

HIGH COURT OF BOMBAY**Bench: Justice R.I. Chagla****Date of Decision: 21st May 2024**

ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
INTERIM APPLICATION (L) NO. 11255 OF 2021
IN
COM IPR SUIT NO. 5 OF 2022

PIDILITE INDUSTRIES LTD. ...APPLICANT/PLAINTIFF**VERSUS****DUBOND PRODUCTS INDIA PVT. LTD. ...DEFENDANT****Legislation:**

Section 29 of the Trade Marks Act, 1999

Subject: Interim application seeking an order of injunction restraining the defendant from infringing the plaintiff's LW and LW+ registered trademarks and related reliefs for trademark, copyright, and passing off.

Headnotes:

Intellectual Property – Trademark Infringement – Plaintiff sought injunction against defendant for using marks LW and LW+ or any deceptively similar marks – Plaintiff claimed extensive use and registration of LW/LW+ marks for waterproofing and bonding products – Defendant's use of HYDROBUILD LW and HYDROTITE LW deemed deceptively similar – Court held plaintiff's marks were well-known and deserving of protection – Injunction granted restraining defendant from using impugned marks. [Paras 1-14]

Trademark Law – Prior Use and Goodwill – Plaintiff demonstrated prior use of LW/LW+ marks since 1990s – Defendant's adoption of similar marks in 2009 found to be dishonest – Plaintiff's established goodwill and reputation in LW/LW+ marks supported grant of injunction – Court emphasized protection of well-known trademarks against deceptive similarity. [Paras 15-18]

Judicial Precedents – Reference to Past Judgments – Court relied on prior decisions protecting plaintiff’s LW/LW+ marks – Judicial recognition of plaintiff’s rights in LW/LW+ marks reinforced decision to grant injunction – Reference to Supreme Court and High Court judgments on trademark infringement and protection of well-known marks. [Paras 19-25]

Decision:

Held: Interim application allowed – Injunction granted restraining defendant from using LW, LW+, HYDROBUILD LW, HYDROTITE LW, or any deceptively similar marks – Defendant directed to cease use of impugned marks and labels immediately. [Para 26]

Referred Cases:

- Sabmiller India Ltd. vs. Jagpin Breweries Ltd. 2014 SCC OnLine Bom 4842
- Pidilite Industries Limited vs. O-Chem Sealers Pvt. Ltd. 16.06.2021
- Pidilite Industries Limited vs. Zar Metamorphose Combine Pvt. Ltd. 27.01.2020
- Pidilite Industries Limited vs. Bharat Chemicals & Ors. 06.11.2020
- Pidilite Industries Limited vs. Chiripal Industries Limited Interim Application (L) No.12828 of 2021 in COMIP Suit No.452 of 2021 dated 9th March 2023

Representing Advocates:

For Applicant/Plaintiff: Hiren Kamod, Nishad Nadkarni, Aasif Navodiya, Khushboo Jhunjunwala, Jaanvi Chopra, Rakshita Singh, Prem Khullar i/b. Khaitan & Co.

For Defendant: Chaitanya Chavan with Rahul Singh, Yash Naik, Arbaaz Shaikh i/b. Legal Catalyst

ORDER:

1. By this Interim Application, the Applicant / Plaintiff is seeking an order of injunction restraining the Defendant from infringing the Plaintiffs LW and LW+ registered trademarks and for which necessary relief has been sought

viz. for injunction restraining infringement of trademark, copyright and passing off of the Plaintiff's registered Trade Marks by the impugned marks of the Defendant viz. LW with or without the marks HYDROBUILD or HYDROTITE and / or Power and the impugned labels referred to in the Plaint as impugned marks / labels.


2. The Plaintiff is stated to be a world-renowned company, carrying on business in the field of waterproofing chemicals, construction bonding chemicals / materials / additives products amongst other products including construction and paint chemicals, adhesives, sealants, automotive chemicals, art materials, industrial adhesives, industrial and textile resins and organic pigments and preparations since at least 1969. The mark DR. FIXIT is stated to have been honestly and independently conceived and adopted by the Plaintiff's in the year 2001, and has been continuously, extensively and in an uninterrupted manner used since then.

3. The Plaintiff further states that one of the oldest products of the Plaintiff within the DR. FIXIT range of products is sold under the marks LW and LW+. The Plaintiff had commenced the use of the mark LW in or about the year 1990. Further, in or about the year 2001, the house mark DR. FIXIT was introduced by the Plaintiff as an umbrella brand for all its waterproofing and bonding products. The Plaintiff states that the LW mark continued to be used as a product identification mark within the range of products. In or about the year 2009 an improved variant of the said product was launched as LW+, also under the same sub-range of products. The marks LW/LW+ are arbitrary / invented marks for use upon and in relation to the Plaintiff's products. The Plaintiff claims to be first to adopt and use the same as a trademark.

4. The Plaintiff has relied upon its earliest trade mark application, under no. 705497 dated 2nd May, 1996 in class 1, made by the Plaintiff in the year 1996, comprising of the mark LW as a leading and essential feature thereof which claims use since April 1993. The application came to be abandoned on technical grounds, however, the factum of adoption and use of the Plaintiff's mark LW in or about the 1990 is sufficiently demonstrated through the said application.

5. The Plaintiff in paragraph 14 of the Plaint has provided

an indicative list of the Plaintiff's various trademark registrations in respect of the marks LW/LW+ which are reproduced as under:-

S L N O	TRADE MARK	REG NO.	CLA SS & STA TUS	DATE OF REGI STR ATIO N	DAT E OF US E
1		2447 181	19 Regi ste red	21 Dece mber 2012	04 July 199 8
2		2448 213	01 Regi ste red	24 Dece mber 2012	1 Mar ch 201 1
3		2447 182	01 Regi ste red	21 Dece mber 2012	01 Mar ch 201 1
4		2472 730	02 Regi ste red	05 Febru ary 2013	04 Feb ruar y 201 0








5		2472 713	02 Regi ste red	05 Febru ary 2013	04 Feb ruar y 201 0
6		2448 212	19 Regi ste red	24 Dece mber 2012	01 Mar ch 201 1
7		2308 687	01 Regi ste red	30 March 2012	01 Mar ch 201 1
8		2308 686 12 pt	19 Regi ste red	30 March 2012	01 Mar ch 201 1

6. The Plaintiff states that the mark LW (word per se) is the leading and essential feature of all the said registrations of the Plaintiff. The registrations are valid and subsisting and the entries appearing on the register of trade marks including the dates of use thus constitute prima facie evidence of such facts.

7. The Plaintiff has stated that in respect of an earlier label, bearing No. 714144, there was a condition namely “Registration of this Trade Mark shall give no right to the exclusive use of the LETTER A, LW, INTEGRAL CEMENT WATERPROOFING COMPOUNDS”. The Plaintiff states that though it has not relied on the said registration for the purpose of the present suit, the same has been referred to in the Plaint to avoid any allegations of suppression. The Plaintiff states that the said condition does not affect the independent / separate registrations of the Plaintiff as listed above or the exclusive rights

conferred by the same. The other registrations of the Plaintiff are not subject to any disclaimers or limitations with respect to the mark LW/LW+. Further, despite the presence of the disclaimers / conditions imposed on one registration, the Plaintiff's mark LW/LW+ (word per se) has been taken judicial notice of and has also received judicial protection in the past by this Court. The Plaintiff has placed reliance upon sample orders in respect of the Plaintiff's marks tendered at the time of hearing on 27th October, 2023. The sample orders which have been passed by this Court from time to time are as under:-

Sr no.	Case Name	Marks	Court	Date of Order
1.	Pidilite Industries Limited v. O-Chem Sealers Pvt. Ltd.	LW/LW+ v. LWC	Bombay High Court	16.06.2021
2.	Pidilite Industries Limited v. Zar Metamorphose Combine Pvt Ltd.	LW/LW+ v. LW/LW+	Bombay High Court	27.01.2020
3.	Pidilite Industries Limited v. Bharat Chemicals & Ors.	LW/LW+ v. LWC	Bombay High Court	06.11.2020

4.	Pidilite Industries Limited v. Tayyab Ali Malak & Ors.	 v.  / 	Bombay High Court	12.02.2020
5.	Pidilite Industries Limited v. Berger Paints India Limited	DR FIXIT v. DR. SEAL-IT LW/LW+ v. LW/LW+ LW/LW+ v. ILW+	Bombay High Court	29.10.2015
6.	Pidilite Industries Limited v. Platinum Waltech Limited	LW/LW+ v. LWC  v. 	Bombay High Court	24.08.2021
7.	Pidilite Industries Limited v. Dhami Fixwell Pvt Ltd.	LW/LW+ v. WP+  v. 	Bombay High Court	04.12.2021
8.	Pidilite Industries Limited v. EC Industry	LW/LW+ v. LWC/ECI L.W.C/ECI L W	Bombay High Court	11.10.2021
9.	Pidilite Industries v. EC Industry	LW/LW+ v. LWC/ECI L.W.C/ECI L W	Bombay High Court	11.12.2019
10	Pidilite Industries Limited v. Chetak Minerals & Anr.	LW/LW+ v. CG L W/ C L W/ LW	Bombay High Court	23.06.2021

8. The Plaintiff further states that it has also created and used unique and original labels upon its LW/LW+ products from time to time. When the product was launched in the year 1993, the Plaintiff had designed a unique, distinctive and original label inhouse for use in relation to the LW products. In or about 2009, upon introduction of the upgraded product, the Plaintiff created another label and commenced use of the revised unique, distinctive and original label upon its LW+ products. In or about March 2011, the Plaintiff created a further revised and modified label which is also being used presently.

