



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

INTERIM APPLICATION (L) NO. 33507 OF 2025
IN
COMMERCIAL IP SUIT (L) NO. 33475 OF 2025

Mohamed Sadique Raisuddin Saifee ... Applicant/Plaintiff.

Versus

Rizwan Yunus Shaikh ... Respondent/Defendant.

Mr. Vinod Bhagat a/w. Ms Apeksha Mehta, Ms Rashmi Thakur, Ms Sonam Pradhan and Ms Twisha Singh i/by Mr Vinod Bhagat for the Applicant/Plaintiff.

Coram : Sharmila U. Deshmukh, J.

Date : November 07, 2025

P.C.:

1. This is an action for infringement of trade mark and passing off. Mr. Bhagat, learned counsel appearing for the Plaintiff tenders the affidavit of service evidencing service upon the Defendant. The service has been effected on 18th October, 2025.
2. None appears on behalf of the Defendant.
3. The Plaintiff is engaged *inter alia* in the business of manufacturing, marketing and selling cosmetic preparations and product, skin care, hair care and other beauty products since last four decades through its predecessors. In relation to the aforementioned goods, the Plaintiff is using the trade mark "THE BODY CARE" which is

stated to be in use continuously since the year 1987. Mr. Bhagat would submit that the trade mark "THE BODY CARE" was coined and adopted in the year 1987 by the Plaintiff's predecessor and has been in use since then. He submits that by reason of continuous uninterrupted use the Plaintiff has acquired enormous goodwill and reputation. He submits that the Plaintiff's trademark "THE BODY CARE" has achieved distinctiveness and the mark is associated solely with the Plaintiff's goods.

4. Mr. Bhagat further submits that the Plaintiff had applied for registration of the word mark "THE BODY CARE" on 10th October, 1994 with user detail of 1st April, 1987. Pointing out to the said registration, he submits that the said registration was subject to disclaimer that the registration shall not give exclusive right to use the word "THE BODY CARE". He submits that despite the said disclaimer, the Plaintiff is entitled to ad-interim relief as subsequently an application was made for registration of the device mark "THE BODY CARE" which has been granted registration. Pointing out to page No.65 of the plaint which is the Application filed by the Plaintiff for registration of the device mark "THE BODY CARE" on 9th March, 2009, Mr. Bhagat would submit that the said registration is not subject to any disclaimer and the exclusive right to the device mark which is essentially the word, "THE BODY CARE" vests exclusively in

the Plaintiff.

5. Mr. Bhagat would further point out to the screen shots taken of the domain name which uses the trade mark. Drawing attention of this Court to the sales figure which is annexed at Page No.110 and 111, he points out the substantial sales turnover as well as the advertisement and promotional expenses been incurred by the Plaintiff in order to support his contention of having garnered enormous goodwill and reputation. In order to demonstrate the user of the mark, he points out to the invoice at page No.112 which shows the sales on 14th August, 2003 of the products under the registered mark "THE BODY CARE".

6. He would tender the comparison chart to demonstrate that the Defendant has copied the essential features of the Plaintiff's mark i.e. the words "THE BODY CARE" and has merely added the suffix "SHOP" which is descriptive. He submits that as the essential features have been copied, the Defendant has infringed the registered trade mark of the Plaintiff.

7. He would further submit that the Plaintiff became aware of the Defendant's existence in or around the second week of October, 2025, when the Plaintiff came across the Defendant's retail shop located at Goregaon, Mumbai operating under the name as "THE BODY CARE

SHOP". He submits that the Plaintiff has not been able to effect any purchase of any goods sold under the said trade mark "THE BODY CARE SHOP". However, the name of the store as clearly evident is infringing the registered trade mark of the Plaintiff. He submits that the Plaintiff conducted search in the records of the Trade Mark Registry and came across an Application filed on 26th May, 2025 by the Defendant seeking registration of the impugned mark "THE BODY CARE SHOP" claiming user since 23rd June, 2021.

8. He would submit that it is evident that the Defendant has not carried out any search of the Trade Mark Registry before adopting the impugned mark as the search would have revealed the existence of the Plaintiff's mark since at least the date of Application for registration in the year 2009. He would submit that the Defendant does not have any defence as the essential features of the registered mark have been copied by the Defendant and having applied for registration of the mark itself, the Defendant cannot contend that the words are descriptive.

9. I have considered the submissions and perused the record.

10. The registration certificate brought on record would demonstrate *prima facie* the proprietary right of the Plaintiff to the exclusive use of the trade mark "THE BODY CARE". Even if, the first

registration certificate is ignored considering the disclaimer contained therein, the second registration application for registration of the device mark "THE BODY CARE" was filed in the year 2009 with the user claim of 1995 and the registration has been granted without any disclaimer. *Prima facie* the Plaintiff is therefore entitled to the exclusive use of the registered trade mark. The sales figure brought on record *prima facie* indicates the goodwill and reputation enjoyed by the Plaintiff in the cosmetic industry. Even if the first registration of the trade mark is ignored, *prima facie* the use of mark is since the year 1987. The invoice which has been produced on record shows the sales at least from the year 2003. The Defendant has *prima facie* commenced the use of mark in the year 2021 as is evident from the application for registration.

