

Velji Karamshi Vaid And Anr vs V3 Fashion And 6 Ors on 9 September, 2025

2025:BHC-OS:14740

IAL-22614-2022-F

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
INTERIM APPLICATION (LODGING) NO. 22614 OF 2022
IN
COMMERCIAL IP SUIT NO. 348 OF 2025

Velji Karamshi Vaid And Anr ... Applicants/Plaintiffs
Versus
V3 Fashion & Ors ... Defendants

Adv. Hamza Lakhani a/w Kavisha Shah, Prathmesh Bhosale i/by India Law Alliance for Applicants/Plaintiffs.

Adv. Chirag Mody a/w Chetan Shah i/by Ashok Purohit and Co. for Defendants Nos. 1 to 6.

Adv. Rajendra Jain i/by Vinsha Acharya for Defendant No. 7.

Coram : Sharmila U. Deshmukh, J.

(Through Video Conferencing)

Reserved on: July 17, 2025.

Pronounced on : September 9, 2025

ORDER:

1. This is an action for infringement of trade mark, copyright and for passing off. The subject matter of the present proceedings are three impugned marks i.e. (Impugned Mark 1) , (Impugned Mark 2), and, (Impugned Mark 3). In so far as the impugned mark VOLUME 4 Shubham 1 of 25 IAL-22614-2022-Final.doc is concerned, learned counsel for Defendant Nos 1 to 6 submits that in the written statement it is stated that the application for registration has been withdrawn.

2. The case of the Plaintiffs is that they are in the business of manufacturing/marketing of garments under the brand name and trade mark of "V3" and "Volume 3". In 2007, the Plaintiffs had applied for registration of , which was granted and in the year 2019, the Plaintiff applied for and was granted registration of which registrations are valid and subsisting. The Plaintiffs are carrying on the business throughout India and are also exporting the garments under the umbrella of the name

and trademarks "V3", , "Volume 3", , which forms an essential part of Plaintiff No. 2's Corporate name or trading style. The Plaintiff has set out the registrations obtained by the Plaintiff in paragraph 14 of the plaint as under:

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Trade Mark	Registrati on/	Class	Goods Services	& Status
	Applicati on No.			
	3957013	25	Readymade garments of all kinds, clothing, footwear and headgear	Registered
	1600453	25	Ready Made Garments of all kinds of Clothing, Footwear and Headgear, Socks, Hosiery, Belts, Bermudas Jeans, Nigh Ties, Slips, Childrens and Ladies Garments.	Registered
	4827068	35	\Wholesale Retails of Clothing, Readymade Garments, Trousers, Shirt, T- Shirt, Jeans, Jacket, Jerseys, Socks, Suits,	and Pending

Shubham

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Neckties, Scarf,
Sweaters, Night
Dresses And
Sarees

3. It is stated that the Plaintiff's brand name and style 'Volume 3' and device of 'Volume 3' owing to its goodwill and popularity came to be popularly known as 'V3' by the customers, trade members and public at large and Plaintiff decided to also adopt brand name and trade mark 'V3' and device of 'V3' officially and on their labels, packaging material, printing material etc with effect from 16th August, 2016. It is submitted that the Plaintiff's have till date carried on total global business of Rs. 7,23,00,0000/- (Rupees Seven Crores and Twenty Three Lakhs Only).

4. It is submitted that the use of the Impugned Mark 1 by the Defendant No 7 came to the notice of the Plaintiff in or around 2018, upon learning about the store set up by Defendant No 7 using the mark as an integral feature of its name/corporate identity in respect of identical goods. Upon taking necessary search, the Plaintiff become aware that Defendant No. 7 had filed an application Shubham 4 of 25 IAL-22614-2022-Final.doc on 27th February, 2018 in Class 25 for registration of its mark which came to be refused by order dated 4 th June, 2019. The Plaintiffs in order to amicably resolve the dispute approached the Defendant No. 7, who assured the Plaintiff No. 1 that Defendant No. 7 would forthwith discontinue the use of the mark.

5. In so far as impugned marks 2 and 3 are concerned, it is submitted that the Defendant No 1 through its partners Defendant No 2 to 4 and Defendant No 5 firm through its partners Defendant Nos 2, 3 to 6, are engaged in the business of manufacturing and marketing garments on the same floor and building as that of the Plaintiffs under the impugned marks and .

