



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 20th May, 2024.

Pronounced on: 1st July, 2024.

+ CS(COMM) 229/2023, I.A. 3085/2024, I.A. 3114/2024

DONGGUAN HUALI INDUSTRIES CO. LTD. Plaintiff

Through: Mr. Varun Goswami, Mr. Yogesh Goel, Mr. Sahil Agarwal, Mr. Hritik Chaudhary and Mr. Aryan, Advocates.

versus

ANAND AGGARWAL AND ORS. Defendants

Through: Mr. Chinmoy Pradip Sharma, Senior Advocate with Mr Ashish Choudhary, Advocate for D-1.
Mr. Chinmoy Pradip Sharma, Senior Advocate with Dhruv Surana, Mr. Arya Hardik, Mr. Irfan Haseeb, Mr. Krishnajyoti Deha and Mr. S. Bhattacharya, Advocates for D-2 to 4.

**CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA**

JUDGMENT

SANJEEV NARULA, J.:

I.A. 7306/2023 (under Order XXXIX Rules 1 & 2 read with Section 151 of Code of Civil Procedure, 1908)

THE CONTROVERSY BEFORE THE COURT

1. In the instant lawsuit, the Plaintiff seeks, *inter alia*, a permanent injunction to prevent the Defendants from utilizing the trademark "HUALI".



Defendant No. 1 has obtained statutory rights in the said mark by registering the same under No. 4146654 for goods categorised in Class 20. Nonetheless, the Plaintiff, asserting that they are the prior user of the “HUALI” trademark, challenges the validity of Defendant No. 1’s registration. The Plaintiff argues that in view of their prior usage rights, this registration does not diminish their entitlement to protect their trademark under the common law principles of passing off. Thus, we shall assess whether to grant an interim injunction in favour of the Plaintiff during the pendency of the instant lawsuit, upon considering the complexities of the facts presented by both sides and legal principles relating to passing off.

FACTS AND CONTENTIONS

2. Mr. Varun Goswami, counsel for Plaintiff, has presented the following facts and contentions:

2.1. Established in the year 1995 and incorporated in China, the Plaintiff, Dongguan Huali Industries Co. Ltd., specializes in the research, development, production and sale of decorative composite materials. These products include edge decoration materials, shaped decorative materials, and other types, utilized primarily in the manufacturing of plate furniture, surface decorations and interior designs. Over the decades, the Plaintiff has expanded its market presence to several countries worldwide, including, *inter alia*, in China, India, Russia, and Taiwan.

2.2. The Plaintiff is one of the largest manufacturers of furniture components, specializing in PVC and melamine edge banding, alongside a broad range of furniture accessories and related goods. They market these products under the trademark “HUALI”, a term ingeniously crafted from



two Chinese words: ‘HUA’, signifying ‘flower’, ‘fancy pattern’, or ‘florid’, and ‘LI’, denoting ‘worldwide reputation’. As an invented mark, “HUALI” warrants the highest degree of legal protection on account of its distinctive nature and the significant goodwill it has accrued globally.

2.3. The Plaintiff first adopted the trademark “HUALI” in 2004 for international operations and subsequently in 2007 within India, and has been employing it consistently and extensively ever since. This mark not only defines their high-quality products but is also prominently featured in the Plaintiff’s trade name. Further, Plaintiff has also registered the domain name “dghuali.com”¹. Significant financial resources have been dedicated to the advertisement and promotion of their products under the ‘HUALI’ trademark.² Consequently, the mark has become intrinsically associated with the Plaintiff’s products, serving as a distinctive source identifier. This extensive usage has enabled the “HUALI” trademark to accumulate a formidable reputation in the market, as substantiated by impressive sales figures under the “HUALI” brand.³

2.4. In addition to asserting strong common law rights in the “HUALI” trademark, the Plaintiff has also undertaken efforts to secure statutory rights in respect thereof. The Plaintiff has successfully registered the trademark in several international jurisdictions, including South Africa, Uzbekistan, Taiwan, Vietnam, and China, demonstrating a proactive approach to safeguarding their intellectual property rights globally. In India, reinforcing their commitment to secure these rights, the Plaintiff filed for registration