9. The Plaintiff states that the said LW+ Label qualifies as an artistic work in which copyrights subsist and such copyrights are owned by the Plaintiff. The LW+ label bears the Plaintiff's mark LW+, comprises of a unique and distinctive colour combination of inter alia yellow and blue colours in a unique and distinctive layout, has the distinctive device of a man wearing a yellow construction helmet, and several other distinctive features all of which are represented and placed in a distinctive layout, colour scheme and get up. The LW+ Label has been / is used as a trademark and/or in a trademark sense upon and in relation to the LW/LW+ Products of the Plaintiff and has been applied for registration as well as registered in the name of the Plaintiff. The packaging/label/trade dress along with all features thereof including the colour combination thereof, are all owned by the Plaintiff and are identified by the public at large with the Plaintiff alone, and any use of any of the said features either singularly, or a combination thereof is sufficient to cause confusion in the minds of the public.

10. The Plaintiff has stated that its products under the LW/LW+ Marks and the LW/LW+ Labels have been extensively sold and have become extremely successful and popular and have earned Plaintiff crores of rupees in revenues. The approximate sales figures in respect of the products sold under the LW/LW+ Marks and the LW/LW+ Labels since the year 2000-01 till 2018-19 are set out at paragraph 16 page 11 of the Plaint. Sample invoices in respect of Plaintiff's LW/LW+ products are at Exhibit C of the Plaint. The Plaintiff claims to have invested substantially in advertising, publicizing and promoting its products under the LW/LW+ Marks and the LW/LW+ Labels over the last several years. Such promotional expenditure attributable to Plaintiff's

LW/LW+ products exceed crores of rupees. The approximate promotion and advertisement expenditure figures in respect of the products sold under the LW/LW+ Marks and the LW/LW+ Labels since the year 2013 till 2019 are set out at Paragraph 17 of the Plaint. Further, the samples of promotional material of Plaintiff's products bearing the LW/LW+ Marks and the LW/LW+ Labels are collectively annexed at Exhibit D to the Plaint.

11. The Plaintiff states that it has acquired enormous reputation and goodwill in the LW/LW+ Marks and the LW/LW+ Labels, in the business carried on under the LW/LW+ Registered Marks and the LW/LW+ Labels and in the products sold under the LW/LW+ Marks and the LW/LW+ Labels. The LW/LW+ Marks (including the mark LW/LW+ per se) and the LW/LW+ Labels are associated by the consumers, traders and public at large exclusively with Plaintiff. The products of the Plaintiff bearing the LW/LW+ Marks and the LW/LW+ Labels are known as "LW/LW+" in the trade and by the consumers and public at large. LW/LW+ Marks and the LW/LW+ Labels have acquired the status of famous and well-known marks. Further, the aforementioned products including those sold under the LW/LW+ Marks and the LW/LW+ Labels are sold in distinctive and unique containers which containers are extensively used, promoted and are associated exclusively with the Plaintiff and its DR. FIXIT range of products, including the LW/LW+ Product. This is more so since the class of consumers of the Plaintiff's products in question include labourers and construction workers and illiterate consumers as well who have a recollection of and rely upon the trade dress including the colour scheme of the product as well. Accordingly, the Plaintiff alone is entitled to use the LW/LW+ Marks and the LW/LW+ Labels. The Plaintiff states that any colourable imitation thereof by any person is bound to cause confusion in the minds of public, retailers, dealers and consumers.

12. The Plaintiff states that it has been vigilant in protecting its intellectual property rights including its rights in the LW/LW+ Marks and the LW/LW+ Labels and has initiated actions from time to time in respect of violation of its intellectual property rights by issuing notices and has also succeeded in courts in legal proceedings initiated by it in respect of such violations. Such actions include actions in respect of the unauthorized use of the LW/LW+ Marks and the LW/LW+ Labels or any deceptively similar marks. Judicial

protection and recognition has been accorded to the Plaintiff's LW/LW+ marks and the LW/LW+ Labels and this Court has granted protection to the Plaintiff's rights therein.

13. The Plaintiff states that in or about September 2015, the Plaintiff came across a trademark application filed by the Defendant for the mark



in class 1, bearing application no. 2682422.

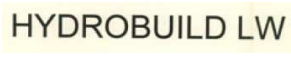
Since the impugned mark incorporated Plaintiff's LW/LW+ Marks and since the Plaintiff has been vigilant in protecting its rights, it immediately opposed the application vide opposition no. 838134. The Plaintiff has been prosecuting the said opposition proceedings and the same is presently pending. In view of the Plaintiff's opposition, the said mark has not proceeded to registration. The Plaintiff at the relevant time did not come across any products of the Defendants and have, in fact pleaded in the opposition proceedings that the user claimed by the Defendants in the impugned trademark application is false.

14. The Plaintiff states that in or about December 2020, the Plaintiff came across products that the Defendant was manufacturing and marketing bearing the mark LW (along with HYDROBUILD) which mark is identical / deceptively similar to the Plaintiff's LW/LW+ Marks and which products are identical to the DR. FIXIT and LW/LW+ products of the Plaintiff. The said products of the Defendant also bear a label / trade dress which is a colourable imitation / substantial reproduction of the Plaintiff's LW+ Label and the artistic works therein including the distinctive blue and yellow colour scheme in an almost identical layout, the identical mark LW, and the overall trade dress, get up and packaging. The said label / trade dress used on the Defendant's products also bears the image of a man wearing a construction helmet which is, including in the overall context of things, contextually deceptively similar to the Plaintiff's LW/LW+ Marks and LW+ Label.

15. The Plaintiff states that upon further research, discovered that the Defendant had also fraudulently obtained a registration for a variant of the impugned mark i.e., **HYDROBUILD LW** in class 1 bearing no. 2676581 dated 11 February 2014 in respect of the aforesaid impugned products. The impugned trademark registration obtained by the Defendant bearing no.

2676581 in class 1, on which the Defendant is seeking to rely upon, has been fraudulently obtained by the Defendant and the reason for such adoption of the impugned marks by the Defendant is evidently dishonest, fraudulent and with a view to ride upon the extensive goodwill and reputation of the Plaintiff that had already been developed by the Plaintiff at such time that the Defendant sought to wrongfully adopt the mark as alleged. The impugned trade mark registration encompasses the whole of the Plaintiff's LW mark and is in violation of the Plaintiff's rights in its LW/LW+ marks and ought not to have proceeded to registration. The Defendant has secured the impugned trade mark registration by making false representations and concealment of material facts before the Ld. Registrar qua the factum of the prior adoption, use and registration of the Plaintiff's

LW mark. The Defendant's marks LW or  and

 are evidently in violation of the Plaintiff's rights

in its LW/LW+ Marks and the Defendant's trademark

applications/registration in respect thereof are evidently fraudulent, illegal, dishonest and of a nature that would shock the conscience of this Hon'ble Court, as more particularly set out hereinafter as well.

16. The Plaintiff has placed reliance upon a comparison of the rival products and features thereof, which were tendered across the bar during the hearing dated 27 October 2023 and the same is reproduced :


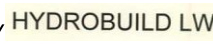
PRODUCT COMPARISON

Plaintiff's LW/LW+ Product	Defendant's Impugned Product
<div data-bbox="316 456 722 1276"> </div> <div data-bbox="836 604 1055 752"> <p>LW/LW+ versus LW</p> </div> <div data-bbox="836 792 1055 1075"> <p>Vs</p> </div> <div data-bbox="787 1115 1112 1438"> <p>Overall imitation of label including identical colour scheme of blue and yellow, grey bottle, identical marks and features (including images) in an almost identical layout.</p> </div> <div data-bbox="1153 456 1550 1223"> </div>	

17. The Plaintiff states that a cease and desist notice dated 11 December 2020, was addressed to the Defendant by the Plaintiff through its advocates, calling upon the Defendant to cease and desist from committing the wrongful acts and from violating the Plaintiff's rights in its registered trade marks, labels, trade dress and passing off its products as those of the Plaintiff. The said notice was delivered to the Defendant by email on 11 December 2020 as well as by courier and Registered Post Acknowledgment Due (RPAD) on 14 December 2020. The Plaintiff did not receive any response to the said cease and desist letter.

18. The Plaintiff has filed the present Suit and taken out the present Interim Application on 4th May, 2021.

19. Mr. Hiren Kamod, the learned Counsel appearing for the Plaintiff has submitted that the Defendant's impugned mark LW, with or without any other word or HYDROBUILD LW POWER and HYDROBUILD LW as well as the impugned label is deceptively similar to the Plaintiff's mark LW/LW+, DR FIXIT LW/LW+ Labels. He has placed reliance upon Section 29 of the Trade Marks Act, 1999 in support of his contention that infringement of a registered trademark takes place by use of either an identical or a deceptively similar trade mark in relation to identical or similar goods. He has submitted that the Defendant's usage of the impugned marks LW, with or without any other word or HYDROBUILD LW POWER and HYDROBUILD LW

and/or  /  , which encompass the whole of the Plaintiff's registered mark LW and are identical/deceptively similar to the Plaintiff's LW/LW+ Marks, that too in respect of products which are identical to the DR FIXIT LW/LW+ products of the Plaintiff, is infringing the rights of the Plaintiff in its registered LW / LW+ trade marks including the LW/LW+ labels. He has submitted that the impugned label is also deceptively similar to / is an imitation of and/or a substantial reproduction of the LW/LW+ Label of the Plaintiff and the artistic works therein including the distinctive blue and yellow colour scheme, trade dress and the identical mark LW, in an almost identical layout. The label / trade dress used on the Defendant's products also bears the image of a man wearing a construction helmet which is, including in the overall context of things, contextually deceptively similar to the Plaintiff's LW / LW+ Marks and LW+ Label. He has submitted that the impugned marks LW / HYDROBUILD LW POWER and HYDROBUILD LW are also structurally and phonetically similar to the Plaintiff's mark LW / LW+. The dishonesty on the part of the Defendant in adopting the impugned mark as well as the impugned label is evident and apparent. He has submitted that the Defendant has made every attempt to copy each feature of the Plaintiff's marks / packaging in an attempt to confuse consumers with the striking similarities whilst making minor and insignificant differences in an attempt to build up an unsustainable defense on the basis thereof. He has submitted that the Defendant has in paragraph 2(A) of its Affidavit in Reply alleged, albeit falsely, that the Plaintiff is infringing the mark of the Defendant, inherent in this statement of the Defendant are four factual admissions – i) that the Defendant considers and uses LW as a mark and only therefore can it allege that the same has been infringed by the Plaintiff's use of LW/LW+; ii) that the rival

marks are identical; iii) rival goods are identical; and iv) that there is a likelihood of confusion.

