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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION  
IN ITS COMMERCIAL DIVISION  
INTERIM APPLICATION (L) NO. 11238 OF 2021  
IN  
COMMERCIAL IP SUIT (L) NO. 11236 OF 2021  
WITH  
LEAVE PETITION NO. 186 OF 2021**

Pidilite Industries Ltd ...Plaintiff  
*Versus*  
Q-Chem Sealers Pvt Ltd ...Defendants

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**Mr Hiren Kamod**, *with Nishad Nadkarni, Aasif Navodia, Khushboo Jhunjhunwala & Charu Shukla, i/b Khaitan & Co., for the Plaintiff.*

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**CORAM: G.S. PATEL, J**  
**(Through Video Conferencing)**  
**DATED: 16th June 2021**

**PC:-**

1. Heard through video conferencing.
2. Mr Kamod seeks to move after notice. The papers have been served on the Defendants twice, at different addresses. The second service is successful. The hard copy was sought to be served at the



only known address of the Defendants. Multiple attempts were made but the report indicates that the Defendant's shop was closed. The Defendant is in Kurukshetra. There is an Affidavit of Service. I see no purpose achieved in further delaying the matter. If a Defendant is running a commercial business in the name of a corporate entity, then it is the responsibility of such a party to ensure its or its representatives availability to accept service especially of legal proceedings.

3. The Suit seeks to protect a number of its marks, artistic works and a design from infringement and passing off. There is a separate Petition for leave under Clause XIV of the Letters Patent to combine the causes of action in infringement with the cause of action in passing off. Since this has been served, I will make that Petition absolute. The Leave Petition is disposed of in these terms.

4. The Plaintiff, Pidilite Industries Ltd is an extremely well-known manufacturer of water proofing chemicals, construction bending chemicals, paint chemicals, adhesives, sealants and so on. It has been in this sector at least since 1969. Today it has significant international and overseas operations as well. The Plaintiff has a range of products sold under various marks, LW+, LW, URP, DR FIXIT, PIDIPROOF, FEVICOL, PIDILITE, FEVISTIK, FEFI KWIK, D3, SH, MARINE, M-SEAL, FEVICRYL. There is also a mark of a device of two opposing elephants pulling in opposite directions a globe, the impression sought to be conveyed being that once the two halves of that device are bound with one of the Plaintiff's products even two mighty elephants cannot tear it asunder.



5. Based in Kurukshetra, the Defendant and appears to be selling construction chemicals, adhesives, etc.

6. From paragraph 5 onwards the plaint contains a narration of the marks that the Plaintiff has adopted over time. Some of these are household names, particularly the FEVICOL series (including FEVISTIK), known even to ordinary households and children. Others are more specialized. The present litigation is in respect of some of these marks, namely, LW/LW+, DR FIXIT and URP with its variant series. The plaint contains a narration about each of these separately. Paragraphs 6 to 11 deal with the DR FIXIT mark and the products under it. LW and LW+ are the subject of the narration in paragraphs 12 to 20. The URP marks are set out in paragraphs 21 to 28.

7. These details include details of registration of the marks, their use, sales and the artistic works in the labels of LW, and LW+. Prima facie, the Plaintiff's averments in regard to the registrations and artistic works cannot really be contested. The assertions and averments in regard to sales and expenses also have supporting material.

8. There is one additional aspect and it will undoubtedly have a bearing in this matter. The Plaintiff has designed a unique and distinctive storage can or container for its DR FIXIT range of products including those that are sold under the LW/LW+ registered marks and labels and the URP registered marks. The cap, colour scheme and shape of this storage container or bottle are all unique.



There is a visual appeal to these containers. The design is not a matter of functionality. The containers have elevated ridges or grooves on both sides. There is a unique yellow handle for the DR FIXIT products with a yellow cap. For the URP products the handle and cap are in orange. These colour combinations are distinctive. A representation is annexed at Exhibit 'J'. The Plaintiff is the owner of all rights in these containers. The containers bear the product labels. The Plaintiff has also obtained registrations under the Designs Act for the designs of these containers. These registrations are of October 2007 and are subsisting and valid.