The registration of the mark was applied by the Defendant No 1 on 20th April, 2019 on proposed to be used basis and was refused registration by the Registry of Trade Marks on 7 th April, 2021 and despite rejection, the Defendant No 1 has continued with the use of the mark.

6. On 25th July, 2019, the Plaintiff's addressed a cease and desist notice to Defendant Nos. 1 and 2, which was replied alleging that the Plaintiff's trade mark was registered in Class 20 and that the mark was Shubham 5 of 25 IAL-22614-2022-Final.doc in use by the Defendant No 1 since the year 2017. On 30 th April, 2021, Defendant No 1 applied for registration of its mark with user claim of proposed to be used. It is stated that despite rejection of earlier registration, the Defendant No 1 once again applied for registration of the mark on 2nd August, 2022 after filing of present suit. On 4 th August, 2022, the Defendant No 1 applied for rectification of the Plaintiff's registered trade mark contending that the said mark is structurally, visually and phonetically similar to the Defendant No 1's mark and is likely to cause confusion in the minds of the consumer.

7. The Defendant Nos 1 to 6 in its Affidavit in reply dated August, 2022, claimed to be prior user of the impugned marks since the year 2017. The explanation for use of the mark is that the Defendant No 1 was incorporated in or around 11th November, 2017 as V3 Fashion with the 1st alphabet of Defendant No 2's name and numerical 3 as there were three partners. It is stated that the Defendant's marks are not visually, structurally or phonetically similar to the Plaintiff's marks and there is no likelihood of confusion. It is submitted that on preliminary search of the trade mark registry, there are number of marks which are Shubham 6 of 25 IAL-22614-2022-Final.doc

registered in Class 25 with the words 'V3' and the same are set out in paragraph 8 of the Affidavit-in-reply. It is stated that the Plaintiff's Application for trade mark registration dated 27th September, 2018 had been filed on proposed to be used basis. It is submitted that in the reply dated 17th December, 2018 to the Registrar of Trade Mark the Plaintiffs have stated that their mark is a composite label as a whole and it is the Plaintiff's own case that their proposed label mark is different and does not conflict with marks such as "V3 Fashion Studio", "V3 Jeans" and "V3 IShop" and therefore Plaintiff's cannot now be permitted to claim exclusivity in respect of the words 'V3'. It is submitted that there is no document produced to show the sales turnover of the Plaintiff and that the promotional expenses are stated to be only Rs. 23,000/- over a purported period of 15 years. It is submitted that the Defendants have till date spent a sum of Rs. 40 lakhs towards advertisement, promotion and brand building and the Defendant's turnover for the financial year 2021-22 was in excess of Rs. 5.6 crores. The Defendant No. 1 has applied for rectification of the Plaintiff's 'V3' mark which is pending.

8. In the rejoinder Affidavit dated 17th August, 2022, it is stated that after filing of the present suit, the Plaintiffs have found certain invoices of the year 2010 and 2011. It is submitted that the Defendant Nos. 1 to 4 have taken contradictory stand with respect to the Shubham 7 of 25 IAL-22614-2022-Final.doc impugned marks in the rectification application and present proceedings. It is stated that Defendant Nos. 1 to 6 are conducting their business on the same floor and the same building using the same acronym i.e. 'V3' which is causing grave loss to the Plaintiffs. The Defendant Nos. 1 to 6 have deliberately concealed the fact of the Plaintiffs have opposed the registration of 'V3 Squared' and 'V3 Jeans' registration.

9. An additional affidavit dated January, 2023 was filed by Defendant Nos. 1 to 6 contending that the invoices produced by the Defendants shows prior user of the impugned marks and that the Defendants have been carrying on their business in the building premises prior to the Plaintiffs. In the second additional affidavit dated 14th January, 2023 filed by the Defendant Nos. 1 to 6, it is stated that Defendant Nos. 2 to 4 had applied and obtained copyright registration in respect of the artistic work of .

