

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON
15.06.2026

PRONOUNCED
11.08.2026

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THE HON'BLE MR.JUSTICE K.KUMARESH BABU

OA Nos. 492 & 493 of 2026
and A.No.2183 of 2026
in C.S.(COMM.DIV.)No.147 of 2026

Empee Distilleries Limited,
Rep by its Authorised Signatory
Mr Alfred Sagaya Sunder Xavier
No. 72, Greams Road, Thousand Lights,
Chennai - 600 006

..Applicant(s) in both
O.As and Application

Vs

Universal Spirits Pvt Ltd,
Rep by its Managing Director,
Mr Sheeju Purushothaman,
Having registered office at
Empee Tower, 59, Harris Road, Pudupet,
Chennai 600 002

and factory at K.Pudur,
Kanjikode, Palakkad,
Kerala 678 621.

..Respondent(s) in both
O.As and Application

PRAYER in O.A.No.492 of 2026:- Original Application filed to grant an order of Ad interim injunction restraining the respondent, their men, servants, agents, or anyone claiming through or under them from in any manner manufacturing, packing, marketing or selling the products under the marks '**CLASSIC MARCO POLO DELUXE BRANDY**' & '**MARCO POLO DELUXE XXX RUM**' or any other mark or marks which are deceptively similar to that of the Applicant's



registered brand name/trademark/word mark '**MARCO POLO**' or including '**MARCO POLO**' either as a prefix or suffix, in the name of the products manufactured by the Respondent, so as to infringe the Applicant's trademarks, pending disposal of the above commercial suit and pass such further or other orders as this Court may deem fit in the facts and circumstances of the case.

PRAYER in O.A.No.493 of 2026:- Original Application filed to grant an order of Ad interim injunction restraining the defendant, their men, servants, agents, or anyone claiming through or under them from in any manner using the impugned marks '**CLASSIC MARCO POLO DELUXE BRANDY**' & '**MARCO POLO DELUXE XXX RUM**' or by including '**MARCO POLO**' either as prefix or suffix, in the name of the products manufactured by the respondent or under any other mark or marks which are deceptively similar to that of the applicant's registered brand name/ trade mark/ word mark '**MARCO POLO**' so as to pass off the products of the respondent as and for those of the applicant, pending disposal of the above commercial suit and pass such further or other orders as this Court may deem fit in the facts and circumstances of the case.

PRAYER in A.No.2183 of 2026:- Application filed to grant an order of Ad interim direction to appoint a Commissioner or Court Receiver, with all powers under Order XL of the Civil Procedure Code, 1908, including the power to enter any premises, whether belonging to the respondents or not, wherever situated, along with the applicant's representatives at any time of the day or night, including on Sundays and holidays, without prior notice, with the help and assistance of police officials, wherever required and for that purpose to break open any lock, door, shutter or receptacle to make an inventory, search, seal, seize, copy and/or store any products, labels, invoices, bills, cartons, packets, materials, books and things bearing or containing the impugned marks



‘CLASSIC MARCO POLO DELUXE BRANDY’ & ‘MARCO POLO DELUXE XXX RUM’ or any other mark or marks which are deceptively similar to that of the Applicant’s registered brand name/trademark/word mark ***‘MARCO POLO’*** pending disposal of the above commercial suit and pass such further or other orders as this Court may deem fit in the facts and circumstances of the case.

For Applicant(s): Mr.A.R.L.Sundaresan
Senior Counsel
for Mr.AR.Karthik Lakshmanan

For Respondent(s): Mr.Vijay Narayan
Senior Counsel
for Mr.Rohan Rajasekaran

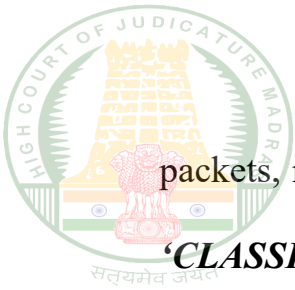
COMMON ORDER

The Original Application in O.A.nO.492 of 2026 has been filed seeking to grant an order of Ad interim injunction restraining the respondent, their men, servants, agents, or anyone claiming through or under them from in any manner manufacturing, packing, marketing or selling the products under the marks ***‘CLASSIC MARCO POLO DELUXE BRANDY’ & ‘MARCO POLO DELUXE XXX RUM’*** or any other mark or marks which are deceptively similar to that of the Applicant’s registered brand name/trademark/word mark ***‘MARCO POLO’*** or including ***‘MARCO POLO’*** either as a prefix or suffix, in the name of the products manufactured by the Respondent, so as to infringe the Applicant’s trademarks, pending disposal of the above commercial suit and pass such further or other orders as this Court may deem fit in the facts and circumstances of the case.