9. The result is that the Plaintiff has now a very broad spectrum of intellectual property rights: trade mark, copyright and design. All of these entitle it to statutory protection as also, at least so far as trade mark and copyright are concerned, common law remedies.

10. The Plaintiffs grievance is about how the Defendants have wrongfully used not only the LW, LW/LW+ labels, the URP mark but also attempted to pirate the design-protected DR FIXIT container. Indeed, if we work backwards from the design to the trade mark, perhaps the story would be complete. If, for instance, it is found even prima facie that there is no meaningful distinction between the design of the Defendant's container and the Plaintiff's DR FIXIT container, then the question of bona fides in adoption of the marks and similarity of the labels will inform the discussion in regard to trade mark and copyright violations.



11. In October 2020, the Plaintiff came across a water proofing compound product being put into the market by the Defendant. This bore the mark LWC. But it was not just the mark, for the Defendant had also a label that was a substantial reproduction and an impermissible and colourable imitation of the Plaintiff's LW/LW+ labels and the artistic works in those labels. A substantially similar glue, white and yellow colour scheme, layout and distinctive lettering was being used. Then there was another colour construction product by the Defendant called URP/URP-SBR. This is undoubtedly identical or confusingly and deceptively similar to the Plaintiff's URP mark. Third, the Plaintiff found that the Defendant was using storage cans that are clearly a colourable imitation of and deceptively similar to the Plaintiff's DR FIXIT containers: an identical shape, shoulders, ridges on the side, cap and surface patterns.

12. I will go straightaway to the table of comparison that we find in paragraph 33. It seems to be inconceivable having regard to these images (reproduced at the end of the order) that any of these adoptions by the Defendants could possibly be said to be bona fide. The Defendant apparently sells its products on some website which is unfortunately passive but it is also found on one aggregator, justdial.com. The Defendant also has a Facebook page, although that is perhaps best ignored for the present.

13. There is no doubt in my mind that there is a very strong prima facie case made out both in infringement and passing off for all three forms of intellectual property that the Plaintiff seeks to protect. I can see no valid justification for the Defendants adoption of the marks, use of the labels and use of the container. I am inclined to grant an ad-



interim order. Bearing in mind that this is an ad-interim order after notice, I do not see the reason to limit this in point of time.

14. There will be an ad-interim order in terms of prayer clauses (a) to (f) which read thus:

“(a) Pending the hearing and final disposal of the suit, the Defendant, its directors, proprietors, partners, owners, servants, 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 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 LWC or URP or any marks incorporating the above including the Impugned LWC Labels or the Impugned Containers any other mark/label identical with or similar to or comprising of the LW/LW+ Marks and/or the LW/LW+ Labels or URP Registered Marks of the Plaintiff or using containers/jars similar to the Plaintiff’s Distinctive DR FIXIT Containers (including its unique shape, configuration, contours, surface pattern and colour scheme);

(b) Pending the hearing and final disposal of the suit, the Defendant, its directors, proprietors, partners, owners, servants, 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 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 Impugned Products or any other goods for which the LW/LW+ Registered Marks are



registered or any goods similar thereto, the impugned mark LWC or the impugned labels or any other mark which is identical with or similar to the LW/LW+ Registered Marks of the Plaintiff (including the mark LW, LW+ or the LW+ Label) and from manufacturing, selling, offering for sale, advertising or dealing in such goods or any other goods bearing the impugned mark LWC or the Impugned LWC Label or any other marks similar to the LW/LW+ Registered Marks;

(c) Pending the hearing and final disposal of the suit, the Defendant, its directors, proprietors, partners, owners, servants, 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 the URP Registered Marks of the Plaintiff bearing nos. 3057490, 2472722, 2472723 and 2472720 in any manner and from using in relation to any of the Impugned Products or any other goods for which the URP Registered Marks are registered or any goods similar thereto, the impugned mark URP / URP-SBR, or any other mark/label which is identical with or similar to the URP Registered Marks of the Plaintiff (including the mark URP) and from manufacturing, selling, offering for sale, advertising or dealing in such goods or any other goods bearing the impugned marks URP/URP-SBR or any marks/labels similar to the URP Registered Marks (including the mark URP or any features thereof);

