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

INTERIM APPLICATION (L) NO.28100 OF 2024
IN
COM IPR SUIT (L) NO.28069 OF 2024

Ceat Limited

...Applicant /
Plaintiff

Versus

Apollo Tyres Ltd.

...Defendant

Virag Tulzapurkar, Senior Counsel with Hiren Kamod, Vinod Bhagat
and Prachi Shah i/b. V.A. Bhagat for the Applicant / Plaintiff.

None for the Defendant.

CORAM : R.I. CHAGLA J.
DATE : 12TH SEPTEMBER, 2024.

ORDER :

1. At the outset, Mr. Tulzapurkar, Ld. Senior Counsel for the Plaintiff, tenders Draft Amendment seeking to make amendments to the Plaint and Interim Application, as more particularly set out in the Draft Amendment. The draft amendment is taken on record and marked as 'X' for identification. In the interest of justice, the amendment is allowed. Reverification is dispensed with. The amendments shall be carried out within a period of 1 week from today.
2. Mr. Tulzapurkar tenders an Affidavit of Service, proving service of the papers and proceedings of the matter and notice of

today's hearing on the Defendant via email, which is taken on record. Though the Plaintiff appears to have served copies of the papers and proceedings and notice of today's hearing in above matter upon the Defendant on 10th September 2024 via email communication, none appears for the Defendant despite being served.

3. The Plaintiff has filed the present suit and interim application seeking an injunction against the Defendant for the acts of disparagement and slander of the Plaintiff's CROSSDRIVE AT car tyre by the Defendant through the circulation, broadcast, communication to the public of a video commercial (VC) advertisement, as well as infringement of the Plaintiff's registered trade mark CEAT.
4. According to the Plaintiff, it is one of India's oldest and leading tyre companies manufacturing and marketing automotive tyres, tubes, flaps and other like goods since the last nearly seven decades, through its predecessors. Vide deeds of assignment dated 22nd November 1978 and 6th October 2010 all rights in the trade mark CEAT, held in India and worldwide, came to be assigned in favour of the Plaintiff. The Plaintiff is thus the subsequent proprietor of the trade mark CEAT worldwide. It is stated that the trade mark CEAT is in use since the year 1951 by the Plaintiff, through its predecessors. CEAT is the house mark of the Plaintiff and appears on all of Plaintiff's products. Plaintiff has used the trade mark CEAT extensively all across India and has widely publicized the said trade mark. As a result thereof, the trade mark CEAT is distinctive of and is exclusively identified by the Plaintiff.

5. It is stated that in the year 2008, Plaintiff engaged the services of a design agency, who through its employee had designed, under a contract of service, a new artistic label of CEAT. Colour representation of such CEAT label is appended at Exhibit D to the Plaintiff. It is stated that Plaintiff has obtained copyright registration in its CEAT artistic label, copy of the registration certificate whereof is appended at Exhibit E to the Plaintiff. It is stated that Plaintiff is the registered proprietor of the trade mark CEAT and of marks wherein CEAT occupies a leading and memorable feature. Details of such registrations are mentioned in para 8 of the Plaintiff. Copies of the trade mark registration certificates and online status pages of such registrations are appended at Exhibit F to the Plaintiff. In addition thereto, Plaintiff has also appended a list of its various trade mark registrations wherein the mark CEAT occupies an essential and memorable feature at Exhibit G to the Plaintiff.
6. Plaintiff has also disclosed a list of the various countries wherein its trade mark CEAT is duly registered, the same is appended at Exhibit H to the Plaintiff. It is stated that the Plaintiff's sales turnover is in excess of Rs. 11,000 crores and the Plaintiff produces approximately 43 million tyres a year which products are exported to around 100 countries globally. It is stated that the Plaintiff has a network of 5200 dealers, distributors and around 800 retailers located across India. It is stated that the Plaintiff is a recipient of several awards, a list whereof is appended at Exhibit I to the Plaintiff. A statement of the annual sales turnover and advertisement figures of the Plaintiff for the trade mark CEAT is appended at Exhibit J to the Plaintiff. It is

stated that for the financial year 2023-24, the Plaintiff has sold CEAT branded products in excess of Rs. 11,715.44 crores and for the corresponding period has spent an amount in excess of Rs. 249.74 crores. Copies of sales invoices and advertisement cuttings evidencing use of CEAT are appended at Exhibit K to the Plaintiff.