2. The Original Application in O.A.No.493 of 2026 has been filed seeking filed to grant an order of Ad interim injunction restraining the defendant, their men, servants, agents, or anyone claiming through or under them from in any manner using the impugned marks '**CLASSIC MARCO POLO DELUXE BRANDY**' & '**MARCO POLO DELUXE XXX RUM**' or by including '**MARCO POLO**' either as prefix or suffix, in the name of the products manufactured by the respondent or under any other mark or marks which are deceptively similar to that of the applicant's registered brand name/ trade mark/ word mark '**MARCO POLO**' so as to pass off the products of the respondent as and for those of the applicant, pending disposal of the above commercial suit and pass such further or other orders as this Court may deem fit in the facts and circumstances of the case.

3. The Application in A.No.2183 of 2026 has been filed seeking grant an order of Ad interim direction to appoint a Commissioner or Court Receiver, with all powers under Order XL of the Civil Procedure Code, 1908, including the power to enter any premises, whether belonging to the respondents or not, wherever situated, along with the applicant's representatives at any time of the day or night, including on Sundays and holidays, without prior notice, with the help and assistance of police officials, wherever required and for that purpose to break open any lock, door, shutter or receptacle to make an inventory, search, seal, seize, copy and/or store any products, labels, invoices, bills, cartons,



packets, materials, books and things bearing or containing the impugned marks

‘CLASSIC MARCO POLO DELUXE BRANDY’ & ‘MARCO POLO

DELUXE XXX RUM’ or any other mark or marks which are deceptively

similar to that of the Applicant’s registered brand name/trademark/word mark

‘MARCO POLO’ pending disposal of the above commercial suit and pass such

further or other orders as this Court may deem fit in the facts and circumstances

of the case.

4. Heard the learned counsels appearing for their respective parties.

5. Mr. A.R.L.Sundaresan learned Senior Counsel appearing on behalf of the applicant would submit that the applicant had been carrying on business of manufacturing Indian Made Foreign Liquor (IMFL) through its distilleries at various places which has been marketed and sold through TASMAL, Kerala State Beverages (M&M) Corporation Limited (BEVCO), Karnataka State Beverages Corporation Limited (KSBCL) and Telangana State Beverages Corporation Limited (TSBCL).

4. He would submit that the applicant company was originally founded by one Mr.M.P.Purushothaman, which was a part of a ‘Empee Group’. The applicant company was involved in a Corporate Insolvency Resolution process at the instance of a financial creditor which commenced on 01.11.2018 under



the IBC Code. A Resolution Professional (RP) was appointed in which '*SNJ Distillers Private Limited*' had submitted the substantial bid which was approved by the Committee of creditors and the said Resolution plan was also approved by NCLT on 20.01.2020. The said plan came to be confirmed by NCLT by its order on 27.08.2020 and the seal of approval was given by the Hon'ble Apex Court on 26.11.2020. By virtue of the said orders, the applicant company together with all its immoveable and moveable assets, licences, permissions, trademarks, intellectual properties etc., was taken over as a going concern by the said '*SNJ Distillers Private Limited*' as being the successful resolution applicant. Thereafter, the new Board of Directors had taken over the management of the applicant company.

5. The applicant/ company had been in manufacture of IMFL products and also owns registered trademarks in Class 33 of a trade name **Marco Polo**. He would submit that the above trademark had been popular among the consumers earning a good reputation, good will and brand value attached to it. The said trademark as of today is valid up to 09.05.2036.

6. Learned Senior Counsel would further submit that even though currently no products have been manufactured under the said registered trade name, it had come to its knowledge that the respondent has been manufacturing and marketing its IMFL products under the trade name of "**Classic Marco Polo**



Deluxe Brandy” and ***“Marco Polo Deluxe XXX Rum***” and is being sold through Kerala State Beverages (M&M) Corporation Limited.

