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

INTERIM APPLICATION (L) NO. 13908 OF 2024
IN
COMMERCIAL IP SUIT NO. 434 OF 2025
WITH
INTERIM APPLICATION NO. 5393 OF 2025
IN
INTERIM APPLICATION (L) NO. 13908 OF 2024

Anil Srichand Kundnani]
Proprietor of Bhagyalaxmi Tea Centre]
Umbrella Compound, Dahanu Road,]
Palghar-401602] **...Applicant/Plaintiff**

Versus

1) Pruthvi Ishwar Patel]
Proprietor of Maa Bahucharaji Sales]
Gala No. 5D Baug, J.B. Nagar, Andheri (E),]
Mumbai 400 059]
Also having address at]
M/s. Maa Bahucharaji Sales, Room No. 8,]
Roshni Apartment, Sankeshwar Nagar,]
Achole Road, Achole, Nalasopara (E), Palghar,]
Maharashtra 401 209]

2) Prabhat Supermarket]
Shop No. 1-2, Orchid Palace, Marol Military] **...Defendants**
Road, Andheri (E), Mumbai – 400 059] **/Respondents**

Mr. Atmaram Patade a/w Mr. Yatin Kochare, Ms. Shraddha Patil, Ms. Reshma Kakad, Mr. Pranav Manjrekar, Mr. Suraj Naik i/b Mr. Atmaram Patade, for the Applicant/Plaintiff.
Mr. Alankar Kirpekar a/w Mr. Ayush Tiwari, Mr. Chinmay Pagedar i/b Mr. Chandrakant Sakapal, for the Defendant No. 1.

CORAM : SHARMILA U. DESHMUKH
RESERVED ON : April 10th, 2026
PRONOUNCED ON : June 8, 2026

ORDER:

1. The suit is filed for infringement of Plaintiff's copyright in original artistic work of its label mark and for passing off. On 14th June, 2024,

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this Court granted ex-parte ad-interim relief restraining the Defendant from using the impugned label mark or any other identical or deceptively similar label mark as that of the Plaintiff's "UMANG" label mark, and from infringing the Plaintiff's artistic work and directed full disclosure by the Defendants.

2. The Plaint pleads about the incorporation and adoption of the mark "UMANG" in the year 2009 for manufacturing and marketing of the Plaintiff's premium quality packaged tea, coffee, etc. The Plaintiff is the registered proprietor of the word mark of "UMANG". The plaint sets out in paragraph 7 of the plaint, the status of the Plaintiff's registrations:

Sr. No.	Trade Mark	Appl. No.	User detail	Appl. date	Class	Status
1.	UMANG (WORD MARK)	6032310	23/04/2009	21/07/2023	30	Accepted & Advertised
2.	UMANG (WORD MARK)	4310665	23/04/2009	03/10/2019	35	Registered
3.	UMANG (DEVICE MARK) 	6015727	23/04/2009	11/07/2023	30	Opposed
4.	UMANG (WORD MARK)	4310666	23/04/2009	03/10/2019	38	Registered
5.	UMANG (WORD MARK)	4310663	23/04/2009	03/10/2019	16	Registered

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6.	UMANG (DEVICE MARK) 	4310662	23/04/2009	03/10/2019	38	Registered
7.	UMANGAM (DEVICE MARK) 	6300844	06/04/2021	13/02/2024	30	Accepted & Advertised
8.	JALARAM (DEVICE MARK) 	1600101	02/01/2002	11/09/2007	30	Registered

3. It is submitted that the original artwork in respect of the product bearing the trademark “UMANG” has been conceptualized and created by the Plaintiff in house and that the Plaintiff is the proprietor/owner of the original artistic work and in respect of one of these artistic labels, Plaintiff has obtained copyright registration. It is submitted that the Plaintiff has substantial online presence and the brochures, fliers, hangouts, leaflets, etc. are annexed to plaint to show the advertisement and promotional material. The sample invoices are annexed at Exhibit H to H-71 to the plaint. It is stated that the annual

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sales turnover of the Plaintiff for the year 2021 to 2024 is approximately Rs. 19,58,92,397/-.

