

Sharayu Khot.

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

INTERIM APPLICATION (L) NO. 33060 OF 2024

IN

COMMERCIAL IPR SUIT (L) NO. 32860 OF 2024

Skechers South Asia Pvt. Ltd. & Ors.

...Applicants/  
Plaintiffs

*Versus*

Wardrode & Ors.

...Defendants

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Mr. Hiren Kamod along with Ms. Smriti Yadav, Mr. Shubham Shende,  
i/b Khaitan & Co. for the Plaintiff.  
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CORAM : R.I. CHAGLA J

DATE : 24 October 2024

ORDER :

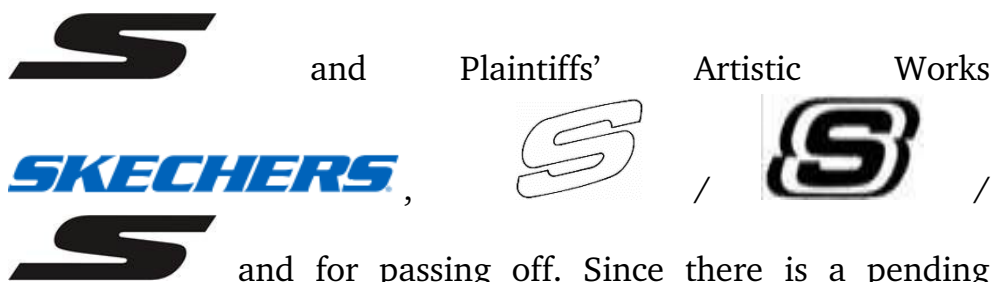
1. The Plaintiffs seek to move without notice to the Defendants for the reasons set out in paragraph 33 of the Plaint and paragraph 4 of the Interim Application. I find that the Plaint contains disclosures sufficient to sustain an *ex-parte* application for ad-interim reliefs.
2. The Suit is for infringement of trade mark, copyright in relation to the Plaintiffs' Trade Marks including the trade marks

SKECHERS (word per se) /





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and for passing off. Since there is a pending Petition for leave under Clause XIV of Letters Patent, Mr. Kamod, Ld. Advocate for the Plaintiffs, restricts his application to the reliefs for infringement of trade mark and passing off.

- It is stated that the trade mark 'SKECHERS' was adopted in or about the year 1992 in respect of the Plaintiffs goods pertaining to footwear etc. and related services. It is stated that Plaintiff No.2, designs, develops and markets uniquely and distinctively designed branded lifestyle footwear, apparels and accessories for men, women and children, performance footwear for men and women under the 'Skechers Work' brand name as well as permits other parties to use the trade mark 'Skechers' for accessories, pet accessories, leather goods, eye wear and medical scrubs amongst others. It is stated that Plaintiff No.3 is a wholly owned subsidiary of Plaintiff No.2. It is stated that Plaintiff No.3 is the registered proprietor of the trade mark 'Skechers' and its

variants, and its reputed 'S' logos such as  /  and its variants (**Plaintiffs Trade Marks**). It is

stated that Plaintiff No.3 has licensed the Plaintiffs' Trade Marks to Plaintiff No.1 for use in relation to various products including footwear, apparel, bags, eyewear, accessories and other related goods for men, women, and children of all ages in India (**said Goods**). It is stated that all goodwill arising from the same ultimately accrues in favour of Plaintiff No.3 Details of such trade mark registrations are mentioned in paragraph 9 of the **Plaint**. Copies of registration certificates / status pages from the online records of the Trade Marks Registry are at Exhibit C to the **Plaint**. It is stated that the Plaintiffs have also created and

represented the Plaintiffs' Trade Marks in a unique label bearing distinct fonts of writing such as **SKECHERS**,



etc. (Plaintiffs' Artistic Works). Averments pertaining to the Plaintiffs' ownership of copyright in the Plaintiffs' Artistic Works are mentioned in paragraph 10 of the Plaint and a list thereof is appended at Exhibit D. Copies of specimen advertisement and promotional materials are at Exhibit E to the Plaint. Copies of screenshots of the Plaintiffs promoting their said Goods on social media websites are at Exhibit F to the Plaint. A certified copy of the statement of sales figures and marketing expenditure incurred by the Plaintiffs in respect of the Plaintiffs' Trade Marks and Plaintiffs' Artistic Works in India from 2012-2013 onwards is at Exhibit G to the Plaint. Plaintiff has appended specimen sales invoices/tax invoices/delivery challans at Exhibit H to the Plaint.