10. The Defendant No. 7 by its affidavit dated 19 th October, 2023 contended that Defendant Nos. 2 and 3 were the erstwhile partners of Defendant No. 7 and in the year 2018, the Defendant No. 7 with Defendant Nos. 2 and 3 mutually decided to adopt the name for incorporating sole proprietorship firm with the Shubham 8 of 25 IAL-22614-2022-Final.doc name 'V3 Fashion'. It is stated that the Defendant Nos. 2, 3 and 7 had full knowledge that the Plaintiff was already using the trade mark. At the request of Defendant Nos 2 and 3, the Defendant no 7 applied for registration of the trade mark which was rejected on 4th June, 2019. It is stated that in 2019, the Defendant No. 7 intended to retire from his sole proprietorship firm and the Defendant Nos. 2 and 3 wanted to continue the business with the same trade mark. The Defendant Nos. 2 and 3 along with the Defendant No. 4 changed their trade marks slightly and adopted and started using the impugned marks without executing any deed of assignment. It is stated that Defendant No. 7 is not using the Plaintiff's brand name and trade mark and is not associated with Defendant Nos. 2 to 4.

11. In the additional affidavit in reply dated 19 th October, 2023 filed by Defendant No. 7, it is contended that in 2017 the Defendant No. 7 with Defendant Nos. 2 and 3 adopted the mark 'V3'. It is further contended that on the request of Defendant Nos. 2 and 3 on 27 th February, 2018 the Defendant No. 7 applied for registration of the impugned mark 'V3' in Class 25 claiming user since 1 st April, 2017 which came to be rejected by the Trade Mark Registry. It is further stated that pursuant to the Plaintiff No. 1's request in 2019, the Defendant No. 7 expressed his desire to Defendant Nos. 2 and 3 to close the business Shubham 9 of 25 IAL-22614-2022-Final.doc and applied for cancellation of GST registration which was cancelled on 9th September, 2020 and accordingly the business was stopped and the Defendant No. 7 discontinued use of the mark 'V3'. It is stated that the Defendant No. 7 has not given any authority to Defendant Nos. 2 and 3 to continue any use of the mark 'V3' or the trading name/Style V3 fashion. It is stated that the Defendant Nos. 1 to 6 have been making use of various documents such as invoices, challans, licenses, Defendant No. 7's Email id, mobile number without his consent and the Defendant Nos. 1 to 6 have forged/fabricated, altered various documents in order to claim false user of 2017 in respect of which police complaint has been filed on 18 th February, 2023. It is further stated that the invoices at page 81, 82 and 85 bears the Defendant No. 7's email id, GST number, mobile number and address. Similarly the invoices at page number 83, 84 and 86 contend the Defendant No. 7's email id, GST number and mobile number however the purported invoices are neither signed by the Defendant 7 nor by his customers. It is stated that the Defendant Nos 1 to 4 have obtained new GST registration which is reflected in the invoices from the year 2019 onwards at Pages 87 to 89.

12. It is stated that in the trade mark application filed by Defendant No 1 for registration of the impugned mark 'V3 STYLE' , the user is claimed from 10th April, 2017 whereas the Defendant No.1 was not in Shubham 10 of 25 IAL-22614-2022-Final.doc existence before the year 2019. It is submitted that the shop and establishment license at page 70 dated 12 th September, 2017 produced by the Defendant Nos 1 to 6 belongs to Defendant No. 7, the invoices at page 71 and 73 to 75 belongs to Defendant No. 7 and his business. The MSME certificate dated 18th August, 2021 at page 82 and 85 could not have been applied with date of incorporation as 10th February, 2018 and date of commencement of production/business as 10 th January, 2019 in as much as Defendant No. 1 was not in existence before 2019. The Defendant Nos. 1 to 4 has submitted false affidavit of user along with the first application for registration of the trade mark stating that they are carrying on business 'V3' since 2017 whereas Defendant No. 1 was never in existence before the 2019. SUBMISSIONS:

13. Mr. Lakhani, Learned Counsel appearing for the Plaintiff submits that the Defendant Nos 1 to 6 are unregistered user of deceptively similar mark. He submits that the Defendant's filed its first application on 20th April, 2019 for registration of the impugned mark 1 was on the basis of proposed to be used and was refused registration by order of 7th July, 2021 by citing conflicting trade marks. He submits that despite the earlier rejection, the Defendants applied once again for registration of the impugned mark 1 on 2 nd August, 2022 with user Shubham 11 of 25 IAL-22614-2022-Final.doc detail of 10th April, 2017 after filing of the present suit.