4. It is submitted that in January 2024, after coming across the impugned products bearing the impugned label mark/artwork “UTSAH”, FIR was lodged against the Defendant No. 1, and cease and desist notice was issued on 15th February, 2024 which has been responded by the Defendant on 17th March, 2024 raising baseless defence. The Plaintiff conducted an inquiry in the trademark registry and found that the Defendant has applied for registration of the impugned device/label mark of “UTSAHA” on 27th June, 2023 and the status is shown as objected.

5. The Defendants have filed affidavit of disclosure and have also filed affidavit dated 20th July, 2024 for opposing continuation of ad-interim relief granted by order dated 14th June, 2024. The Defendants have stated that the Plaintiff has made false statement about filing of FIR, whereas only a complaint was lodged. It is further submitted that the Plaintiff has not disclosed to the Court that on 2nd June, 2016, the Plaintiff had filed application for registration of label mark of “UMANG” under application no. 3275370 which has been refused registration. It is contended that copyright registration is also *ex facie* illegal and liable to be canceled, as the same is based upon No Objection Certificate (NOC) dated 21st August, 2023 which could not have been granted by the

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Registrar of Trademark after having refused the trademark application bearing no. 3275370 in the year 2016.

6. The positive case set out by the Defendant is that it is the registered copyright owner of the artistic work bearing the mark "UTSAHA" and has been granted copyright registration. The use of green colour, device of cup and cardamom are commonly used for elaichi tea preparations.

7. In rejoinder, it is contended that the order of 14th June, 2024 was not based on the averment pertaining to the FIR and the same was an inadvertent error. It is contended that the Plaintiffs trademark attorney failed to take timely action pertaining to the trademark application no. 3275370 when the impugned refusal order was passed by the trademark registry. It is submitted that the opposition proceedings were at the instance of third party who was the proprietor of the word mark, whereas the Plaintiff's mark was label mark. It is submitted that the Plaintiff has multiple subsisting trademark applications which are in force and right is claimed based on the label mark which is original artistic work of the Plaintiff. It is submitted that the Defendants are aware of the Plaintiff's original artwork and in the Plaintiff's trademark application for the label mark of "UMANGAM" which is updated variation of the Plaintiff's trademark/artistic work of "UMANG", the Defendant No 1 has filed opposition notice on 24th July, 2024 stating

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that the "UMANGAM" label mark is deceptively similar and identical to the Defendant No 1's mark of "UTSAHA".

8. In sur-rejoinder it is submitted that refusal of the label mark under Section 11 of the Trademark Act, 1999 assumes significance and constitutes defence, which has been suppressed, The Plaintiff has also suppressed the opposition filed by one Mr. Umesh Agarwal on 17th December, 2016 relying upon prior user and prior registration of the mark "UMANG". It is submitted that the Plaintiff's adoption of the mark and its artistic work is dishonest and illegal, which cannot create any legal rights in favour of the Plaintiff.

9. In sur-sur-rejoinder, the Plaintiff has reiterated its earlier stand and claims that refusal of application no 3275370 is irrelevant and does not create any bar on Plaintiff's title to the original artistic work.

10. Mr. Kochare, learned counsel for the Plaintiff would submit that there is no application filed under Order XXXIX Rule 4 of Code of Civil Procedure, 1908 for vacating the ad-interim order and it is settled that it was open for the Defendant to file affidavit-in-reply to show as to why that ad-interim should not be continued or should be varied which was required to be done immediately and has not been done. He would draw attention of this Court to paragraph 7 of the plaint listing out the various marks and would submit that the device mark of "UMANG" under application no. 6015727 filed on 11th August, 2023 is opposed and

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that the device mark of “UMANGAM” has been opposed on the ground of deceptive similarity by the Defendant. He submits that the device marks at serial no. 3 and 7 of “UMANG” and “UMANGAM” are identical, and therefore, it is not open for the Defendant to claim that its device mark is not deceptively similar to the Plaintiff’s registered mark.

11. He would further point out the copyright registration obtained on 21st November, 2023 by the Plaintiff. He would point out the specimen invoices annexed to the plaint to demonstrate the sale of the products bearing the mark. He would point out the Chartered Accountant’s certificate certifying the sales turnover as well as the cease-and-desist notice which was issued on 15th February, 2024 to the Defendant and the reply thereto. He would submit that the application of the Defendant for copyright registration of its artwork is a cropped version of the mark which is actually in use.

