

IN THE COMMERCIAL COURT AT CITY CIVIL COURT AHMEDABAD

COMMERCIAL TRADEMARK SUIT NO.23 OF 2019

Plaintiff: PepsiCo India Holdings Pvt. Ltd.

Versus

Defendant: Bipin Patel

Appearance:

Mr. B.H. Chhatrapati, Ld. Counsel for the plaintiff

ORDER BELOW APPLICATION EXH.7 & EXH.1

1. The plaintiff has instituted the present suit for seeking permanent injunction to restrain infringement of plant variety registered under the provisions of the Protection of Plant Varieties and Farmers' Rights Act, 2001 ('the said Act' for short) and passing off.

2. Along with the suit, the plaintiff has also filed an application under Order XXXIX, Rules 1 and 2 and section 151 of the Code of Civil Procedure, 1908 for seeking relief of ad-interim injunction against the defendant.

3. I have heard the Learned Counsel for the plaintiff. The Learned Counsel for the plaintiff has vehemently submitted that the plaintiff is the registered breeder of the potato plant variety 'FL 2027' (commercial name FC-5) which is registered under the provisions of the said Act. The said registration was granted to the plaintiff on 1st

February, 2016 and is valid and subsisting as on date. The Learned Counsel for the plaintiff has further submitted that the Registered Variety of potatoes breeds are being used by the plaintiff for manufacturing potato chips which are sold under the popular brand name/trade mark LAY'S. The Learned Counsel for the plaintiff has further submitted that the defendant has been illegally growing, producing, selling without permission of the plaintiff, such Variety in violation of the plaintiffs' statutory right granted under sections 64 and 65 of the said Act. The Learned Counsel for the plaintiff has further submitted that the defendant is violating the right of the plaintiff as granted under sections 64 and 65 of the said Act. He has further submitted that the Registered Variety is the hybrid of FL 1867 and Wischip varieties. In the year 1999, the denomination FL 2027 was coined and assigned to the said variety. In India, the Registered Variety was first put to commercial use in 2009 and has been traded under the trademark FC-5 by the plaintiff. The plaintiff filed application for registration of the Variety as a 'new variety' with the plant Variety Registry on 2nd February, 2012 and the plaintiff has been granted registration by the Plant Variety Registry and the plaintiff has placed the same at Mark 4/1. The Learned Counsel for the plaintiff has further submitted that the plaintiff has granted license to some farmers, firstly in Punjab to bring potatoes of the said Variety on the buy-back system. In January

2019, it came to the knowledge of the plaintiff that the defendant has started the production of the Variety of the potatoes by infringing the right of the plaintiff under the said Act. The Learned Counsel for the plaintiff has further submitted that the plaintiff has collected the samples from the premises of the defendant in presence of the defendant and the said samples were sent for verification to the in-house laboratory of the plaintiff as well as the laboratory established by the Government at Shimla. The laboratory of the plaintiff as well as the laboratory at Shimla have pointed out that the DNA of the samples collected by the plaintiff from the premises of the defendant, are matched with the DNA of the plaintiff's potato. Therefore, the defendant is infringing the right of the plaintiff under the Protection of Plant Varieties and Farmers' Rights Act, 2001. Learned counsel for the plaintiff has drawn the attention of this court to sections 64 and 65 of the said Act. Learned Counsel for the plaintiff has further submitted that the plaintiff has *prima-facie* case in its favour. He has further submitted that the balance of convenience also lies in favour of the plaintiff. If the plaintiff is not granted ad-interim injunction, the plaintiff would suffer irreparable loss. He has further submitted that delay in granting ad-interim injunction would defeat the very purpose of filing the suit and would cause prejudice to the rights of the plaintiff. Therefore, the plaintiff is entitled for ad-interim injunction.

4. I have considered the submissions of the Learned Counsel for the plaintiff and perused the record. Perusal of the record transpires that the Variety of potato is registered by the Plant Variety Registry, Govt. of India and the certificate has been issued to that effect and the same has been placed at Mark 4/1. Perusal of the documents further transpires that the sample collected by the plaintiff from the premises of the defendant and sent for comparison to the ICAR and Central Potato Research Institute, Shimla, Himachal Pradesh, wherein the report transpires that the DNA of the samples seized from the premises of the defendant and DNA of the potatoes of the plaintiff are matched. I have considered the provisions of sections 64 and 65 of the said Act. At this stage, it appears that the plaintiff has *prima-facie* case in its favour. The balance of convenience also lies in favour of the plaintiff. If the plaintiff is not granted the ad-interim injunction, then the plaintiff would suffer irreparable loss. At this stage, if the ad-interim injunction is not granted in favour of the plaintiff, then the delay would defeat the justice.

5. Having regard to the facts and circumstances of the present case, issue summons to the suit and notice of the present application upon the defendant, returnable on 26th April, 2019, on furnishing the complete set of paper-book, with postal cover and

A.D. card duly affixed with requisite postal stamp, within three days from today.

Direct Service is permitted. Service through e-mail is also permitted.

6. In the meantime, by way of ex-parte ad-interim injunction, the reliefs in terms of paragraph Nos.17(i) and 17(ii) of the present application at Exh.7 are hereby granted in favour of the plaintiff, till the next date of hearing.

Compliance of Order 39 Rule 3 of the Code of Civil Procedure, within three days.

Now to come up on 26th April, 2019.

Dictated & pronounced in the open court on this 8th day of April, 2019.

Ahmedabad.

*Safir**

**(Moolchand Tyagi)
Judge
Commercial Court
Unique ID Code No.GJ01043**