¹ Plaintiff also owns another website viz. www.dghuafali.com

² Details of promotional expenses are delineated in Paragraph No. 26 of the plaint

³ Details of sales figures worldwide and in India, from Financial Year 2018-19 onwards, are delineated in Paragraphs No. 26 and 27 of the plaint respectively.



under the Trade Marks Act, 1999⁴ through application No. 2777522 dated 21st July, 2014, for “*FURNITURE & FURNITURE PARTS, PVC EDGE BANDING, MELAMINE EDGE BANDING FOR USE IN FURNITURE, FURNITURE ACCESSORIES INCLUDED IN CLASS-20*”. This application was initially lodged by one M/s FAT Overseas, who acted as the Plaintiff's distributor in India. Later the rights in the trademark were officially transferred to the Plaintiff, as documented in the Deed of Assignment dated 27th November, 2014. This application is pending consideration and has been opposed by the Defendant No. 1, Mr. Anand Aggarwal. Additionally, Plaintiff has also secured registration for their device mark “HUAFULI”/ “**HUAFUL I**”, under No. 2842353 in Class 20.

2.5. The Plaintiff is aggrieved on account of the Defendants' adoption and use of the identical trademark “HUALI” in respect of identical goods. Defendant No. 1, Mr. Anand Agarwal, is a director of ‘All Star Intl Trading Co.’⁵, a company situated in Hong Kong. Defendant No. 2, Mr. Himanshu Goyal, is a director of the Defendant No. 3 company (M/s Kalkaji Glasses Pvt. Ltd.) and the proprietor of Defendant No. 4 firm (M/s Kalkaji Enterprises).

2.6. In an interesting sequence of events, Defendant No. 1 initially applied for registration of the mark “HUALI” through application No. 3925098 dated 24th August, 2018. This application was filed on a ‘Proposed to be Used’ basis. However, shortly before opposing the Plaintiff's trademark application No. 2777522, Defendant No. 1 strategically amended the application to claim usage dating back to 24th August, 2008. After this

⁴ Hereinafter, “*the Act*”

⁵ Hereinafter, “*All Star Co.*”



amendment, Defendant No. 1 withdrew the initial application and subsequently re-applied for registration of the mark “HUALI” through application No. 4146654, which persisted with the claimed usage date of 24th August, 2008. Pertinently, this subsequent application, which has since been granted, was filed on the same date that Defendant No. 1 opposed the Plaintiff’s trademark application. However, no mention was made of this second application in the notice of opposition, which hindered the Plaintiff’s ability to contest the same.

2.7. Defendant No. 1 has dishonestly secured registration for “HUALI” on the basis of a fictitious user claim. Initially, the Trademark Registry raised certain objections to the said application, citing the Plaintiff’s pending application and calling upon the Defendant to produce documents in support of the claimed user date. In response, Defendant No. 1 averred that they had a prior user date as compared to the Plaintiff, and sought to corroborate their user claim by producing certain bills of lading to demonstrate their user. However, these documents appear to be *ex facie* forged and fabricated, as they display dates that precede the incorporation dates of the Defendant companies. Consequently, these bills of lading are unreliable for proving the asserted usage of “HUALI” by the Defendants. Furthermore, both Defendants No. 1 and 4 have submitted identical handwritten invoices from the year 2008 to demonstrate their usage of the mark. The duplication of these invoices by different defendants strongly suggests manipulative and dishonest practices.

2.8. The Plaintiff initiated the process for registering the “HUALI” trademark in India in the year 2014. In contrast, Defendant No. 1 only sought registration for the same trademark much later, initially in 2018 and



then in 2019. Importantly, even if Defendant No. 1's claim of using the trademark since 2008 were to be accepted, it still falls short of the Plaintiff's documented usage in India beginning in 2007. This timeline unequivocally establishes the Plaintiff as the prior user of the "HUALI" mark, thus strengthening their legal position in claiming exclusive rights over its use.

