

OCD-9

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION
ORIGINAL SIDE

[Commercial Division]

IA No.GA-COM/2/2024

In

IP-COM/16/2024

SAJ FOOD PRODUCTS PVT LTD
-VS-
M/S PARLE BISCUITS PVT LTD

BEFORE:

The Hon'ble JUSTICE KRISHNA RAO

Date : July 19, 2024.

Appearance:

Mr. Debnath Ghosh, Adv.
Mr. Biswaroop Mukherjee, Adv.
Mr. Abhijit Sarkar, Adv.
Mr. Abhik Chitta Kundu, Adv.
... for the petitioner

The Court: The petitioner has filed the present application for grant of ad interim injunction.

The petitioner is a well-known and reputed manufacturer of biscuits, snacks and bakery products marketing and selling such products under the well-know brand "BISK FARM". The petitioner commenced its business in 2000. One of the premier marks of the petitioner is "TOP GOLD" which has been continuously and extensively used since 2005. The petitioner has conceived and adopted the mark "TOP GOLD" by taking the words "TOP" and "GOLD" and making a unique combination of the same as "TOP GOLD". All the products of the petitioner are manufactured, sold, advertised, marketed and distributed under the house mark "BISK FARM". The petitioner also manufactures, markets, trades, distributes and advertises diverse types of its biscuits and allied products under the specific marks which, inter alia, are : (i) TOP; (ii) TOP

GOLD; (iii) POPSTAR; (iv) GOLD FINGER; (v) ATTA MARIE; (vi) HEYLO; (vii) SO SWEET; (viii) CHATPATA SPICY; (ix) SNACKIES; (x) ENGLISH CRACKER; (xi) SMOOTHEE; (xii) PUFF ROLE; (xiii) SWEETY PIE; (xiv) CUPKAKE; (xv) RUSKIT; (xvi) CREAMWICH; (xvii) BOOM; (xviii) GOOGLY; (xix) BURST; (xx) INDIAAH; (xxi) FLAT STIKS; (xxii) TOP HERBS etc.

The petitioner has adopted the mark “TOP” and “TOP GOLD” sometime in the month of April, 2005 in class 30 in respect of its butter and cheese biscuits and has been regularly, extensively and continuously using the same since 1st April, 2005. The defendant has now sought to launch its products under the mark “TOP GOLDSTAR” which would invariably lead to confusion and deception and such part of the petitioner’s mark “TOP GOLD” which is a coined mark amounts to infringement, passing off and unfair trade practice.

The petitioner has obtained statutory protection of its mark “TOP GOLD” by obtaining registration as of 8th August, 2011. The petitioner has also obtained copyright certificate on 14.11.2017 in which it has been categorically mentioned that it has been used in India since 2015 by the petitioner. The petitioner is continuously and extensively selling its butter and cheese biscuits under the mark “TOP GOLD” since 2005 and as per the sale figure value of sale for the year 2023-2024 is Rs.20,491/- lakhs.

In order to popularize all its biscuits under the mark “TOP GOLD”, the petitioner has extensively advertised its biscuits sold under the mark “TOP GOLD” in print media and television as well as on the social media for which the petitioner has made expenditure as on February 2024 to the tune of Rs.1140.19 lakhs.

Mr. Debnath Ghosh, learned advocate, appearing for the petitioner submits that the respondent has willfully and deliberately adopted the petitioner's unique mark "TOP GOLD" and added the word "STAR" and respondent's deliberate use and adoption of the "TOP GOLDSTAR" mark and its corresponding packaging, trade dress and get up of the mark "TOP GOLD" and such use and adoption of the impugned marks has been made in utter bad faith.

The mark of the petitioner is



And the mark of the respondent is



The petitioner is the prior user of the mark "TOP GOLD", having been regularly, continuously and extensively using the mark since the month of April, 2005. The respondent is using the mark "TOP GOLD" and/or "TOP GOLDSTAR" and the accompanying packaging subsequent to the petitioner. The respondent is using "TOP GOLD" and/or "TOP GOLD STAR" marks which are identical to the petitioner's mark "TOP GOLD" wherein the term "TOP" and "GOLD" are written in large font and the term "STAR" is written in smaller font and using the said mark in respect of the identical and similar goods that is biscuits. The petitioner has also enclosed the invoices showing that the petitioner is selling the biscuits since the year 2005 under the mark "TOP GOLD". The petitioner has enclosed the certificate showing the sale figures of the biscuits under the name "TOP GOLD" for total amount of Rs.1,10,651/- lakhs.

Considering the submission made by the counsel for the petitioner and on perusal of the materials on record, this Court finds that use of the mark "TOP GOLD" and "TOP GOLDSTAR" by the respondent amounts to unfair practice by the use of a deceptively similar mark "TOP GOLD" which is an unauthorized use of an asset of the petitioner protected by the trade mark and copyright laws. The use and adoption of the mark "TOP GOLD" by the respondent cause an economic injury to the petitioner and its business.

This Court finds that the petitioner has made out a prima facie case and balance of convenience and inconvenience is in favour of the petitioner. This Court also finds that if at this stage ad interim order is not passed, the business of the petitioner will suffer irreparable loss and

injury as the respondent using the mark of the plaintiff “TOP GOLD” and “TOP GOLDSTAR” identical to the mark of the petitioner.

Accordingly, the respondent and its men, servants, agents, assigns, dealers, distributors and/or anyone claiming through them be restrained are restrained from using or enabling others to use the petitioner’s trade mark “TOP GOLD” by manufacturing, marketing, processing, selling, advertising, dealing with biscuits or allied products under the trademark “TOP GOLD” and/or “TOP GOLDSTAR” in any manner whatsoever till 27th August, 2024.

It is made clear that this order will not restrain the respondent to use the mark “TOP” without using the word “GOLD” along with “TOP”.

The petitioner is directed serve the copy of the application, plaint and documents and to file affidavit of service on the returnable date.

List the matter on 27th August, 2024.

(KRISHNA RAO, J.)