

# Gulf Oil Lubricants India Limited vs Voltronic India Lubricants & Ors on 13 October, 2020

**Author: C. Hari Shankar**

**Bench: C. Hari Shankar**

\$~1(original side)

\* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ IA 9281/2020 in CS(COMM) 560/2019

GULF OIL LUBRICANTS INDIA LIMITED ..... Plaintiff

Through: Mr. N.K. Bhatnagar, Mr. Ankit  
Gupta and Ms. Ankita Seth,  
Advs.

versus

VOLTRONIC INDIA LUBRICANTS & ORS. .... Defendants

Through: None

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

ORDER

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13.10.2020

(Video-Conferencing)

IA 9281/2020 in CS(COMM) 560/2019

1. This application is, essentially, a sequel to IA 13842/2019, which was allowed by this Court, vide order, dated 1st October, 2019.

2. The order, dated 1st October, 2019, passed by this Court, finds, prima facie, that there was widespread and rampant infringement of the registered trademarks and copyright in the packaging material, registered in favour of the plaintiff. Observing, therefore, that there was a good prima facie case in favour of the plaintiff, ad interim injunction was granted.

3. At that time, the plaintiff had impleaded, specifically, Defendant Nos. 1, 3 and 4, as identified defendants, who are alleged to be infringing the trademarks of the plaintiff. Certain unidentified defendants were also impleaded, in an omnibus manner, as Defendant No. 6, styling them as "John Does".

3. Alongwith the plaint, IA 13842/2019 had been preferred by the plaintiff under Order XXVI Rule 9 and Order XXXIX Rule 7 of the Code of Civil Procedure, 1908 (CPC), for appointment of Local Commissioners to visit the premises of the Defendant Nos. 1, 3 and 4 as well as the premises of any

unidentified stockist, dealers, retailers, manufacturers or other entities, dealing with allegedly infringing products. This Court opined that the request was justified and that, in order to ascertain the extent of infringement of plaintiff's registered trademarks, copyright and the extent of passing off, it was necessary to appoint Local Commissioners. Consequently, four Advocates of this Court were appointed as Local Commissioners, who were permitted to visit the premises of Defendant Nos. 1 and 4 as well as other entities identified by the plaintiff, as alleged stockists, dealers, manufacturers, retailers, franchisees or persons otherwise dealing in products which infringed the plaintiff's registered trademarks or were passing off their products as those of the plaintiff.

4. Learned counsel for the plaintiff was directed to coordinate with the Local Commissioners to determine the places where the execution of the commission was required to be undertaken, in Delhi or outside. The Local Commissioners were also permitted to seek assistance of the local police authorities, who were directed to provide assistance, if sought. The plaintiff was directed to make arrangement for execution of the commission.

5. The task of the Local Commissioners was adumbrated in paras 6 to 8 of the order, dated 1st October, 2019, which may be reproduced thus:

"6. The Local Commissioners will make an inventory of the infringing goods, packaging materials, labels or any other materials bearing the registered marks of the plaintiff or which appear to be deceptively similar thereof. Upon making the inventory, the Local Commissioners shall return the goods to the concerned defendants upon an undertaking that the defendants will not deal in those goods and will preserve the same for production before the Court as and when required. The Local Commissioners may retain samples of each of the goods or materials in question. Local Commissioners shall also inspect the books of accounts and other records of the defendants; copies of the same may be made under the directions of the Local Commissioners. The proceedings of the commission shall be photographed, and/or videographed upon the directions of the Local Commissioners.

7. If it is required for the purpose of commission, the Local Commissioners may break open any locks at the premises of the defendants, in the presence of the police authorities.

8. The Local Commissioners shall serve copies of this order, the plaint and the entire paper book in the suit upon the defendants, including any unidentified defendant, on whose premises the commission is sought to be executed."

6. Subsequently, the plaintiff moved IA 16032/2019, for extension of time granted by the order, dated 1st October, 2019, to the Local Commissioners to execute the commission. This Court, vide order, dated 18th November, 2019, extended the time, for execution of the local commission, by a period of four weeks, with all other directions, as contained, in the order, dated 1st October, 2019, remaining intact.

8. Mr. Bhatnagar, learned counsel for the plaintiff, submits that the commissions stood executed by the aforesaid four Local Commissioners.

9. The plaintiff, in the present application, asserts that it had engaged the services of a specialized intellectual property investigation company, to carry out investigation and locate parties infringing the intellectual property rights of the plaintiff or passing off their products as those of the plaintiff. These investigations, it is averred, have revealed that certain new entities are indulging in selling engine oil, using the registered trademark "GULF PRIDE 4T PLUS"

of the plaintiff, and by employing a trade dress and packaging style which are deceptively similar to those of the plaintiff's product. This, it is submitted, has necessitated the appointment of at least two more Local Commissioners, to visit the premises of such entities, indulged in such infringement, and seize the infringing goods. Simultaneously, the application also seeks eight weeks' time for the newly appointed Local Commissioners to undertake and execute the said commissions.

10. As this Court has already opined that, given the perceived scale of infringement of the registered trademarks of the plaintiff, appointment of the Local Commissioners is necessary in order to ascertain the extent thereof, I am inclined to accede to the prayer of the plaintiff in this application. Accordingly, Mr. Amarjeet Singh, Advocate (Mobile: 9911111950) and Mr. Anuj Kumar Sharma, Advocate (Mobile: 8076629401) are appointed as Local Commissioners, to visit the premises of the persons, who are identified by the plaintiff to be the stockists/dealers/manufacturers/retailers/franchisees or persons otherwise dealing in products which infringe the plaintiff's registered marks, or are passing off their products as those of the plaintiff. The places, where the commission, is required to be executed, would be determined, objectively, by the Local Commissioners, in coordination with the learned counsel for the plaintiff. The duties of Local Commissioners would be as set out in paras 6 to 8 of the order, dated 1st October, 2019, which already stand reproduced hereinabove. Should the Local Commissioners feel it necessary to execute the commission at a particular venue, and that the assistance of the local police authorities is necessary for the said purpose, they are at liberty to approach the Officer incharge of the concerned police station, to provide necessary assistance and the Officer incharge of the police station is directed to provide assistance, as sought by the Local Commissioners.

11. The Local Commissioners would be entitled to fees of 75,000/- for each premises within Delhi and NCR and to fees of 1,00,000/- for each premises outside Delhi, where the commission is required to be executed, in addition to out of pocket expenses. The fees of the Local Commissioners and expenses of the commission would be borne by the plaintiff in the first instance, subject to final order to be passed in the suit.

12. The Local Commissioners are granted eight weeks' time to execute the commission, in accordance with the present order. Report of compliance be placed, on record, by the Local Commissioners, consequent thereupon.

13. The application stands allowed, in the aforesaid terms.

14. Interim order, granted on 1st October, 2019 in IA 13841/2019, would also continue to operate till further orders.

15. The Court Master is directed to email, to the learned counsel for the plaintiff, a copy of this order as soon as it is ready/uploaded on the website of this Court.

C. HARI SHANKAR, J.

OCTOBER 13, 2020 r.bararia