2.9. Defendants are using the mark "HUALI" in respect of identical and similar goods to the Plaintiff, despite being aware of the prior presence of the Plaintiff in the market. Defendant No. 1 was even purchasing manufactured products bearing the "HUALI" trademark from the Plaintiff. There is a substantial risk that consumers, misled by the Defendants' use of the "HUALI" mark, might buy their inferior quality products under the false impression that they are sourced from or associated with the Plaintiff. Such deceptive practices have likely caused financial and reputational damages to the Plaintiff. Upon coming across the Defendants' infringing activities in October 2022, the Plaintiff filed police complaints reporting the same, however, no appropriate legal action was taken. Accordingly, the Plaintiff has filed the instant suit seeking protection of their common law rights in the trademark "HUALI".

3. Mr. Chinmoy Pradip Sharma, Senior Counsel for Defendants, has controverted the aforementioned contentions. His submissions are summarised as follows:

3.1. At the outset, it is disputed that the Plaintiff has been using the trademark "HUALI" in India since the year 2007. The documents presented to support Plaintiff usage claim do not list the Plaintiff company's name, but instead show the names of different entities, specifically 'Huali (HK) Industries Co. Ltd.' and 'Huali (Asia) Industries Co. Ltd.' Although the



Plaintiff claims to be the owner of such entities, however, no substantial evidence has been produced to substantiate such a claim. Consequently, such documents cannot be relied upon to prove Plaintiff's user of the mark "HUALI" in India since 2007. Moreover, in their application before the Trademark Registry the Plaintiff has taken a contradictory position, claiming usage since 27th December, 2013. This further indicates that their claim of alleged use since the year 2007 has only been adopted in order to supersede the Defendants' user claim, which dates back to the year 2008.

3.2. Plaintiff has been well aware of the Defendants' use of the "HUALI" trademark in India. Defendant No. 1 had previously collaborated with the Plaintiff for the purposes of packaging their products bearing the mark "HUALI" in the year 2015, as evidenced by the 'WeChat' screenshots produced on record by the Defendants. Further, Defendant No. 1 had also filed an opposition to the Plaintiff's trademark application No. 2777522 in the year 2019, which the Plaintiff duly responded to. Thus, the Plaintiff's assertion that they have only become aware of the Defendants' activities in October 2022, is contradicted by the contents of the plaint itself. This delayed response of approaching the Court in the year 2023, accompanied by the Plaintiff's construction of a false sense of urgency and the omission of material facts, suggests a tactical legal manoeuvre. Consequently, the Plaintiff is not entitled to the injunctive relief they seek.

3.3. Ms. Neha Kaushal, purportedly an authorized signatory for the Plaintiff, is also linked to one M/s R.K. Industries, which has sought to

register the trademark "RK HUALI"/ "" under application No.



5168082. The said application has been opposed by Defendant No. 1, seeking to protect their “HUALI” trademark. In retaliation, the present suit has been dishonestly instituted through the Plaintiff at the instance of a third party, and therefore, the same is not maintainable.

3.4. The Plaintiff does not have any registration in India for the mark “HUALI”. Moreover, the term “HUALI”, which can be roughly translated to mean “magnificent”, is a laudatory term in China. Therefore, the term cannot acquire any distinctiveness in China as it is generic and common to trade, and consequently, the Plaintiff cannot rely on their alleged goodwill in China to assert common law rights in India. On the other hand, Defendant No. 1 is the prior user of mark in India and has secured several registrations for the trademark “HUALI” in various classes, including Class 20. Therefore, the Defendants have superior rights as compared to the Plaintiff, and therefore, the Plaintiff’s prayer for interim injunction must be denied.

3.5. As regards the alleged discrepancies in the bills of lading and invoices submitted to the Trademark Registry, the Defendants claim these were merely inadvertent clerical errors made by junior employees, who have since left the company. Therefore, any errors in documentation should not be interpreted as deliberate or deceptive actions by the Defendants. The handwritten invoices placed on record clearly reflect the Defendants’ use of the mark “HUALI”, which was being done by Defendant No. 1 through Defendants No. 2, 3 and 4, from the year 2008.