7. It is stated that being a pioneer in the tyre manufacturing industry, Plaintiff continuously undertakes research and development to improve the strength, grip and quality of its tyres. It is stated that Plaintiff has over the years designed new and original surfaced patterns for different types and sizes of its tyres to ensure durability, smooth ride and secure grip on the roads. It is stated that in and around the year 2020, Plaintiff has developed a new tyre tread design in respect of its All Terrain (AT) tyres, for use in motor vehicles and has named it CROSSDRIVE AT. It is stated that the Plaintiff has been using its CROSSDRIVE AT tyre since May 2022 and color pictures whereof are appended at Exhibit L to Plaintiff. At Exhibit M to the Plaintiff, Plaintiff has appended a statement of its annual sales turnover for its CROSSDRIVE AT tyre along with copies of few randomly drawn sales invoices. Plaintiff has also furnished at Exhibit N to the Plaintiff copies of promotional and publicity materials and screenshots of links evidencing use of its CROSSDRIVE AT tyre bearing the distinctive tread design and pattern. Plaintiff has appended at Exhibit O to the Plaintiff, screenshots of its CROSSDRIVE AT tyre appearing on its website www.ceat.com.

8. Plaintiff has been vigilant in protecting its rights in the trade

mark CEAT from being infringed and has filed civil suits against infringers found to be violating upon its rights. Plaintiff has appended at Exhibit P to the Plaint, copies of two such orders passed by this Court in favour of the Plaintiff. Plaintiff's trade mark CEAT has been declared as a well known trade mark both by the Courts and by the Registrar of Trade Marks and a printout of the publication in the Trade Marks Journal declaring CEAT as a well known trade mark of the Plaintiff is appended at Exhibit R to the Plaint.

9. According to the Plaintiff, on 4th September 2024, it came across a video commercial advertisement uploaded by the Defendant on YouTube advertising its APOLLO APTERRA AT² tyre used in relation to Mahindra THAR sports utility vehicle (SUV for short) wherein the Defendant has unfairly shown the Plaintiff's CROSSDRIVE AT tyre depicting it to be worn out while cleverly blurring the Plaintiff's trade mark CEAT embossed therein and has compared the same to a fresh and brand new APOLLO APTERRA AT² tyre. It is stated that from the advertisement campaigns undertaken by the Defendant on various online platforms, viz. YouTube, X, Instagram, LinkedIn, Facebook, a message is sought to be conveyed to the purchasers that the Plaintiff's CEAT all terrain tyres are of inferior and sub-standard quality; are inferior to the Defendant's APOLLO APTERRA AT² tyre and are to be discarded. It is stated that the Plaintiff's CEAT all terrain tyres have been rubbished and made to show in poor light in the said advertisement.
10. Mr. Tulzapurkar draws my attention to the VC advertisement. He submits that the intention of the Defendant appears to be to

mock and ridicule the Plaintiff's CROSSDRIVE AT tyre visible in the black Mahindra THAR SUV car. Plaintiff has appended at Exhibit U to the Plaint, colour representations of the Plaintiff's CROSSDRIVE AT tyre as represented in the VC advertisement, which is not only shown to be worn out but is also tampered with by buffing and blurring the Plaintiff's trade mark therefrom. He submits that from the remnants of the tread pattern visible on the side of the front left tyre of the black Mahindra THAR SUV car used by the Defendants in its advertisement, the Plaintiff is able to identify the use of its CROSSDRIVE AT tyre therein. Mr. Tulzapurkar submits that the impugned VC advertisement has attracted comments from members of the public who have been deceived and have identified the impugned spoken words "SEE-IT, SEE-IT" and "SETH" in the Defendant's impugned VC advertisement to be a clear reference to the Plaintiff's trade mark CEAT. He submits that the disclaimer along with the impugned advertisement is barely visible and is of no significance.

