

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INTERIM APPLICATION (L) NO.4133 OF 2020
IN
COMMERCIAL IP SUIT (L) NO. 4130 OF 2020

Parle Products Pvt. Ltd & Anr.Plaintiffs/Applicants

V/s.

Future Consumer Ltd. & Ors.Defendants

Mr. Virag Tulzapurkar, Senior Advocate a/w Mr. Hiren Kamod, Mr. Aditya Chitale, Mr. Nishin Shrikhande and Mr. Avinash Belge i/b RKD Legal Services LLP for Plaintiffs/Applicants.

None for Defendant

CORAM : K.R.SHRIRAM, J.
DATED : 9th OCTOBER 2020

PC. :

1. This is an action for infringement of Plaintiffs copyright combined with a cause of action for passing off. Today, Plaintiffs are pressing for *ad-interim* reliefs against all Defendants except Defendant No.4.
2. The papers and proceedings in the present Application have been duly served by Plaintiffs upon Defendants (excluding Defendant No.4) on 6th October 2020. Further, the intimation of today's listing and the link of today's hearing has been served by Plaintiffs upon Defendants. Plaintiffs have filed Affidavit of Service dated 9th October 2020 in respect of the above. Despite service, no one is present on behalf of Defendants.

3. It is stated that Plaintiffs are carrying on the business of manufacturing and selling of biscuits including but not limited to confectionaries, wafers, cakes etc. Plaintiff No.1 has been recognized as the most chosen fast-moving consumer goods or FMCG brand since 2010. According to the Nielsen Report for the year 2010 Plaintiff No.1's brand PARLE-G was certified as the world's largest selling biscuit brand.
4. It is stated that in the years 1939, 1971 and 1996 Plaintiff No.1 began manufacturing and marketing its biscuits under the marks "MONACO", "KRACKJACK" and "HIDE & SEEK", respectively. To secure its statutory rights in the "MONACO", "KRACKJACK" and "HIDE & SEEK" trade marks Plaintiff No.1 has applied for and secured trade mark registration in respect of the same under the Trade Marks Act, 1999.
5. It is stated that in or about the months of July 2013, July 2014 and May 2017 Plaintiff No.1 created the latest packaging used in respect of its "MONACO", "KRACKJACK" and "HIDE & SEEK" products, respectively. Photographs of Plaintiffs' "MONACO", "KRACKJACK" and "HIDE & SEEK" products bearing their respective packaging are at Exhibits C, D and E to the Plaint. The distinctive and essential features of each packaging are mentioned at paragraphs 14, 17 and 20 of the Plaint. It is stated that Plaintiffs' Packaging were created / authored by Mr. Mayank Shah, employee of Plaintiff No.1 during his course of employment with Plaintiff and therefore Plaintiff No.1 is the owner of the copyrights subsisting in Plaintiffs' Packaging. It is stated that

Plaintiff No.2, has been using Plaintiffs' Packaging and marks under a license/permission from Plaintiff No.1 being a wholly owned subsidiary of Plaintiff No.1.





6. It is stated that since the beginning, Plaintiffs have been openly, continuously and extensively using Plaintiffs' Packaging, upon and in respect of their goods in India. It is stated that Plaintiffs have taken efforts to popularize their products bearing Plaintiffs' Packaging and have been expending substantial sums of money and efforts towards popularizing Plaintiffs' Packaging and promoting sales of the relevant goods in India. Statements of Plaintiff's annual sales figures and promotional expenses are at paragraph 24 of the Plaint. Plaintiffs' Chartered Accountant's Certificates certifying their annual sales figures and promotional expenses are at Exhibit F-1 and F-2 to the Plaint. Copies of representative invoices relating to the sale of Plaintiffs' "MONACO", "KRACKJACK" and "HIDE & SEEK" products are at Exhibits G-1 to G-3, H-1 to H-3 and I-1 to I-3 to the Plaint. Copies of Plaintiffs' advertisement and promotional material are at Exhibits J-1 to J-13, K-1 to K-13 and L-1 to L-13 to the Plaint. It is stated that Plaintiffs' Packaging including the features thereof have become distinctive of Plaintiffs' goods and connote and denote to the members of the general public and trade the goods of Plaintiffs alone and of no one else.
7. It is stated that in the second week of September 2020, Plaintiffs came