ANALYSIS AND FINDINGS

Evaluating the Passing Off Action Against the Backdrop of Defendant’s Registration



4. The trademark in dispute, “HUALI”, is currently registered under the name of Defendant No. 1. The Plaintiff has initiated a passing off action, grounded in their claim of prior use, which directly challenges the validity of this registration on multiple grounds. However, given the legal framework established by Section 31 of the Act, which mandates a *prima facie* presumption of validity for registered trademarks, the Court’s analysis at this stage will concentrate on assessing the Plaintiff’s claim of passing off.

5. The status of Defendant No. 1 as the registered owner of the “HUALI” trademark does not negate the Plaintiff’s ability to pursue a passing off action. The trademark registration does not confer immunity from challenges, particularly when allegations of passing off are substantiated by evidence of prior use. The registration, while offering statutory benefits, does not obliterate prior common law rights established through actual use and accrued goodwill in the market. This understanding is supported by a conjoint reading of Sections 27, 28 and 34 of the Act. Section 27(2) allows for actions for passing off to proceed independently of the registration status of a mark, while Section 34 articulates that registration does not confer a right to interfere with or diminish the rights of those who have previously used the mark in commerce. This principle is also supported by the Supreme Court’s judgment in *S. Syed Mohideen v. P. Sulochana Bai*⁶, wherein it was affirmed that registration does not preclude an action for passing off. Therefore, registration, while providing certain statutory protections, does not confer an absolute right – rather, it is contingent upon respecting prior users’ established rights. Thus, if the Plaintiff can demonstrate that they have been using the “HUALI” mark prior to its



registration by Defendant No. 1 and that significant reputation and goodwill are associated with their mark, they can substantiate a claim for passing off.

Identity of Marks and Goods: Implications for Eminent Consumer Confusion

6. Both the Plaintiff and Defendants acknowledge the use of the identical mark “HUALI” in respect of identical goods covered in Class 20, i.e. furniture parts, PVC edge banding, melamine edge banding for use in furniture, furniture accessories and other cognate and allied goods. It is also undisputed that the parties also employ identical/ substantially similar trade dress/ packaging for their products⁷. A side-by-side comparison of the competing packaging is set out hereunder:



7. Given the mutual acknowledgment by both parties of using the

⁶ (2016) 2 SCC 683

⁷ The identity of trade dress/ packaging is also confirmed by the findings delineated in the report dated 10th



identical “HUALI” mark for identical goods, there is no necessity for the Court to engage in a comparative analysis of the marks to assess deceptive similarity. Furthermore, the identity of trade dress is also an important consideration when adjudicating an act of passing off, as it further exacerbates the propensity for unwary members of the public to be deceived. Thus, the likelihood of confusion among consumers is evident. This situation directly invokes the principle of ‘one mark, one source’, emphasizing the need to identify a single source for goods under one trademark to avoid public confusion. Therefore, the central issue for the Court to resolve is whether the Plaintiff can be established as the prior user of the “HUALI” trademark in India. Following this determination, the Court must also assess whether the case meets the critical criteria for passing off—goodwill, misrepresentation, and damage—as comprehensively set forth in the landmark decision of *Reckitt & Colman Products Ltd. v. Borden Inc.*⁸

Determining Prior Use: Analysing Claims of Early Trademark Adoption

8. The action of passing off is a common law remedy designed to protect the goodwill associated with unregistered trademarks from misrepresentation. This doctrine is founded on the principle that no individual should be allowed to sell their goods under the pretence that they are the goods of another trader. The core of this action is the deception involved—whether intentional or unintentional—that leads to consumer confusion and has the potential of causing damages.