4. It is stated that the Plaintiffs have been vigilantly protecting their statutory and common law rights subsisting in the Plaintiffs' Trade Marks and the Plaintiffs' Artistic Works.
5. According to the Plaintiffs, in or about the second week of October 2024, an officer of the investigating agency hired by the Plaintiffs, came across the Impugned Goods in the premises of the Defendants in Nashik and Indore bearing the Plaintiffs' Trade Marks and Plaintiffs' Artistic Works, which are an imitation of the Plaintiffs' said Goods. Photographs / representations of the Defendants' impugned goods along with Defendants' shop names are at Exhibit I to the Plaint. It is stated that the Plaintiffs have thereafter examined the Impugned Goods and basis the quality of the Impugned Goods, the materials used, the stitching, the MRP etc., it was clear that the same do not originate from the Plaintiffs. It is stated that the Impugned Goods are clear imitations of the Plaintiffs' said Goods bearing the Plaintiffs' Trade Marks and the Plaintiffs' Artistic

Works and that the same are in fact counterfeits / lookalikes. It is stated that from the investigation conducted, it appears that the Defendants are connected with each other and that they are operating in a clandestine manner, and further, that the source of the Impugned Goods also appears to be common. It is stated that the Plaintiffs have thereafter conducted a search on the website of the Trade Marks Registry for the Plaintiffs' Trade Marks in relevant class viz. class 25 for checking if the Defendants have filed any applications for registration of the impugned marks. However, it is stated that the Plaintiffs have not come across any applications filed by the Defendants. It is further stated that details of Defendant No.2 are available on various social medial websites such as [www.facebook.com](http://www.facebook.com) and [www.instagram.com](http://www.instagram.com). Relevant print outs from [www.facebook.com](http://www.facebook.com) and [www.instagram.com](http://www.instagram.com) are at Exhibit J to the Plaintiff.



6. Mr. Kamod submits that the Defendants have bodily lifted the Plaintiffs' Trade Marks / Plaintiffs' Artistic Works, and that as such the rival marks are identical and/or deceptively similar and that the Impugned Goods bear a substantial reproduction of the Plaintiffs' Artistic Works. He submits that even a cursory look at the Impugned Goods would reveal that the same are an obvious copy / slavish imitation of the Plaintiffs' said Goods bearing the Plaintiffs' Trade Marks and the Plaintiffs' Artistic Works. He submits that the adoption of the Plaintiffs' Trade Marks and the Plaintiffs' Artistic Works in relation to the Impugned Goods by the Defendants is dishonest. He submits that the Impugned Goods are nothing but counterfeits and that the adoption by the Defendants of the Plaintiffs' Trade Marks and the Plaintiffs' Artistic Works is a deliberate attempt to come as close as possible to the Plaintiffs.
7. Mr. Kamod submits that considering the dishonest conduct of the Defendants coupled with the dishonesty in their adoption, the Plaintiffs apprehend that if the Defendants are given notice

of the present application, there is a strong likelihood that the Defendants would remove the Impugned Goods / counterfeits bearing the Plaintiffs' Trade Marks and the Plaintiffs' Artistic Works from their possession, custody and/or control and sell or part with possession thereof or dump the Impugned Goods in the market and that this would defeat the very purpose of making the present application. In such circumstances, he submits that it is absolutely just and necessary that an *ex-parte* ad-interim order be passed restraining the Defendants from committing acts of trade mark infringement and copyright.

8. I have heard the submissions advanced by the Ld. Advocate for the Plaintiffs and perused the record. *Prima facie*, the Plaintiffs are the registered proprietors of the Plaintiffs' Trade Marks

SKECHERS /  /  /  as detailed in the table at paragraph 9 of the Plaint. *Prima facie*, the Plaintiffs are the owners of copyright subsisting in the Plaintiffs'

Artistic Works ,  /

 /  etc., the particulars whereof are detailed at Exhibit D to the Plaint. The Plaintiffs have acquired reputation and goodwill in the Plaintiffs' Trade Marks and the Plaintiffs' Artistic Works. From the Impugned Goods shown at Exhibit I to the Plaint, it is clear that the Defendants' Impugned Goods are counterfeits. The Defendants have bodily lifted the Plaintiffs' Trade Marks and the Plaintiffs' Artistic Works and have applied the same to the Impugned Goods. I am of the view that the adoption of the Plaintiffs' Trade Marks and the Plaintiffs' Artistic Works in relation to the Impugned Goods by the Defendants is dishonest.