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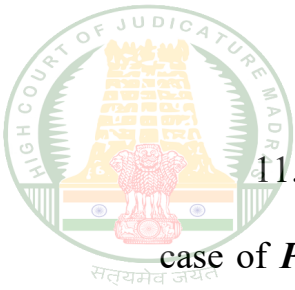
7. He would submit that the respondent company is also a part of the *EMPEE Group* which had knowledge of transfer of the trade name ***‘Marco Polo’*** in favour of the applicant pursuant to the Resolution plan approved and affirmed by the Hon’ble Apex Court. He would submit that the trade name along with the logo *‘EMPEE’* had been a well known trademark having good reputation and good will and the present marketing of the products under the very same registered trade name showing it to be manufactured by the *‘EMPEE’* would create a deception in the minds of the consumers that the product that is being sold is the product of the applicant company and in that regard, he would submit that firstly it is not in public interest that the product is allowed to be marketed under the said trade name. Apart from the deception, it may also lead to an irreparable harm to the applicant’s brand identity leading to loss of consumer goodwill which is very difficult to quantify. Any amount of damages given in that regard would not suffice to redeem the harm that had been done to the applicant. Hence, he would submit that balance of convenience is in favour of the applicant for grant of injunction. In that regard, he would rely upon the Division Bench judgment of the Hon’ble Delhi High Court in support of his contention.



8. Countering his arguments, Mr.Vijay Narayan learned Senior Counsel appearing on behalf of the respondent would contend that it is an admitted fact that the applicant had been not using the said trade name registered with it and in that regard there would be no deception or confusion in the mind of the public firstly.

9. Relying upon the tender documents and the trademark registration application before the Kerala Authority which has been accepted by the Authority, he would submit that any grant of injunction would only affect the business of the respondent. He would further submit that the applicant is not in the manufacture of any IMFL product in the trade name, particularly the applicant is also not in the market in the State of Kerala where the products of the respondent are being sold nor anywhere else in the India.

10. That apart, he would submit that the claim of the applicant fails the Triple Identity Test. He would submit that even a glance at the registered trademark with that of the products of the respondent, the same would not show any deceptive similarity which would lead to the possibility of a confusion in the minds of the end consumers. He would further submit that the suit having been filed in the commercial division, non-compliance of Section 12A itself would not entitle the applicant for the reliefs that has been sought for.

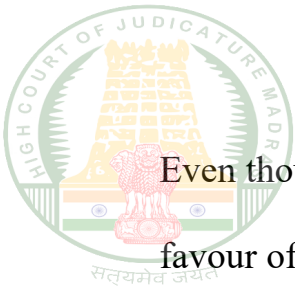


11. Further, relying upon the judgment of the Hon'ble Apex Court in the case of ***Pernod Ricard India Private Limited & another Vs Karanveer Singh Chhabra*** reported in ***2025 SCC Online SC 1701***, in support of his contention, he would further submit that the test laid down by the Hon'ble Apex Court in the aforesaid judgment for grant of injunction do not entitle the applicant for grant of any injunction as prayed for much less an appointment of an Advocate Commissioner. Hence, he prays this Court to dismiss the application.

12. I have considered the submissions made by the learned counsels appearing on either side and perused the materials available on record.

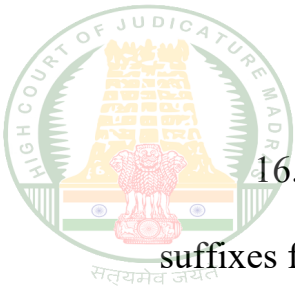
13. There is no quarrel that the applicant company formed part of the *EMPEE Group* of which the respondent also forms part of. Both the applicant and the respondent were initially promoted by one Mr.M.P.Purushothaman, which had been commonly known as *EMPEE Group*. Unfortunately, the applicant company was subjected to IBC proceedings by a financial creditor in which the applicant company was taken over as a going concern by '*SNJ Distillers Private Limited*' which is also in the market of manufacture and supply of IMFL products.