11. He submits that the Defendant's advertisement when looked at in its entirety seeks to portray the Plaintiff's CROSSDRIVE AT tyre in bad light when compared with its brand new APOLLO APTERRA AT² tyre. At Exhibits V1 and V2 to the Plaint, the Plaintiff has appended colour representations of its worn out CROSSDRIVE AT tyre as shown in the impugned advertisement and its actual tyre when it is worn out to the extent of 80%, respectively. He submits that the message conveyed by the Defendant's advertisement amounts to disparagement and slander of the Plaintiff's CROSSDRIVE AT tyre. He further

submits that the use of the spoken words “SEE-IT, SEE-IT” and “SETH” in the impugned VC advertisement, being phonetically identical and/or deceptively similar to the Plaintiff’s trade mark CEAT, constitute infringement of the Plaintiff’s trade mark under Section 29(9) of the Trade Marks Act. Mr. Tulzapurkar has placed reliance on *Gujarat Coop. Milk Marketing Federation Ltd. v. Hindustan Unilever Ltd., 2018 SCC OnLine Bom 7265 and USV (P) Ltd. vs. Hindustan Unilever Ltd. reported in 2022 SCC OnLine Bom 1471.*

12. Mr. Tulzapurkar submits that the rival products belong to the same category of products viz. tyres. Both the rival products are majorly sold through word of mouth of purchasers. He submits that the impugned advertisement, by being circulated on YouTube, Instagram, X, LinkedIn, Facebook, all of which have a large customer base, has severely disparaged the Plaintiff’s said CROSSDRIVE AT tyre and has injured the goodwill and reputation of the Plaintiff in the said product besides prejudicially affecting the Plaintiff’s market reputation and goodwill including the substantial goodwill acquired by the Plaintiff in the said product and in its well known trade mark CEAT. He submits that in these circumstances, it is in the interest of justice that ad-interim orders are granted to the Plaintiff.
13. I have considered the submissions advanced on behalf of the Plaintiff and I have perused the record. I have seen the Defendant’s impugned VC advertisement and the story board thereof at Exhibit T to the Plaint. The storyline of the Defendant’s VC advertisement at paragraph 16 of the Plaint is reproduced below:

*“The Defendant’s VC advertisement makes use of two THAR SUV cars, one black and the other maroon in colour, parked alongside each other. While the black MAHINDRA THAR SUV car reveals worn out tyres, claimed to be of the Plaintiff’s CROSSDRIVE AT make, the maroon Mahindra THAR SUV car reveals the Defendant’s brand new APOLLO APTERRA AT² tyres. The storyline/storyboard in the Defendant’s VC advertisement proceeds in a manner where the front left tyre of the black Mahindra THAR SUV is talking to the front right tyre of the maroon Mahindra THAR SUV car. In the first frame as soon as the maroon Mahindra THAR SUV car pulls-in beside the black Mahindra THAR SUV car, the front right tyre of the maroon Mahindra THAR SUV car addresses the front left tyre of the black Mahindra THAR SUV car as **“Aree Seth! Tum toh pehchaan mein hi nahin aa rahe yaar”** which literally means that the front left tyre of the black Mahindra THAR SUV car is not recognizable as an All Terrain tyre. Further, the rival tyres of both cars continue their conversation where black Mahindra THAR SUV car tyre laments about the friction felt between the tyre and the road on account its poor condition, to which the maroon Mahindra THAR SUV car tyre ridicules by taunting **“Par tum toh all-terrain tyre ho na ?”**. While responding, the black Mahindra THAR SUV car tyre retorts once again saying **“Meri halat dekh ke lagta hai ?”**, thereby once again pointing*

to its fragile/worn out condition while the video also focuses on the poor condition of the said tyre. In the immediate next frame of the VC advertisement, the black Mahindra THAR SUV car tyre continues to lament further saying “SEE-IT, SEE-IT !.....road ne toh ghis di yaar....meri grip” and the video instantly focuses on movement of the tyre whilst yet again highlighting its worn out condition and thus its blurred tyre tread pattern. The maroon Mahindra THAR SUV car tyre once again tauntingly states “Arre, road ki tension chod. Just Go The Distance....Chal, See you” and video simultaneously focuses on the Defendant’s APOLLO APTERRA AT² tyre which is brand new in condition and thereafter the said maroon Mahindra THAR SUV car excitedly zooms past as if to mock and ridicule the black Mahindra THAR SUV car on account of its worn out state. The Defendant’s VC advertisement thereafter mentions a closing remark “Excuses ke chakkar mein mat pado. Apollo Apterra lagao aur ghoomte raho. Iski High Durability, Superb Grip aur Puncture Resistance de reliable performance on every terrain” which again seeks to mock at the dormant condition of the black Mahindra THAR SUV car on account of its poor gripping as also highlighting the positives of the Defendant’s APOLLO APTERRA AT² tyre. Additionally, throughout the advertisement the Defendant has inserted a disclaimer “All characters appearing in this work are fictitious. Any resemblance

to real-life people or entities is purely coincidental.”