12. He would submit that the Defendants claim of suppression is unacceptable as rejection of the Plaintiff's application no. 3275370 is by reason of conflicting word mark of “UMANG” and not based on artwork. He submits that the Defendant’s copyright registration is subsequent registration of 6th June, 2024. He would submit that perusal of Defendant’s original artwork would indicate that the same is a slavish reproduction of the Plaintiff’s original artwork.

13. He submits that the passing off action is also maintainable as the

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Plaintiff has demonstrated reputation and goodwill. He submits that though it is stated by the Defendant that the use of green colour/ device of cup/cardamon are commonly used, no extensive usage is shown. He submits that what is required to be taken into consideration is the manner of depiction of the original artwork.

14. He submits that the Defendant's challenge to the Plaintiff's copyright registration is based on Section 45 of Copyright Act, which would not apply as the application has been filed by the Plaintiff and not by some third party. He submits that the Defendant obtained copyright registration as they have used the cropped version and their copyright registration is of no consequence. He submits that under the Copyright Rules, the Defendant is required to give notice of his application to the Plaintiff as the Plaintiff had claimed interest in the subject matter of the copyright, and despite being aware of the earlier registration, did not give notice. He relies upon the following decisions :-

(i) Sanjay Soya Private Limited vs Narayani Trading Company[1]

(ii) Hiralal Prabhudas vs Ganesh Trading Company And Others[2]

(iii) ITC Limited vs Britannia Industries Limited[3]

1 IA(L) No. 5011 of 2020 decided on 9th March, 2021 by Bombay High Court.
2 1983 SCC Online Bom 284
3 2023 SCC Online Mad 6972

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(iv) Colgate Palmolive Company And Another vs Anchor Health And Beauty Care Private Limited[4]

(v) Xotik Frujus Private Limited vs Bubalus Beverages[5]

(vi) Marico Limited vs Zee Hygine Products Private Limited And Others[6]

(vii) Hugo Boss Trademark Management GMBH And Co. KG vs Sandeep Arora Trading as Arras the Boss And Others[7]

(viii) Marico Limited vs K.L.F. Nirmal Industries Private Limited[8]

(ix) Jagdish Gopal Kamath And Others vs Lime & Chilli Hospitality Services[9]

(x) Corn Products Refining Co. vs Shangrila Food Products Limited[10]

(xi) Hygienic Research Institute Private Limited vs Chandan And Shah Trading LLP And Another[11]

15. Mr. Kirpekar, learned counsel for the Defendants would submit that as the Plaintiff seeks interim relief, it has to make out a strong *prima facie* case and have to show ownership in the copyright and that the copyright registration has been obtained in accordance with due

4 2003 SCC Online Del 1005
5 IA(L) No. 24055 of 2021 decided on 25th November, 2022 by Bombay High Court.
6 IA(L) No. 33099 of 2024 decided on 25th June, 2025 by Bombay High Court.
7 2023:DHC:8930
8 MANU/MH/5159/2023
9 MANU/MH/0384/2015
10 AIR 1960 SC 142
11 (2025) 1 HCC (Bom) 25

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procedure of law.

16. He submits that the Plaintiff is required to disclose all material facts and pointing to paragraph 7 of the plaint would contend that the Plaintiffs registration of the device mark of “UMANG” has been opposed, and only word mark is registered in Class 30. He submits that the Plaintiff’s label is opposed because it contains the word “UMANG” in class 30 which is the word mark conflicting with the previously registered trademark. He would further point out that the Plaintiff's copyright registration gives the title of the work as “UMANG”. He submits that though in the plaint it is stated that the original artwork was designed in house, the copyright registration gives the name of one Mr. Chirag Vasantkumar Gadesha as the author of the copyright. He submits that there is no pleading that there was any deed of assignment in Plaintiff’s favour and there is no clear show of title. He submits that Plaintiff's entire case is based on copyright registration, whereas the certificate shows that the author of the original artwork is a third party. He submits that he cannot claim any right in the original artwork either through the registration or as an in-house creation.

17. He submits that the Plaintiff has further suppressed the opposition to registration of the mark "UMANG", which assumes significance. He submits that as the trademark registry has refused his registration under Section 45 of Copyright Act, the Registrar of

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Trademark could not have issued search certificate for permitting registration of copyright. He submits that as the Plaintiff's ownership in the artwork is under a cloud, the refusal of application no. 3275370 has not been deliberately shown.

