

Shephali

**IN the HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
INTERIM APPLICATION (L) NO. ___ OF 2020
IN
COMMERCIAL IP SUIT (L) NO. __ OF 2020
(To be renumbered subsequently)**

Savla Corporation ...Plaintiff
Versus
Aristo Apparels ...Defendant

Mr Hiren Kamod, *with Ms Alka Parelkar, Vinay Parelkar, i/b VA Associates, for the Plaintiff.*
None *for the Defendant.*

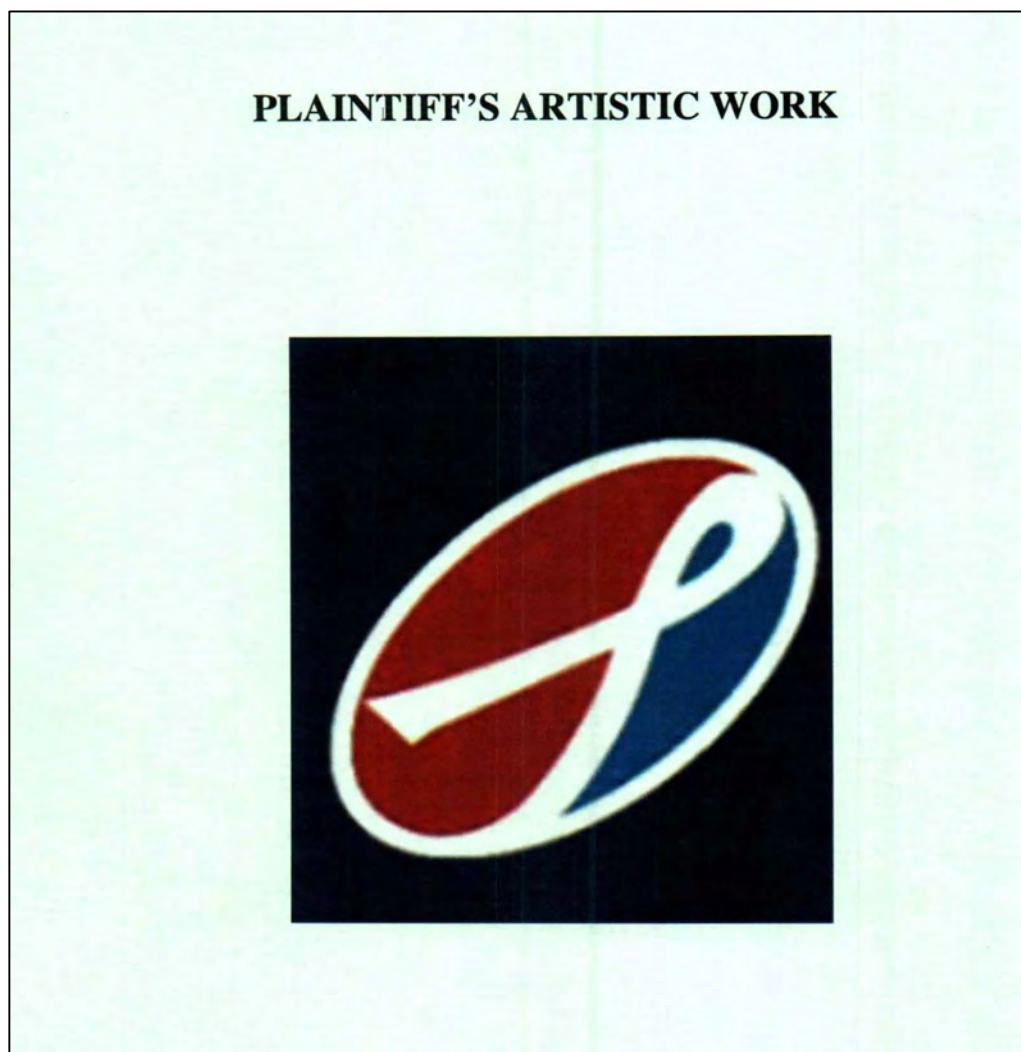
CORAM: G.S. PATEL, J
(Through Video Conference)
DATED: 16th December 2020

