

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INTERIM APPLICATION (L) NO.6247 OF 2022
IN
COMMERCIAL IP SUIT (L) NO.6245 OF 2022

Pidilite Industries Limited ... Applicant
In the matter between:
Pidilite Industries Limited ... Plaintiff
Vs.
Fixo Industries and another ... Defendants

WITH
LEAVE PETITION NO.42 OF 2022
IN
COMMERCIAL IP SUIT (L) NO.6245 OF 2022

Mr. Hiren Kamod a/w. Mr. Nishad Nadkarni, Mr. Aasif Navodia and
Ms.Khushboo Jhunjhunwala i/b. Khaitan & Co. for Applicant / Plaintiff.
Mr. Fakhruddin Khan a/w. Mr. Salman and Ms. Saima for Defendants.

CORAM : MANISH PITALE, J.
DATE : OCTOBER 10, 2022

P.C. :

By this application, the applicant / plaintiff is pressing for ad-interim reliefs in the context of the allegations made against the defendants. In the plaint, it has been specifically stated in paragraph 32 as to why the plaintiff is pressing for urgent ad-interim reliefs. Having perused the contents of the said paragraph, this Court is convinced that the present application needs to be considered at the earliest.

2. It is brought to the notice of this Court that defendant No.1 was served with the papers as far back as on 09.03.2022 and defendant No.2 was also served. Defendant No.2 has appeared through counsel before this Court.

3. Learned counsel for the applicant / plaintiff has invited attention of this Court to the contents of the plaint. It is stated that the plaintiff is a world renowned business entity in the field of adhesives and sealants,

construction and paint chemicals, automotive chemicals etc., and that the present plaint is concerned about the product “FEVI KWIK”, which is a cyanoacrylate adhesive / instant adhesive. It is stated that the mark “FEVI KWIK” was conceived and adopted in the year 1987 by the plaintiff and has been continuously in use since 1991. It is further stated that since November 2007, the unique and distinctive package for the said product “FEVI KWIK” was designed and adopted by the plaintiff. It is also stated that the aforesaid product itself has generated huge amount of revenue for the plaintiff company and this is evident from the sales figure for the year 2019-20, showing sales to the tune of Rs.482 crores approximately. It is stated that huge amounts have been spent towards promotion and advertisement of the said product. In the year 2019-20, the figure came to about Rs.32.48 crores.

4. On this basis, it is stated that the said product has a huge goodwill in the market and there have been attempts by the counterfeiters to illegally take advantage of such goodwill.

5. It is further stated that sometime in October 2021, the plaintiff came across instant adhesive product being sold by the defendants under the mark “FIXO KWIK”, which is deceptively similar to the mark of the plaintiff, not only in the placement of the words used in the mark but also the designing of the packet in which the adhesive is sold, the same being a colourable imitation or a substantial reproduction of the original packet of the plaintiff.

6. It is stated in the plaint that upon coming across the offending mark being used by the defendants, the plaintiff undertook search and found that defendant No.2 had applied for the registration of the said mark. There were two applications moved in the years 2013 and 2014 and that, both the applications were refused by the competent authority by passing orders on 05.10.2018 and 31.10.2018. Having disclosed the material that was revealed in pursuance of the search undertaken, the plaintiff has stated that despite refusal of such applications for

registration of the marks, defendant Nos.1 and 2 have continued to blatantly use the aforesaid counterfeit mark, as a consequence of which, the plaintiff is constrained to move this Court.

7. As noted above, defendant No.2 has appeared through counsel. It is stated that an affidavit was sworn by defendant No.2 and that the same is on its way for filing. The photocopy of such affidavit is served on the learned counsel for the plaintiff in the Court and a copy of the same is also handed over to this Court. This Court has referred to the copy of the said affidavit only to ascertain as to whether any substantial statement is made therein, which could be taken into account while considering the ad-interim reliefs being pressed on behalf of the plaintiff.

8. It appears that defendant No.2 has simply denied anything to do with the offending mark and it is also not stated therein as to whether defendant No.2 has anything to do with defendant No.1 at all. In any case, the original reply affidavit not being before this Court, the contents thereof can be ignored.

9. Despite this, learned counsel appearing for defendant No.2 vehemently submitted that there is absence of substantial material in the papers filed along with the plaint to demonstrate as to what is the cause of action that the plaintiff can possibly have against defendant No.2. It is submitted that in the absence of any tangible material to show any connect between the alleged offending product and defendant No.2, no ad-interim relief could be granted to the plaintiff, at least in so far as defendant No.2 is concerned.

10. This Court has considered the rival submissions as also the material on record. As noted above, the adhesive in question being sold bearing the mark "FEVI KWIK" and distinctive packaging has been in the market as a product of the plaintiff for a considerable period of time. The plaint also shows details of the words / marks, which are registered in favour of the plaintiff as also the distinctive designing of the packets

and its colour scheme thereby showing that the plaintiff indeed has registrations of such marks and its label and that they are in use continuously for a long period of time. The material referred to above also shows the extent of goodwill achieved by the plaintiff in so far as the said product is concerned. The plaintiff has given sufficient disclosure of the search carried out in respect of the offending mark and the product as also the possible defences that the defendants may take against the allegations made in the plaint.