20. Mr. Hiren Kamod has submitted that mere addition of a prefix and / or a suffix to the impugned mark is inconsequential and the impugned marks are still almost identical and/or deceptively similar to the Plaintiff's LW / LW+ registered mark. The same is also being used in respect of identical goods as that of the Plaintiff. He has placed reliance on *Sabmiller India Ltd v. Jagpin Breweries Ltd*¹ wherein this Court held that the rival marks are to be compared as a whole and with reference to the leading, essential and memorable parts thereof. He has submitted that the Defendant's contention that the use of HYDROBUILD before LW in the impugned marks is sufficient to distinguish the rival marks, is meritless, including since the Plaintiff is a registered proprietor of LW/LW+ per se and including since the leading and essential feature of the Defendant's marks is also LW. He has submitted that any other view would simply defeat the purpose of the Trade Marks Act, 1999, where any Defendant would simply add any prefix or suffix to a well established mark and then claim that the two marks are not similar due to the presence of the prefix or suffix. He has submitted that the moment any person incorporates the registered trademark in its impugned trademark, the whole of rival marks are bound to be closely or deceptively similar. He has submitted that the Defendant's impugned mark HYDROBUILD LW consists whole of the Plaintiff's registered trademark or its leading and essential features. It is submitted that the fact that the Defendant considers HYDROBUILD & HYDROBUILD LW to be two different marks is also evident from the fact that despite having a registration for HYDROBUILD (bearing no. 2013852 in class 1), the Defendant made separate trademark applications for the marks HYDROBUILD LW / HYDROBUILD LW POWER.

21. Mr. Hiren Kamod has submitted that the Defendant's impugned label in respect of the impugned products are an imitation of and / or a reproduction / a substantial reproduction of the Plaintiff's LW+ Label and the Plaintiff's artistic copyright work therein including the image of a man wearing a construction helmet, the colour scheme and layout and overall trade dress as such copying and use amounts to infringement of the copyright of the Plaintiff subsisting in the said artistic works comprised in the said LW+ Label. He has further relied upon Section 51 of the Copyright Act, 1957 in the context of minute variations in representation or placement of the colours are

inconsequential and do not make the Defendant's use non-infringing. The test to establish infringement of copyright is well settled. The Defendant's impugned work/label need not be an exact reproduction of the Plaintiff's work/label. It would be sufficient to establish copyright infringement if the Defendant's label looks similar or like a copy or is reproduction of substantial part of the Plaintiff's label, which in the present case it evidently is. He has submitted that the Defendant's impugned work has incorporated essential and substantial features of the Plaintiffs work and therefore the test to establish copyright infringement has been met. He has placed reliance upon the judgment in *Pidilite Industries Limited vs S.M. Associates & Ors*² and in the judgement in *Pidilite Industries Limited vs Riya Chemy*³ at paragraph 65. He has submitted that a bare perusal of the rival labels leaves an unmistakable impression that the Defendant's impugned label is nothing but a reproduction of the essential features of the Plaintiff's LW/LW+ Label including the image of a man wearing a helmet, the colour scheme, layout and the overall look and feel of the label.

22. Mr. Hiren Kamod has submitted that by using the impugned marks, label, and overall trade dress in respect of its impugned products, the Defendant is seeking to misrepresent its goods as those of the Plaintiff or as having some connection with the Plaintiff, causing irreparable damage to the Plaintiff and to the goodwill and reputation of the Plaintiff's business and is also diluting the distinctiveness of the LW/LW+ Marks and the LW+ Label of the Plaintiff. He has submitted that such usage is likely to cause confusion and deception amongst the members of the trade and public at large. There is a deliberate attempt on the part of the Defendant to trade upon the reputation and goodwill of the Plaintiff.

² 2003 SCC OnLine Bom 143.

³ 2022 SCC OnLine 5077.

He has submitted that the identity / resemblance of the Defendant's Impugned Marks LW with or without the marks HYDROBUILD or HYDROTITE and/ or POWER and the Impugned Labels with the LW/LW+ Marks and the LW/LW+ Label of the Plaintiff is clear evidence of the intention of the Defendant to deceive and confuse the public, consumer and traders.

He has submitted that such wrongful actions of the Defendant amount to the tort of passing off and / or unfair competition and / or dilution and are actionable as civil wrongs. He has submitted that contrary to what the Defendant has sought to contend, even the likelihood of confusion and deception is sufficient and actual instances of confusion or deception are not required to be proved by the Plaintiff. He has placed reliance upon the decision of this Court in *Laxmikant V. Patel v. Chetanbhai Shah & Anr*¹. at paragraph 13 and *Sabmiller India Ltd (Supra)*, at paragraph 17.

23. Mr. Hiren Kamod has submitted that this Court from time to time has taken judicial notice of and has protected the rights of the Plaintiff with respect to its DR FIXIT / LW / LW+ marks / labels, including in the context of and after considering identical defenses as those being raised by the present Defendant. He has submitted that it is therefore apposite that the Plaintiff's marks LW/LW+ continues to receive the protection that it has in the past and that not only are the Plaintiff's rights therein protected, but also the interest of the public at large is protected as well.

24. Mr. Hiren Kamod has submitted that the Plaintiff's trade mark registration bearing no. 705497 in class 1, comprising of the mark LW as one of the leading and essential features thereof is dated 2nd May 1996 and has a user claim of April 1993. Accordingly, it is evident specially at the prima facie stage that Plaintiff is the prior adopter and use of the mark LW, since the 1990s. The Plaintiff has also produced its statement of sales since at least the year 2000, in respect of its products sold under the LW/LW+ Marks. He has submitted that the Defendant's alleged date of adoption and use of the impugned mark as per the Defendant's own pleaded case, is allegedly 9th March 2009, which is admittedly subsequent to 1993 and even to 1996. He has submitted that the Defendant's contention that the Plaintiff has not produced any material to evince its claim of being a prior user, i.e. prior to Defendant's alleged adoption of 2009 is false and baseless. He has submitted that even assuming whilst denying its alleged claim of adoption in 2009, the Defendant is evidently and demonstrably much subsequent in time to the Plaintiff and has dishonestly adopted and used the impugned marks with a view to take unfair advantage of the goodwill and reputation generated by the

¹ (2002) 3 SCC 65.


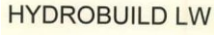
Plaintiff in its well known LW/LW+ marks, including by virtue of their use from the 1990.

25. Mr. Hiren Kamod has submitted that class headings are irrelevant in the present matter since, as can be seen from a bare perusal of the nice classification, various classes contain overlapping goods or similar and cognate goods. He has submitted that a perusal of the Fourth Schedule of the Trade Marks Act, 1999 would reveal that goods of the same description may not necessarily be included in only one class and that goods of the same or similar description / category may fall in two or more classes. Class 01 and Class 19 are overlapping in nature. He has placed reliance upon on a judgment of this Court in *Allied Auto Accessories Ltd v. Allied Motors Pvt Ltd & Anr*⁵, Paragraphs 23, 24, 25, 37 and 49, wherein this Court, inter alia held “The well settled position, therefore, is that guidelines or classification lists which are published by the Trade Marks Registry 5 2002 SCC OnLine Bom 1138. are only administrative guidelines”. He has further placed reliance upon the judgment of the Delhi High Court in *FDC Limited v. Docsuggest Healthcare Services Pvt Ltd*². (Paragraphs 51 – 55, 60, 61 and 64) and of this Court in *Eagle Potteries Private Ltd v. Eagle Flask Industries Pvt Ltd*⁷. at (Paragraphs 34, 35 and 40).

26. Mr. Hiren Kamod has submitted that the Defendant’s argument that the Defendant has a registration in class 1 or is allegedly prior to the Plaintiff in the said class, holds no water. The Defendant has at various places admitted to the rival goods being similar / identical. The Defendant has further admitted that the Plaintiff is its competitor and that the products sold by both parties are used in construction. He has accordingly submitted that inherent in the statements of the Defendant is the fact that both parties are selling goods which are identical / similar / cognate and/or allied and there arises no question of examining different classes in respect thereof.

27. Mr. Hiren Kamod has submitted that the Defendants has failed to prove actual use or its alleged user claim or alleged reputation or goodwill.

² (2017 SCC OnLine Del 6381). ⁷ (1992 SCC OnLine Bom 490).

He has submitted that the Defendant's user claim is false and Defendant is not a prior adopter or user. He has submitted that the Defendant's alleged claim of use of March 2009 in respect of its impugned marks  /  are false to the knowledge of the Defendant. This is easily demonstrable from the fact that Defendant's trademark applications filed in February 2014, in respect of the above marks, claimed that the aforesaid marks are allegedly in use since March 2009. However, the Defendant's another and prior trademark application for the mark HYDROBUILD, applied for in August 2010, does not have any user claim and claims that the mark is proposed to be used. Accordingly, had the marks HYDROBUILD LW or HYDROBUILD LW POWER been in use since 2009, there would have been no reason for the Defendant to make an application for HYDROBUILD in 2010 on a 'proposed to be used' basis. He has submitted that the Defendant's dishonesty and falsity of claims/statements is therefore writ large.

