

**IN THE COMMERCIAL COURT AT CITY CIVIL COURT, AHMEDABAD
COMMERCIAL TRADE MARK CIVIL SUIT NO.6 OF 2023**

Plaintiffs

1 Mr. Piruz Khambatta, through Power of Attorney-holder Mr.Zubin Khambatta

2 Rasna Private Limited

Versus

Defendant : M/s. Punit Proteins Private Limited

Appearance :

Mr. Pratik Chaudhary & Mr. Akash Shah with Mr. Y.J.Trivedi, Ld.
Counsel for the Plaintiff

ORDER BELOW NOTICE OF MOTION APPLICATION.

1. This is a suit instituted by the Plaintiffs – Rasna Private Limited through Power of Attorney-holder Mr. Zubin Khambatta for Mr. Piruz Khambatta, Director and Chairman of the Plaintiff Company for permanent injunction against defendant for infringement and passing off its goods under plaintiff's registered trademark "RASNA" seeking damages under The Trademarks Act, 1999 with other ancillary reliefs along with an application under Order XXXIX Rule 1 & 2 CPC.
2. The succinct facts as averred in the application filed under Order XXXIX Rule 1 & 2 CPC are that plaintiff no.2 is a company incorporated under the Indian Companies Act 1956 who has pioneered the concept of soft drink concentrate in India and have spearheaded with industry through their predecessors since 1970. It is pleaded that the trademark RASNA is also registered for goods included in Class 29,

30,31,32 and various other Classes such as agricultural, horticultural, forestry, products and grains etc. The plaintiffs have further averred that since their product under the trademark RASNA have been sold since 1970, the same have become extremely well-known and virtually synonymous with goods and business of the plaintiffs as per section 2(1)(zg) of the Trademark Act, 1999. The plaintiffs are aggrieved by the action of defendant in as much as marketing its goods under the trademark RASNA MADHI TOOR DAL in the market in Ahmedabad where the word RASNA appearing prominently on the packages of the said act amounts to infringement of trademark and passing off action. Hence, the present application.

3. Ld. Counsel has submitted that in the first week of August, 2022 the plaintiff, through its distributors and marketing agents came to know that defendant is illegally selling its goods under the trademark RASNA MADHI TOOR DAL in the market of Ahmedabad under the identical word-mark / devicemark of RASNA (list of all trademarks/label/devicemark containing the word RASNA owned by plaintiffs is mentioned at Page 4 to 6 of the plaint). In this regard, he has relied on labels and packaging of defendant's products at Page 641 to 643 of the list of documents annexed with the plaint. He has further drawn attention of this court to the invoice dated 04.08.2022 of the Starbazar in Ahmedabad selling the allied edible product i.e. TOOR DAL. In order to substantiate the contention, Ld. Counsel has further placed reliance on

defendant's website, submitting that the impugned product in the name of RASNA MADHI TOOR DAL under the identical trademark of plaintiff amounts to infringement of plaintiff's trademark being done with the sole motive to pass off its products amongst consumer thereby, portraying itself to be associated with the plaintiff company and RASNA brand to usurp the goodwill and reputation of plaintiffs and their brand RASNA. Under these circumstances, Ld. Counsel for the Plaintiff has prayed for ex-parte ad-interim injunction against defendant.

4. This Court has heard Ld. Counsel for the Plaintiff and perused the documents on record. At the threshold, it is to be mentioned that this court has jurisdiction to try and adjudicate the Suit under Section 134 of the Trademarks Act, 1999 as the plaintiff carries business within the jurisdiction of this court and the defendant is also selling its products in Ahmedabad. A perusal of material on record including Registration Certificates from page no. 134 to 223 of list of documents annexed with the plaint makes it axiomatically clear that "RASNA" is a registered trademark of the plaintiff as per Trademark Act, 1999. Further, the registration certificate dated 26.10.2006 at page 226 of the documents appended with plaint prima-facie establishes that plaintiff's trademark RASNA is registered for goods falling under class 31 which includes grains as well whereas, it appears from the record that the defendant has started marketing its products at a later stage. Apart from the fact that the mark

being coined enjoys inherent distinctiveness, it's prolong and continuous usage has earned plaintiff goodwill and reputation amongst its users as reflected in documents at Sr. No. 293 to 572 of the list of documents annexed with the plaint. When judged from the angle of a common consumer, the court must adopt the stand of a reasonable man who is likely to consume the product and is required to discern whether the two marks are deceptively similar as defined in section 2(h) of The Act and due to close resemblance, if it is likely to create confusion to the consumers. Thus, on comparison of plaintiff's trademark with that of defendant i.e RASNA MADHI TOOR DAL, it prima-facie appears that the latter consists the word RASNA being deceptively similar which is likely to deceive or cause confusion in the minds of consumers as also the goods of plaintiff and defendant stem from the same food sector, commonly consumed in almost every household. It is extremely significant to observe here that plaintiff's products which are subject matter of the present Suit are edible/consumable items and the same are being consumed in heavy quantity by the public at large including all age groups. Furthermore, in the past also several users marketing their products under the trademark RASNA have been enjoined by different courts as is reflected in orders annexed at page no. 573 to 636 of the plaint. For foregoing reasons, this Court is of the opinion that such infringer be stopped immediately to prevent great harm to the public who may get confused and deceived by identical/deceptively similar brands/labels as the general

public hardly verifies the genuineness of the available products and the possibility of them believing the said products are of the plaintiff company, cannot be ruled out at this stage.

5. In view of above facts and circumstances of the matter, this Court finds that balance of convenience lies in favor of plaintiffs. Moreover, the dilution and tarnishing of the reputation which the plaintiff's predecessors have earned through many years of consumer satisfaction would lead to incalculable losses and irreparable damage to their brand value. Furthermore, since the rival products are frequently consumed by the Indian customer, there is a significant public interest which must be borne in mind. On the above conspectus, I hereby grant an *ex-parte* ad interim injunction in favor of plaintiffs restraining the defendants from using impugned trademark RASNA till the next date of hearing. Therefore, in the interest of justice, following final order is passed:-

ORDER

- i. The defendant company, its directors, partners, assigns, licensees, agents, and all related business persons are hereby temporarily restrained from using, selling, advertising, circulating, displaying and marketing the impugned trademark, work mark/labels depicted in the list of documents to the plaint in any manner or any other mark/label that is identical with or deceptively similar to the plaintiff's marks/labels whatsoever, till the next date of hearing.

- ii. Plaintiffs are directed to comply with the provisions of Order XXXIV Rule 3 CPC within ten days from the date of this order.
- iii. Defendant to appear with reply to temporary injunction application on or before 28.04.2023 to show-cause as to why *ex-parte* ad-interim injunction granted in favor of plaintiff be not made absolute and defendant be not restrained to do above stated things till the disposal of Commercial Trademark Suit No.6 of 2023.
- iv. Show-cause-notice be issued to the defendant and matter be kept for hearing on temporary injunction application.
- v. Written statement be filed within the prescribed statutory period.
- vi. Matter adjourned for hearing on interim injunction application on 28.04.2023.

Date : 07.04.2023
Place : Ahmedabad.

(Priyanka Agarwal)
Judge, Commercial Court,
City Civil Court, Ahmedabad
Unique ID Code No.GJ01597