11. A bare perusal of the two marks i.e., the registered mark of the plaintiff and the offending mark would be appropriate to consider the contentions raised on behalf of the plaintiff. A comparison of the two marks is as follows:-

Plaintiff's FEVI KWIK Product	Defendants' Impugned Product
	

12. This Court is convinced that a bare perusal of the two marks would show that the mark being allegedly used by the defendants is *prima facie* deceptively similar to the registered trademark of the plaintiff. There is sufficient material placed on record to show that *prima facie* the mark allegedly being used by the defendants would have the tendency of causing confusion in the mind of a purchaser. The use of the word 'KWIK' and the sentence 'ONE DROP INSTANT ADHESIVE' along with the image of a globe create deception and it is found that there is a likelihood of consumer being confused when the defendants' product is placed before him.

13. Therefore, it is found that a strong *prima facie* case is made out

by the plaintiff for grant of ad-interim reliefs. It is also found that if such ad-interim reliefs are not granted today, the plaintiff will continue to suffer irreparable loss and that therefore, the balance of convenience is clearly in favour of the plaintiff.

14. The leave petition filed on behalf of the plaintiff is granted by this Court since the papers are already served on the defendants and defendant No.2 is represented through counsel. Therefore, the ad-interim prayer pertaining to action of passing-off is also being considered today itself.

15. As noted above, the overall impression created by the product allegedly brought into the market by the defendants has the effect of confusing the consumers and it can be said that *prima facie* the defendants seem to be committing the act of passing-off.

16. In the light of the above, ad-interim reliefs are granted in favour of the plaintiff in terms of prayer clauses (a), (b), (c) and (d), which read as follows:-

(a) Pending the hearing and final disposal of the suit, the Defendants, its proprietors, partners, owners, servants, subordinates, representatives, stockists, dealers, agents and all other persons claiming through or under them or acting on their behalf or under their instructions be restrained by an order and injunction of this Hon'ble Court from manufacturing, marketing, selling, advertising, offering to sell or dealing in the Impugned Products or instant adhesives or any similar goods or any other goods bearing the Impugned Mark FIXO KWIK and/or the Impugned Label/Packaging, or any other marks/labels/trade dresses/packages identical with or similar to or in any manner comprising of or reproducing the FEVI KWIK Registered Marks (including the mark FEVI KWIK per se), FEVI KWIK Distinctive Label/Packaging and the colour schemes or any essential features of the FEVI KWIK Products of the Plaintiff;

(b) Pending the hearing and final disposal of the suit, the Defendants, its proprietors, partners, owners, servants, subordinates, representatives, stockists, dealers, agents and all other persons claiming through or under them or acting on their behalf or under their instructions be restrained by an order and injunction of this Hon'ble Court from infringing in any manner the FEVI KWIK Registered Marks of the Plaintiff bearing nos.

465651, 1643621, 1643620, 1128234, 1295076, 705500, 1128236 and 689062 and from using in relation to Impugned Products or any other goods for which the FEVI KWIK Registered Marks are registered or any goods similar thereto, the Impugned Mark FIXO KWIK and the Impugned Label/Packaging, or any other marks or labels which are identical with or similar to the FEVI KWIK Registered Marks of the Plaintiff (including the mark FEVI KWIK and the FEVI KWIK Distinctive Label/Packaging) and from manufacturing, selling, offering for sale, distributing, advertising or otherwise dealing with the Impugned Products or any other goods bearing the Impugned Mark FIXO KWIK and the Impugned Label/Packaging or any marks/labels identical/similar to the FEVI KWIK Registered Marks or any features thereof;

(c) Pending the hearing and final disposal of the suit, the Defendants, its proprietors, partners, owners, servants, subordinates, representatives, stockists, dealers, agents and all other persons claiming through or under them or acting on their behalf or under their instructions be restrained by an order and injunction of this Hon'ble Court from infringing in any manner the Plaintiff's copyrights in the artistic work comprised in/reproduced on its FEVI KWIK Distinctive Label/Packaging (depicted at Exhibit "A") and from reproducing/ copying the said artistic works or any substantial part of the said artistic works on the Defendants' Impugned Products (including those depicted at Exhibit E to the Plaintiff) or any bottles, cartons, packaging material or advertising material, literature or any other substance and from manufacturing, selling, offering for sale, distributing, advertising or otherwise dealing with any Impugned Products or other similar products upon or in relation to which any labels or works infringing the said artistic works have been reproduced or substantially reproduced or by issuing copies of such works to the public;

(d) Pending the hearing and final disposal of the suit, the Defendants, its proprietors, partners, owners, servants, subordinates, representatives, stockists, dealers, agents and all other persons claiming through or under them or acting on their behalf or under their instructions be restrained by an order and injunction of this Hon'ble Court from committing the tort of passing off in any manner and from manufacturing, marketing, selling, advertising, distributing, offering to sell or otherwise dealing in any manner in the Impugned Products or any similar goods or any other goods bearing the Impugned Mark FIXO KWIK and/or the Impugned Label/Packaging or any other marks/labels identical with or similar to or comprising of/ reproducing the mark FEVI KWIK, the FEVI KWIK Registered Marks and the FEVI KWIK Distinctive Label/Packaging including the overall trade dress, packaging, unique get up, font style, layout, look, feel and/ or any essential features used in respect of the Plaintiff's FEVI KWIK Products;"

17. The ad-interim reliefs granted hereinabove shall continue until further orders.

18. List for further consideration on 05.12.2022.

19. In the meanwhile, leave is granted to defendant No.2 to place on record the original of the affidavit referred to hereinabove. Further liberty is reserved for defendant No.2 to file additional affidavit, if so advised.

(MANISH PITALE, J.)

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