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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(COMM) 343/2021 & I.A. 9280/2021, I.A. 9281/2021, I.A.
9876/2021
GUJARAT COOPERATIVE MILK MARKETING
FEDERATION LTD & ANR. Plaintiffs
Through: Mr. Sunil Dalal, Sr. Adv. with
Mr. Abhishek Singh, Mr. Devashish
Bhadauria, Mr. J. Amal Anand and Mr.
Elvin Joshy, Advs.

versus

MARUTI METALS & ANR. Defendants
Through

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

ORDER

% **13.08.2021**
(Video-Conferencing)

I.A. 9281/2021 in CS(COMM) 343/2021

1. Subject to the plaintiffs' filing legible copy of any illegible or dim documents on which they may seek to place reliance within four weeks from today, exemption is granted for the present.
2. The application stands disposed of.

I.A. 9280/2021 in CS(COMM) 343/2021


1. Mr. Sunil Dalal, learned Senior Counsel for the plaintiffs, submits that, as there were some errors in this application, a separate application under Order XXXIX Rules 1 & 2 CPC has been moved,

which is listed today as I.A. 9876/2021. Accordingly, with liberty to press I.A. 9876/2021, he seeks leave to withdraw this application.

2. Granting liberty as aforesaid, this application is dismissed as withdrawn.

CS(COMM) 343/2021

1. The plaintiff, who is the registered holder of the well-known trade mark “AMUL”, used in milk and milk products, alleges infringement, by the Defendant No. 1, of the said mark, by the

impugned  mark, which is used in the context of kitchenware and utensils.

2. Section 29(4) of the Trademarks Act, 1999, permits an action for infringement to lie even in respect of dissimilar goods, where the impugned mark is deceptively similar to that of the plaintiff.

3. The word “AMUL” is distinctive, and has no etymological meaning. It is indelibly associated, in the minds of the consuming public, with the products of the plaintiff. *Prima facie*, any use of the word “AMUL” as a trademark by any other entity may tantamount to infringement.

4. Mr. Sunil Dalal also points out that Defendant No. 1 has illegally reflected its trademark as registered, by using the superscript ® with the impugned mark. This, he submits, is additionally

misleading, as the impugned mark is not registered.

5. The mark of the Defendant No.1 which is registered, and against which a rectification proceeding, filed by the plaintiff, is



pending before the Registrar of Trademarks is

6. These assertions, which are also borne out by the record as it exists before me, make out a *prima facie* case in favour of the plaintiff. As the impugned mark is not registered, and is being illegally shown as a registered mark, a clear case for grant of *ad interim* relief, in my view, exists. Such misrepresentation also amounts to a fraud on the consuming public, additionally justifying interlocutory interdiction as sought.

7. In view thereof, issue summons to the defendants.

8. Written statement, accompanied by affidavit of admission/denial of documents filed by the plaintiffs, be filed within a period of four weeks, with advance copy to the learned counsel for the plaintiffs, who may file replication thereto, if any, accompanied by affidavit of admission/denial of documents filed by the defendants within two weeks thereof.




9. List before the Joint Registrar (Judicial) for completion of pleadings, admission/denial of documents and marking of exhibits on the documents on 25th October, 2021.

I.A. 9876/2021 in CS(COMM) 343/2021

1. The prayer clause in this application, under Order XXXIX Rules 1 and 2, reads thus:

“In the abovementioned facts and circumstances, it is most respectfully prayed that this Hon’ble Court may be pleased to:

a) Pass ad-interim ex-parte orders restraining Defendant No. 1, their principal officers, family members, servants, agents, dealer, distributors, franchisees and anyone acting for and on their behalf from advertising, promoting or in any other manner using or dealing with the infringing mark

 “” and the mark “”

b) Pass ad-interim ex-parte orders restraining Defendant No. 1, their principal officers, family members, servants, agents, dealer, distributors, franchisees and anyone acting for and on their behalf from advertising, promoting or in any other manner dealing with the Plaintiff’s ‘AMUL’ trademarks or any other logos or any word, which is identical or deceptively similar to the Plaintiff’s “AMUL” trademarks.

c) Pass ad-interim ex-parte orders restraining Defendant No. 1, their principal officers, family members, servants, agents, dealer, distributors, franchisees and anyone acting for and on their behalf, from in any manner using the domain name www.amulcooker.com or any domain name which has ‘AMUL’ as suffix or prefix.

d) Pass ad-interim ex-parte orders directing Defendant No. 2 to permanently block/delete/suspend the domain name “www.amulcooker.com”

e) Any other relief that this Court may deem fit and proper while looking into the facts and circumstances of the case.”

2. Issue notice to the defendants.

3. Notice be served by all modes. Notice be served on Defendant No. 1 *dasti* in addition, by the plaintiff through its own agency, as the office of the Defendant No. 1 is situated outside Delhi.
4. For this purpose, the Registry is directed to issue notice to Defendant No. 1 *dasti*, and provide a copy thereof to the plaintiff, so that service of notice could be effected on the said defendant.
5. Affidavit of service along with proof thereof be placed on record before the next date of hearing.
6. Let a response to this application be filed by the defendants within two weeks of effecting of service with advance copy to learned counsel for the applicant/plaintiff, who may file rejoinder thereto, if any, before the next date of hearing.
7. Renotify this application on 9th September, 2021 for hearing and disposal, subject to completion of pleadings.
8. In the meantime, there shall be an *ad interim* order in terms of prayers (a) and (b) in this application.
9. The plaintiff is directed to comply with Order XXXIX Rule 3 of the CPC, within the time stipulated therein.

C. HARI SHANKAR, J.

AUGUST 13, 2021

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