18. He submits that the Defendant has secured copyright registration of "UTSAHA" by reason of refusal of Plaintiff's registration in the year 2016. He submits that there is no document produced by the Plaintiff to show user of the label mark. He submits that the notice of opposition to the Plaintiff's trade mark application was by one Mr. Umesh Agarwal on the basis that the trademark "UMANG" has been registered by the said Mr. Umesh Agarwal, and where the word mark is the integral part of the label, the Plaintiff is in fact passing off as "UMANG" which is third party's registered mark and the Plaintiff therefore is an infringer. He submits that the entire usage is to be considered including the use of the word "UMANG". He relies upon the following decisions :-

(i) Abdul Cadur Allibhoy vs Mahomedally Hyderally[12]

(ii) Kewal Ashokbhai Vasoya And Others vs Suarabhakti Goods Private Limited[13]

19. In rejoinder, it is contended that whatever has been argued before this Court is not the pleaded case of the Defendant.

20. Rival contentions now fall for determination:

12 Vol. III The Bombay Law Reporter 218
13 MANU/MH/3566/2022

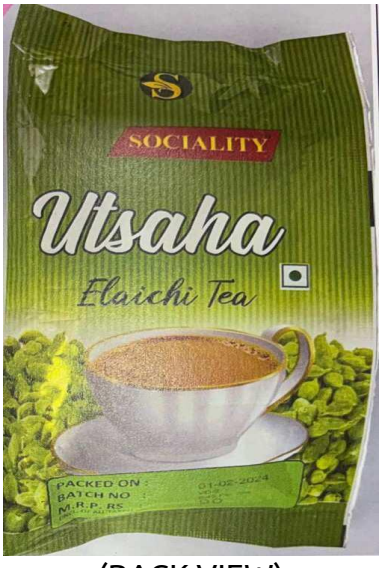
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21. The Plaintiff's claim that its copyright in the artistic work of label mark "UMANG" has been infringed by the Defendant by use of the impugned artwork in "UTSAHA" label mark and that such slavish reproduction amounts to passing off the Defendant's goods as that of the Plaintiff. The rival products depicted in the plaint are reproduced herein below for the purpose of comparison.

PLAINTIFF'S MARKS	DEFENDANT'S IMPUGNED LABELS/ PRODUCT
	

PLAINTIFF'S PRODUCT	DEFENDANT'S IMPUGNED PRODUCT
 (FRONT VIEW)	 (FRONT VIEW)

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 (BACK VIEW)	 (BACK VIEW)
 (SIDE VIEW)	 (SIDE VIEW)
 (SIDE VIEW)	 (SIDE VIEW)

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22. *Prima facie* upon comparison of the rival products, it cannot be denied that the artworks are deceptively similar. The background colour scheme of shaded green, the bed of cardamoms on which the tea cup is placed are identical. The stylized font of depiction of the marks and the words on the packaging is similar. The word “sociality” is written on the Defendant’s package in identical red colour inside slightly curved rectangle identical to the word “JALARAM” on the plaintiff’s package. The placement of all elements on the Defendant’s packaging is identical to the Plaintiff’s packaging. It is therefore not a case of only the use of cardamom and cup of tea which may be common in tea packaging, but the entire trade dress which is nothing but a slavish reproduction of the Plaintiff’s artwork. It is the expression of the idea of showing the combination of tea and cardamom in a distinct colour scheme and the placement of features which constitutes copyright and it is when this expression of idea is infringed, that the Defendant can be injuncted. There cannot be any denial to the similarity of the rival artworks by the Defendant as the Defendant has opposed the registration of the Plaintiff’s "UMANGAM" label. Now "UMANGAM" label is nothing but "UMANG" label. The Plaintiff’s "UMANG" label and "UMANGAM" label are reproduced herein below:

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PLAINTIFF'S LABEL MARKS



23. The Plaintiff's "UMANG" label and "UMANGAM" label marks are identical and the Defendant’s opposition to the registration of Plaintiff’s "UMANGAM" label on the premise that the "UMANGAM" label is identical and deceptively similar to the Defendant’s label mark contains an implicit admission of the rival artworks being identical/deceptively similar.