PC:-

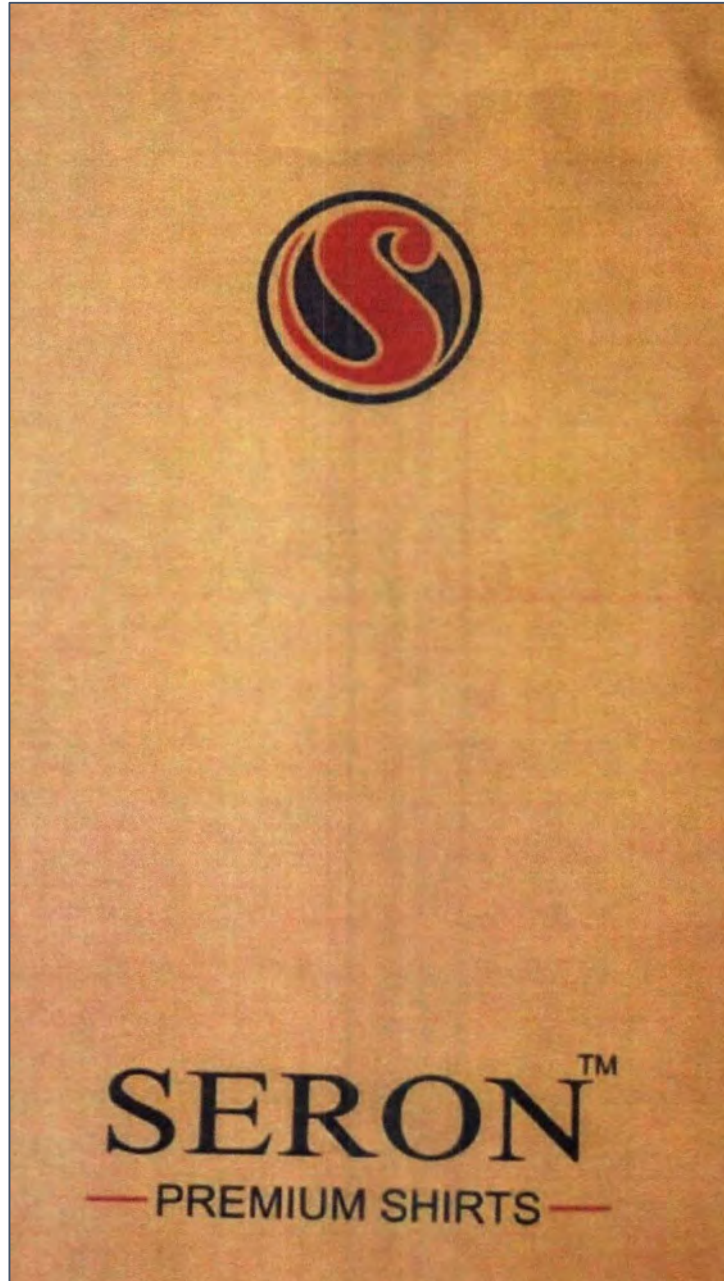
1. Heard through video conferencing.
2. The Defendant has been served a second time. There is an Affidavit of Service. None appears. An application by the Plaintiff in a matter like this cannot be defeated simply by the Defendant's staying away.