14. He submits that the Defendants have filed for registration of the impugned mark 2 on 30th September, 2021 on proposed to be used basis which has been objected by the Plaintiff. He submits that the Defendants have adopted varying stands before this Court and in the rectification

application. He points out that in the rectification application the Defendants have stated that the Defendants have coined the mark and the Plaintiff's mark is causing confusion and the Defendant Nos 1 to 6 are estopped from taking a contrary stand in present proceedings. He would further point out the pleading in the rectification application filed by that the marks have acquired secondary significance and are highly distinctive. He would further point out that it is specifically stated that the use of the mark 'V3' with or without any suffix or prefix or part of any trade name will cause confusion and deception amongst honest members of the trade and public.

15. Per contra, Mr. Modi learned Counsel appearing for the Defendant Nos 1 to 6 relies upon Section 17 of the T.M. Act, 1999 to contend that no exclusivity can be claimed by the Plaintiff over the word 'V3' as the Plaintiff's registration is for device mark. He would further submit that the Defendant Nos 1 to 6 have coined their mark by using the first alphabet of one of its partners and numerical three as Shubham 12 of 25 IAL-22614-2022-Final.doc there are three partners in all and have obtained copyright registration in respect of the artwork. He submits that the Defendants are prior users since the year 2017 and points out the invoices placed on record. He submits that the Plaintiff shifted subsequently in the year 2020 in the same premises and opened its shop on the same floor to springboard on the success of the Defendants.

16. He would submit that the Plaintiff has come with unclean hands as it is stated in the plaint that the Plaintiff is using its mark since 2016 whereas the application for registration is filed by the Plaintiff on 27 th September, 2016 on proposed to be used basis. He submits that in the rejoinder affidavit, the Plaintiff has claimed user since the year 2010 and in the reply to the examination report of the Registrar of Trade Marks, the Plaintiff has claimed use of the mark since 1 st September, 2018. He submits that there are no invoices annexed to the plaint to evidence use of the mark by the Plaintiff. He submits that the Plaintiff has suppressed that the Plaintiff's registration was objected on ground of conflicting marks and the explanation tendered by the Plaintiff was that their mark is a composite label and the cited marks "V3 Fashion Studio", "V3 Jeans" and "V3 ishop" are different marks.

17. He submits that the Plaintiff issued the cease and desist notice on 25th July, 2017 and 22nd October, 2019 and for two and half years, no steps were taken by the Plaintiff. He submits that in the meantime, the Shubham 13 of 25 IAL-22614-2022-Final.doc Defendants continued with the use of the marks. He submits that the Plaintiff's sales turnover since 2010-2011 is about Rs 7.5 crores and in F.Y. Year 2020-21 is Rs 71,44,708/ whereas the Defendant's turnover for year 2021-2022 is more than Rs 5.6 crores.

18. He would submit that the rival marks are completely different by pointing out the dissimilarities and would submit that there is no question of any confusion. He submits that there are many other entities using the mark 'V3' along with other prefixes and suffixes. In support he relies upon following decisions:

1. Vasundhra Jewellers Pvt. Ltd vs. Kirat Vinodbhai Jadvani

2. Satyam Infoway Ltd. vs. Siffynet Solutions (P) Ltd.2

3. F. Hoffmann-LA Roche & Co. Ltd., vs. Geoffrey Manner & Co.

Pvt. Ltd.³

4. Malojirao Narasingarao Shitole vs. State of Madhya Pradesh⁴

5. M/s. Three-N-Products Pvt. Ltd. vs. M/s. Kairali Exports⁵

6. Ramjas Foundation vs. Union of India⁶

7. Dalip Singh vs. State of Uttar Pradesh⁷

19. In rejoinder, Mr. Lakhani submits that the Plaintiff's pleaded case is about registration of the device mark and that people have associated the Plaintiff's goods with its registered trade mark. He 1 2022 SCC OnLine Del 2996 2 (2004) 6 Supreme Court Cases 145 3 1969 (2) Supreme Court Cases 716 4 1969 (2) Supreme Court Cases 723 5 2018 SCC OnLine Del 6397 6 (2010) 14 Supreme Court Cases 38 7 (2010) 2 Supreme Court Cases 114 Shubham 14 of 25 IAL-22614-2022-Final.doc would further submit that pertinently Mr. Modi has not answered the submissions as regards contrary stands taken before this Court and in the rectification Application.