28. Mr. Hiren Kamod has submitted that the Defendant has failed to produce any documents demonstrating actual use of the impugned mark since in its alleged claimed year i.e., 2009 and/or any documents to support its alleged user claim in respect of the impugned marks from 2009. The Defendant has also failed to produce any material to prove its alleged reputation or goodwill. The earliest purported invoice made available by the Defendant in respect of its impugned products is of the year 2013, which is admittedly and significantly subsequent to the Plaintiff's adoption and use of the mark LW/LW+ and even subsequent to the Plaintiff's first invoice presently on record which dates back to the year 2000. He has further submitted that the Defendants invoices are of no assistance to the Defendant since all the invoices sought to be produced by the Defendant are of a date and year which is much subsequent to the Plaintiff's adoption and use of its mark LW/LW+.

29. Mr. Hiren Kamod has further submitted that the Defendant has sought to place reliance on the opposition proceedings and evidence submitted before the Trade Marks Registry. However, even on a bare perusal of the same, it can be clearly seen that no invoices have been produced by the Defendant to support its alleged claim of use since 2009. He has submitted that the alleged sales figures sought to be relied upon by the Defendant in

such opposition proceedings only set out alleged sales since 2011 and not 2009. In any event, in the absence of any document to support its claims, the Defendant's reliance on the aforesaid figures is of no assistance to the Defendant and holds no value.

30. Mr. Hiren Kamod has further submitted that the Defendant has sought to rely upon some stray letters of certain dealers and traders inter alia alleging that the impugned products of the Defendant bearing the impugned marks HYDROBUILD LW and/or HYDROBUILD LW POWER have been available in the market since 2009-10 and that there has been no comparison / competition observed for packaging, pricing of the same. He has submitted that the language, words and contents of all such letters produced by the Defendant are identical to each other and an exact verbatim reproduction of each other. Further, all such letters have been obtained by the Defendant subsequent to the filing of the present suit. He has submitted that it is clear that the veracity, contents, truthfulness and even the issuance of the said letters is extremely questionable and tainted with falsity and mala fide and the same have, in any event, been denied by the Plaintiff. He has placed reliance upon the decision of this Court in *Medley Laboratories (P) Ltd & Anr v. Alkem Laboratories Limited*⁸ at Paragraphs 11, 14, 15 and 17 in the context of his contention that self serving nature of these documents cannot be relied upon and even considered by this Court. He has submitted that the Defendant has failed to prove any of its claims and is therefore not in a position to even allege that it is the prior adopter or user of the marks in question, and is certainly not entitled to any rights therein.

31. Mr. Hiren Kamod has submitted that the Plaintiff has been able to produce more than sufficient documentary evidence and material to demonstrate open, continuous and extensive use of its LW/ LW+ marks much prior to the dates of use mentioned in the registrations sought to be relied upon by the Defendant and accordingly the Defendant has no ground to claim prior use of the mark.

32. Mr. Hiren Kamod has submitted that the Plaintiff's LW/LW+ Marks are not descriptive or generic in nature and are validly registered as trademarks under the Trade Marks Act, 1999. Further, the Defendant's use of the

impugned mark LW is in a 2002 SCC OnLine Bom 444 trademark sense. Hence, the Defendant cannot blow hot and cold, as it has done so in the present case. He has submitted that the Plaintiff has more than sufficiently displaced the Defendant's contention that LW is allegedly an acronym for Liquid Waterproofing or that it is an indication in trade to designate the kind or character or quality or intended purpose of the production of the said goods. This Court has in the past, considered identical defenses / grounds as those being raised by this Defendant, in respect of the Plaintiff's LW/LW+ Marks and has despite that held in favour of and granted protection to the Plaintiff's LW/LW+ Marks. He has placed reliance upon the orders which form part of the compilation of the sample orders and which are aforementioned. He has submitted that this Court in *Pidilite Industries Limited vs Chiripal Industries Limited*⁹ has held that "There is much substance in the contention raised on behalf of the Plaintiff that a strong prima facie case is made out for the reason that LW and LW+ have been used as unique and abstract expressions in the context of the product of the Plaintiff, over a considerable period of time". Further, in *Pidilite Industries Limited vs Zar Metamorphose Combine*¹⁰, this Court held that "By their very nature, it cannot be Interim Application (L) No.12828 of 2021 in COMIP Suit No.452 of 2021 dated 9th March, 2023. 2020 SCC Online Bom 2382. said that words 'LW' or 'LW+' are description of the character or quality of goods.

33. Mr. Hiren Kamod has further submitted that the Plaintiff is not required to give reasons for adopting the mark LW / LW+. It has been held in *Lupin Limited vs Eris Lifesciences Pvt Ltd*¹¹, at Paragraph 20. It is further held that "When the mark is registered and the entry is made in the Register, the Plaintiff discharges the burden that the mark is a distinctive mark and satisfies the criteria of 'trademark' within the definition of the trademark and the requirements of Sections 9 and 11 of the Act".

34. Mr. Hiren Kamod has further submitted that the Defendant has despite already having registration for HYDROBUILD, the Defendant filed separate trademark applications for HYDROBUILD LW and HYDROBUILD LW POWER, thereby making it evident that its adoption and use of LW is in a trademark sense. He has submitted that the Defendant is seeking to claim rights in LW and fraudulently obtained registration thereof, and hence its contention of the mark being allegedly descriptive or generic is merely an

11 2015 SCC OnLine Bom 6807

afterthought which holds no merit. He has submitted that the conduct of the Defendant is therefore evidently mala fide and the Defendant is yet again taking inconsistent and contradictory stands, blowing hot and cold at the same time, which it cannot be permitted to do so. He has placed reliance on a judgement of this Court in

Jagdish Gopal Kamath & Ors vs Lime & Chilli Hospitality Services¹² at Paragraphs 23, 29-30. He has also placed reliance upon a judgment of this Court in Pidilite Industries Limited v. Riya Chemy (supra) at Paragraph 62.

35. Mr. Hiren Kamod has further submitted that a perusal of the impugned products would make it evident that the Defendant is using the impugned marks bearing the word LW as a trademark / part of a trademark. He has placed reliance on this Court's judgment in Pidilite Industries Limited v. Riya Chemy (2022 SCC OnLine 5077 at Paragraphs 12, 25 and 62) and Pidilite Industries Limited v. Jubilant Agri & Consumer Products Limited (2014 SCC OnLine Bom 50 at Paragraphs 14.2, 14.3 and 14.4). He has submitted that the Defendant is using a descriptive phrase "Integral Waterproofing Compound For Concrete" on the impugned products, which it would

12 2015 (62) PTC 23 [Bom] not, had it already been using LW in a descriptive sense or to describe the product. The Defendant is thus estopped and cannot be heard to say that LW is not registrable or that it does not qualify as a trademark when the Defendant is itself seeking to register, and is also using the same in a trademark sense.

36. Mr. Hiren Kamod has further submitted that the Defendant's contention that the Plaintiff's LW/LW+ marks are allegedly common to the trade, is false. He has submitted that in order to succeed in its defense of a mark being common to the trade, the Defendant must establish that the marks on which it relies are many and that they are in extensive use and that they have, by reason of that wide usage, passed into the realm of the generic, to the extent that they can no longer be said to describe any particular purveyor or user. He has placed reliance upon the decision of this Court in Jagdish Gopal Kamath (Supra) in this context.

37. Mr. Hiren Kamod has further submitted that there has been no delay or acquiescence on the part of the Plaintiff and the Defendant is not an honest or concurrent user. He has submitted that it is settled law that delay is not available as a defense in an infringement action. He has placed reliance upon the decision of this Court in Abdul Rasul Nurallah Virjee and Jalalluddin Nurallah Virjee v. Regal Footwear¹³ at Paragraphs 98. He has further submitted that in any event, there has been no delay or laches or acquiescence on the part of the Plaintiff whatsoever including in the filing of the present suit and the entire circumstances and sequence of events leading to the filing of the present suit have been set out in the plaint. The Plaintiff has swiftly initiated action upon coming across the impugned products in the market. Further, the Plaintiff had opposed the Defendant's application for registration of the impugned mark HYDROBUILD LW POWER in or about 2015 and the said proceedings are pending. The Plaintiff upon coming across the Defendant's impugned products in December, 2020 issued a cease and desist notice to the Defendant to which the Defendant did not respond. Therefore, the Plaintiff has not only apprised the Defendant of its statutory and common law rights in its LW/LW+ Marks, but has also put the Defendant to unequivocal notice of their objection to Defendant's use of the impugned marks and label. Once the Defendant was put to notice, any further use of the impugned mark was to its own peril. He has submitted that it is settled law that to 13 2023 SCC OnLine Bom 10. prove acquiescence, the Plaintiff must commit a "positive act" of encouraging the Defendant in continuing with its wrongful acts, which is evidently absent in the present matter.

38. Mr. Hiren Kamod has further submitted that it is settled law that where the Defendant's adoption itself is dishonest, no amount of user can create any rights in favour of the Defendant. He has submitted that it is evident that the Defendant had the Plaintiff's LW/LW+ products before it while adopting the impugned marks and the impugned label. No amount of use pursuant to a dishonest adoption can inure to the benefit of the Defendant. The Defendant is not an honest or concurrent user under the Trade Marks Act, 1999. There is no honesty in the Defendant's adoption.

39. Mr. Hiren Kamod has further submitted that the Defendant has gambled by investing whatever amount it may allegedly have, in its infringing

mark and its usage of the infringing mark cannot be a defense to an action by a registered proprietor of a prior adopted and registered mark. He has placed reliance in this regard on *Bal Pharma Ltd vs Centaur Laboratories Pvt Ltd*¹⁴, at 14 2002 (24) PTC 226 (Bom) (DB). Paragraph 9.

