

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL AND TAX DIVISION
HCCOMM NO. E085 OF 2024

HAVELLS INDIA LIMITED1ST PLAINTIFF

QRG ENTERPRISES LIMITED.....2ND PLAINTIFF

-VERSUS-

DUNCUN MAINA GATHU.....1ST DEFENDANT

GALACTIC SYSTEMS LIMITED.....2ND DEFENDANT

JIJI ONLINE MARKETPLACE KENYA LIMITED.....3RD DEFENDANT

RULING

1. The plaintiffs filed a Notice of Motion application dated 23rd May 2024 under the provisions of Sections 1A, 1B & 3A of the Civil Procedure Act, Order 40 Rule 1 & Order 51 of the Civil Procedure Rules, 2010, Section 7 of the Trade Marks Act, Articles 40 and 159(a) & (d) of the Constitution of Kenya, 2010, and all enabling provisions of the law. The plaintiffs pray for an order of temporary injunction restraining the 1st, 2nd & 3rd defendants and their agents or representatives from importing, distributing, listing, marketing, or selling goods bearing Marks identical or confusingly similar to the plaintiffs' Trademarks pending the hearing and determination of this suit.
2. The application is premised on the grounds on the face of the Motion, and it is supported by an affidavit sworn on 24th May 2024 by Mr. Harsh Aggarwal, a representative of the plaintiff companies. He averred that the plaintiffs are the lawful proprietors in Kenya of various registered Trademarks, including "HAVELLS", used in connection with the production and sale of a wide range of industrial and consumer electrical products. He further averred that the

plaintiffs have built substantial goodwill and reputation in the said Marks through extensive global and local use. He claimed that the 1st & 2nd defendants without authorization have been importing, distributing, marketing and selling counterfeit electrical goods bearing Marks identical to the plaintiffs' Trademarks through the 3rd defendant's online platform, www.jiji.co.ke, thereby infringing on the plaintiffs' intellectual property rights and misleading consumers.

3. Mr. Aggarwal stated that the 3rd defendant actively facilitates and profits from the infringing activities by hosting, promoting and managing listings containing the plaintiffs' Marks, despite having knowledge of the infringement. He further stated that investigation and test purchases confirmed that the defendants' goods are counterfeit and pose serious safety risks to consumers due to their substandard quality. He asserted that the defendants' acts amount to Trademark infringement, passing off, and unfair competition, and that continued infringement will cause irreparable harm to the plaintiffs' goodwill and public safety. He urged this Court to grant the orders being sought in order to protect the plaintiffs' intellectual property rights.
4. The application is also supported by an affidavit sworn on 24th May 2024 by Mr. Roma Arora, also a representative of the plaintiff companies. He reiterated the averments contained in the affidavit sworn by Mr. Harsh Aggarwal. He added that the 3rd defendant not only facilitates but actively participates in the infringing acts by providing and managing listings, connecting buyers and sellers, and profiting from the sale of counterfeit goods despite being aware of the infringement.
5. He averred that the defendants' acts amount to Trademark infringement, passing off, deceit and unfair competition, as they mislead consumers into

believing that the counterfeit goods are associated with the plaintiffs. Mr. Arora stated that such conduct unlawfully exploits the plaintiffs' goodwill, damages their reputation, endangers consumers and violates the provisions of Section 7 of the Trade Marks Act. He asserted that despite existing Court orders, the 3rd defendant continues to list infringing products on its platform.

6. In opposition to the application, the 1st defendant filed a replying affidavit sworn on 10th March 2024 by Mr. Duncun Maina Gathiu, the 1st defendant herein. Mr. Gathiu denied infringing on the plaintiffs' Trademarks or dealing in counterfeit goods, and asserted that he has never imported, possessed, or sold counterfeit products, and he has not been charged under the Anti-Counterfeit Act. He averred that he is a small-scale retailer of electrical equipment sourced from ASL Limited, a reputable company based in Industrial Area Nairobi, which he believes to be an authorized distributor of genuine Havells products. He further averred that he occasionally advertises his goods on the 3rd defendant's e-commerce platform www.jiji.co.ke, to reach potential buyers.
7. Mr. Gathiu annexed receipts from ASL Limited and extracts from its website showing that it lists "HAVELLS-INDIA" as one of its brands and asserted that this demonstrates the legitimacy of his stock. He stated that the plaintiffs have not established a *prima facie* case with a probability of success and that granting the orders being sought herein would severely prejudice his business and cause him to suffer financial loss. He also stated that the plaintiffs' electronic evidence is inadmissible for want of a certificate under Section 78A of the Evidence Act, and as such, the instant application ought to be dismissed with costs.
8. In a rejoinder, the plaintiffs filed a further affidavit sworn on 28th March 2025 by Mr. Roma Arora, a representative of the plaintiff companies. He averred that