(d) Pending the hearing and final disposal of the suit, the Defendant, its directors, proprietors, partners, owners, servants, 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 the Plaintiff's copyrights in the artistic



work comprised in/reproduced on its LW/LW+ Labels 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 L-1 to L-2 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;

(e) Pending the hearing and final disposal of the suit, the Defendant, its directors, proprietors, partners, owners, servants, 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 pirating or infringing the Plaintiff's copyrights in the registered design bearing nos. 212886 and 212887 in any manner and from manufacturing, selling, dealing, offering to sell any products in the Impugned Containers or any other containers or packaging materials or jars which are or contain or have applied upon it the said registered designs owned by the Plaintiff in respect of the Distinctive DR FIXIT Containers or any fraudulent or obvious imitation thereof;

(f) Pending the hearing and final disposal of the suit, the Defendant, its directors, proprietors, partners, owners, servants, 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 LWC or URP or URP-SBR or the Impugned LWC Labels or the





Impugned Containers any other mark/label identical with or similar to or comprising of the LW/LW+ Registered Marks and/or the LW/LW+ Labels and/or the URP Registered Marks, of the Plaintiff or using containers/jars similar to the Plaintiff's Distinctive DR FIXIT Containers (including its unique shape, configuration, contours, surface pattern and colour scheme);

15. I am not disposing of the interim application. Mr Kamod reserves his right to move for further relief including the appointment of a Court Receiver. At present, as he says, the Plaintiff does not know where to take the Court Receiver or any additional Special Receiver.

16. This order is to be communicated to the Defendants by email. Since the Plaintiff has moved after notice, this order will continue until further orders of this Court.

17. Affidavit in Reply is to be filed and served on or before 26th July 2021. Affidavit in Rejoinder, if any, is to be filed and served on or before 9th August 2021.

18. List the Interim Application for hearing and final disposal on 25th August 2021.



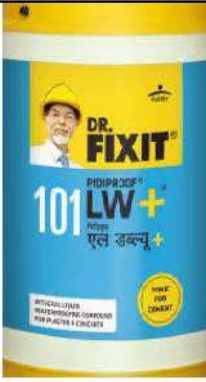
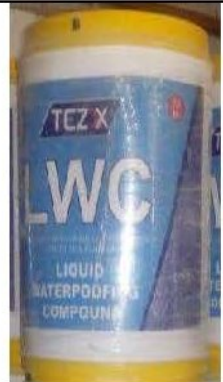
19. Liberty to the Defendants to apply for a variation, modification or recall of this order but only after seven clear working days' notice in physical form to the Advocates for the Plaintiff.



**20.** All concerned will act on production of an ordinary copy of this order.

**(G. S. PATEL, J)**

TABLE OF COMPARISON

Sr. No.	<u>Plaintiff's LW, LW/LW+ Label, URP Marks and Distinctive DR. FIXIT Containers</u>	<u>Defendant's Impugned LWC Label, Impugned URP Marks and Impugned Containers</u>
1.		
2.	It has a unique, distinctive and original trade mark.	It is encompassed whole of the LW Mark and has just added the letter 'C' to the same
4.	It has a unique distinctive and original trade mark URP	It is encompassed whole of the URP Mark and has just added the letters 'SBR' to the same
5.		

<p>6.</p>	 <p>Distinctive DR. FIXIT Containers have a unique oblong shape, ridges on the side, shoulders on top, and unique caps.</p>	 <p>Impugned Containers have an identical oblong shape, ridges on the side, shoulders on top, identically shaped caps.</p>
<p>7.</p>	<p>It shows the LW/LW+ Mark placed at the center of the packaging.</p>	<p>It shows that the Impugned Mark LWC is similarly placed at the prominent place on the packaging.</p>