40. Mr. Hiren Kamod has further submitted that the disclaimer on some of the Plaintiff's marks does not limit the rights of the Plaintiff. He has submitted that the disclaimers on some of the Plaintiff's registrations would not affect or negate the rights of the Plaintiff to claim exclusivity and protection in respect of its other registrations, especially when the Plaintiff has obtained other independent registrations of the said mark without any disclaimers or conditions. He has submitted that it is settled law that every trade mark registration is separate and independent and a disclaimer in one registration cannot be read into or imported into other registrations without disclaimers. The Plaintiff is therefore also independently entitled to succeed in the present suit on the basis of its LW/LW+ registrations set out in the Plaint. He has placed reliance on the judgement of this Court in *Pidilite Industries Limited vs PomaEx Products*¹⁵. at Paragraphs 80, 81, 82, 83, 95, 98, 100 and 101 in this context.

41. Mr. Hiren Kamod has submitted that the disclaimers do

15 2017 SCC OnLine Bom 7237. not go to the market and a common man of average intelligence, or the average consumer would have no knowledge of any disclaimers present in a trade mark registration. The average person generally has no notice of the disclaimer when the mark is used in the course of trade. It is also settled law that for the purpose of comparison of the marks to adjudicate upon the possibility of confusion or deception of the public, the whole of the mark (including the disclaimed portion) would have to be compared as that is how a common man would view the marks in the market. He has placed reliance on the judgment of this Court in *Pidilite Industries Limited (supra)* at Paragraph 61. Further, in the matter of *Pidilite Industries Limited v. Platinum Waltech (supra)* and *Pidilite Industries Limited v. Zar Metamorphose Combine Pvt Ltd (supra)*, this Court has accorded judicial notice and protection to the Plaintiff's mark LW (word per se) despite the

presence of, and after consideration of the very same disclaimer/condition on the Plaintiff's mark.

42. Mr. Hiren Kamod has further submitted that the Plaintiff's marks LW/LW+, have also acquired further distinctiveness and secondary significance due to its wide, long, open and continuous use since many decades. The Plaintiff has acquired valuable common law rights in its marks by virtue of the aforesaid.

43. Mr. Hiren Kamod has further submitted that Court can go behind the Defendant's registration of the impugned marks since the same are ex-facie illegal, fraudulent and of a nature that would shock the conscience of the Court. He has placed reliance on the decision of the Full Bench of this Court in *Lupin vs Johnson and Johnson*¹⁶ at Paragraphs 24, 26, 45, 59(1), 59(3) and 59(5). He has also placed reliance on a judgment of this Court in *Pidilite Industries Limited Vs. Poma Ex Product (Supra)* at Paragraphs 79, 81-84 and *Pidilite Industries Limited Vs. Riya Chemy (Supra)* at paragraph 63 in this context.

44. Mr. Hiren Kamod has further submitted that it is settled law that a Suit for infringement is not barred merely because the Defendant's mark is also registered and the inherent jurisdiction of the Court to entertain the infringement action is not ousted merely because of the Defendant's registration. He has placed reliance in this regard on the judgment of this Court in *Siyaram Silk Mills Ltd v. 16 AIR 2015 Bom 50. Shree Siyaram Fab Pvt Ltd & Ors*¹⁷ at Paragraphs 5, 10 and 11. 45. Mr. Hiren Kamod has further submitted that it is evident from the material on record that the impugned marks are deceptively similar to the Plaintiff's registered mark LW / LW+ and which are violative of the rights of the Plaintiff. The same is therefore also violative of the provisions of the Trade Marks Act, 1999 including Section 11 of the Act and ought not to have proceeded to registration. He has further submitted that though the Defendant is now seeking to contend that LW is a descriptive term and is not being used by the Defendant in a trademark sense, the Defendant, despite having a registration for HYDROBUILD, separately made an application for registration of the mark HYDROBUILD LW and

HYDROBUILD LW POWER, that too without disclaiming LW therein. Therefore, the Defendant's trademark applications, including the trademark registration obtained, are evidently fraudulent and dishonest. It is therefore evident that the aforesaid registrations of the Defendant are, including even at the prima facie interlocutory stage, fraudulent and illegal, in violation of the provisions of the Trade Marks Act, 1999. Therefore, the Court ought to go behind the 17 2012 SCC OnLine Bom 48. Defendant's registrations and grant an injunction against the Defendant's wrongful activities with a view to secure the rights of the Plaintiff.

46. Mr. Hiren Kamod has further submitted that the rival marks / labels are similar and there is likelihood of confusion amongst the public at large; class of consumers. The Plaintiff is not required to demonstrate actual confusion.

47. Mr. Hiren Kamod has further submitted that the Plaintiff has made out a prima facie case for grant of interim relief. The balance of convenience is overwhelmingly in favour of the Plaintiff. Further, irreparable harm, loss and injury has been caused and shall continue to be caused to the Plaintiff due to the Defendant's wrongful activities, and the same is also apparent from the pleadings and the material on record. The Defendant has various other products apart from the impugned product, as is the Defendant's own case, and therefore the Defendant's business will not be affected upon the grant of an injunction. In any event, the Defendant ought not to be permitted to continue with its wrongful activities, which are not only in violation of the Plaintiff's rights but are also prejudicial to public interest and welfare. It is therefore submitted that the Interim Application ought to be made absolute in terms of prayers (a) to (d) thereof.

48. Mr. Chaitanya Chavan the learned Counsel appearing for the Defendant has submitted that the Defendant is actively involved in the manufacturing of cement preservatives and cement water proofing preservatives, water proofing chemicals etc. The Defendant is presently selling over 30 products relating to these goods pertaining to the construction industry. He has submitted that the Defendant is not a fly by night operator but has been in the business almost since one and half decade. He has relied upon Section Section 28(3) and 30(2)(e) of the Trade Marks Act which

concerns registration of trade marks. He has submitted that the mark HYDROBUILD was applied for registration on 25th August, 2010 and came to be registered on 1st July, 2015. There was no opposition from the Plaintiff in respect of Trade Marks HYDROBUILD LW. The registration of the said mark came to be applied on 11th February, 2014 and came to be registered on 5th July, 2018. Therefore, the Defendant is a registered proprietor of the mark HYDROBUILD (bearing No 2013852 in Class 1) and HYDROBUILD LW (bearing 2676581 in Class 1). He has placed reliance upon the definitions of Registered proprietor in Section 2(v); Registered trade mark in Section 2(w); the Registered user in Section 2(x); Mark in Section 2(m); Trade Mark in Section (zb) of the Trade Marks Act. He has submitted that mark includes a device, label, name, signature, word, letter, etc. or combination of colours or any combination thereof.

49. Mr. Chaitanya Chavan has placed reliance upon Section 28 of the Trade Marks Act which confers rights by the registration of the trade mark. He has submitted that Section 28(3) recognizes the Defendant's right to use its registered trade mark as against the other registered trade mark which is similar or identical or nearly resembling each other. He has further submitted that under Section 29(2) of the Trade Marks Act which concerns infringement action it is permissible against a person who is not a registered proprietor of a mark. Further, Section 30(2) (e) of the Trade Marks Act, it provides for the limits on effect of registration. Section 31 of the Trade Marks Act confirms that the Registration is an evidence of prima facie validity. He has also placed reliance upon Section 34 of the Trade Marks Act which is about saving of vested rights of a prior user. He has submitted that the rights acquired for the proprietor of the trade mark upon registration of the trade mark hold a stronger footing.

50. Mr. Chaitanya Chavan has submitted that the procedure for registration of the Trade Mark stands to be, or at least, is akin to quasi judicial process leading to registration of the Trade Mark. This includes: (a) application, (b) public notice by publishing an advertisement, (c) opportunity to public at large to file opposition and (d) in the process of inquiry, if Registrar finds the mark to create confusion, it may refuse registration.

51. Mr. Chaitanya Chavan has submitted that the Defendant having acquired statutory rights to do business under the trade marks HYDROBUILD and HYDROBUILD LW, such rights cannot be disregarded. Further, under Section 31 of the Trade Mark Act, the registration of Defendant's mark is evidence of its validity.

52. Mr. Chaitanya Chavan has submitted that for injunction, a very strong prima facie case with certain pre-requisites is emphasized. He has placed reliance upon the decision of the Supreme Court in Sayyed Mohideen V/s. P. Sulochana Bai¹⁸ at 18 2016(2) SCC 683. paragraphs 22 to 26.

53. Mr. Chaitanya Chavan has further submitted that in view of Section 28(3), 29(2) and 30(2)(e), no infringement action can lie against a registered proprietor of a mark. He has placed reliance upon decision of the Delhi High Court in M/s. Jindal Industries Ltd. vs. M/s. Nirmal Steel Tubes Pvt. Ltd.¹⁹ at Paragraph 10; P.M. Diesels Pvt. Ltd. vs. Thukral Mechanical Works²⁰ at paragraph 11, 13, 14, 15 and decision of this Court in Essel Propack Ltd. vs. Essel Kitchenware Ltd²¹ at paragraph 44.

Mr. Chaitanya Chavan submitted that Lupin Limited Vs. Johnson and Johnson²² at Paragraphs 57 and 60, considered the effect of prima facie evidence of validity. This Court held that there will be a strong presumption of validity in favour of the Defendant who is also the registered proprietor. IAssociation²⁵ lar form herein above. Further, in the indicative list of Plaintiff LW and LW+ trade mark registrations one of the trade mark registrations being registered No.2447181 for trade mark LW under Class 19, though having date of registration as 21st December, 2012, the date of user is shown as 4th July, 1998. Undoubtedly, the Plaintiff has been using the LW mark much prior to use of LW with HYDROBUILD by the Defendant.

