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CROSS SUITS FOR PERMANENT INJUNCTION AND MISC. APPLICATIONS FOR TEMPORARY INJUNCTION

Plaintiffs: JAZAA FOODS (PVT.) LIMITED through Authorized Representative and another
Defendants: JUNAID JAMSHED (PVT.) LIMITED through Chief Executive Officer and 2 others
Decision: Application for temporary injunction filed by plaintiff was allowed and cross application for injunction filed by defendant in cross suit was disallowed.

Then cross suits along with injunction applications were filed to decide dispute between the parties over the use of the name of the celebrity, late Junaid Jamshed.

The brief facts of the Plaintiff's case are that the Plaintiff is in the business of packing and distributing of food items and is the registered proprietor of trade mark "Jazaa" in class-30. The late Junaid Jamshed was one of the founding members/shareholder of the **JAZAA FOODS (PVT.) LIMITED** and presently one of his sons is a shareholder and Director thereof. Therefore, the plaintiff's trade mark in use despite not being a part of its registered trade mark bears the words "by Junaid Jamshed".

U&I Garments (Pvt.) Ltd. is in the business of manufacturing clothing, ready-garments, footwear, bags, fragrances etc. bearing the trade mark 'Junaid J. Jamshed', which are supplied to the company Junaid Jamshed (Pvt.) Ltd., for onward retail. The late Junaid Jamshed was also a shareholder of this company and presently one of his sons is still the shareholder but the registered trade mark 'Junaid J. Jamshed' is the property of U&I Garments (Pvt.) Ltd., and the company Junaid Jamshed (Pvt.) Ltd., is its Licensee. The mark is not only registered in respect of above stated goods but it also stands registered in a number of other classes including class-30 in which Plaintiffs mark is registered.

Plaintiff filed a suit for injunction along with application praying for temporary injunction to restrain defendants from creating hindrances or obstructions in the use of its mark with words "by Junaid Jamshed". The plaintiff pleaded that its business had been started by the late Junaid Jamshed along with other members and during his life time he spear-headed the marketing campaign of the plaintiff and in that vein, given his celebrity status, he had vide a written authorization permitted the plaintiff to use the mark in question and since then has been using the mark without any objection from the defendants. After three years of the death of Junaid Jamshed, the defendant No. 3 the chief executive of defendant company, asked the plaintiff to obtain a license from the defendant for the use of the mark in question and on the refusal of the plaintiff to obtain the license the chief executive threatened to impede and damage the business of the plaintiff.



The defendant also filed a suit against the plaintiff for infringement and passing-off of trade mark along with an application, praying for a temporary injunction to restrain the plaintiff from using the mark in question in any fashion or manner.

The learned counsel for the plaintiff submitted that right after the suit, the defendant threatened the plaintiff's distributors and have also approached Facebook for removing the contents relating to the plaintiff. It was further submitted that the mark in question is not deceptively similar to the trade mark of the defendants and in any case, the registered trade mark of the defendant is subject to the disclaimer that they do not have the right to exclusive use of the name '*Junaid Jamshed*'.

The learned counsel for the defendant submitted that the name '*Junaid Jamshed*' is not part of the registered trade mark of the plaintiff, whereas the said name was central to the registered trade mark of defendant which is also registered in class-30 in respect of the same food items as that of the plaintiff and therefore the plaintiff is also liable for passing-off.

After hearing the counsels of both sides and perusal of record, the court observed that given the disclaimer and its effect the defendant did not have a prima facie case for grant of a temporary injunction to restrain the use of mark in question by the plaintiff; the balance of convenience was not in its favor, nor would it suffer any irreparable loss if injunction was refused as apparently no action had been taken by it against the use of the mark in question by the plaintiff since 2016. Conversely, the plaintiff met the test of the said three ingredients for the grant of a temporary injunction because, the mark was in use by the plaintiff since 2016 without objection and Junaid Jamshed had given a written authorization to the plaintiff to use his name and therefore, unless the defendants were restrained from interfering in the said use, the plaintiff was likely to suffer irreparable loss. Consequently the application for injunction moved by defendant in its suit was dismissed and the application for injunction moved by plaintiff in its case was granted in terms that the defendants were restrained from interfering in the use of the mark/name "*by Junaid Jamshed*" by plaintiff in conjunction with its registered trade mark '*Jazaad*' in Class 30.