11. The side-by-side comparison is reproduced herein below.

PLAINTIFF'S MARK	DEFENDANT'S MARK
	

12. Upon *prima facie* comparison of the rival marks, it is evident that the Defendant has bodily lifted the essential features of the Plaintiff's mark and has merely added the descriptive word "SHOP". The addition of the descriptive word is immaterial as the essential features of the Plaintiff's mark has been copied by the Defendant. Considering the overall similarity between the two marks, there is a propensity of the consumers to be deceived that the Defendant's shop is associated with the Plaintiff's goods. The use of the impugned mark by the Defendant is *prima facie* liable to cause damage to the Plaintiff.

13. The submissions made by Mr. Bhagat is supported by the material placed on record. The Defendant's impugned trade name is *prima facie* similar to the Plaintiff's trade mark. The registration which has been applied by the Defendant is in Class 3 in respect of the identical goods in which the Plaintiff carries on its business.

14. In light of the above, the Plaintiff has made out a case for grant of ad-interim relief in terms of prayer Clauses (a), (b) and (c), which read as under:

"a. pending the hearing and final disposal of the suit, the Defendant by themselves, their proprietor, servants, agents, stockists, distributors, assignees, subsidiaries and all those connected with the Defendant in their business be restrained by an order and temporary injunction of this Hon'ble Court from manufacturing, marketing, trading, displaying, selling, offering for sale and/or using in any manner whatsoever in relation to their retail services dealing in cosmetic preparations including face cream, face mask, shower gel, soap, hair serum

and such other like cosmetic goods, the impugned trading/business/shop name and the impugned mark THE BODYCARE SHOP or any name or mark identical with and/or deceptively similar to the Plaintiff's trade mark THE BODY CARE, so as to infringe upon the Plaintiff's aforesaid trade mark THE BODY CARE registered under No. 1793685, in class 03;

- b. pending the hearing and final disposal of the suit, the Defendant by themselves, their proprietor, servants, agents, stockists, distributors, assignees, subsidiaries and all those connected with the Defendant in their business be restrained by an order and temporary injunction of this Hon'ble Court from manufacturing, marketing, trading, displaying, selling, offering for sale and/or using, in any manner whatsoever in relation to their retail services dealing in cosmetic preparations including face cream, face mask, shower gel, soap, hair serum and such other like cosmetic goods, the impugned trading/business/shop name and the impugned mark THE BODYCARE SHOP or any name or mark identical with and/or deceptively similar to the Plaintiff's trade mark THE BODY CARE, so as to pass off their services, goods and business as and for those of the Plaintiff or in some way connected or associated therewith;*
- c. pending the hearing and final disposal of this suit a Court Receiver or such other person, be appointed with all powers under Order XL Rule 1 and Order XXXIX Rule 7 of the Code of Civil Procedure, 1908, to attend and search the shops, offices, premises of the Defendant and such other premises as well as to take possession of hoardings/banners /signage, cards, visiting cards, invoices, cosmetic goods bearing the impugned trading name and the impugned mark THE BODYCARE SHOP, cartons, labels, stickers, stationery goods, printing and packaging materials and other related items and goods which infringe upon the Plaintiff's registered trade mark of THE BODY CARE as may be found, stocked, sealed or are lying and to break open such locks with police assistance (if needed), make an inventory, seize and take custody/possession thereof by sealing the said goods at the Defendant's premises under lock and key and also of all related items such as production registers, brochures, price lists bearing the impugned trading*

name and the impugned mark THE BODYCARE SHOP, lying at the shops, offices or premises of the Defendant or agents or at any other place/s and the Defendant by themselves, their proprietor, servants, agents, stockists, distributors, assignees, be ordered and directed to deliver up all of the aforesaid to the Court Receiver or to such other fit and proper person as this Hon'ble Court thinks fit and the Court Receiver must carry out such search and seizure with local police assistance, if necessary, at no costs;

15. The Court Receiver, High Court of Bombay is hereby appointed with the following powers and directions :

- (a) All powers under Order XL Rule 1 and Order XXXIX Rule 7 of the Code of Civil Procedure, 1908 except the power of sale.
- (b) A direction to visit and search all premises of defendants, forcibly breaking open locks if necessary; and also where necessary, with police assistance.
- (c) A direction to seize and seal in the Defendants' premises all the offending material, including, cartons, dyes, moulds, printing equipment and other material of all description that carry the impugned mark or label.
- (d) A direction to make an inventory of all the material, equipment, etc.

16. The Court Receiver, High Court of Bombay to submit its report to the Court on or before **3rd December, 2025.**

17. List the Application on **4th December, 2025.**

18. Ad-interim granted to continue till 4th December, 2025.

19. All concerned to act upon digitally signed copy of this order.

[Sharmila U. Deshmukh, J.]