71. There have been various orders passed by this Court from time to time which forms part of the sample orders and the list of which have been set out herein above and which shows that the Plaintiff has been vigilant in protecting its intellectual property rights including its rights in LW / LW+ marks and LW / LW+ labels and has been successful in obtaining orders from this

Court protecting such rights in the aforementioned marks. Thus, judicial protection and recognition has been accorded to the Plaintiff's LW/LW+ marks and the LW/LW+ Labels.

72. The Defendant's use of the impugned mark LW with HYDROBUILD POWER and / or HYDROBUILD incorporated therein, would in my prima facie view amount to an infringement of the Plaintiff's registered trade mark LW as the impugned marks have encompassed the whole of the Plaintiff's LW as well as the rival products being identical. It is settled law that mere addition of prefix and / or suffix to the impugned mark is inconsequential. This is more so when impugned marks are in respect of the identical goods as that of the Plaintiff. The decisions of this Court in Sabmiller (Supra) is apposite. It held therein that the rival marks are to be compared as a whole and with reference to the leading, essential and memorable parts thereof. I accordingly find no merit in the Defendant's contention that the use of the word HYDROBUILD before LW in the impugned marks is sufficient to distinguish the rival marks. The leading and essential feature of the Defendant's marks is LW. If the Defendant's contention is to be accepted, this would defeat the purpose of the Trade Marks Act, 1999, whereby the Defendant would simply add any prefix or suffix to a well established mark and then claim that the two marks are not similar due to the presence of the prefix or suffix.

73. The comparison of the Defendant's impugned label with that of the Plaintiff's label in respect of identical products would in my prima facie view show that there has been an imitation and / or reproduction / substantial reproduction of the Plaintiff's LW+ label and the Plaintiff's artistic copyright work therein including the image of a man wearing a construction helmet, the colour scheme and layout and overall trade dress. The minute variation in representations or placement of the colours are inconsequential and do not make the Defendant's use non-infringing. Further, the Defendant's impugned work and label need not be an exact reproduction of the Plaintiff's work / label. It is sufficient to establish copyright infringement if the Defendant's label looks similar or like a copy or is reproduction of substantial part of the Plaintiff's label which in my prima facie view is evident in the present case. It is sufficient for the Defendant's impugned work to have incorporated the essential and substantial features of the Plaintiff's work for meeting the test of copyright

infringement. The decisions relied upon by the Plaintiff namely Pidilite Ltd. Vs. S.M. Associates & Ors. (Supra) and Pidilite Industries Ltd. Vs. Riya Chemy (Supra) are apposite.

74. As regards the Defendant's impugned mark / label passing off as the Plaintiff's registered mark LW / LW+ and LW+ labels are concerned, in the present case, in my prima facie view, the impugned marks, labels and overall trade dress in respect of the impugned products would show that the Defendant is seeking to misrepresent its goods as that of the Plaintiff or having some connection with the Plaintiff. There is dilution of goodwill and reputation of the Plaintiff's business as well as dilution of distinctiveness of the Plaintiff's LW / LW+ marks and LW+ label. Such usage of the impugned marks, labels are likely to cause confusion and deception amongst the members of the trade and public at large. The close identity / resemblance of the Defendant's impugned marks and the Plaintiff's registered marks LW / LW+ and LW+ label is clear evidence of the intention of the Defendant to deceive and confuse the public, consumer and traders. I do not find merit in the Defendant's contention that there has to be actual incidences of confusion. It is well settled that even likelihood of confusion and deception is sufficient. This has been held by this Court in Laxmikant V. Patel (Supra), Sabmiller India Ltd. (Supra) and Jagpin Breweries Ltd. (Supra).

75. The Plaintiff has a registered trade mark bearing No.705497 in Class 1 comprising of the mark LW as one of its leading and essential features and which registration is dated 2nd May, 1996, having user claim of April 1993. This is in itself evidence, especially at the prima facie stage of the Plaintiff's prior adoption and usage of the mark LW since the 1990s. Reference to this would be relevant since the Defendant's registration of the impugned trade mark HYDROBUILD LW was also in Class 1 bearing No.2676581 dated 11th February, 2014 and thus subsequent to the Plaintiff's trade mark registration. Further, from the material on record, it is evident that the Plaintiff have been using the mark LW / LW+ at least since the year 2000 in respect of its products. The first invoice dates back to the year 2000. The Defendant's alleged date of adoption and use of the impugned mark is 9th March 2009 and admittedly subsequent to 1993 and even to 1996. I do not find any merit in the contention of the Defendant that the Plaintiff has not produced any material to evince its claim of being a prior user, i.e. prior to Defendant's

alleged adoption of 2009. Although, the Plaintiff had not relied on the aforementioned mark for the purpose of present Suit, the Defendant itself had produced the said registration and thus the registration of the said mark is required to be considered and in my prima facie view is evidence of the Plaintiff being significantly the prior user of the mark LW.

76. I further do not find any merit in the submission on behalf of the Defendant that the registered marks of the Plaintiff which have been relied upon in the Plaint are in different class i.e. class 19 then that of the Defendant's registered mark which falls under Class 1. This is in the context of the mark LW which has prior date of use than that of the Defendant's registered mark. Further, I do not find any merit in the contention that one of the marks LW having date of use of 4th July, 1998 is registered under Class 19 and hence cannot be relied upon to show prior user. It has been held by this Court in Allied Auto Accessories (Supra) relied upon by the Counsel for the Plaintiff that guidelines or classification lists published by the Trade Mark Registry are only administrative guidelines. Further, a perusal of the fourth Schedule of the Trade Marks Act, 1999 would reveal that goods of the same description may not necessarily be included in only one class and that goods of the same or similar description / category may fall in two or more classes. I find that Class 1 and 19 are overlapping in nature and the headings of such classes also bear out the same. Further, the rival products in the present case are identical in nature and are essentially construction chemicals and thus weightage can be given to the registration of the LW mark in Class 19. The Defendant's contention that the Defendant has a registration in Class 1 prior to the Plaintiff in the said class, accordingly holds no water.

77. The Defendant's claim of use of March, 2009 is also not borne out from the material relied upon by the Defendant. Further, the Defendant's trade mark application was filed in February 2014 in respect of mark HYDROBUILD LW claiming alleged user of March, 2009. However, the Defendant's prior trade mark application for HYDROBUILD, applied in August, 2010, does not have any user claim and claims that the mark is proposed to be used. Thus, there is inconsistency between the user of the mark HYDROBUILD and HYDROBUILD LW POWER which is alleged to be used since 2009. Further,

had the marks HYDROBUILD LW or HYDROBUILD LW POWER been in use since 2009, there would have been no reason for the Defendant to make an application for HYDROBUILD in 2010 on a “proposed to be used basis”.

79. Having considered the material on record the earliest invoice made available by the Defendant in respect of its impugned products is of the year 2013 which is significantly subsequent to the Plaintiff’s adoption and use of the mark LW / LW+ i.e. the Plaintiff’s first invoice on record dating back to the year 2000. Further, the Defendant’s reliance on the opposition proceedings and evidence submitted before the Trade Mark Registry in respect of its impugned mark is misplaced. In the opposition proceedings no invoices have been produced by the Defendant to support its alleged claim of use since 2009. The Plaintiff has denied the alleged sales figures sought to be relied upon by the Defendant in such opposition proceedings. In any event the alleged sales are since 2011 and not 2009. In the absence of any document in support of the Defendant’s claim of user of March, 2009, the reliance thereupon is of no assistance to the Defendant and holds no value.

80. The Defendant has relied upon stray letters of certain dealers and traders inter alia alleging that the impugned products of the Defendant bearing the impugned marks HYDROBUILD LW and/or HYDROBUILD LW POWER have been available in the market since 2009-10 and that there has been no comparison / competition observed for packaging, pricing of the same. I prima facie find from the words used that the contents of all such letters produced by the Defendant are identical to each other and an exact verbatim reproduction of each other. Further, all such letters have been obtained by the Defendant subsequent to the filing of the present Suit. I prima facie find from the contents of the said letters that the same are extremely questionable and cannot be relied upon by the Defendant in support of its contention that the use of the Defendant’s impugned mark is in the year 2009.

81. I prima facie find that the Plaintiff has produced sufficient documentary evidence and material to demonstrate open, continuous and extensive use of its LW / LW+ marks much prior to the date of use mentioned in the registrations sought to be relied upon by the Defendant of its impugned marks

and thus the claim of the Defendant of prior user of the impugned mark is without any substance.

82. The Defendant has contended in the pleadings that the Plaintiff's LW/LW+ marks are descriptive or generic in nature. The Defendant has further contended in the pleadings that the mark LW/LW+ stands for "Liquid Water Proofing". In my view these contentions are baseless and this Court has not accepted identical contentions of the Defendant in respect of Plaintiff's LW/LW+ marks, the sample orders of which are part of the Plaintiff's compilation and a list of which has been re-produced above. This Court has gone on to grant protection to the Plaintiff LW / LW+ marks. In one of the orders in *Pidilite Industries Ltd. Vs. Chiripal Industries Ltd.*, (Supra), this Court in paragraph 33 held that:

"There is substance in the contention raised on behalf of the Plaintiff that a strong prima facie case is made out for the reason that LW and LW+ have been used as unique and abstract expressions in the context of the product of the Plaintiff, over a considerable period of time."