3. The Suit is an action in trade mark and copyright infringement combined with a cause of action in passing off. Since the Defendant is in Mumbai where the entire cause of action has arisen, there is no question of requiring a Petition for leave under Clause XIV of the Letters Patent.
4. Mr Kamod seeks urgent ad-interim reliefs.
5. The facts are these.
6. The Plaintiff is a registered partnership firm. It has been periodically reconstituted. The Plaintiff manufactures garments and fashion apparels, including readymade men's wear. The Plaintiff started his business in 1971. It claims to be a popular fashion brand and says that it has carved out a niche for itself in this industry for the quality of its products including shirts, trousers and denim attire.
7. The Plaintiff has various trade marks such as "SERO", "FREEZONE", "FUNTONES", and "MARRY ME". It uses these marks in India and in certain overseas jurisdictions as well. The Defendant is a sole proprietorship concern of one Kanji Patel, also engaged in the same industry.
8. The contest in this matter is about the two rival marks, SERO, registered to the Plaintiff and the mark or label adopted by the Defendant, 'SERON'.

9. Rather than starting with a long narrative, I prefer to begin this matter with an immediate comparison of the two rival marks. These are set out below:



Defendant's Mark



10. As can be seen, the Plaintiff's mark has a tilted oval device with a white border. In this is inset a stylized cursive 'S' looping on itself. One part of it is shaded a deep red and another part is in deep blue. Another representation of this is at page 46.

11. The Defendant's artwork is depicted above and is also at page 114. The device itself is confusingly and deceptively similar to that of the Plaintiff. Again, we see inset in circle — albeit with a black border — and a stylized cursive 'S' shape. One part of it is in deep red and the rest is either in black or deep blue.

12. Beyond this is the confusion that is likely to occur from the word marks themselves. The Plaintiff's mark is SERO. The Defendant has merely added a 'N' to the Plaintiff's mark and have adopted the rival mark.

13. It is not out of place to mention that both marks are used in respect of the same class of goods and the same type of goods, viz., readymade garments and menswear.

14. The Plaintiff claims to have not only trade mark registration but copyright in the artwork itself. Hence, the present Suit.

15. The details of the registration of the Plaintiff's SERO mark are set out in paragraph 4 of the plaint. The registrations are in class 25 and they include the device that I have set out above as also the word

SERO itself. This is clearly an invented and coined word and it is prima facie, therefore, safe to say that, given the prior registration and user, the Plaintiff has proprietary rights in the mark.

16. The question of goodwill and reputation is inter alia established prima facie by the material that is available on record in the form of social media pages, promotional materials, sales figures and statements of expenses. These are not insubstantial. They are, at least at this stage, sufficient to show the distinctiveness of the Plaintiff's marks and the fact that these marks uniquely identify the Plaintiff as the source of the goods under these marks.

17. In paragraph 10, the Plaintiff says that the Defendant is aware of the Plaintiff's mark. In September 2020, the Plaintiff came to learn of the Defendant's activities in selling products in the same category under the impugned mark SERON. The Plaintiff's marketing team made a trap purchase on 19th September 2020. On a further search in the records of the Register of Trade Marks, the Plaintiff saw that the Defendant has applied for registration of the SERON label mark in class 25 — the very class in which the Plaintiff enjoys prior registration.

18. There is no manner of doubt in my mind that the Plaintiff has made out a sufficient prima facie case. The Defendant's mark is confusingly and deceptively similar to that of the Plaintiff's. Prima facie, it would appear that the Defendant is trading on the Plaintiff's goodwill and reputation.

19. There is a definite structural, phonetic and visual similarity between the Plaintiff's mark and the Defendant's mark. There is no doubt that the artwork in which the Plaintiff enjoys copyright has been lifted and used with only the most minor and irrelevant modifications by the Defendant.