24. Mr. Kirpekar’s defence is two fold: firstly that the Plaintiff is not the owner of copyright as the registration certificate issued by the Registrar of Copyright mentions the name of some other person as

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author of artistic work and no deed of assignment has been placed on record and secondly on the ground that the refusal of trade mark registration application no 3275370 renders the copyright registration invalid. In so far as the first defence is concerned, the submission is raised without any pleading to that effect in the various affidavits filed by the Defendant. What has been argued has not been pleaded and no opportunity was given to the Plaintiff to deal with the said submission. The pleading in the plaint is that the Plaintiff has in house conceptualized and created distinct labels/artworks bearing the trade mark "UMANG" and the Plaintiff is the proprietor/owner of these original artistic works. The pleading of ownership in copyright has not been contradicted in the reply Affidavits and it is the copyright registration which has been assailed on the ground of rejection of the Plaintiff's trade mark application no 3275370. Mr. Kirpekar cannot be permitted to argue a case not pleaded and which the Plaintiff did not have any opportunity to meet.

25. Pertinently, Rule 70 of the Copyright Rules, 2013 governs the procedure for applying for registration of copyright and Rule 70(3) of the Rules provide that every application should be signed by the applicant, who may be an author or owner of right and if the application is submitted by the owner of copyright, it shall be enclosed with an original copy of no objection certificate issued by the author in his

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favour. The registration certificate indicates that the Plaintiff has mentioned the name of a third party as the author and as registration has been granted, it can be accepted at interlocutary stage that all necessary documents were submitted including the NOC alongwith the application. It also needs to be noted that the Defendant in its reply Affidavit dated 20th July, 2024 has pleaded that it is the registered copyright owner of the impugned artistic work and has placed the registration certificate on record. Perusal of the Defendant's copyright registration certificate, which is subsequent to the Plaintiff's copyright registration, discloses that the author of the impugned artistic work is third party and there is no deed of assignment placed on record by the Defendant. The same yardstick, as sought to be contended by Mr. Kirpekar, if applied to the Defendant, would render the Defendant's copyright ownership invalid.

26. Dealing with the issue of invalidity of copyright registration in view of Section 45 of the Copyright Act, Section 45(1) of the Copyright Act reads as under:

> *"45(1). The author or publisher of, or the owner of or any other person interested in the copyright in, any work will make an application in the prescribed form accompanied by the prescribed fee to the Registrar of Copyrights for entering particulars of the work in the Register of Copyrights: Provided that in respect of an artistic work which is used or is capable of being used in relation to any goods or services, the application shall include a statement to that effect and shall be accompanied by a certificate from the Registrar of Trademarks referred to in Section 3 of Trade Marks Act, 1999(47 of 1999), to the effect that no trademark identical with or deceptively similar to such artistic work has been registered under that Act in the name of, or that no application has been made under that Act for such registration by, any person other than the applicant."*

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27. The interplay between the Copyright Act and the Trademark Act in the context of registration of the copyright appears only in Section 45 of the Copyright Act which provides for application for copyright registration to be accompanied by certificate of Registrar of Trade Marks stating that there is no trademark identical with or deceptively similar to the artistic work which has been registered under the Act and no registration has been made under that Act. This is because under the provisions of the Trademark Act, the definition of mark under Section 2(m) includes a device, brand, heading, label, ticket, name, signature, word, letter, lingual, shape of goods, packaging or combination of colours or any combination thereof. A situation is therefore required to be avoided where there is already a label mark registered in favour of one party and the other party seeks registration of the original artwork which may be identical or deceptively similar to the device mark/ label mark which is already registered or applied for registration under the Trademark Act. In order to avoid any conflict in the exclusive ownership rights, that the proviso is inserted in Section 45 of the Act, before an application can be filed seeking registration of copyright.

28. The proviso to Section 45(1) uses the expression “trade mark identical with or deceptively similar to such artistic work”, which indicates that there should not be any artistic work similar to the one of which copy right registration has been sought, applied for or registered.