across Defendants' impugned biscuits bearing the marks "CrackO", "Kracker King" and "Peek-a-Boo" having trade dresses / packaging / labels which are identical with and / or deceptively similar to and / or a substantial reproduction of Plaintiffs' Packaging. Photographs of Defendants' impugned products "CrackO", "Kracker King" and "Peek-a-Boo" bearing the impugned packaging are at Exhibits M-1, M-2 and M-3, respectively, to the Plaint. A copy of the cash memo evidencing the sale of all the three impugned products in Defendants' Big Bazaar outlet in Vile Parle, Mumbai is at Exhibit N to the Plaint. Comparative tables of the rival products are at paragraph 29 of the Plaint. It is stated that Defendants have intentionally stocked their impugned products on the shelves alongside Plaintiffs' products. Photographs showing the manner in which Plaintiffs' "MONACO", "KRACKJACK" and "HIDE & SEEK" products bearing Plaintiffs' Packaging and Defendants' impugned products "CrackO", "Kracker King" and "Peek-a-Boo" bearing the impugned packaging are being displayed / sold by Defendants in their retail outlets are at Exhibits O-1 to O-4 to the Plaint.

8. Mr. Tulzapurkar, submitted that a bare perusal of Defendants' impugned products bearing the impugned trade dresses / packaging / labels would reveal that Defendants have copied each and every element of Plaintiffs' Packaging including the layout, colour combination, placement and all distinctive elements and features of Plaintiffs' Packaging to the last millimeter. He submitted that

Defendants’ impugned trade dresses / packaging / labels are reproductions of Plaintiffs’ Packaging and / or reproductions of substantial parts thereof. He submitted that Defendants’ use of the impugned trade dresses / packaging / labels amounts to infringement of Plaintiffs’ copyright and passing off.

9. I have heard the submissions in detail and perused the record. *Prima facie* it appears that Plaintiffs are the owners of the copyright in Plaintiffs’ Packaging used in respect of their “MONACO”, “KRACKJACK” and “HIDE & SEEK” products and have acquired substantial goodwill and reputation in the same. Photographs of the rival products are reproduced below:

PLAINTIFFS’ PRODUCTS	DEFENDANTS’ IMPUGNED PRODUCTS
MONACO 	CrackO 
HIDE & SEEK 	PEEK-A-BOO 
KRACKJACK	KRACKER KING



A comparison of the rival products hardly leaves any doubt about the manner in which Defendants have blatantly copied Plaintiffs' Packaging / labels. There is no doubt that the rival labels are being used for identical products under nearly identical packaging and trade dresses. The labels / artworks / packaging / trade dresses of Defendants' "CrackO", "Kracker King" and "Peek-a-Boo" products are a reproduction of Plaintiffs' Packaging used in respect of their "MONACO", "KRACKJACK" and "HIDE & SEEK" products and / or reproductions of substantial parts thereof. It is apparent that Defendants must have had Plaintiffs' products before them while designing the impugned packaging. The similarity in the rival packaging/labels cannot be a matter of coincidence.

10. 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, Plaintiffs are likely to suffer irreparable injury. The balance of convenience is also in favour of Plaintiffs. There are no equities in favour of Defendants. There shall accordingly be an *ad-interim* order against Defendant Nos.1, 2, 3 and 5 in terms of prayer clauses (a), (b) and (c) of the Interim Application except the bracketed portion, which

read as follows:

a) that pending the hearing and final disposal of the suit, Defendants by themselves, their directors, servants, agents, stockists, dealers, distributors, packagers, manufacturers and all persons acting on their behalf be restrained by a temporary order and injunction of this Hon'ble Court from infringing Plaintiffs' copyright in Plaintiffs' Packaging show at EXHIBITS C, D and E to the Plaint by reproducing, publishing, communicating to the public or using in any manner the Impugned Packaging shown at Exhibits M-1, M-2 and M-3 to the Plaint, or any other work which is reproduction of Plaintiffs' Packaging show at EXHIBITS C, D and E to the Plaint or substantial parts thereof or in any other manner whatsoever;

b) that pending the hearing and final disposal of the suit, Defendants by themselves, their directors, servants, agents, stockists, dealers, distributors, packagers, manufacturers and all persons acting on their behalf be restrained by a temporary order and injunction of this Hon'ble Court from in any manner using the Impugned Packaging shown at EXHIBITS M-1, M-2 and M-3 to the Plaint or any other label or packaging or colour scheme or lay out or get up or trade dress that is identical with and/or deceptively similar to Plaintiffs' Packaging, label, color scheme, lay out, trade dress shown at EXHIBITS C, D and E to the Plaint or any feature contained therein in respect of biscuits or similar goods so as to pass off their impugned products as and for the products of Plaintiffs in any manner whatsoever;

