

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

**INTERIM APPLICATION (LODGING) NO.897 OF 2025
IN
COMMERCIAL IP SUIT (LODGING) NO.35513 OF 2024**

Rynox Gears, a Partnership Firm,
having its address at 276/78,
Samuel Street, 17 H.V. Building,
Masjid, Mumbai – 400 003, Maharashtra

...Applicant/
Original Plaintiff

Versus

Steelite India, A Partnership Firm,
having its address at I-18 Sector-8,
DSIDC Bawana Industrial Area,
Delhi – 110 039.
Also at, I-18, DSIDC Industrial Area,
Sector 5, Bawana, Delhi 110 039

...Respondent/
Original Defendant

*Ms. Amreen Khan a/w Ms. Kanishka Chawla i/b Ms. Snehashree Hinge for
the Applicant/Original Plaintiff*

*Mr. Anand Mohan a/w Mr. Prasad A. Kamthe and Mr. Aditya Agarwal for
the Respondent/Original Defendant*

CORAM : SHARMILA U. DESHMUKH, J.

RESERVED ON : FEBRUARY 25, 2026

PRONOUNCED ON : MARCH 17, 2026

JUDGMENT :

1. The present suit for infringement of trademark and passing off.
The Plaintiff has pleaded that the Plaintiff is a partnership firm

engaged in the business of manufacturing and marketing, *inter alia*, of quality goods such as motorcycle protective accessories such as helmets, clothing, and luggage. The Plaintiff was established in the year 2012 and is marketing the aforementioned goods under its trademark RYNOX, which also forms the main and essential feature of the Plaintiff's trade name Rynox Gears. In the year 2019, the Plaintiff conceived and adopted a distinctive label for its trademark RYNOX,



RYNOX.

The Plaintiff has acquired goodwill and reputation in respect of the said trademark and is known as a premier manufacturer, *inter alia*, of motorcycle protective clothing, luggage, and safety helmets. The Plaintiff also owns an e-commerce website under the domain name <https://rynoxgear.com>. The details of about 23 registrations secured by the Plaintiff in various classes of its trademark are detailed in paragraph 7 of the plaint. The chartered accountant certified expenses certificate for promotions and investments, is annexed to the plaint and extracts from e-commerce webpages and specimen sales invoices are annexed to the plaint.

2. It is stated that in the first week of June 2023, the Plaintiff learnt that the Defendant has unauthorizedly and without the consent of the Plaintiff, obtained registration of the trademark label of RHYNOX,



in Class 9 for identical goods. The impugned mark is phonetically identical and deceptively similar to the Plaintiff's registered trade mark/trade name RYNOX, in respect of which rectification application has been filed by the Plaintiff. It is pleaded that the Plaintiff issued cease and desist notice dated 25th October, 2023 calling upon the Defendant to immediately cease and desist from using the impugned mark and pursuant to the receipt of notice, the Defendant took down their website. In month of August, 2024, the Plaintiff learnt that the Defendant continues to infringe the Plaintiff's trade mark and pass off its goods as that of the Plaintiff. Hence the suit came to the filed.

3. The limited affidavit-in-reply contends that there is suppression of facts, as the Plaintiff has made a false statement that it is engaged in business of selling of identical goods as that of the Defendant, i.e., helmets; that it is suppressed that the cease and desist notice came to be returned and false case is pleaded in the plaint that after receipt of the legal notice, the Defendant has taken down its website. The Defendant's products are not available in Mumbai and this Court does

not have jurisdiction. It is pleaded that the Plaintiff is not engaged in the manufacture or sale of protective/safety helmets, which requires Bureau of Indian Standard certification. The Plaintiff's business of specialized motorcycle accessories such as jackets, gloves, apparel, luggage, bags, etc. is different and distinct from the Defendant's business, and that the consumers and the trade channels are different and consumers are discerning. The Plaintiff has no presence in the business of helmets, whereas the Defendant is in the said business since the year 2017. The Defendant's partnership firm was constituted in the year 2016, and in the year 2016, the Defendant's mark was adopted as a homage to the Defendant's partner's home state, i.e. Assam, as the Defendant's mark is centered around the State animal of Assam, i.e. Rhino, which is a symbol of strength and resilience. The artwork associated with the Defendant's mark is an independent creation and is the original artwork. It is pleaded that the Defendant's goods are manufactured and marketed under the Defendant's mark since 2016, and in the year 2019, the Defendant has registered and used the domain name www.rhynoxhelmets.co.in. The Plaintiff's trademark registrations are subsequent to the Defendant's adoption and use of the mark, which was adopted after taking a search in the trademark industry, and hence the use is bona fide and honest. The Defendant commenced the use of the mark in or around 20th December

2016 and applied for registration in Class 9 on 2nd January 2017, which was granted without opposition on 28th November 2020. Since 2016, the Plaintiff has conducted substantial business, and the Chartered Accountant's Certificate is annexed to the affidavit-in-reply. The rectification proceedings have been filed only in the year 2023. The Defendant's use of the mark predates the Plaintiff's trademark publication dated 23rd January 2017. It is pleaded that there is no actionable similarity between the rival marks, as the Plaintiff's device mark/word mark RYNOX and the Defendant's device mark RHYNEX are entirely different. It is pleaded that there is no market overlap or tangible evidence of confusion, since the Plaintiff is not in the helmets segment.