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The requirement of the proviso to Section 45(1) is that the application for registration of trade mark similar to the artistic work should be made by third party other than the applicant. In present case, the application for registration of trade mark of "UMANG" was made by Plaintiff itself and thus, the search certificate has been rightly issued by the Registrar. The emphasis is on the artistic work and not on the word mark. The title of the Plaintiff's artwork being "UMANG" is immaterial as what is registered is the artwork. Perusal of the examination report of the Registrar of Trade Marks in respect of registration application no 3275370, produced by the Defendant itself, indicates that objection was raised under Section 11(1) of Trade Marks Act, 1999 in view of identical word mark "UMANG" and not on the ground of identical artistic work.

29. Mr. Kirpekar would emphasize on the refusal of registration of Plaintiff’s label mark of "UMANG" for the reason that the essential feature of the Plaintiff’s label mark is the word "UMANG", which has been opposed by virtue of previous registration by one Mr. Umesh Agarwal and claims that Plaintiff is an infringer. Firstly, the Plaintiff has subsisting registration of word mark “UMANG” and secondly in case of copyright infringement, it is the substantial similarity test which is required to be applied. A resemblance between two works is *prima facie* proof of infringement or copy, if there is no explanation tendered by the Defendant for the similarities. The lay observer test is widely

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regarded as the most reliable method for determining whether or not there has been copyright infringement, which assesses the degree of resemblance between the rival works by considering the opinion of a lay observer who is exposed to both works. Applying the said test, when the rival artworks are perused, it is clear that the impugned artwork is substantial reproduction of Plaintiff's artwork. There is also no statutory provision demonstrated that before claim for infringement of copyright, the use of original artwork is necessary to be established.

30. The Defendant's claim of ownership in copyright is premised on the copyright registration certificate obtained by the Defendant. The Plaintiff secured copyright registration on 21st November, 2023 and upon the Defendant commencing use of the impugned artwork, the Defendant was issued cease and desist notice on 15th February, 2024. The Defendant was thus aware of the Plaintiff's claim to the original artwork and under Rule 70(9) of Copyright Rules was mandated to give notice of its copyright registration application to the Plaintiff, which has not been done. The copyright registration will also not assist the Defendant as the Defendant has obtained copyright registration in respect of the following artwork :

" 

"

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31. The Defendant applied for and secured copyright registration of the cropped version of the actual artwork which is used by the Defendant, which is as under:

" 

"

32. The Defendant's registered artwork does not disclose several elements which are identical to the Plaintiff's original artwork and there is no explanation given for seeking copyright registration of the cropped version of the actual artwork being used by the Defendant. The Plaintiff had applied for registration of its device mark of "UMANG" in the year 2023 with user claim of 23rd April, 2009 and similarly the copyright registration speaks of year of publication being of 2009. The Defendant's copyright registration gives the year of publication as 2022. It is therefore *prima facie* evident that the Plaintiff had created and adopted the artwork prior to that of the Defendant and the impugned artwork is a slavish reproduction of the Plaintiff's original artistic work. There is no material produced by the Defendant to show that the impugned art work is an independent creation. The application for copyright registration of cropped version shows dishonest intent on part of the Defendants.

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33. In so far as passing off action is concerned, the Plaintiff has placed on record the sales turnover duly certified by the Chartered Accountant, which for the financial year 2022-2023 was Rs 615,02,031/. The Defendant's copyright registration mentions the publication of the work in the year 2022 and the Plaintiff had already garnered substantial goodwill and reputation demonstrated from the sales turnover at the relevant time of commencement of use by the Defendant. The use by the Defendant of an artwork different from cropped version of the artwork of which copyright registration has been secured, and without any explanation for use of the same, shows misrepresentation. Considering the presence of the Plaintiff in the market since the year 2009 and the goodwill and reputation earned, the slavish reproduction of the Plaintiff's original artwork is likely to cause damage to the Plaintiff.

34. In ***Abdul Cadur Allibhoy vs Mahomedally Hyderally*** (supra), it was held that if the trademark contains a false representation calculated to deceive the public, a man cannot by using that which in itself a fraud obtain any right at all. In the present factual scenario and in view of the discussion above, I do not find the ratio of the said decision to be applicable.

35. By order of 14th June, 2024, this Court had granted ad-interim relief against infringement of copyright and against passing off. The

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Plaintiff has *prima facie* made out case of copyright violation and passing off.

36. In light of above discussion, the Interim Application is made absolute in terms of prayer clause (a), (b) and (c) *qua* the Plaintiff's original artwork/label mark of "UMANG".

(SHARMILA U. DESHMUKH, J.)