



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION  
IN ITS COMMERCIAL DIVISION

**INTERIM APPLICATION (L) NO. 29298 OF 2025**  
**IN**  
**COMMERCIAL IP SUIT (L) NO. 27017 OF 2025**

ITC Limited

... Applicant/Plaintiff.

**Versus**

Abbas Mohammad Shaikh

... Respondent/Defendant.

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*Mr. Ravi Kadam, Senior Advocate a/w. Mr.Rohan Kadam, Mr.Nimish Kothare, Mr.Nikhil Mutha, Ms.Ashwini Sonawane i/by M/s.Nanu Hormasjee & Co. for the Applicant/Plaintiff.*

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**Coram : Sharmila U. Deshmukh, J.**

**Date : November 13, 2025**

**P.C. :**

1. At the outset, Mr. Kadam, learned Senior Advocate appearing for the Plaintiff tenders the draft amendment. The draft amendment is taken on record. Considering the nature of amendment, the same is allowed. Amendment to be carried out within a period of two weeks. Reverification is dispensed with.
2. This is an action for infringement of trade mark, copyright and passing off. The Plaintiff is the registered proprietor of the trade mark "GOLD FLAKE" which was registered in the 1942 and has been in continuous uninterrupted use of the Plaintiff. The "GOLD FLAKE" trade mark as well as the derivative marks are stated to be highly

reputed amongst trader and consumers and the Plaintiff's products which are cigarettes are also exported globally.

**3.** Mr. Kadam, learned Senior Advocate appearing for the Plaintiff submits that in or about 1905, the Plaintiff's through its predecessor in business commenced the use of the trade mark "Gold Flake" in respect of cigarettes and has obtained trade mark registration. He submits that the Plaintiff is also owner of the original artistic work in respect of the registered trade mark. In order to demonstrate the reputation and goodwill, he points out to the sales turnover which for the year 2023-2024 was Rs.40,186 Crores. He submits that the Defendant Nos.1 and 2 are the owners of various agricultural lands situated in Raigad and one of those plots i.e. Survey No.16, Hissa No.2 appears to have been sold by Defendant Nos.1 and 2 to Defendant No.3. He submits that the Karjat Police carried out a raid on 24<sup>th</sup> October, 2024, upon a complaint which was filed by the Plaintiff in respect of the illegal manufacturing and counterfeiting of GOLD FLAKE cigarettes. During the raid, the Police found sophisticated unit manufacturing counterfeit GOLD FLAKE cigarettes in the farmhouse on the said land, finished goods, raw material and machinery worth Rs.4.94 Crores and seized the same. He submits that accordingly, First Information Report dated 25<sup>th</sup> October, 2024 was registered under the various provisions of the Bharatiya Nyaya Sanhita, 2023.

**4.** He submits that based on this material, the Plaintiffs have

identified that the Defendant Nos.1 and 2 are the beneficial owners of the plot and the unit and are working with in collusion with Defendant No.3 for marketing of counterfeit GOLD FLAKE cigarettes. He submits that the Defendant No.4 has been arrayed as Accused and has been identified as one of the chief conspirators in the police report filed by the Raigad Police. He submits that a charge-sheet has been filed on 2<sup>nd</sup> May, 2025 by the police authority. He submits that it appears that the illegal unit run by the Defendants for manufacturing of the counterfeit products has no legal factory license, and has been set up clandestinely in the farmhouse. He submits that it appears that the impugned cigarettes are filled with mixed sawdust and chemicals.

5. Mr. Kadam would seek to move without notice to the Defendants and points out to the pleadings at paragraph 11, 12 and 13 of the additional affidavit which is tendered and taken on record. He submits that though the police have certified the destruction of the stock seized during the illegal manufacturing unit considering the magnitude on which the counterfeit manufacturing was going on, it is likely that there are vast stockpiles on the counterfeit cigarettes still to be destroyed and as the manufacturing unit is in the vicinity of the Mumbai city, it is possible that the counterfeit cigarettes are available for sale and distribution within the jurisdiction of this Court. He would further submit that in any event, the Defendants are residing within the jurisdiction of this Court and therefore, this Court will have

jurisdiction in respect of the action of passing off. He would further point out the side by side comparison of the rival products.