REASONS AND ANALYSIS:-

20. The Plaintiffs had applied and obtained registrations of the device marks and , which registrations are stated to be valid and subsisting. The infringement is claimed by reason of the use by the Defendant Nos 1 to 6 of two impugned marks i.e. and . It is submitted by Mr. Mody that the Defendant Nos 1 to 6 have withdrawn the application for registration of the mark "VOLUME 4" and does not intend to use the said mark. Similarly in so far as the Defendant No 7 is concerned, the pleadings indicates that the Defendant No 7 supports the case of the Plaintiff and has ceased the use of its mark .There is no debate that the impugned marks are used in relation to identical goods.

21. The Plaintiffs claim infringement of its registered mark by use of the impugned marks by the Defendant Nos 1 to 6. The defense taken Shubham 15 of 25 IAL-22614-2022-Final.doc by the Defendant Nos 1 to 6 to support the use of their mark is (a) prior user since the year 2017 (b) the rival marks are not visually, structurally or phonetically similar and hence no confusion (c) the Plaintiff's mark is composite label and and no exclusivity can be claimed over part of mark "V3" (d) suppression of material facts by the Plaintiff and (e) registration of various other marks by third parties using V3 as prefix or suffix.

22. This is a classic case where both the Plaintiffs and Defendants have not approached the Court with clean hands. The pleadings and the material placed on record by both the parties prima facie does not inspire confidence and does not

support the respective stands adopted by the parties as discussed hereinafter.

23. The Plaintiffs seeks to rely on the registration certificates to restrain the use of the impugned marks by the Defendant Nos 1 to 6.

The Plaintiffs have pleaded and placed on record the registration certificates evidencing the registration of its marks without placing on record the application for registration of the mark . The application for registration has been placed on record by the Defendant Nos 1 to 6 which shows that the Plaintiffs had applied for registration of its device mark on 27th September, 2018 with user claim of proposed to be used basis, whereas the plaint pleads adoption and Shubham 16 of 25 IAL-22614-2022-Final.doc use of the mark since 16th August, 2016. The reason for non disclosure of the application for registration is prima facie not far to be seen. In the cease and desist notice dated 25th July, 2019 issued by the Plaintiff to the Defendants, the Defendant Nos 1 to 6 have pleaded prior user since the year 2017. Prima facie it appears that considering the defense of prior user since the year 2017, in order to overcome the defense, the Plaintiff has made misleading statement about user since the year 2016 and has deliberately suppressed the application for registration which would have divulged that in 2018, the mark was proposed to be used.

24. The Plaintiffs have also suppressed the stand taken by the Plaintiffs in the examination report, which is brought on record by the Defendant Nos 1 to 6. The Registrar of Trade Marks had cited various conflicting marks containing the word "V3" and the stand taken by the Plaintiffs was that the Plaintiff's mark is composite label as a whole and that the other cited marks "V3 Fashion Studio", "V3' Jeans" and "V3 ishop" are not in conflict with the Plaintiff's mark. In the affidavit-in-rejoinder, the Plaintiffs have stated that the Plaintiff's have opposed 'V3 Square" and 'V3' Jeans before the Trademark Registry but have failed to offer any explanation for non disclosure of its own stand taken at the time of registration of its mark despite the Defendant Nos 1 to 6's specific pleading, which conduct assumes significance while Shubham 17 of 25 IAL-22614-2022-Final.doc considering the grant of discretionary relief. In case of Phonepe Private Limited vs Resilient Innovations Private Limited (2023 SCC Online Bom 764), the Co-ordinate Bench of this Court has held that the stand taken by the Plaintiff therein before the Registrar of Trade marks in the examination report is a relevant factor and by not placing its own stand, the Plaintiff dis-entitled itself to grant of discretionary reliefs under Order XXXIX Rules 1 and 2 of CPC.