9. The Plaintiff asserts their use of the mark “HUALI” internationally

May, 2023 filed by Local Commissioner, Ms. Shyna Narula, Advocate.



since the year 2004 and in India since the year 2007, and in support of this claim have submitted certain documentary evidence. However, the Defendants have challenged these documents, arguing at they do not directly mention the Plaintiff's name. In response, the Plaintiff has effectively demonstrated that the issuing entities of these documents are, in fact, wholly-owned subsidiaries of the Plaintiff company. To corroborate this, a certificate, bearing the seal and signature of the Director of the Plaintiff company has been submitted. This certificate clarifies that Huali Industries Co. Ltd., located in Dongguan, operates under the name 'Dongguan Huali Industries Co. Ltd.' It further verifies that 'Huali (Asia) Industries Co. Ltd.', 'Huali (H.K.) Industries Co. Ltd.' and 'Dongguan Huafuli Decorative Building Materials Co. Ltd.' are wholly-owned subsidiaries of the Plaintiff company. While additional evidence might be needed to fully validate the Plaintiff's claim of ownership and control over these subsidiaries, nonetheless, at this *prima facie* stage, the certification of ownership is deemed sufficient. The Court finds no compelling reason to doubt its authenticity. The detailed description of the interconnected corporate structure supports the continuity of trademark usage claims across different but related entities, thereby substantiating the Plaintiff's position as the prior user of the mark.

10. The Defendants have also raised concerns regarding the inconsistency in the Plaintiff's asserted user date of the "HUALI" trademark. They highlight that before the Trademark Registry, the Plaintiff claimed use since 2013, whereas before this Court, the claim contrastingly extends back to 2007. They further pointed out the discrepancy in an affidavit dated 27th

⁸ (1990) 1 All ER 873 (HL)



September, 2018, where Mr. Tan Hongru, legal representative of the Plaintiff company deposed that the Plaintiff “*has used the said mark in respect of the said goods in India since at least December 27, 2013.*” While it is true that the user detail in the Plaintiff’s trademark application No. 2777522 is from 27th December 2013, the Court finds the phrase ‘*at least*’ in Mr. Hongru’s affidavit to provide legal flexibility. This wording allows for the possibility of earlier use, merely establishing a confirmed baseline for usage. Therefore, the apparent contradiction in dates does not necessarily denote dishonesty or legal incoherence, but rather reflects the evolving nature of evidentiary disclosure as more comprehensive documentation becomes available or is scrutinized over the course of litigation. Such situations are not uncommon in complex international business operations, where record-keeping might vary between jurisdictions. The Court must evaluate the totality of the evidence presented rather than dismiss the Plaintiff’s claims solely on the basis of varied dates initially provided in different legal contexts.

11. The Plaintiff has produced several documents to demonstrate their continuous usage of the “HUALI” trademark since the year 2007. Noteworthy among these are a purchase order dated 13th September, 2007, a commercial invoice dated 9th October, 2007 and a corresponding bill of lading from 16th October, 2007, detailing a transaction with India Furniture Products Ltd. Additionally, the Plaintiff’s active participation in trade exhibitions is evidenced by an invoice dated 1st April, 2008, issued by Universal Expositions Ltd., which covers charges for promotional activities at the Index Fairs held at NSIC Exhibition Complex, New Delhi, from 13th to 16th November, 2008. This domestic usage is supplemented by the



Plaintiff's global engagement with the mark since 2004, demonstrated through their participation in various international trade exhibitions. These activities not only affirm the continuity and extent of the trademark's use, but also the substantial goodwill associated with the "HUALI" mark. The Plaintiff's sustained efforts to maintain and expand the trademark's recognition and market presence, both domestically and internationally, are evident. In consideration of the above evidence, the Court finds that the Plaintiff has *prima facie* established their use of the trademark "HUALI" within India, *via* their subsidiary companies, since the year 2007.

12. On the other hand, the Defendants' assertion of trademark use dating back to 2008 remains on tenuous ground. Significant inaccuracies have been identified in the documentation submitted to the Trademark Registry, which undermine their claim of continuous usage. Given these concerns, let us undertake a detailed analysis of the Defendants' documentation to assess the legitimacy of their purported early use of the "HUALI" trademark.

12.1. The bills of lading dated 25th June, 2009, 19th December, 2010, and 26th July, 2011, list Defendant No. 1's company (All Star Co.) as the shipper and Defendant No. 3 (Kalkaji Glasses Pvt. Ltd.) as the consignee. However, All Star Co. was incorporated in China on 23rd May, 2014. Further, Defendant No. 3 was incorporated on 29th January, 2010, and only received their Importer-Exporter Code (IEC) on 27th December, 2012. These facts establish that the bills of lading predate the official existence of both entities, rendering them *prima facie* not genuine and highly suspect.