9. In the aforementioned circumstances, I find that that a strong *prima facie* case for infringement of trade marks and copyright has been made out by the Plaintiffs. The balance of convenience is also in favour of Plaintiffs. Unless the reliefs sought for are granted, the Plaintiffs will suffer or are likely to suffer irreparable harm, loss and injury. In view of what is stated in paragraph 33 of the Plaint and the foregoing discussion, I am satisfied that giving any notice to the Defendants before passing the present order would defeat the very purpose of granting ad-interim reliefs. In these circumstances, there shall be an ad-interim order in terms of prayer clauses (a), (b) and (d) of the Interim Application which read thus:

*“(a) that pending the hearing and final disposal of the suit, the Defendants, directly or indirectly, by themselves, their concerns, firms, partners, servants, employees, agents, dealers, distributors and all persons claiming under them be restrained by a perpetual order and injunction of this Hon’ble Court from using or causing to be used the Plaintiffs’ Artistic Works or any other artistic work identical or similar to the Plaintiff’s Artistic Works in relation to the Impugned Goods or any goods or in any manner from manufacturing, marketing or offering for sale, advertising or dealing in any goods bearing the Plaintiffs’ Artistic Works or any other artistic work identical or similar to the Plaintiff’s Artistic Works so as to infringe the Plaintiff’s copyright subsisting in the Plaintiff’s Artistic Works;*

*(b) that pending the hearing and final disposal of the suit, the Defendants, directly or indirectly, by themselves, their concerns, firms, partners, servants, employees, agents, dealers, distributors and all persons claiming under them be restrained by a perpetual order and injunction of this Hon’ble Court from using or causing to be used the Plaintiffs’ Trade Marks or any mark which is identical or similar to the Plaintiffs’ Trade Marks in relation to the Impugned Goods or any goods or in any manner from manufacturing, marketing or offering for sale, advertising or dealing in any goods bearing the Plaintiffs’ Trade Marks*

*or any other mark which is identical or similar to the Plaintiffs' Trade Marks so as to infringe the Plaintiffs' Trade Marks;*

*(d) that pending the hearing and final disposal of the suit, the Court Receiver, High Court, Bombay or such fit and proper person as this Hon'ble Court may deem fit and proper be appointed Receiver with all power under Order XL Rule 1 and Order XXXIX Rule 7 of the Code of Civil Procedure, 1908 to attend and search the Defendants' premises at the addresses mentioned in the cause title as well as any other warehouses and / or the premises of any partner, dealer, manufacturer, distributor, retailer, agent, licensee, shop etc. (including on Court holidays and vacations) and to make an inventory, seize and take possession / custody of Impugned Goods and any signage, boards, banners, hoardings, advertisement materials, books of account and other records, invoices, promotional materials, packaging material, stationery, labels, stickers or any other material bearing the Plaintiffs' Trade Marks and Plaintiffs' Artistic Works or any other mark or artistic work identical or similar to the Plaintiffs' Trade Marks and Plaintiffs' Artistic Works and the Defendants, directly or indirectly, by themselves, their concerns, firms, partners, servants, employees, agents, dealers, distributors and all persons claiming under them, 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 be entitled to avail protection or assistance from police or other governmental agencies or local authorities (if required), in carrying out the orders of this Hon'ble Court, that the Court Receiver be entitled to break open any locks at the premises of the Defendants at any time for the purpose of implementing the orders of this Hon'ble Court as sought hereinabove;"*

10. It is clarified that the order shall not prevent the Defendants from selling original / legitimate goods upon which the Plaintiffs' Trade Marks and the Plaintiffs' Artistic Works have been affixed by the Plaintiffs or any other person authorized by the



Plaintiffs, if any, sourced from legitimate sources, though the order shall apply to all other products, bags, invoices, signboards, material bearing the Plaintiffs' Trade Marks and the Plaintiffs' Artistic Works which is not authorized by the Plaintiffs. It is also clarified that insofar as prayer clause (d) is concerned, a representative of the Plaintiffs shall accompany the Additional Special Receivers at the time of execution of the order and assist the Additional Special Receivers in identifying all counterfeit / unauthorized products, packaging material or such other material which alone shall be seized and sealed.

11. The Court Receiver, High Court, Bombay is appointed with the following powers and directions, viz.:
  - a. All powers under Order 40 Rule 1 and Order 39 Rule 7 C.P.C., except the power of sale;
  - a. A direction to visit and search all premises of the Defendants, forcibly breaking open locks, if necessary; and also, where necessary, with police assistance;
  - b. A direction to seize and seal in the Defendants' premises all the offending goods, including, cartons, dyes, moulds, printing equipment and material and other material of all description that carry the impugned packaging / label / trade dress;
  - c. A direction to make an inventory of all the material, equipment, etc.
12. For the effective, expeditious and practical implementation of this order, there will be a need for the appointment of Additional Special Receivers since the Defendants are in Nashik and Indore.
  - a. The Ld. Advocate for the Plaintiffs has given me the names of the Advocates who can be appointed as Additional Special Receivers to assist the Court Receiver attached to this Court.