4. In rejoinder affidavit, it is pleaded that the Plaintiff is engaged in the business of motorcycle riding gear and protective accessories, including jackets, pants, gloves, and luggage systems, which products are closely associated with motorcycle safety and form part of the same commercial category and consumer expectations as helmets. The Plaintiff does not currently manufacture helmets, however, the business overlaps with the Defendant's business in terms of product function, trade channels, target consumers, and brand positioning. The goods are cognate, allied, or likely to be associated in the course of

trade. It is pleaded that a cease-and-desist legal notice was duly issued to the Defendant, however, the proof of delivery has been inadvertently misplaced. The Plaintiff is the prior adopter and user of the mark RYNOX since 2012.

5. Ms Khan, learned counsel appearing for the Plaintiff would submit that the Plaintiff had applied for registration of its word mark RYNOX on 31st August 2016, with a user claim of 16th February 2012, which was published in the journal on 23rd January 2017. She submits that the Plaintiff has also obtained a registration of the device mark of RYNOX, which application was filed on 28th November 2019. She would further point out that the Plaintiff's e-commerce website advertises the Plaintiff's motorcycle protective gear, luggage, and accessories under its registered mark RYNOX. She would further point out the media articles about the launch by the Plaintiff of touring accessories and gloves and the events in which the Plaintiff had participated to contend that there was widespread promotion of the Plaintiff's registered mark. She would point out the chartered accountant's certificate which shows the promotional expenses incurred towards the promotion for the RYNOX brand. She would further point out the invoices of the year dated 10th December 2012 annexed at page 210 onwards till page 224, showing the use of the mark since the year 2012

onwards. She would further submit that the duly certified sales turnover for the year 2022–2023 is about Rs. 42 crores. She would further submit that the Defendant's mark RHYNOX is phonetically similar to the Plaintiff's mark. She would submit that there has been actual instance of confusion as one of the e-commerce websites, Meesho, is selling the Defendant's impugned product described under the Plaintiff's registered mark RYNOX .

6. Mr. Mohan, learned counsel appearing for the Defendant would submit that the Defendant has *bona fide* adopted and continuously used the trademark/label in respect of helmets and has secured registration of its mark. He submits that the Defendant applied for registration of its mark on 2nd January 2017, by which date the Plaintiff's trademark application had not even been published. He submits that the action of infringement is not maintainable, as there is no case made out for going beyond the validity of the Defendant's registration.

7. He would further submit that there is no case for grant of equitable interim relief of passing off, as the Plaintiff has not come with clean hands before this Court and has set up a false case. He submits that the Plaintiff has pleaded that it is a renowned manufacturer of helmets, which was contested in the response, and in

the rejoinder, there is only a bald assertion of commonality of trade channels. He would further submit that the Plaintiff has set up a false plea with regard to its cease-and-desist notice and taking down of the Defendant's website, whereas it was the Plaintiff's own stand before the trademark registry that the cease-and-desist notice was in fact returned undelivered. He submits that the falsity is sought to be compounded by pleading in the rejoinder that the proof of delivery has been misplaced. He submits that a specific statement of truth is required to be filed under the Commercial Courts Act, and unverified pleadings are not even permitted to be relied upon.

8. He would submit that, in any event, there is no case made out for passing off, as there is no goodwill/reputation demonstrated in the field of helmets and neither any misrepresentation/deception is made out. He submits that common field of activity may not be the necessary ingredient for maintaining an action for passing off, but is a relevant factor to be taken into account while testing passing off. He submits that the Plaintiff's label/composite mark with the rhinoceros and the manner of depiction of the alphabet "X" in an exaggerated manner, is not even alleged to be similar to any label/logo of the Plaintiff and there is sufficient added material to distinguish the rival marks. He submits that the Plaintiff lacks goodwill in the relevant segment, as the

Defendant only sells helmets, whereas the Plaintiff does not deal in helmets at all. He submits that the fact that the Plaintiff had never learnt of Defendant, who is in the market since the year 2017, itself is evidence that the rival markets/trade channels are distinct, and the Plaintiff has not shown a single entity who has presence in both markets. He submits that the class of consumers is distinct, as the consumers of Defendant's segments are ordinarily motorcycle riders who are unlikely to purchase the Plaintiff's products meant for sporting enthusiasts, who are bound to be discerning. He submits that the Defendant has a running business in the segment of helmets since the year 2016–2017, and the Defendant does not deal in any goods, which the Plaintiff actually sells, and therefore the balance of convenience is in favour of the Defendant.