83. Further, this Court in another order namely, *Pidilite Industries Ltd. Vs. Zar Metamorphose Combine* (Supra), held that:- "By their very nature, it cannot be said that words 'LW' or 'LW+' are description of the character or quality of goods. It is no good to say that they are an abbreviation of the words 'liquid waterproofing', which are clearly descriptive; it must be shown that there is an honest practice in the industry to use this abbreviation for the words "liquid waterproofing". And for establishing such honest practice, it is not sufficient to point out that a few rival manufacturers or marketers use the very same abbreviation. The defendant has to indicate the extent of such user by these rival traders particularly, or by the trade generally, so as to amount to a practice. And, even as a matter of practice, it must be shown to be bona fide. It is no good, if the practice itself can be said to constitute an infringement or a tort and actionable as such. It is by no means apparent in the present case that the use of these words by rival traders is so extensive that it may be identified as an industry practice. Secondly, these traders may themselves be infringers of the Plaintiff's registered

trademarks and indeed, that is precisely what the Plaintiff's case here is. The Plaintiff has not only moved against these rival traders, but even managed to obtain suitable orders against them. The so-called practice of the industry, urged on the basis of such user, can hardly be termed as honest."

84. Thus, this Court has in prior orders held in favour of the Plaintiff on the balance of convenience, particularly on the ground that the Plaintiff has been using the alphabets LW and LW+ for identifying its goods and both are its registered trade marks. The Defendant would not suffer much if it was called upon to describe its goods by reference to the full phrase 'Liquid Water Proofing'. However, the Plaintiff will clearly suffer in terms of dilution of its registered trademarks LW and LW+, if the Defendant was to be permitted user of LW and LW+ for describing its goods. This Court has also noted that if it is the Defendant's own case that LW and LW+ are used by way of description and not as trade mark, the Defendant is very well free to use the appropriate description, namely, "Liquid Water Proofing" instead of its abbreviated forms 'LW' or 'LW+' for describing its goods and in so doing would not suffer any prejudice.

85. The Defendant has sought to place reliance upon the judgment in J.R. Kapoor (Supra). Such reliance is misplaced and irrelevant to the present proceedings. In the said decision, the suffix MICRO in the mark 'MICROTEL' admittedly stood for microtechnology. This is contrasted by the Plaintiff's LW / LW+ in the present case which are arbitrary, invented and honestly coined by the Plaintiff and the same are not descriptive in any manner. Further, the Defendant's reliance on People Interactive (India) Pvt. Ltd. (Supra), to contend that the Plaintiff has not led evidence to prove that its mark has acquired distinctiveness or secondary significance is also misplaced reliance. The registration of the Plaintiff's mark is prima facie evidence of the distinctiveness of the Plaintiff's mark. I prima facie find that the Plaintiff has demonstrated that the Plaintiff's marks have acquired enormous goodwill and reputation including by virtue of their use since many decades and the same have acquired further distinctiveness and secondary significance.

86. The Defendant has contended that the Plaintiff has not provided reasons for adopting the mark LW/LW+. The Defendant on the one hand has contended that LW/LW+ is descriptive. However, on the other hand, the Defendant has applied for registration of its impugned marks bearing LW as its leading and essential feature. In my considered view the Plaintiff is not required to give any reasons for coining the word. When the mark is registered and the entry is made in the Register, the Plaintiff discharges the burden. The registered mark becomes a distinctive mark and satisfies the criteria of 'trademark' within the definition of 'trademark' under the Act as well as satisfying the requirements of Sections 9 and 11 of the Act. This has been held by this Court in *Lupin Ltd. Vs. Eris Lifesciences Pvt. Ltd*³².

87. The Defendant although having a registration for its mark HYDROBUILD filed separate trademark applications for HYDROBUILD LW and HYDROBUILD LW POWER, thereby making it evident that its adoption and use of LW is in a trademark sense. The Defendant in the aforementioned applications, did not disclaim LW and has applied for the registration and protection of the entire mark containing LW as its leading and essential feature. The Defendant has accordingly sought to claim rights in LW and is taking an inconsistent and contrary stand in the pleadings by contending that the mark LW / LW+ is descriptive and generic. It is well settled that the Defendant is not entitled to blow hot and cold at the same time. This has been held by this Court in *Jagdish Gopal Kamath & Ors. (Supra)*

32 2015 SCC OnLine Bom 6807. and *Pidilite Industries Ltd. Vs. Riya Chemy (Supra)*.

88. The Defendant is using the descriptive phrase "Integral Waterproofing Compound for Concrete" on the impugned products, which it would not have had it already been using LW in a descriptive sense or to describe the product. Further, the Defendant's reliance on the judgment in *M/s. ARG Outlier Media Pvt. Ltd. Vs. Rayudu Vision Media Ltd. (Supra)*, is misplaced as in that case no proprietary rights were claimed by the Plaintiff over the letter 'R' in its device mark comprising of the letter 'R' and a ". ". This is contrary to Plaintiff's stand in the present proceeding where its claiming proprietary rights over LW / LW+ in its device marks.

89. Further, the Defendant's contention that the LW / LW+ marks are allegedly common to the trade is in my prima facie view, meritless. The Defendant has not produced any material to demonstrate that the LW / LW+ is or has become generic or common to the trade. For the Defendant to succeed in its defense of a mark being common to trade, the Defendant must establish that the mark on which it relies are many and that they are in extensive use and that they by reason of that wide usage, passed into the realm of the generic, to the extent that they can no longer be said to describe any particular user. This has been held by this Court in Jagdish Gopal Kamath (Supra). This principle or requirement of proving extensive and substantial use by third parties is even applicable and binds the Defendant at the interlocutory stage. This has been held by this Court in Pidilite Industries Ltd. Vs. S.M. Associates and Ors. (Supra).

90. In view of the Defendant having adopted, used and also fraudulently applied for/ secured registration of the impugned mark HYDROBUILD LW containing the term LW as its leading and essential feature and use in a trade mark sense, would be estopped from contending that the term LW / LW+ is common to trade or generic or incapable of protection. The decisions of this Court viz. Pidilite Industries Ltd. Vs. Jubilant Agri & Consumer Products Ltd. (Supra) and Jagdish Kamat and Ors. (Supra) are apposite.

91. I do not find any merit in the Defendant's contention that there has been delay or acquiescence on the part of the Plaintiff in initiating action against the Defendant. In any event, such contention of delay is not available as a defence in an infringement action. This has been held by this Court in Abdul Rasul Nurallah Virjee and Jalaluddin Nurallah Virjee (Supra), I prima facie find that there has been no delay or laches or acquiescence on the part of the Plaintiff in filing the present Suit. The Plaintiff has upon coming across the impugned products in the market immediately taken action by issuing cease and desist notice to the Defendant which the Defendant has not responded. Thus, the Plaintiff had not only apprised the Defendant of its statutory and common law rights in its LW / LW+ marks, but also put the Defendant to unequivocal notice of its objection to the Defendant's use of the impugned marks and label. Once the Defendant was put to notice, any further use of the impugned marks was to the Defendant's peril.

92. In *Power Control Appliances & Ors. (Supra)*, the Supreme Court has held that the Plaintiff must commit a “positive act” of encouraging the Defendant in continuing with its wrongful acts, which is evidently absent in the present matter. I prima facie find that the Plaintiff in the present case has objected to the Defendant’s use of the impugned marks and label from time to time and has not stood by or let the Defendant continue with its wrongful acts. No amount of use albeit to the knowledge of the Plaintiff can ever amount to acquiescence. I find much merit in the submission on behalf of the Plaintiff that honesty in adoption is the bedrock to establish the defence of acquiescence. Further, in the present case, both the ingredients of acquiescence namely, honesty in adoption of the mark by the Defendant and ‘positive act’ on the part of the Plaintiff to lull the Defendant into a false sense of security are absent.

93. The reliance by the Defendant on the judgment of the Division Bench of the High court in *Apollo Parker Construction Equipments Pvt. Ltd. (Supra)* is a misplaced reliance. In that case, the Plaintiff’s trade mark opposition against the Defendant’s mark was filed and then subsequently withdrawn by the Plaintiff, and thereby allowing the Defendant’s mark to proceed to registration. It is in that context, the Court held that the Plaintiff having withdrawn the opposition proceedings cannot later contend that the Defendant’s registration was invalid or that there was no acquiescence. The withdrawal of the opposition proceedings in that matter was the ‘positive act’ as contemplated by the law of acquiescence. This is contrasted with the present case where there is no positive act of any nature whatsoever and therefore, the decision of the Gujarat High Court will have no application in the present matter.

94. The dishonesty in the adoption of the Defendant’s impugned mark is also based on the fact that the Defendant had the Plaintiff’s registered marks LW / LW+ before it while adopting the impugned marks and the impugned label. The Defendants had already registration for its mark HYDROBUILD, inspite of which the Defendant filed separate trade mark applications for HYDROBUILD LW and HYDROBUILD LW POWER, where LW is leading and essential feature. Thus, the Defendant in my prima facie view is not an honest or concurrent user under the Trade Marks Act, 1999.

95. The Defendant in its application for registration of the impugned marks has not produced any evidence of having conducted a search of the register of Trade Marks before adopting the impugned mark to ensure that no identical or similar marks were existing in the register prior thereto. It has been held by this Court in Bal Pharma Ltd. (Supra) that such exercise must be conducted by the Defendant prior to adopting the impugned mark and the Defendant by not conducting such exercise has gambled by investing whatever amount it may allegedly have in its infringing mark and its usage of the infringing mark cannot be a defence to an action by a registered proprietor of a prior adopted and registered mark. Thus, any use by the Defendant of the infringing mark and labels is at the peril of the Defendant.