The last frame of the Defendant’s VC advertisement shows the rival tyres approaching each other from opposite directions the Defendant’s APOLLO APTERRA AT² tyre pushing away the worn out tyre thereby implying that the Plaintiff’s CROSSDRIVE AT tyre is no-match and a non-starter when compared with the Defendant’s said tyre. Additionally, the use of the word “entities” in the Defendant’s disclaimer also suggests that the Defendant is consciously aware that the same bears reference to a juristic company viz. the Plaintiff, which it conveniently seeks to disclaim.”

14. Recently, I have passed an order dated 5th September 2024, in the matter between *Hindustan Unilever Limited vs. Abbott Laboratories & Ors., Interim Application (L) No. 27529 of 2024 in Commercial IPR Suit (L) No. 27527 of 2024*, wherein I have observed as under:

“20. I have considered the submissions advanced on behalf of the Plaintiff and I have perused the record. Before I get into the facts of the case, I find it appropriate to reproduce some well- established principles in a case for disparagement of goods. **It is a settled law that a tradesman is entitled to declare his goods to be the best in the world or to say that his product is better than his competitor's, however, while doing so he cannot directly or indirectly say that the goods of his competitors are bad or inferior and if he does so then he really slanders the goods of his**

competitors and defames his competitors and their goods which is not permissible. Further, it is equally well settled that to decide the question of disparagement, three factors are crucial viz. (i) Intent of the commercial; (ii) Manner of the commercial; and (iii) storyline of the commercial and the message sought to be conveyed by the commercial. Out of these three factors, the “manner of commercial” is very important and if the manner of commercial is ridiculing or condemning the product of the competitor, it amounts to disparagement. The reliance upon the *Gujarat Co-operative Milk Marketing Federation Ltd. (supra)* by Mr. Kamod is apposite.

24. As laid down by a Division Bench of this Court in *USV Private Limited (supra)*, an advertiser of a product has full freedom to talk about the good aspect of its product and use exaggerations or simple truth to catch the eyes of the consumer. However, there is also caution which the advertiser needs to adhere to in order to ensure that in the process, it does not ridicule or disrepute the other products in the same category, which in the present case I am of the prima facie view, the Defendant Nos. 1 and 2 have clearly done so.”

(Emphasis Added)

15. Coming to the facts of the case, *prima facie*, the record shows that the Plaintiff is the registered

proprietor of the said trade mark CEAT, which has been declared as a well known trade mark. *Prima facie*, it appears that the Plaintiff is the owner of the unique and distinctive tread pattern of its CROSSDRIVE AT tyre and that it has acquired goodwill and reputation in respect thereof. Upon seeing the impugned advertisement and the story board, *prima facie*, I am of the considered opinion that the Impugned Advertisement does in fact unfairly seeks to compare the Plaintiff's worn out tyre with the Defendant's brand new tyre and the basic premise of the impugned advertisement is to denigrate and slander the Plaintiff's said CROSSDRIVE AT tyre. The use of: (i) spoken words "SEE-IT, SEE-IT" and "SETH", (ii) the conversation between rival tyres where one is shown to grumble and other taunt and flaunt, (iii) visual representation denoting the worn out condition of the Plaintiff's tyre as against the Defendant's tyre in a new condition, (iv) the mocking and ridiculing of the Plaintiff's worn out tyre through the use of spoken words and visual representation of *inter alia* the stationary position of the car owing to fragile condition of the Plaintiff's tyre as well as the maroon car with the Defendant's tyre zooming past the black car with the Plaintiff's tyre, and (v) the comments posted by the members of the general public who have identified the Plaintiff's tyre in the impugned VC advertisement is sufficient evidence of disparagement and slander of Plaintiff's goods knowingly undertaken by the Defendant. The reference to the Plaintiff i.e. CEAT and its tyres in the