9. Rival contentions now fall for determination:

10. The rival marks are reproduced herein below for purpose of comparison :



11. The Plaintiff and the Defendant are both registered proprietors of their respective trade marks. The statutory framework of the Trade Marks Act, 1999 recognises more than one proprietor and limits the

vested rights in such an eventuality. Before proceeding further it would be appropriate to have brief look at the relevant sections.

Section 28(3) of the Trade Marks Act, 1999 provides as under:

“28(3): Where two or more persons are registered proprietors of trade marks, which are identical with or nearly resemble each other, the exclusive right to the use of any of those trade marks shall not (except so far as their respective rights are subject to any conditions or limitations entered on the register) be deemed to have been acquired by any one of those persons as against any other of those persons merely by registration of the trade marks but each of those persons has otherwise the same rights as against other persons (not being registered users using by way of permitted use) as he would have if he were the sole registered proprietor. ”

12. Section 30(2) of the Trade Marks Act, 1999 limits the effect of registered trade mark by providing that a registered trade mark is not infringed where :

“(e) the use of a registered trade mark, being one of two or more trade marks registered under this Act which are identical or nearly resemble each other, in exercise of the right to the use of that trade mark given by registration under this Act.”

13. Section 29 of the Trade Marks Act, 1999, which provides for infringement of registered trademarks, speaks of infringement by a person who is not the registered proprietor of the trademark which is being used. Conjoint reading of the relevant statutory provisions will disclose that claim against infringement will lie against unregistered proprietor as even in case of identical trade marks, which are registered, the statutory protection is available. The expression “if

valid” used in Section 28(1) was considered by the Full Bench of this Court in the case of **Lupin Ltd. v. Johnson & Johnson**¹. The Hon’ble Full Bench held that at the stage of granting an interim injunction, the civil court can go beyond the validity of the registration where the registration is *ex facie* illegal, fraudulent, or such, which shocks the conscience of the Court. The pleadings in the plaint do not assail the validity of the registration of the Defendant's trademark, nor any submissions were canvassed to assail the registration within the small window left open by the Hon’ble Full Bench in the case of **Lupin Ltd. v. Johnson & Johnson** (*supra*). The Defendant being registered proprietor of its mark, no relief of infringement would lie against the Defendant.

14. Even assuming for sake of arguments, that the validity of registration of the impugned mark is assailed, this is not a case of *ex facie* illegality or fraud or such as shocks the conscience of the Court in view of the sequence of events which led to the registration of the trade marks. The Plaintiff applied for registration of its word mark RYNOX on 31st August, 2016 with user claim since 16th February, 2012. The Defendant applied for registration of its mark on 2nd January, 2017 after conducting search of the trade mark registry, which obviously did not reveal the Plaintiff’s registration. The Plaintiff’s mark was

1 (2014) SCC OnLine Bom 4596

published in the journal on 23rd January, 2017 subsequent to the Defendant's application for registration and the Plaintiff's mark was granted registration on 15th June, 2017. It is therefore not a *prima facie* case of the Defendant's registration being *ex facie* illegal or result of fraud and no relief can be claimed in respect of infringement of the Plaintiff's mark.

15. That leaves for consideration the issue of passing off. The Plaintiff has pleaded in the plaint that the Plaintiff was established in the year 2012 and that it is marketing its motorcycle protective accessories such as helmets, clothing, and luggage under the trademark RYNOX. The pleading in paragraph 14 of the plaint is that the Defendant has adopted an identical mark for identical business. A dispute has been raised in the response affidavit that the Plaintiff is not marketing helmets under the registered trademark and in rejoinder, a case is sought to be made out that the products which are being marketed by the Plaintiff are closely associated with motorcycles safety, and form part of the same commercial category as helmets. The plea of the rival products being allied/cognate products is pleaded for the first time in the rejoinder affidavit in response to the contention raised by the Defendant that the Plaintiff is not in the helmet segment.

16. There is also a misrepresentation in the plaint that since the year 2012, the Plaintiff is in the business of manufacturing and marketing of helmets, which has been *prima facie* proved to be false, which contention is reiterated in paragraph 6 of the plaint.

17. The Plaintiff has further pleaded that a cease-and-desist notice was issued on 25th October 2023, which was received by the Defendant, and that after receipt of the notice, the Defendant has taken down its website, and that the Plaintiff learnt in the month of August 2024, that the Defendant is continuing to infringe and pass off its goods under the trademark of the Plaintiff, as the Defendant has activated its interactive website. The Defendant has placed on record the application for rectification filed by the Plaintiff, in which it is admitted by the Plaintiff that the cease-and-desist notice had been returned unserved. The pleadings of the Plaintiff are replete with false statement on oath not only as regards the manufacturing and marketing of safety helmets under the registered trademark, but also about the receipt of cease-and-desist notice and the consequent act of taking down of its website by the Defendant. Though the said fact was specifically pleaded in the reply affidavit, in the rejoinder the Plaintiff has compounded the falsity by stating that the proof of delivery has been inadvertently misplaced.