96. Although, the Plaintiff has a disclaimer in respect of the Plaintiff's registration of one of the marks, this would in my view not affect the rights of the Plaintiff to claim exclusivity and protection in respect of its other registrations, especially when in the present case, the Plaintiff has obtained other independent registrations of the said mark without any disclaimer or condition. Thus, the disclaimer on the Plaintiff's trade mark registration bearing No.714144 will not limit the rights of the Plaintiff in its other independent registrations or the exclusive rights conferred by the same. It is settled law that every trademark registration is separate and independent and a disclaimer in one registration cannot be read into or imported into the other registrations without disclaimers. The decision relied upon by the Plaintiff viz. Pidilite Industries Ltd. Vs. Poma-Ex Products is apposite. Further, disclaimers do not go to the market and the average person i.e. common man of average intelligence has no notice of the disclaimer when the mark is used in the course of trade. It is settled law that for the purpose of comparison of the marks, the whole of the mark would have to be compared as that is how the common man would view the marks in the market. The decision of this Court in Pidilite Industries Ltd. Vs. Riya Chemy (Supra), is apposite in this context. In the matter of Pidilite Industries Ltd. Vs. Platinum Waltech Limited (Supra) and Pidilite Industries Ltd. V/s. Pidilite Industries Ltd. Vs. Zar Metamorphose Combine Pvt Ltd. (Supra), this Court has accorded judicial notice and protection to the Plaintiff's mark LW (word per se), despite the presence of, and after consideration of the very same disclaimer / condition on the Plaintiff's mark.

97. Having arrived at a prima facie finding that there is dishonest adoption of the impugned marks by the Defendant, the Court has the power to go behind the Defendant's registration, even at the interlocutory stage and grant injunction against the Defendant, particularly, where the registration of the trade mark of the Defendant is prima facie found to be ex facie illegal, fraudulent and shocks the conscious of the Court. This has been held by the Full Bench of this Court in *Lupin V/s. Jhonson and Jhonson (Supra)*. I prima facie find that the Defendant's registration of the impugned marks is ex facie illegal, fraudulent and of a nature that shocks conscious of this Court. In my prima facie view the Defendant has obtained registration of its impugned marks by playing fraud upon the Registrar of Trade Marks and concealing from him, the existence of the Plaintiff's prior registered marks. It is settled law that a Suit of infringement is not barred merely because the Defendant's mark is also registered and there is inherent jurisdiction of this Court to entertain the infringing action and such entertainment of the infringement action is not ousted merely because of the Defendant's registration. This has been held by this Court in *Siyaram Silk Mills Ltd (Supra)*. Further, in my prima facie view, the Defendant's impugned marks are deceptively similar to the Plaintiff's registered mark LW / LW+ and violative of the Plaintiff's right.

98. The decision relied upon by the Defendant namely *Sayyed Mohideen V/s. P. Sulochana Bai*³³ is inapplicable in the present case. The other decisions relied upon by the Defendant namely *M/s. Jindal Industries Ltd. vs. M/s. Nirmal Steel Tubes Pvt. Ltd.* reported in AIR 1995 Del 42 and *P.M. Diesels Pvt. Ltd. vs. Thukral Mechanical Works*, AIR 1988 Del 282 are decisions which are prior to the Full Bench judgment of this Court in *Lupin Vs. Jhonson and Jhonson (Supra)* and therefore, irrelevant to the present 33 2016 (2) SCC 683 proceedings.

99. Having compared the rival marks / labels, I prima facie find that they are similar and there is likelihood of confusion amongst the public at large and class of consumers. The Plaintiff is not required to display actual confusion. It is settled law that the Plaintiff in order to succeed in an action for infringement is required to establish that there is likelihood of confusion on the part of the public and not to prove actual confusion. The decision relied upon on behalf of the Plaintiff namely *Pidilite Industries Ltd. Vs. Jubilant Agri*

(Supra) is apposite. Further, this has also been held by this Court in Sabmiller India Ltd. (Supra) and the decision of the Supreme Court in Laxmikant Patel (Supra). I do not accept the Defendant's contention that the persons such as construction workers / carpenters who would be the class of consumers for the rival products in the present case being highly educated would be better equipped to research and distinguish between the rival products since the same are always sold in large / bulk quantities and therefore priced at a considerable price. The decision of this Court in Gorbatschow Wodka KG v. John Distilleries Ltd. (2011 SCC OnLine Bom 557) considers the judgment cited by the Defendant in Khodey Distilleries Ltd. V/s. Scotch Whisky Association, (2008) 10 SCC 723 at para 75 and Cadila Healthcare Ltd (Supra) and has held that "The Court will not readily assume that because consumers of premium goods and services have higher disposable incomes or, as the defendant states are educated, that the likelihood of deception is minimal. If the law was to accept such a position, it would only be a pathway of deceit..." Further, in Cadila Pharmaceuticals Ltd. Vs. Sami Khatib, MANU/MH/0497/2011 (Paragraph 15 and paragraph 23 (B)) and Pidilite Industries Limited vs Riya Chemy (Supra) at paragraphs 46 and 56, this Court has held that honesty in adoption is also not a defence to an action for infringement.

100. The Defendant has attempted to distinguish the judgments relied upon by the Plaintiff by stating that the facts in all of them are different by placing reliance upon the decision of the Supreme Court in Empire Industries Limited & Ors v. Union of India ((1985) 3 Supreme Court Cases 314). However, the settled law laid down by the judgments relied upon by the Plaintiff cannot be disregarded and judicial notice is required to be taken of them. Further, the orders which have been passed by this Court taking judicial notice of Plaintiff's LW /LW+ marks have considered identical defences raised by the Defendant and negated the same. The decisions relied upon by the Plaintiff have laid down settled legal principles which have withstood the test of time and would be applicable to the present case.

101. Thus, in my prima facie view, the Plaintiff has made out more than a prima facie case for grant of interim relief. The balance of convenience is overwhelmingly in favour of the Plaintiff. Further, irreparable harm, loss and injury will be caused to the Plaintiff due to the Defendant's continued use of the impugned marks which are wrongful activities. The Defendant has various

other products apart from the impugned product and therefore the Defendant's business will not be affected upon the grant of injunction. Thus, the interim relief sought for by the Plaintiff in terms of prayer Clauses (a) to (d) of the Interim Application are required to be granted to protect the Plaintiff's rights from being violated as well as in public interest and welfare.

102. Hence, the Interim Application is allowed in terms of prayer Clauses (a) to (d), which read thus:-

- a. Pending the hearing and final disposal of the suit, the Defendant, its directors, proprietors, partners, owners, employees, workers, subordinates, representatives, stockists, dealers, agents and all other persons claiming through or under them or acting on their behalf or under their instructions be restrained by an order and injunction of this Hon'ble Court from in any manner using the Impugned Marks LW with or without the marks HYDROBUILD or HYDROTITE and/ or POWER or the Impugned Labels any other mark which is identical with or similar to the marks LW/ LW+ or LW/LW+ Labels of the Plaintiff upon or in relation to the Impugned Products and from manufacturing, selling, offering for sale, advertising or dealing in constructions chemicals or chemicals/compounds or similar goods or any other goods bearing the Impugned Marks to the extent that they incorporate or use LW or LW+;
- b. Pending the hearing and final disposal of the suit, the Defendant, its directors, proprietors, partners, owners, employees, workers, subordinates, representatives, stockists, dealers, agents and all other persons claiming through or under them or acting on their behalf or under their instructions be restrained by an order and injunction of this Hon'ble Court from infringing in any manner the LW/LW+ Registered Marks of the Plaintiff bearing nos. 2448213, 2447182, 2308687, 2472730, 2472713, 2448212, 2447181 and 2308686 in any manner and from using in relation to any of the Impugned Products or any other goods for which the LW/LW+ Registered Marks are registered or any goods similar thereto, the Impugned Marks LW with or without the marks HYDROBUILD or HYDROTITE and/ or POWER or the Impugned Label or any other mark / label which is identical with or similar to the LW/LW+ Registered Marks of the Plaintiff (including the mark LW/LW+ and the LW/LW+ Label) and from manufacturing, selling, offering for sale, advertising or dealing in such goods or any other goods bearing the Impugned Marks LW with or without the marks HYDROBUILD or HYDROTITE and/ or

POWER or the Impugned Label or any marks / labels similar to the LW/LW+ Registered Marks (including the mark LW/LW+ and LW/LW+ Label or any features thereof);

- c. Pending the hearing and final disposal of the suit, the Defendant, its directors, proprietors, partners, owners, employees, workers, subordinates, representatives, stockists, dealers, agents and all other persons claiming through or under them or acting on their behalf or under their instructions be restrained by an order and injunction of this Hon'ble Court from infringing in any manner the Plaintiff's copyrights in the artistic work comprised in/reproduced on its LW/LW+ Label and from reproducing / copying the said artistic works or any substantial part of the said artistic works on the Defendant's Impugned Products (including those depicted at Exhibits "H" and "J" to the Plaintiff) or any bottles, cartons, packaging material or advertising material, literature or any other substance and from manufacturing and selling or offering for sale products upon or in relation to which the said artistic works have been reproduced or substantially reproduced or by issuing copies of such works to the public;
- d. Pending the hearing and final disposal of the suit, the Defendant, its directors, proprietors, partners, owners, employees, workers, subordinates, representatives, stockists, dealers, agents and all other persons claiming through or under them or acting on their behalf or under their instructions be restrained by an order and injunction of this Hon'ble Court from committing the tort of passing off in any manner and from manufacturing, marketing, selling, advertising, offering to sell or dealing in the Impugned Products or any similar goods or any other goods bearing the Impugned Marks LW with or without the marks HYDROBUILD or HYDROTITE and/ or POWER or marks incorporating the mark LW or the Impugned Labels or any other mark / label / trade dress identical with or similar to or comprising of the LW/LW+ Registered Marks and/or the LW/LW+ Label of the Plaintiff;

103. The Interim Application is accordingly disposed of. There

shall be no order as to costs.

[R.I. CHAGLA J.]

104. Mr. Yash Naik, learned Counsel appearing for the Defendant has sought stay of the Judgment and Order which has been pronounced today. This is vehemently opposed by Mr. Kamod, learned Counsel for the Plaintiff.

105. Considering the findings arrived at in the impugned Judgment and Order including the prima facie finding of malafide adoption of the impugned marks of the Defendant, this case does not warrant a stay of the said Judgment and Order. The Application for stay is accordingly rejected.

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