25. Coming to the defense taken by the Defendant Nos 1 to 6, the defense is prior user which is sought to be substantiated by producing their sales invoices along with its affidavit-in-reply dated 17th August, 2022 from pages 81 to 89. The invoices at pages 81 and 82 are dated 17th November, 2017, at pages 83 and 84 are dated 6th November, 2017, at page 85 to 89 are dated 6th June, 2018, 29th October, 2018 , 27th May, 2019, 30th July, 2019 and 20th January, 2022.

26. The application for registration of their device mark by Defendant No 1 filed on 20th April, 2019 is with user claim of proposed to be used. In the second application filed for registration of the same device mark on 2nd August, 2022, the user is claimed since 10th April, 2017. In so far as the sales invoice dated 6th November, 2017 is concerned, the Defendant No 1 to 6's pleaded case in paragraph 5 of its reply is that the Defendant No 1 was incorporated in or around 11th November, 2017. That

being so, the sales invoices of 6 th November, Shubham 18 of 25 IAL-22614-2022-Final.doc 2017 could not have been generated prior to the incorporation of Defendant No 1. The defence of prior user since the year 2017 is prima facie doubtful in view of the Defendant No 7's Affidavit in reply dated 19th October, 2023. The Defendant No 7 has specifically stated that the invoices produced by the Defendant Nos 1 to 6 are fabricated as the invoices reflects the license number, GST registration number, email id, mobile number, address etc of the Defendant No 7. When perused, the Shops and Establishment License bearing Registration No 762267082 and the GST Registration certificate No 27CVRPP7803C1Z9 annexed to the Defendant No 7's reply is issued to the Defendant No 7. The pleadings of Defendant No 7 have not been refuted by the Defendant Nos 1 to 6 by filing any Affidavit nor any submissions were canvassed during the hearing to dispute the same. The case put up by the Defendant No 7 that the supporting invoices produced by the Defendant Nos 1 to 6 are false and fabricated remains uncontroverted seriously damaging the case of the Defendant Nos 1 to 6. The sales invoices of the year 2017 and 2018 reflects the GST registration and the details of the Defendant No. 7 and there is no explanation for the use of the Defendant No 7's registration and other details by the Defendant Nos 1 to 6.

27. The sales invoice at Page 87 dated 27th May, 2019 shows a Shubham 19 of 25 IAL-22614-2022-Final.doc different GST registration No 27AARFV5055D1ZV, which indicates that it is only in the year 2019 that the Defendant Nos 1 to 6 commenced its business by obtaining GST registration. The sales invoices of the year 2017 and 2018 depict the trade name "V3 Fashion" in a different font and in the sales invoice of 27th May, 2019 the trade name "V3 Fashion"

is used for the first time in a manner where the word "V3" is similar to that of impugned mark 1 i.e. There is no explanation for sudden use of the trade name "V3 Fashion" in different manner with different GST registration number. Apart from the above, none of the invoices produced by the Defendant Nos 1 to 6 reflect the use of the impugned marks 2 and 3 i.e. and . The only prima facie conclusion which can be drawn at this stage is that the sales invoices of the year 2017 and 2018 produced by the Defendant Nos 1 to 6 are false and fabricated and the material on record does not prima facie establish use of the impugned marks 1 and 2 prior to the date of registration of the Plaintiff's mark.

28. In the affidavit-in-reply dated 17th August, 2022 filed by the Defendant Nos 1 to 6, it is pleaded that the totality of the trade mark of the Defendant's will not cause any deception or confusion or mistake in the minds of person and that the trade marks in question Shubham 20 of 25 IAL-22614-2022-Final.doc are neither visually nor deceptively and nor structurally similar to the marks of the Plaintiffs. The stand taken by the Defendant Nos 1 to 6 is diametrically opposite to the stand taken in the rectification application seeking cancellation of the Plaintiff's mark. In the rectification application, the Defendant Nos 1 to 6 have taken a stand that the trade mark 'V3' and 'V3 Fashion' is an invented word and is distinctive which has acquired secondary significance amongst public and trade and that the use of any such trade mark or any other identical or deceptively similar trade mark to that of trade mark 'V3' in respect of any goods or service will cause confusion and deception amongst the honest members of the trade and public.

29. Considering the varying stands and the suppression of material facts by both the parties, at the interim stage, no prima facie conclusion as regards the rival claims can be arrived at and evidence is required to be led.