14. It is not in dispute that the applicant had owned a registered trade name "***Marco Polo***" which had been widely used by it for its IMFL products.



Even though, the respondent had claimed the use of the trade name registered in favour of the applicant with prefixes and suffixes, the use of the said trade name by it had not been indicated to be used from a particular date. It is further to be noted that the claim of the respondent that the trade name had not been used for more than a decade, in the view of the Court cannot be a reason that can aid it. This for the simple reason that up till 2020, that is the date on which the Resolution plan was approved, the applicant company was under the management of the *EMPEE Group* as a Group Company and no reasons have been attributed by the respondent which is also a part of the *EMPEE Group* as to why the use of the trademark by the applicant was discontinued. Discontinuous use by the *EMPEE Group* in the applicant company cannot be a reason that can be put against the applicant now, when it complains the infringement of its registered trademark.

15. That apart, it is an admitted case that the *EMPEE Group* had been marketing its IMFL products under the trade name “*Marco Polo*” which is registered, which had gained reputation, good will and brand value. The *EMPEE Group* which originally owned the applicant company and the respondent company was well aware that the trade name had been registered only with the applicant company which had now continued with the applicant company and sold as a going concern to the successful resolution applicant.



16. When that being so, the use of the trade name with prefixes and suffixes for the very same product by the very same Group of Companies would *prima facie* create a deception in the mind of the consumers that it would be the product of the applicant company. It is the brand or the trade name of the product that attracts the consumers as it only stays predominantly and not the manufactures' name carries any weight in the minds of the consumers.

17. The Hon'ble apex Court in the judgment relied upon by the learned Senior Counsel appearing for the respondent had laid down the legal principles that has to be weighed by the Court and for the benefit the relevant principles are extracted hereunder:-

(A) Similarity And Distinctiveness: Name, Colour Scheme and Trade Dress

(B) Rule of Anti-Dissection

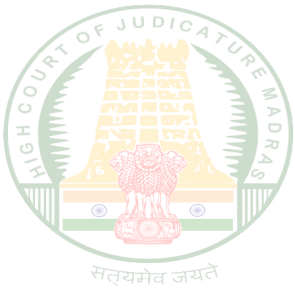
(C) Dominant Feature Test

(D) No Exclusive Right Over Common or Descriptive Terms

(E) Average Consumer Test and Imperfect Recollection

(F) Legal Principles Governing Grant of Injunction

18. The Hon'ble Apex court had also laid down the principles governing the grant of an injunction. The following ratio had been laid by the Hon'ble Apex Court enumerating the criteria for grant of injunction. For better appreciation, the relevant paragraphs are extracted hereunder:-



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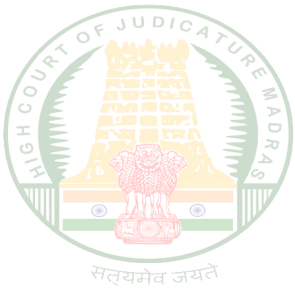
36.3. *The principles laid down in American Cyanamid Co. v. Ethicon Ltd., continue to guide the Courts while determining interim injunction applications in trademark cases. The following criteria are generally applied:*

(i) *Serious question to be tried/triable issue: The plaintiff must show a genuine and substantial question fit for trial. It is not necessary to establish a likelihood of success at this stage, but the claim must be more than frivolous, vexatious or speculative.*

(ii) *Likelihood of confusion/deception: Although a detailed analysis of merits is not warranted at the interlocutory stage, courts may assess the prima facie strength of the case and the probability of consumer confusion or deception. Where the likelihood of confusion is weak or speculative, interim relief may be declined at the threshold.*

(iii) *Balance of convenience: The court must weigh the inconvenience or harm that may result to either party from the grant or refusal of injunction. If the refusal would likely result in irreparable harm to the plaintiff's goodwill or mislead consumers, the balance of convenience may favor granting the injunction.*

(iv) *Irreparable harm: Where the use of the impugned mark by the defendant may lead to dilution of the plaintiff's brand identity, loss of consumer goodwill, or deception of the public - harms which are inherently difficult to quantify - the remedy of damages may be inadequate. In such cases, irreparable harm is presumed.*