6. I have considered the submissions and perused the records.

7. I am convinced for the reasons which are set out in paragraph 11 to 14 of the additional affidavit that the grant of ad-interim relief will be defeated by delay. It is also a matter of concern that the counterfeit cigarettes are learnt to have been filled with the mix of sawdust and chemicals which would be hazardous to the health of the general public.

8. The rival products are reproduced herein below:

| PLAINTIFF'S GOLD FLAKE CIGARETTES                                                   | IMPUGNED COUNTERFEIT GOLD FLAKE CIGARETTES                                            |
|-------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------|
|  |  |
|  |  |



9. Upon *prima facie* comparison of the rival products, it is evident that the Defendants' products are counterfeit GOLD FLAKE cigarettes. The fact that charge-sheet has filed by the Police indicates

sufficient evidence being found by the police authorities as regards the counterfeit manufacture of the Plaintiff's products. The Defendants cannot have any defence considering the raid by the police authorities and the evidence which has led to the filing of the charge-sheet. The proprietary right of the Plaintiff in the registered trade mark is *prima facie* demonstrated from the registrations which are placed on record and the user which is since the year 1905. The reputation and the goodwill of the Plaintiff in the registered trade mark is *prima facie* evident from the sales turnover and the leading presence of the Plaintiff in the cigarette manufacturing industry, requires no enforcement. The products being counterfeit products, the use of the counterfeit products is likely to cause damage to the reputation and goodwill of the Plaintiff.

**10.** In light of the discussion above, a strong overwhelming *prima facie* case has been made out for grant of ad-interim relief in terms of prayer clauses (a) to (d), which read as under:

*"a. Pending the hearing and final disposal of the Suit, a temporary Order and injunction restraining the Respondents/ Defendants, their partners, associates, proprietors, servants, agents, distributors, marketers, suppliers, licensees, assigns, and all others in active concert or participation with them from manufacturing, selling, offering for sale, advertising, directly or indirectly, and/or dealing in any manner the Impugned Cigarettes (as depicted in paragraph 10 above) and/or any other cigarettes/tobacco bearing any identical and/or*

*deceptively similar mark so as to infringe upon the Applicant's/ Plaintiff's registered GOLDFLAKE trademarks (at Exhibits C-1 to C-45 to the Compilation of Exhibits to the Plaintiff);*

- b. Pending hearing and final disposal of the Suit, a temporary Order and injunction restraining the Defendants, its directors, partners, associates, their officers, servants, agents, assigns, successor-in-business, licensees, legal representatives or anyone claiming through or under them from in any manner infringing the copyright of the Plaintiff subsisting in the artistic work pertaining to "GOLD FLAKE Roundel Devices" and/or and/or the trade dress of Plaintiff's "GOLD FLAKE" cigarettes in any manner whatsoever;*
- c. Pending hearing and final disposal of the Suit, a temporary Order and injunction restraining the Respondents/ Defendants, their partners, associates, proprietors, servants, agents, distributors, marketers, suppliers, licensees, assigns, and all others in active concert or participation with them from manufacturing, selling, offering for sale, advertising, directly or indirectly, and/or dealing in any manner the Impugned Cigarettes (as depicted in paragraph 10 above) and/or any other cigarettes/tobacco bearing any mark that is identical and/or deceptively similar to the Applicant's / Plaintiff's trade mark "GOLD FLAKE", "GOLD FLAKE Roundel Devices" and/ or the trade dress of Applicant's / Plaintiff's "GOLD FLAKE" cigarettes so as to pass off the Impugned Cigarettes and/or the Respondents'/ Defendants' goods as and for those of the Applicant's/ Plaintiffs;*
- d. Pending hearing and final disposal of the Suit, a temporary Order and injunction directing the Respondents/ Defendants to disclose on oath, the identities and names of all persons connected with the illicit counterfeiting manufacturing unit (located at*

*Exhibit W-3) and all dealers, stockists, retailers, wholesalers of the Impugned Cigarettes (as depicted at in paragraph 10 above) and any all persons connected in the course of trade with the said Impugned Cigarettes and to further disclose all inventories of the Impugned Cigarettes (as depicted in paragraph 10 above) wheresoever located and to further disclose the locations of any other manufacturing units/premises which manufactures the Impugned Cigarettes (as depicted in paragraph 10 above) wherever so located;"*

- 11.** List the application for further consideration on **10<sup>th</sup> December, 2025.**
- 12.** Ad-interim relief granted earlier to continue till the next date.

**[Sharmila U. Deshmukh, J.]**