

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

**INTERIM APPLICATION NO. 1 OF 2019
IN
COM IP SUIT (L) NO. 1061 OF 2019**

ORRA Fine Jewellery Private Limited Plaintiff

Versus

TomTop Merchandise Private Limited & Ors. Defendants

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Mr. Nausher Kohli i/b Mr. Jay Vakil for the Applicant/Plaintiff.
Mr. Bharat Gandhi i/b Mr. Swapnil V Newaskar for Defendant Nos.1 to 3.

CORAM : S.C. GUPTA, J.

DATE : 14 NOVEMBER 2019

P.C.

This interim application has been taken out by the Plaintiff in a commercial I.P. suit complaining of infringement of trademark and copyright as also passing off of goods.

2. The Plaintiff claims to be a reputed Jewellery brand in gems and Jewellery industry, running a chain of jewellery stores in India under the brand name "ORRA". The trademark "ORRA" has been duly registered by the Plaintiff. The Plaintiff relies on particulars of its extensive sales and sales promotion expenditure in respect of its registered trademark "ORRA". It is the grievance of the Plaintiff that in August 2019, it came

across a website by name *orra-jewels.com* offering jewellery for sale. The Plaintiff claims to have placed an order on the website, in response to which, jewellery under the brand name "ORRA" was delivered to the Plaintiff. The Plaintiff's case is that the use of the trademark "ORRA" by the Defendants amounts not only to an act of infringement, but also constitutes passing off of the Defendants' goods as the goods of the Plaintiff.

3. This Interim application was first moved before this Court, when the original Defendant was represented by an advocate. It transpired then that the defendant was merely a delivery agent for a Chinese manufacturer who appeared to be owning the website. The Chinese manufacturer also had an Indian representative appointed for sales in India. The Plaintiff sought leave of the Court to add the Chinese manufacturer and its Indian representative as parties to the suit. Accordingly, they have been joined as Defendants.

4. Learned counsel for the Plaintiff submits that after amendment of the plaint, for seeking ad-interim reliefs against the newly added Defendants, the plaint and the Interim application were sought to be served on them. Learned counsel submits that when service was sought to be effected, the Plaintiff's representative was informed that the office had been closed. No service could therefore be effected.

5. Learned counsel submits that his client shall make one more endeavour of service on the newly added Defendants. Learned counsel submits that in the meantime appropriate ad-interim reliefs may be granted against the Defendants. Learned counsel submits that apart from interim injunction in respect of use of the offending mark, the Plaintiff seeks disclosure from the Defendants in terms of prayer clause (c) of the Interim application.

6. In the premises noted above, there will be an ad-interim order in terms of prayer clauses (a) & (b) of the Interim Application, which are quoted below :

“a) that pending the hearing and final disposal of the present suit, the Defendants by themselves, their servants, dealers and agents including website and domain name registrants be restrained by a temporary order and injunction of this Hon’ble Court from infringing the Applicant/Plaintiff’s registered suit trademark bearing No. 1215267 in Class 14 by using the same or any other deceptively similar trademarks in relation to the jewellery business, including use of the Applicant/Plaintiff’s suit trademark, or any part(s) thereof or in any other manner whatsoever;

b) that pending the hearing and final disposal of the present suit, the Defendants by themselves, their servants, dealers and agents including website and domain name registrants be restrained by a temporary order and injunction of this Hon’ble Court from marketing, selling and conducting jewellery business by using the infringing website as shown in Exhibit “D” to the plaint or any other deceptively similar trademarks in any other manner whatsoever so as to pass off the Defendant’s business as being the business that of the Applicant/Plaintiff.”

The Defendants are also directed to disclose on oath particulars of sales made by them using the infringing website and with the use of the infringing mark.

7. Learned counsel for the original defendant (now Defendant No.1) submits that his client has already filed an affidavit placing on record its sales register for the period between 9 August to 18 October 2019. Defendant No.1 may not, accordingly, make any further disclosure.

8. The newly added Defendants may file their affidavit of disclosure alongwith their reply to the Interim Application within 4 weeks from today. The Plaintiff to serve the plaint and the Interim Application alongwith this order on these Defendants and submit a proof of such service by the next date.

9. Stand over to 13 December 2019.

(S. C. GUPTE, J.)