

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INTERIM APPLICATION (LODGING) NO. 400 OF 2023
IN
COMMERCIAL IP SUIT (LODGING) NO. 372 OF 2023

Yoko Sizzlers ... Applicant/Orig. Plaintiff
vs.
Yokoso Sizzlers ... Defendant

Mr. Rashmin Khandekar a/w. Mr. Omkar Khanvilkar, Mr. Kartik Gantha and
Mr. Mujtaba Rizvi for applicant/plaintiff.

CORAM : MANISH PITALE, J
DATE : 19th JANUARY, 2023

PC. :

. Heard Mr. Khandekar, learned counsel appearing for the applicant/plaintiff. The present suit and the application for interim reliefs is filed, in the context of the registered trade mark of the plaintiff Yoko Sizzlers.

2. At the outset, the learned counsel, appearing for the plaintiff, sought permission to amend the plaint and handed over the amendments, in order to augment the pleadings already on record, by way of amendment. The plaintiff seeks to add the pleadings, pertaining to its presence in the global market as well as registration of its trade mark in other countries. This Court is of the opinion that the amendments would be necessary for a comprehensive consideration of the issue, sought to be raised in the present suit.

3. Therefore, in the interest of justice, the amendment is allowed. Accordingly, the plaintiff is permitted to amend the pleadings, as per the draft amendments. The plaintiffs shall ensure that the draft amendments be

e-filed within one week from today. Re-verification is dispensed with.

4. It is the case of the plaintiff that since the year 1986, it has been operating in the hospitality business and that it adopted the aforesaid trade mark in the year 1986 itself. It is submitted, on the basis of documents placed on record, that the registration of the trade mark Yoko Sizzlers, dates back to 16th June, 1994. Copy of the certificate is at Exhibit A. It is to be noted that the plaintiff had registration in two classes i.e. class 30 and class 42, documents pertaining to which, are placed on record. The plaintiff has further pleaded that it is running outlets all over the country and it has presence in the form of its outlets, internationally in various countries like UAE, UK and Qatar.

5. Copies of advertisements, published in the print and social media, as also the digital media, are placed on record, to assert that the aforementioned trade mark Yoko Sizzlers has been in the public domain for a long period of time.

6. The plaintiff claims that in August, 2022, it came across the restaurant of the defendant at Pune, bearing the impugned mark Yokoso Sizzlers. It was also found that the defendant has a website www.yokososizzlers.com, which is similar to the website of the plaintiff i.e. www.yokosizzlers.com.

7. Upon noticing the aforementioned restaurant of the defendant, being run in the city of Pune, the plaintiff issued a cease and desist notice to the defendant on 25th August, 2022, calling upon the defendant to stop using the impugned mark Yokoso Sizzlers. The defendant sent its reply to the said notice, claiming that there was no similarity between the two marks and that

the two words Yoko and Yokoso have different meanings in Japanese language.

8. It is in this backdrop, that the plaintiff has approached this Court. The plaintiff has served a notice on the defendant on 13th January, 2023. It is also stated that the defendant was intimated about the listing of the application today before this Court. Affidavit of service is ready and is directed to be e-filed within one week from today.

9. This Court has considered the material placed on record. The registration certificate at Exhibit A clearly shows that the registration of trade mark Yoko Sizzlers is in favour of the plaintiff, dating back to 16th June, 1994. There is sufficient material placed on record to show the presence of the said brand and trade mark of the plaintiff, in the public domain for a considerable period of time. There is sufficient material placed on record also to indicate the large scale presence of the plaintiff in this country and also internationally. In this situation, a bare comparison between the two marks would show that the defendant appears to have added the alphabets 'SO' to the registered trade mark of the plaintiff. Hence, *prima facie*, the impugned mark of the defendant is found to be deceptively similar to the registered trade mark of the plaintiff. Apart from this, the documents placed on record, indicate that the defendant has not only used the deceptively similar mark for its restaurant, but other aspects of the brand of the plaintiff i.e. layout of the restaurant and table mats used therein, also *prima facie*, indicate the efforts on the part of the defendant to copy the business practices of the plaintiff, associated with the registered trade mark Yoko Sizzlers.

10. The response to the cease and desist notice, on the part of the defendant is also perused. *Prima facie*, there does not appear to be substance in the stand taken on behalf of the defendant. Merely because Yoko and Yokoso have different meanings in Japanese language, it would not amount to dissimilarity of the marks in question. Therefore, it is found that a strong *prima facie* case is made out on behalf of the plaintiff, for granting ad-interim relief. This Court is convinced that unless such relief is granted, the plaintiff will suffer grave and irreparable loss, thereby indicating that the balance of convenience also lies in favour of the plaintiff.

11. In view of the above, there shall be ad-interim relief in terms of prayer clause (b), which reads as follows:

“(b) that pending the hearing and final disposal of the suit, this Hon'ble Court be pleased to pass an order and injunction restraining the Defendant by itself, its servants and agents, from in any manner using the mark "Yokoso Sizzlers" or any other trademark identical with or deceptively similar to the Applicant's registered trademark Yoko Sizzlers under No.1236861 in Class 42 as well as 631157 in Class 30, (described in Exhibit "A" to the Plaint) so as to infringe the same;”

12. List the application for further consideration on 24th February, 2023.

13. The plaintiff reserves its right to agitate its claim, pertaining to the action of passing off.

(MANISH PITALE, J)

Priya Kambli