30. For this Court to consider the case of infringement, in view of the defense of prior user, it is necessary to arrive at a prima facie conclusion about the adoption and use of the marks by the rival parties. The relative cases of the parties hinges on the date of user, which user is incapable of being prima facie determined on the basis of material on record as the pleadings and material produced by the parties cannot be trusted without evidence being led. No reliance can Shubham 21 of 25 IAL-22614-2022-Final.doc be placed on the date of user claimed in the plaint, as the Plaintiffs have adopted varying dates of user in different proceedings. In the plaint, the date of user is of the year 2016, in the application for registration filed in the year 2018, the user is proposed user, in the affidavit in rejoinder, the user is claimed since the year 2010 and in the examination report, the user is claimed since 1st September, 2018. The Plaintiffs themselves are not aware of the date of user of their mark and have adopted varying dates of user in different proceedings. The most usual manner to demonstrate prima facie the use of the mark is by producing the invoices showing the sale of the products under the registered mark, which the Plaintiff has failed to do. Similarly, the user claimed by the Defendant Nos 1 to 6 of the year 2017 is based on invoices which are prima facie doubtful. There is no material on record to prima facie establish the date of adoption and use of their respective marks by the Plaintiffs and the Defendants. When both the parties have prima facie taken dishonest stands, no interim relief can be granted.

31. It needs to be noted that the Plaintiffs have set out the rival products in paragraph 28 of the Plaint. Perusal of the rival products would indicate that the Plaintiff's products uses its mark in a manner which is different from its registered marks. The Plaintiffs have Shubham 22 of 25 IAL-22614-2022-Final.doc obtained registration of its marks and the mark used by the Plaintiffs on some of its product's tags is "V3 "which is cut vertically by the words Volume 3. The device mark is depicted on the inside of the collar of the shirts/T shirts and what is prominently displayed is a mark which is different from its registered marks. Based on the rival products produced by the Plaintiffs, it cannot be said that the Defendant Nos 1 to 6 have designed their products in a manner so as to pass off their goods as that of the Plaintiffs.

32. In passing off action, the tort lies in the misrepresentation by the Defendants to the prospective customers that the Defendant's goods are that of the Plaintiff. What the Plaintiff is required to establish is goodwill and reputation on the date of the Defendants commencing its activity and that the Plaintiff's mark has acquired such distinctiveness amongst the consumers that the consumers identify the mark exclusively with the Plaintiff's product. It is well settled that passing off action is common law remedy aimed at arresting the invasion of right of property in the goodwill and reputation which is apprehended to be injured by the mis-representation made by Defendant. The three Shubham 23 of 25 IAL-22614-2022-Final.doc essential ingredients to prima facie establish case of passing off are reputation and goodwill, misrepresentation and damage. One of the indicators to demonstrate goodwill and reputation are the sales figures and promotional expenses. Though it is pleaded that the Plaintiff has sold approximately 1,90,000 units/pieces of clothing with 1500 variety of designs to various trade members, vendors and customers garnering sales volume of

Rs 7,23,00,000/-, there is no document produced by the Plaintiff to substantiate the contention. There is no statement of sales figure and promotional expenses duly certified by a Chartered Accountant produced on record.. The question of misrepresentation and damage would therefore not arise in absence of prima facie case of goodwill and reputation.

33. The Plaintiffs seek equitable and discretionary relief of injunction and the suppression of material facts dis-entitles the Plaintiffs from grant of any interim relief. It is well settled that a person who seeks equity must do equity. The Plaintiff cannot make misleading statements on oath and suppress facts and expect grant of interim relief by reason of varying stands adopted by the Defendant Nos 1 to 6 in their reply and the rectification application. The Plaintiffs are prima facie guilty of the same conduct, as that alleged of Defendant Nos 1 to 6. In the case of Ramjas Foundation vs. Union of India (supra) and Dalip Singh vs. State of Uttar Pradesh (supra), the Shubham 24 of 25 IAL-22614-2022-Final.doc Hon'ble Apex Court has reiterated well settled principles of law that the person who does not come to Court with clean hands is not entitled to be heard on merits of the grievance.

34. In light of the above discussion, this Court is not inclined to grant interim relief. The Interim Application is hereby dismissed.