- a. Virendra Lonari, Advocate is appointed as Additional Special Receiver to execute this order in Nashik, and Prakhar Karpe and Mohit Pandya and Shrey Chandak, Advocates are appointed as Additional Special Receivers to execute this order in Indore.
- b. The fees of each of the Additional Special Receivers for executing the commission is fixed at Rs.25,000/- per day or part thereof. These fees will be paid by the Plaintiffs in the first instance, but the Plaintiffs are at liberty to seek these costs at the final hearing of the Suit.
- c. It is clarified that the Court Receiver, High Court, Bombay also stands appointed and that the appointment of Virendra Lonari, Prakhar Karpe, Mohit Pandya and Shrey Chandak, Advocates to execute this order in Indore is only for convenience.
- d. The Additional Special Receivers will submit their reports by email to the Court Receiver, High Court, Bombay at the following email id: [crcvr-bhc@nic.in](mailto:crcvr-bhc@nic.in)
- e. The contact details of the Additional Special Receivers are as follows:

Name: Virendra Lonari

Address: Sarve No-50/1 A, Plot No – 33, Malhar Bungalow, Makhamalabad road, Nashik, Tambe mala, Nashik, Panchavati, Maharashtra - 422003

Email: [virendralonari@gmail.com](mailto:virendralonari@gmail.com)

Phone: +91 9921504873

Enrollment No.: MAH/2496/2008

Name: Prakhar Karpe

Address: 703 B, the One, RNT Marg, South Tukoganj, Indore (M.P)

Email: [karpelawassociates@gmail.com](mailto:karpelawassociates@gmail.com)

Phone: +91 9833504533

Enrollment No.: MP/1010-A/2015

Name: Mohit Pandya  
Address: 109, Chaitanya Complex, behind District Court, Indore (M.P.)  
Email: [mohitpandya18@gmail.com](mailto:mohitpandya18@gmail.com)  
Phone: +91 9617455553  
Enrollment No.: MP/1112/2017

Name: Shrey Chandak  
Address: G12, Neha Apartment, Collector office, Indore (M.P.)  
Email: [advshreychandak@gmail.com](mailto:advshreychandak@gmail.com)  
Phone: +91 9111420858  
Enrollment No.: MP/3025/2023

- f. Execution and implementation of the order:
- i. The Additional Special Receivers are empowered and authorized, acting on an authenticated copy of this order, to take assistance of the local police authorities in the execution of this commission.
  - ii. The Police authorities concerned are directed to forthwith act on production of a digitally signed copy of this order at no cost.
  - iii. The Court Receiver will issue necessary letters of authority to enable the local police to act.
  - iv. The Additional Special Receivers are directed to seize and seal all impugned goods and make inventory of such seized goods.
  - v. The Additional Special Receivers may, if necessary, break open any locks with the assistance of the Police.
  - vi. The Additional Special Receivers are to visit the address of the Defendants and any such other locations/addresses as may be pointed out by the Plaintiffs' representatives, and seize and seal all the infringing goods of the Defendants.

- vii. The counterfeit goods will presently be stored not in the Defendants' premises, but in a place to be provided by the Plaintiffs, initially at the Plaintiffs' cost, on *superdari*. The Plaintiffs are at liberty to seek these costs at the final hearing of the Suit.
13. In the facts and circumstances of the case, the Court Receiver, High Court, Bombay will not insist upon production of a hard copy of this order, but will act on production of a soft copy digitally signed.
14. This order is not to be uploaded until the Court Receiver, High Court Bombay and Additional Special Receivers execute their commission as above.
15. The Plaintiffs will comply with the provisions of Order 39 Rule 3 C.P.C. within 14 days of the Court Receiver and the Additional Special Receiver completing executing the commission under this order.
16. The Advocates for the Plaintiffs will lodge the digital copy of this order with the office of the Court Receiver within five days of such copy being made available. Upon the same being lodged with the Court Receiver, compliance with Rule 596 of the Bombay High Court (O.S.) Rules is dispensed with.
17. Liberty to the Defendants to apply for a variation, modification or recall of this order after at least 7 clear working days' notice to the Advocates of the Plaintiff.
18. The Additional Special Receivers will submit their reports by email to the Office of the Court Receiver by 3 December 2024.
19. The Court Receiver will submit a report to the Court on or before 10 December 2024.

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20. List the above Interim Application on 10 December 2024.
21. This order will continue till 11 December 2024.
22. This order will be digitally signed by the Private Secretary / Personal Assistant of this Court. All concerned will act on production of a digitally signed copy of this order.

**[R.I. CHAGLA J.]**