18. The present suit has been filed in November 2024, and it appears that the pleading about receipt of the cease-and-desist notice and the taking down of the Defendant's website is an attempt to justify the delay in filing of the present suit, which has been filed after almost one year from the issuance of the cease-and-desist notice. Though it is well settled that delay by itself does not constitute a defence in an action for infringement, it could have been argued by the Defendant that, by reason of remaining passive for a period of almost one year, though being aware of the Defendant's existence, the Plaintiff has allowed the Defendant's business to grow and therefore now cannot seek any injunction. It appears that, in order to obviate any such submission on the part of the Defendant, a false statement is made in the plaint about receipt of the cease-and-desist notice and taking down of the website by the Defendant, which is pleaded to have been reactivated in August 2024, and the suit has been filed in November 2024.

19. In the case of ***Ramjas Foundation & Anr. vs. Union of India & Ors.***², the Hon'ble Apex Court has held that a person who does not come to the Court with clean hands is not entitled to be heard on the merits of his grievance, and the object is that every Court is duty-bound to protect itself from unscrupulous litigants who make

² (2010) 14 SCC 38

misstatements or suppress facts which have a bearing on the adjudication of the issues arising in the case.

20. The application deserves to be dismissed at this stage itself by reason of making false statements on oath. Going a step further, this Court has considered whether any case for passing off is made out. The Plaintiff is not in the business of manufacturing or marketing helmets in which the Defendant's trades. It is well settled that, for maintaining an action of passing off, the classical trinity test is of goodwill/reputation, misrepresentation, and damage to the Plaintiff. In the present case, insofar as the goodwill and reputation is concerned, the same is required to be shown as on the date when the Defendant has commenced the use of its mark, which in the present case was in the year 2016. The CA certificate which has been placed on record shows that for the year 2016–2017, the sales turnover was Rs. 4,85,40,857/- but the sales turnover is not in the helmet segment. It cannot be said that the Plaintiff had any goodwill or reputation in the helmet segment.

21. In the case of *Kirloskar Diesel Recon Pvt. Ltd. & Anr. Vs. Kirloskar Proprietary Ltd. & Ors.*³, this Court has held that the real question in each case is whether there is as a result of misrepresentation a real likelihood of confusion or deception of the

³ 1995 SCC OnLine Bom 312

public and consequent damage to the Plaintiff, and the focus has shifted from the external objective test of making comparison of activities of parties to the state of mind of public in deciding whether it will be confused. It is therefore clear that even though a common field of activity is not the sole criterion in an action for passing off, it is one of the relevant factors to be taken into consideration.

22. A comparison of the Plaintiff's mark with the Defendant's composite label mark would indicate that the Plaintiff's mark RYNOX, the word mark as well as the label mark, is dissimilar to the Defendant's trademark RHYNOX with the pictorial representation of a rhinoceros and the manner of depiction of the alphabet "X" in an exaggerated manner.

23. In the case of *Kaviraj Pandit Durga Dutt Sharma vs. Navaratna Pharmaceuticals Laboratories*⁴, the Hon'ble Apex Court has held that in a case of passing off, the Defendant may escape liability if he can show that the added matter is sufficient to distinguish his goods from those of the Plaintiff. Upon an overall comparison of the manner of depiction of its mark adopted by the Defendant, it cannot be said that there is any similarity between the two marks so as to cause misrepresentation or to pass off the Defendant's goods as those of the Plaintiff. Insofar as the damage to the Plaintiff's reputation and

4 1964 SCC OnLine SC 40

goodwill is concerned, the Plaintiff is not in the business of selling of helmets, and the goodwill which has been generated is in respect of the other products and there is no goodwill which has been shown in the helmet segment, and hence there is no question of damage to the goodwill and reputation of the Plaintiff.

24. The Defendant is in the business of selling helmets since the year 2017, and the only solitary instance of misrepresentation which has been shown is of an e-commerce website displaying the Defendant's product using the Plaintiff's mark RYNOX. A solitary instance is not sufficient for this Court to arrive at a finding of likelihood of deception or misrepresentation, or that the Defendant is passing off its product as that of the Plaintiff. It is not demonstrated that the Defendant intentionally or unintentionally marketed its products as that of the Plaintiff.

25. In light of the above, no *prima facie* case has been made out for grant of injunction against infringement or for passing off. Resultantly, the application fails and stands dismissed.

[SHARMILA U. DESHMUKH, J.]