c) that pending the hearing and final disposal of the suit, the Court Receiver,

High Court, Bombay or any other fit person be appointed with all powers under Order XL Rule 1 of Civil Procedure Code, 1908 as the Receiver of Defendants' impugned products in/ bearing the Impugned Packaging with all powers to enter in the premises of Defendants and/or their directors, servants, agents, dealers, stockists, manufacturers, packagers and distributors at any time of the day or night (even on Sundays and holidays), to seize and take charge, possession and control of the impugned products bearing the Impugned Packaging (and also to take charge and possession of all other goods, records (printed and electronic), account books showing manufacture, stock and/or sale/export of the impugned goods bearing the Impugned Packaging) in possession and control of Defendants and/or their directors, agents, servants, distributors, stockists, manufacturers, packagers and/or dealers;

11. Since the Court Receiver, High Court, Bombay may not be in a position to travel in view of the COVID-19 pandemic and the protective measures enforced by the Government, I am appointing Adv. Shrinivas Bobde as the Court Commissioner and as representative of the Court Receiver, Bombay High Court to execute the present order at the common address of Defendant Nos.1 and 2 and such other Biz Bazaar retail outlets in Mumbai owned/operated/managed by Defendant Nos.1 and 2, as maybe pointed out by the representatives of Plaintiffs during execution of the said proceedings till the next date of hearing:

Details of Local Court Commissioner

Sr. No	Defendants' Addresses	Details of Court Commissioners
1.	<p><u>Defendant No.1</u> FUTURE CONSUMER LTD.</p> <p><i>Having address at</i> Knowledge House, Shyam Nagar, Jogeshwari (East), Mumbai - 400 060, Maharashtra, India</p> <p><u>Defendant No.2</u> FUTURE RETAIL LIMITED</p> <p><i>Having address at</i> Knowledge House, Shyam Nagar, Off Jogeshwari-Vikhroli Link Road, Jogeshwari (East), Mumbai - 400 060</p>	<p>Adv. Shrinivas Bobde</p> <p>Address:- Oval House, Ground Floor, Off Nagindas Master Road, Fort, Mumbai - 400001</p> <p>Email:- shrinivas.s.bobde@gmail.com</p> <p>Mobile No.:- 9619846066</p> <p>Bar Council Registration:- MAH/6340/2011</p>

12. Copies of the Bar Council ID cards of Advocate Shrinivas Bobde has been e-filed by Plaintiffs today. The Court Commissioner shall exercise the following powers which are not exhaustive:-

- (a) Enter the premises at the abovementioned addresses at any time;
- (b) To break open the lock/s, should the need arise;
- (c) To do the acts as stated in prayer clause (c) as granted above;
- (d) To prepare site panchanama / report and take signatures of the persons present at the site;

- (e) To avail requisite police assistance from the concerned local police station;
- (f) To exercise all necessary powers in furtherance of the above to efficaciously implement this order.
13. The Court Commissioner shall keep the impugned products bearing the impugned labels / artworks / packaging / trade dresses under their seal in the safe custody of Defendants. The Court Commissioner is authorized to seek police assistance, if required and the local police authorities of the concerned police stations shall immediately render all possible assistance as requested by the Court Commissioner including deployment of such number of police personnel as required on production of a digitally signed copy of this order. The Court Commissioner to submit his report through the Court Receiver to this Court on or before 27th November 2020.
14. The fees of the Court Commissioners is fixed at Rs.30,000/- per venue plus out of pocket expenses. Ground transportation by air conditioned car shall be arranged by Plaintiffs. The fees and expenses of the Court Commissioner shall be paid directly to them by Plaintiffs within one week of receiving the invoice.
15. The concerned Senior Police Inspector / Station House Officer / Circle Inspector of the local police station shall extend full co-operation to Court Commissiones on production of an authenticated copy or digitally signed copy of this order.

16. The Advocates for Plaintiffs will lodge the digital copy of this order with the office of the Court Receiver within five days of such copy being made available. Upon the same being lodged with the Court Receiver, compliance with Rule 596 of the Bombay High Court (O.S.) Rules is dispensed with.
17. Defendants to file their Affidavit-in-Reply within four weeks. Rejoinder if any to be filed within two weeks thereafter.
18. List the above Interim Application for further reliefs on 27th November 2020. Plaintiffs are granted liberty to renew their application for further reliefs on the adjourned date.
19. Liberty to Defendants to apply for variation of this order with 72 hours prior written notice to the Advocates for Plaintiffs.
20. All concerned including the Court Receiver will act on production by fax or email or printout of a digitally signed copy of this order.

(K.R. SHRIRAM, J.)