12.2. Furthermore, the bills of lading dated 26th August, 2012, 18th October, 2013, and 17th August, 2014, all mention All Star Co. as the shipper and Defendant No. 4 (Kalkaji Enterprises) as the consignee. These documents



mention the GST No. of Defendant No. 4, GSTIN 19AAIFK4362M2ZT, which is anachronistic considering that the GST regime was only introduced in India in 2016, well after the dates on these bills of lading.

13. The temporal anomalies noted in the Defendants' documentation not only suggest potential manipulation and fabrication but also seriously undermine the credibility of their assertions. These discrepancies indicate a deliberate attempt by the Defendants to retroactively establish a usage timeline, conflicting with established corporate and legal records. This undermines the authenticity of the documents and strongly suggests that they were fabricated *post-facto*. Such inconsistencies critically impinge on the Defendants' credibility and suggest a concerted effort to manipulate and misrepresent their business operations' timelines.

14. Considering that the Plaintiff's trademark application for "HUALI" was filed prior to Defendant No. 1's application, yet Defendant No. 1 still managed to secure registration, the Court has scrutinized the basis of this registration. It is noticed that during the registration process, a First Examination Report (FER) was generated in response to the Defendant's trademark application raising an objection under Section 11(2) of the Act, citing the Plaintiff's application for "HUALI" an identical mark. In response, Defendant No. 1 contended that they had opposed the Plaintiff's application. They further asserted that while the Plaintiff's application claimed use since 2013, their own application asserts prior use, dating back to 2008. Pertinently, the user claim since 2008 was also introduced by way of an amendment, after originally seeking registration on a proposed to be used basis. To support this claimed usage, they submitted the afore-noted bills of lading, which are *ex facie* forged. This raises substantial doubts about the



legitimacy of the Defendants' registration and, by extension, their claim to prior use of the trademark "HUALI".

15. Before this Court, the Defendants have attributed the significant discrepancies in their documentation to clerical errors made by junior employees. However, the Court finds this defence unconvincing and considers it to be merely an attempt to obfuscate the truth. These discrepancies extend far beyond simple procedural oversight and strike at the heart of the Defendants' credibility and legal accountability. The nature and extent of the errors suggest a systematic attempt to mislead rather than mere administrative mistakes, casting serious doubts on the integrity of their claims.

16. The chronological inconsistencies in the documentation are stark. Defendant No. 3 was incorporated in 2010 and received its IEC only in 2012, while Defendant No. 1's company was established in China as late as 2014. Yet, the bills of lading reflect transactions dating back to a period before these companies legally existed. This timeline contradiction is not merely a clerical error but a fundamental flaw that suggests potential wilful deceit or fraudulent intent in an effort to establish a backdated history of the trademark's use. Further, attributing such critical legal documentation discrepancies to junior staff does not adequately absolve the management or the company of responsibility, especially given the legal stakes involved. It is the duty of the company's management to ensure the accuracy and integrity of submissions in legal settings, particularly when these documents are used to establish foundational rights to a trademark that carries significant commercial value. Therefore, the explanation provided by the Defendants does not address the underlying legal issues raised by these



discrepancies. It casts doubt on the reliability of their entire claim and undermines the trust required in judicial proceedings, pointing towards a strong intent to mislead.

17. Moreover, given that the Defendants have acknowledged sourcing their products sold under the “HUALI” trademark directly from China, they bear the responsibility to provide substantial documentary evidence of these goods being imported into India. However, when specifically requested by the Court, Mr. Sharma, Senior Counsel for the Defendants, conceded that they were unable to produce any relevant records. The absence of this documentation is significant for several reasons:

17.1. The applicable regulatory framework does not allow a person or entity to import or export goods without a valid IEC. This code is essential for legalizing international trade transactions. Therefore, the inability of Defendant No. 2 to provide any evidence on how goods were procured from Defendant No. 1 before 2014—a claim central to their defence—raises serious legal concerns about their undocumented early business operations. This omission not only questions the legality of their actions but also casts significant doubts on the legitimate use of the “HUALI” trademark during this period.

