant No.2 made on 3<sup>rd</sup> December 2014, to the trademark registry, Mumbai seeking registration of the Trademark “TULSI GOLD” under the same class 29. The said application was rejected by the Registrar of Trademarks on 22<sup>nd</sup> March 2016. The case status of the said application of Defendant No.2 showing rejection is at Exhibit-L to the Plaint.

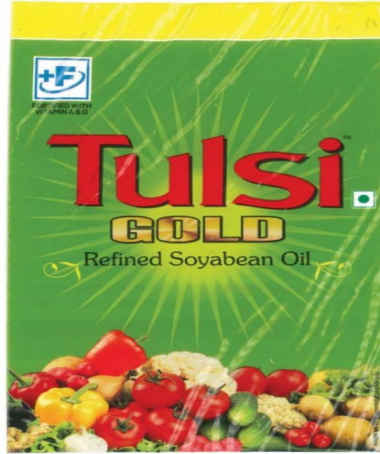
8. Mr. Kamat, submits that after the rejection of the Defendant No.2's application for registration of the mark "TULSI GOLD" having attained finality, Defendant No.2 could not have used the impugned trademark/word mark "TULSI GOLD". Mr. Kamat further submits that the colour scheme of the impugned Trademark clearly shows that Defendant No.2 is infringing the Plaintiff's trade dress. Mr. Kamat also submits that the impugned mark "TULSI GOLD" is identical visually as well phonetically with and/ or deceptively similar to Plaintiff's registered Trademark "TULSI" and Trademark "TULSI GOLD".
  
9. Mr. Kamat, submits that Defendant No.1 is selling the goods with the infringed trademark/wordmark to various people in Madhya Pradesh. The Plaintiff had issued a cease and desist notice dated 20<sup>th</sup> June 2023, to Defendant No.1. Defendant No.1 till date has not replied to the same.
  
10. Mr. Kamat submits that in the aforesaid circumstances, it is absolutely just and necessary that an *ex-parte* ad-interim order be passed restraining Defendants from infringing the Plaintiff's registered trademark "TULSI GOLD". He submits that

considering the dishonest conduct of the Defendants, the Plaintiff apprehends that if Defendants are given notice of the present application, there is a strong likelihood that Defendants would remove the existing stock of goods bearing the impugned mark from its factory/premises/ godowns/ offices /shops and is likely to the dump goods bearing the impugned trademark in the market and flood the market with goods bearing impugned trademark defeating the purpose of making the present application.

11. I have heard Mr. Kamat, Learned Counsel for the Plaintiff and perused the record. *Prima facie*, the Plaintiff has secured registration in respect of the trademark “TULSI” and has been using the Trademark “TULSI GOLD” since 2006. This indeed shows that the Plaintiff holds proprietary rights in the same. From the documents annexed to the Plaint, it is *prima facie* evident that the Plaintiff’s registered trademark “TULSI” and Trademark “TULSI GOLD” has gained immense goodwill and reputation.

12. A comparison of the rival trademark are re-produced below:

PLAINTIFF ORIGINAL PRODUCT



DEFENDANT'S COUNTERFEIT PRODUCT



13. I am of the opinion that the similarity between the rival trademarks is not a matter of coincidence. Defendant's impugned mark is identical with and/or deceptively similar to the Plaintiff's registered Trademark "TULSI" and Trademark "TULSI GOLD". I believe that Mr. Kamat is correct in his submissions that the impugned marks of Defendants are visually, phonetically and deceptively similar to that of the

Plaintiff's registered Trademark "TULSI" and Trademark "TULSI GOLD". In the circumstances, an overwhelming *prima facie* case is made out. The balance of convenience also lies in favour of the Plaintiff and unless the reliefs as prayed for are granted, the Plaintiff will suffer irreparable loss, harm and injury.

14. In view of the above and paragraph Nos. 21 and 22 of the Plaint and 24 and 25 of the Interim Application, I am satisfied that the object of granting the following reliefs would be defeated if the notice of the applicants is given to the Defendants.