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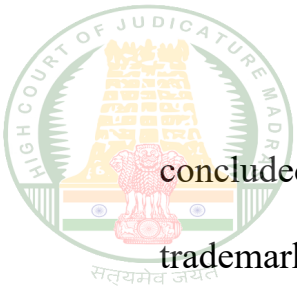


(v) *Public interest: In matters involving public health, safety, or widely consumed goods, courts may consider whether the public interest warrants injunctive relief to prevent confusion or deception in the marketplace.*

36.4. In conclusion, the grant of an interim injunction in trademark matters requires the court to consider multiple interrelated factors: prima facie case, likelihood of confusion, relative merits of the parties' claims, balance of convenience, risk of irreparable harm, and the public interest. These considerations operate cumulatively, and the absence of any one of these may be sufficient to decline interim relief....”

19. The facts in the said judgment arose out of a claim of the use of word ‘pride’ in the IMFL product of the parties therein. The Court considering the facts of the said case had upheld the refusal for grant of injunction on the legal principles that had been enumerated therein.

20. Applying the said principles, enumerated therein particularly the deception of the product to be that of the applicant’s products would be the criteria that would have to be considered by this Court. As enumerated *supra*, by also considering the fact that both the applicant and the respondent were a part of a larger Group called the *EMPEE Group*, applicant being the registered holder of the trade name which is the *lis* before this Court, the fact that the applicant company was subject matter of the IBC proceedings and had been sold as a going concern to the successful resolution applicant, it is *prima facie*



concluded that the IMFL product sold by the respondent using the registered trademark of the applicant would definitely cause a deception in the mind of the consumers that the product is being manufactured and sold by the applicant company.

21. In that regard, this Court is *prima facie* satisfied that the irreparable harm would be caused to the applicant which could not be measured by any damages resulting and hence, the balance of convenience is also in favour of the applicant for grant of an injunction. In view of the aforesaid conclusions and also taking into consideration that the product is an Indian made foreign liquor legal for which stringent conditions have to be followed such as providing of details of the products manufactured along with quantity and quality to the concerned IMFL Authorities. This Court is of the view that a direction could be issued to the respondent to produce the accounts of the manufacture, sale and handover the products to the applicant to be kept in a sealed premises. Accordingly, the applications are disposed of as follows:-

a) O.A.No.492 of 2026 – There shall be an order of injunction restraining the respondent, their men, servants, agents, or anyone claiming through or under them from in any manner manufacturing, packing, marketing or selling the products under the marks ‘CLASSIC MARCO POLO DELUXE BRANDY’ & ‘MARCO POLO DELUXE XXX RUM’ or any other mark or marks which are deceptively similar to that of the Applicant’s registered brand name/trademark/word mark ‘MARCO POLO’ or including ‘MARCO POLO’



either as a prefix or suffix, in the name of the products manufactured by the Respondent, so as to infringe the Applicant's trademarks, pending disposal of the above commercial suit.

b) O.A.No.493 of 2026 – *There shall be an order of injunction restraining the defendant, their men, servants, agents, or anyone claiming through or under them from in any manner using the impugned marks 'CLASSIC MARCO POLO DELUXE BRANDY' & 'MARCO POLO DELUXE XXX RUM' or by including 'MARCO POLO' either as prefix or suffix, in the name of the products manufactured by the respondent or under any other mark or marks which are deceptively similar to that of the applicant's registered brand name/ trade mark/ word mark 'MARCO POLO' so as to pass off the products of the respondent as and for those of the applicant pending disposal of the above commercial suit.*

c) A.No.2183 of 2026 – *There shall be a direction to the respondent to submit its accounts relating to the manufacture of the infringing IMFL products and sale of the same. There shall be a further direction to handover the unsold products to the applicant.*

The aforesaid direction shall be complied with by the respondent within a period of four (4) weeks from the date of receipt of a copy of this order.

11.08.2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No
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OA Nos. 492 & 493 of 2
& A.No.2183 of 2



K.KUMARESH BABU, J.

GBA

A Pre-delivery order made in

**OA Nos. 492 & 493 of 2026
& A.No.2183 of 2026
in C.S.(COMM.DIV.)No.147 of 2026**

11.08.2026