17.2. The Plaintiff has also rightly highlighted that an IEC is issued exclusively to a firm and not to individuals. This starkly contradicts the claim that Defendant No. 1 could engage in international trade under his personal name. Thus, there is no credible explanation forthcoming as to how the Defendants were conducting transactions involving imported goods under the “HUALI” trademark in India prior to the official incorporation of All Star Co. in 2014. Consequently, the assertion that Defendant No. 1



initially supplied products under his personal name, prior to the incorporation of his company, is not merely implausible but demonstrably false based on the requirements for international trading.

Conclusion on prior use

18. In light of the above analysis, in the *prima facie* opinion of the Court, the aforementioned documents produced by the Defendants appear to be forged and fabricated. This inference is drawn not only from the discrepancies themselves but also from the timing and manner in which these documents were purportedly generated. The Defendants’ initial trademark application for “HUALI” was filed on a ‘proposed to be used’ basis in the year 2018. This status was later altered to claim usage dating back to 2008—a year conspicuously absent from all other trademark applications filed by the Defendants, whether granted or pending. This selective and retrospective claim of early use suggests a strategic manipulation of facts tailored to counter the Plaintiff’s prior application from the year 2014, which had been cited in the First Examination Report in response to both of Defendant No. 1’s trademark applications. In support of this user claim, the Defendants relied on various bills of lading which, as analysed above, are *ex facie* forged and fabricated. Furthermore, the four handwritten invoices from 2008⁹ neither contain any mention of Defendant No. 1 nor provide any clarity as to how such goods were imported and distributed without the requisite documentation. Notably, no additional evidence has been presented to substantiate the use of the “HUALI” mark since 2008, severely weakening

⁹ The said invoices are found at Pages No. 278 to 281 of Defendants’ documents filed along with written statement under Index dated 8th September, 2023.



the Defendants’ position and exposing the falsity of their earlier user claims. In light of the Defendants’ inability to present any convincing evidence or coherent explanation that substantiates their claimed use of the trademark since 2008, and considering that all credible material provided by them pertains only to activities from 2014 onwards, the Court finds their claims of earlier usage unmerited. Thus, considering the totality of the evidence and the dubious nature of the Defendants’ documentary submissions, it is *prima facie* established that the Plaintiff, having consistently used the mark since at least 2007, holds the seniority in usage rights of the “HUALI” trademark.

Analysing Misrepresentation and Dishonest Adoption of the Trademark

19. The Defendants have not only failed to provide a reasonable explanation for adopting the mark “HUALI,” but they have also contradicted themselves in their defence. In his written statement, Defendant No. 1 explicitly acknowledges that exports to Defendant No. 2 only commenced in the year 2015, thereby directly contradicting the claims by Defendant No. 2 of using the “HUALI” brand name since 2008. This admission undermines the credibility of Defendant No. 2’s assertions and highlights a clear inconsistency in their narrative. Furthermore, Defendant No. 1 has acknowledged that his first visit to China was in 2013, which *prima facie* negates the possibility of honest adoption of the “HUALI” mark—a term of Chinese origin—in 2008.

20. Defendant No. 1 has argued that the trademark “HUALI” is not unique, citing its use by third parties in China as evidence of the mark’s lack of distinctiveness within that jurisdiction. However, trademark rights are



inherently territorial, and the current legal concern is within the Indian jurisdiction. Here, the Defendants have actively adopted the mark and secured its registration across multiple classes—a clear indication that they recognize and value its distinctiveness and commercial leverage in India. Therefore, any argument regarding the lack of distinctiveness in China is inconsequential to this case, as it does not diminish the trademark’s recognition and distinctiveness within India.