15. There will, therefore, be an ad-interim order in terms of prayer clauses (a) and (c) of the Interim Application which reads as thus:

*a) that pending the hearing and final disposal of the suit, Defendants, jointly and severally, by themselves, their servants, employees, agents, dealers, distributors and all persons claiming under them be restrained by a*



*temporary order and injunction of this Hon'ble Court from infringing the Applicant's registered trade mark "TULSI" under Application No. 547209 in Class 29 by using the Impugned Trademark "TULSI GOLD" or any other mark deceptively similar to the Applicant's said registered trade mark in respect of the goods covered by the Applicant's said registration and/or in respect of similar goods or in any other manner whatsoever;*

*c) that pending the hearing and final disposal of the suit the Court Receiver, High Court, Bombay be appointed under Order XL Rule 1 of Civil Procedure Code, 1908 as the Receiver of the Defendants' goods bearing the Impugned Trademark "TULSI GOLD", with all powers to enter the premises of the Defendants and/or their agents and/or servants without notice to the Defendants or to their agents and/or servants and with the help of the police if necessary, to seize and take charge, possession and control of all the goods bearing the aforesaid Impugned Trademark and also to take charge and possession of all other goods, things including account*

*books showing manufacture, stock and/or sale of the goods bearing the Impugned Trademark in possession and control of the Defendants and/or their agents and/or servants.*

15. The Court Receiver, High Court, Bombay is appointed with the following powers and directions viz.-

(a) All powers under Order 40 Rule 1 and Order 39 Rule 7, except the power of sale;

(b) A direction to visit and search all locations of the Defendants, including the locations that may be discovered during the course of executing this order, forcibly breaking open locks if necessary; and, also where necessary, with police assistance.

(c) A direction to seize and seal and keep in the Plaintiff premises, all the offending materials, including cartons, packaging, dyes, moulds, machinery, printing equipment and material and other material and other materials of all description that carry the impugned marks or labels.

(d) A direction to make an inventory of all the material, equipment etc.

16. Accordingly, Mr. Raman Kumar Tripathi Advocate is appointed as Additional Special Receiver to execute the order. Fees of additional Special Receiver are fixed at Rs. 25,000/- per day. The Plaintiff shall pay the fees, but, it will at liberty to seek the same as cost at the final hearing of the suit.

1. The Addl. Special Receiver shall submit his report to the Court Receiver, High Court, Bombay on the following email id - [crcvr-bhc@i@nic.in](mailto:crcvr-bhc@i@nic.in).

2. Contact\_details of the Addl. Special Receiver are as follows

Sr. No.	Name of the ASR	Details
1	Mr. Raman Kumar Tripathi	Patidar Colony, Shamgarh, Makan No.58, Shamgarh, Mandsaur, Madhya Pradesh, 458883  + 91-8966910605  Email id : <a href="mailto:ramanapex007@gmail.com">ramanapex007@gmail.com</a>

Execution and implementation of the order:

- i) The Additional Special Receiver are empowered and authorized, acting on an authenticated copy of this order, to

take the assistance of the local police authorities in the execution of this commission.

- ii) The police authorities concerned are directed to act on the production of a digitally signed copy of this order,
- iii) The Court receiver will issue the necessary letters of authority to enable the local police to act.
- iv) The Additional Special Receivers are directed to seize and seal all infringing marks, hoardings etc. and make an inventory of such seized items.
- v) The Additional Special Receivers may, if necessary, if break open any locks with the assistance of the police.
- vi) The Additional Special Receivers may visit each of the locations of the defendants and any other location as pointed out by the Plaintiff during the course of execution and even thereafter from time to time and seize and seal all infringing goods and packaging bearing infringing trademark, artworks including any equipment and machinery used by the defendants.
- vii) Liberty is granted to the Plaintiff to add such entities/ persons as part Defendants to the present suit as and when they are identified.

viii) These products will be handed over to the plaintiff on superdari who would keep inventory of such goods as its premises under lock and key.

17. In the facts and circumstances of the case, the Court Receiver, High Court, Bombay, will not insist upon the production of a hard copy of this order but will act on the production of a soft copy digitally signed.

18. This order will not be uploaded until the Additional Special Receiver execute the commission as above.

19. The Plaintiff will comply with the provisions of Order 39 Rule 3 within 14 days of the Court receiver and Additional Special Receivers executing the commission under this order.

20. Liberty to the Defendant to apply for variation, modification or recall of this order after at least seven clear working days' notice to the Advocates for the Plaintiff.

21. The Additional Special Receiver will submit their reports to the Office of the Court Receiver 10<sup>th</sup> November 2023.

22. The Court Receiver will submit a Report to the Court on or before 27<sup>th</sup> November 2023.

23. The above Interim Application along with the Clause XIV Leave Petition to be listed on 27<sup>th</sup> November 2023 for further ad-interim relief and for hearing of the Leave under Clause XIV.

24. This order shall continue until further orders.

25. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on the production of a digitally signed copy of this order.

**[ R.I. CHAGLA J. ]**