20. In this view of the matter, I am inclined to make an ad-interim order in terms of prayer clauses (a), (b), (c) and (d) of the Interim Application which read thus:

“a) That pending the hearing and final disposal of the present suit the Respondent by itself, its servants, agents, representatives and/or all other persons claiming through or under or controlled by it, be restrained by a temporary order and injunction of this Hon'ble Court, from using, in any manner/form, directly or indirectly in relation to any of its goods/products, the Impugned marks or any other mark containing the word “SERO” together or by itself or with any other word or device and/or any other mark containing the Impugned mark as shown in Exhibit 'G1', 'G2' and 'G5' and/or the word “SERO” by itself or in combination with any other word or device and/or deceptively similar words written in a stylized manner or in any manner which is identical with and/or deceptively similar to all the Applicant registered trademarks hearing no. 3614725, 472724 and 868257 so as to infringe the Application said registered trademarks;

b) That pending the hearing and final disposal of the present suit, the Respondent by itself, its servants, agents, representatives and/or all other persons claiming through or under or controlled by it, be restrained by a temporary order and injunction of this Hon'ble Court, from substantially reproducing copying, imitating by any mean and or medium

artistic work in which copyright subsists in favour of Applicant so as to infringe the copyright in the artistic work vesting with the Applicant as shown in Exhibit 'B' to the plaint;

c) That pending the hearing and final disposal of the present suit, the Respondent by itself, its servants, agents, representatives and/or all other persons claiming through or under or controlled by it, be restrained by a temporary order and injunction of this Hon'ble Court, from using, in any manner/form, directly or indirectly in relation to any of its goods/products, the Impugned marks or any other mark containing the word "SERO" together or by itself or with any other word or device and/or any other mark containing the Impugned marks as shown in Exhibit 'G 1', 'G2' and 'G5' and/or the word "SERO" by itself or in combination with any other word or device and/or deceptively similar words written in a stylized manner or in any manner and/or any other deceptively similar mark to the Application "SERO" trademarks or parts and/or features thereof so as to pass off and/or enable others to pass off the Respondent's products/goods as and for the products/goods of the Applicant or in some way connected with the Applicant;

d) That pending hearing and final disposal of the Suit, the Court Receiver/Commissioner, High Court, Bombay be appointed the Receiver of the goods/products, promotional material and/or any other materials used in the rendering of goods/products under the Impugned marks or any mark containing the word "SERO" together or by itself or with any other word or device and/or any other mark, containing the Impugned marks as shown in Exhibit 'G 1', 'G2' and 'G5' and/or the word "SERO" by itself or in combination with any other word or device and/or other deceptively similar words written in a stylized manner or in any manner and/or any other deceptively similar marks to the Applicant

trademark “SERO”, with all powers under Order XL Rule 1 of the Civil Procedure Code, 1908 with power to break open and take physical possession thereof from the Respondent herein, its servants, agents, representatives and/or any person claiming through or under them and wherever situated, with adequate police protection.”

21. The Court Receiver will not insist on hard-copy correspondence but will act on production by email of a digitally signed copy of this order.

22. The Court Receiver must immediately seize and seal all offending products found in the premises of the Defendant. The Court Receiver is empowered to break open, if necessary with police assistance, the locks and doors of all such premises belonging to the Defendant. The police authorities to act forthwith on production of a digitally signed copy of this order.

23. The Court Receiver will, in discharge of his commission, not only visit the Defendant’s office mentioned in the cause title of the Suit but also the address at page 31, Perfect Men’s Wear, Shop Nos. 1, 2, 3 and 4, Shirin Shopping Centre, Opposite Andheri Railway Station, Andheri (West), Mumbai 400 058. I make this order on Mr Kamod’s specific instructions that Perfect Men’s Wear shop at Andheri actually belongs to this Defendant.

24. There is no need to appoint a special receiver since the Court Receiver confirms that his office will attend to all this work.

25. The Court Receiver to submit report to this Court by 23rd January 2021.
26. Affidavit in Reply is to be filed and served on or before 15th January 2021. Affidavit in Rejoinder is permitted to be filed and served on or before 29th January 2021.
27. List the Interim Application for hearing and final disposal on 11th February 2021.
28. Liberty to the Defendant to apply for a variation, modification or recall of this order after one weeks' written prior notice to the Advocates for the Plaintiff.
29. This order will be digitally signed by the Private Secretary of this Court. All concerned will act on production of a digitally signed copy of this order.

(G. S. PATEL, J)