21. It is also an admitted fact that Defendant No. 1 had previously purchased goods under the “HUALI” brand from the Plaintiff, clearly indicating his awareness that the “HUALI” brand was exclusively associated with the Plaintiff. Additionally, it has been revealed that Defendant No. 1 sought permission from the Plaintiff to use the “HUALI” brand with the suffix “EKO” for sales in India, a request that was granted by the Plaintiff. However, Defendant No. 1 has selectively presented parts of the ‘WeChat’ conversation between the Plaintiff’s representative and himself, omitting significant portions to skew the facts of their agreement. This selective disclosure and manipulation of evidence represent a deliberate attempt by the Defendants to construct a misleading narrative and fabricate a defence.

22. As regards the Defendants’ allegation that the suit has been dishonestly instituted at the instance of a third party, the Court does not find the same to be tenable at this interim stage. The contents of the plaint sufficiently demonstrate the Plaintiff’s rights in the trademark “HUALI”, as well as their prior and extensive use of the same. Further, they have produced documents to demonstrate their business relationship with M/s R.K. Enterprises, who was engaged as an exclusive agent for sales and distribution in India. Thus, the Plaintiff has validly instituted the present suit.



The allegations raised by the Defendants would require substantiation through trial for a conclusive ruling at a later stage.

Reputation and goodwill

23. The Plaintiff has convincingly demonstrated reputation and goodwill associated with the “HUALI” trademark through various documents. Notably, they utilize the trademark “HUALI” not only on their products but also as an integral part of their corporate and trade name, embedding the mark deeply within their business identity. The record includes several documents that reflect their use of the “HUALI” mark and their active participation in global events and exhibitions dating back to 2004. This extensive engagement has afforded the “HUALI” mark significant international exposure and repute. The Plaintiff has established a *prima facie* presence in India since 2007 through their wholly-owned subsidiaries. This continuous usage has undeniably resulted in substantial goodwill and a strong reputation associated with the mark, as evidenced by impressive annual sales figures. These figures not only quantify the mark’s economic impact but also serve as a tangible representation of consumer recognition and trust in the “HUALI” brand over an extended period. Such documented financial success strongly supports the Plaintiff’s claims of significant market presence and consumer association, bolstering their case for protection against passing off.

24. In contrast, the Defendants have not produced credible material to substantiate their claims of usage since 2008 or the accrual of goodwill. In fact, the material furnished by the Defendants, both before this Court and the Trademark Registry during the registration process, has been determined to



be *ex facie* unreliable.

CONCLUSION AND DIRECTIONS

25. Under these circumstances, the Defendants' subsequent adoption of the identical "HUALI" trademark for identical goods and services is evidently a dishonest attempt to deceive consumers into believing that their products are associated with or originate from the Plaintiff. This *mala fide* intent is further underscored by the Defendants' reliance on documents that, as previously detailed, are *ex facie* forged and fabricated. This pattern of questionable conduct not only reflects a deliberate strategy to exploit the Plaintiff's established market reputation but also threatens significant financial and reputational damage to the Plaintiff. The potential for consumer confusion created by such deceitful practices is substantial, likely leading to dilution of the Plaintiff's brand equity and diversion of sales, thereby inflicting irreparable harm on the Plaintiff's business.

26. In view of the above, the Court finds that the Plaintiff has made out a *prima facie* case in their favour for grant of interim injunction. In case no interim injunction is granted in their favour, they would suffer irreparable harm; the balance of convenience also lies in favour of the Plaintiff and against the Defendants.

27. Accordingly, during the pendency of the suit, the Defendants, and/or anybody acting on their behalf, are restrained from manufacturing, selling, exporting, offering for sale, advertising/ displaying, directly or indirectly, their products, i.e., Furniture & Furniture Parts, PVC Edge Banding, Melamine Edge Banding for Use in Furniture, Furniture Accessories and allied goods, under the trademark "HUALI" or any other trademark and/or



trade dress which is identical and/or deceptively similar to the Plaintiff's trademark and trade dress.

28. With the above directions, the application is disposed of.

CS(COMM) 229/2023

29. List before the Roster Bench for further consideration on 1st August, 2024.

SANJEEV NARULA, J

JULY 1, 2024
d.negi