impugned VC advertisement is evident. The depiction of the Plaintiff's tyre in the impugned VC advertisement and the use of the words "SEE-IT, SEE-IT" and "SETH" (phonetically similar to CEAT) is not a mere coincidence and the context and the manner in which it has been used makes it evident that the intention of the Defendant is to create a bias in the mind of the viewers. The disclaimer shown through the length of the impugned VC advertisement is of no significance since it is hardly visible to the viewer.

16. In view of the above, applying the well settled principles of disparagement to the present case and after considering the manner, intent and message conveyed by the impugned advertisement, I *prima facie* find that the impugned advertisement denigrates and disparages the Plaintiff's said product. In the aforesaid circumstances, I am satisfied that the Plaintiff has made out a strong *prima facie* case for the grant of *ad-interim* reliefs. The balance of convenience is in favour of the Plaintiff. Unless reliefs as prayed for are granted, the Plaintiff will suffer irreparable harm / injury which cannot be compensated in terms of money. The Defendant is not present despite notice. There are no equities in favour of the Defendant. In the circumstances, there shall be *ad-interim* relief in terms of prayer clauses (a), (b), (c)(i), (d) and (e) of the Interim Application against the Defendant, except the bracketed portions, as reproduced below :

(a) pending the hearing and final disposal of this suit, the Defendant by themselves, their directors, servants,

officers, agents, distributors, dealers, representatives, assignees and all those connected with the Defendant in their business be restrained by an order and temporary injunction of this Hon'ble Court from in any manner circulating/sharing broadcasting or otherwise howsoever communicating to anyone, the public including trade channels or publishing the impugned advertisement (appended at Exhibit T to the Plaint) or any part thereof [or any other advertisement of a similar nature] in any language or in any manner causing the impugned advertisement or any part thereof [or any other advertisement of a similar nature] to be telecast or broadcast or shared or communicated to anyone or public or published on any online platform including social media platform or in any other manner whatsoever;

(b) pending the hearing and final disposal of this suit, the Defendant by themselves, their directors, servants, officers, agents, distributors, dealers, representatives, assignees and all those connected with the Defendant in their business be restrained by an order and temporary injunction of this Hon'ble Court from disparaging or denigrating the Plaintiff's said CROSSDRIVE AT tyre by in any manner circulating/sharing broadcasting or otherwise howsoever communicating to anyone, the public including trade channels or publishing the impugned

advertisement (appended at Exhibit T to the Plaintiff) or any part thereof [or any other advertisement of a similar nature] in any language or in any manner causing the impugned advertisement or any part thereof [or any other advertisement of a similar nature] to be telecast or broadcast or shared or communicated to anyone or public or published on any online platform including social media platform;

(c) pending the hearing and final disposal of this suit, the Defendant by themselves, their directors, servants, officers, agents, distributors, dealers, representatives, assignees and all those connected with the Defendant in their business be directed by a mandatory order and temporary injunction of this Hon'ble Court to (i) recall / delete / take down the impugned advertisement (appended at Exhibit T to the Plaintiff) from all platforms where it is circulated;

(d) pending the hearing and final disposal of this suit, the Defendant by themselves, their directors, servants, officers, agents, distributors, dealers, representatives, assignees and all those connected with the Defendant in their business be restrained by an order and temporary injunction of this Hon'ble Court from infringing the Plaintiff's aforesaid trade mark CEAT registered under Nos. 204251, 466079, 605276, 4270896, 4270895, 4400622, 3573642, 5790831, and 1678126 amongst others; all in class 12 by using the

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words SETH, SEE-IT in the Impugned Advertisement or by visual representation or depiction or by spoken use of the said words or any other words deceptively similar to the Plaintiff's registered trade mark CEAT or in any other manner whatsoever;

17. The Plaintiff shall serve a copy of this order upon the Defendant and file an affidavit of service on or before the next date of hearing.

18. List the above Interim Application on 11th October, 2024 for further consideration on the ad-interim reliefs.

[R.I. CHAGLA J.]