the 1st defendant has failed to rebut the plaintiffs' claim of exclusive ownership of its Trademarks or to deny engaging in the sale of goods bearing Marks identical or confusingly similar to the plaintiffs. He stated that the 1st defendant's denial of connection to the counterfeit goods sold on www.jiji.co.ke is false, as he is the proprietor of Dantrixx Electricals as evidenced by a CR13 search. Further, that the contact details on the receipts from his premises match those used in the www.jiji.co.ke listings.

9. Mr. Arora clarified that the infringing goods purchased from the 1st defendant's premises on 14th December 2023 were a 630 amps MCCB and a 63 amps triple pole. He refuted the 1st defendant's claim of having sourced the goods from ASL Limited and stated that he has provided no proof of such purchase but instead, he had produced unrelated receipts for items such as a changeover switch, MCB, SHS tube and distribution board. Mr. Arora added that the 1st defendant's receipt dated 26th February 2024 was generated after he had been served with the instant application on 24th February 2024, making it a deliberate attempt to mislead the Court.
10. The application herein was canvassed by way of written submissions. The plaintiffs' submissions were filed by the law firm of CFL & Company Advocates on 28th March 2025, while the 1st defendant's submissions were filed on 1st April 2025 by the law firm of John Ogada & Company Advocates.
11. Mr. Wesonga, learned Counsel for the plaintiff relied on the case of **Giella v Cassman Brown Co. Ltd** [1973] E.A. 358 and urged this Court to grant the orders being sought herein. He submitted that the plaintiffs have established a *prima facie* case with a probability of success as defined by the Court of Appeal in the case of **Mrao Ltd v First American Bank of Kenya Ltd & 2 others** [2003] KECA 175 (KLR). Counsel submitted that the plaintiffs are the

registered proprietors of the Havells Trademarks under Registration Numbers KE/T/2002/0053364, KE/T/2002/0053365, KE/T/2002/0053366, 67508 and 67509, duly registered in Classes 7, 9 & 11 under the Nice Classification.

12. He cited Section 7(1) of the Trade Marks Act and submitted that the plaintiffs enjoy the exclusive right to the use of the said Trademarks in relation to the registered goods, thus any person who, not being the proprietor or a registered user of the subject Trademarks, uses a Mark identical with or resembling it so nearly as to be likely to deceive or cause confusion in the course of trade, infringes on that right.
13. Mr. Wesonga asserted that the defendants are not proprietors or registered users of the Havells Trademarks, yet they have engaged in the importation, distribution, listing, marketing and sale of goods depicting Marks identical to, or confusingly similar to the plaintiffs' registered Trademarks. Further, that the defendants have failed to offer any credible rebuttal or explanation for the unlawful use of the Havells Trademarks, and that conduct amounts to Trademark infringement under Section 7 of the Trade Marks Act.
14. Counsel relied on the case of **Havells India Limited & another v Songhong Freight Services Limited & another; Jie Xin Trading Limited (Interested Party)** [2020] KEHC 10053 (KLR), and submitted that the plaintiffs stand to suffer irreparable harm which cannot be adequately compensated by an award of damages if the orders being sought herein are not granted, since the impugned goods do not meet the quality and safety standards adhered to by the plaintiffs. He emphasized that circulation of the said goods in the market poses a risk of electrical faults, short circuits, or fires, thereby endangering lives and property. He asserted that the Havells Trademarks are globally recognized and associated with high-quality electrical products, including miniature circuit

breakers, isolators and distribution boxes. He stated that the sale and distribution of counterfeit electrical goods bearing Marks identical or confusingly similar to the plaintiffs' Trademarks, but not originating from the plaintiffs, is likely to diminish their goodwill and reputation. Counsel asserted that the balance of convenience tilts in favour of the plaintiffs.

15. Mr. Ogada, learned Counsel for the 1st defendant submitted that the plaintiffs have failed to establish a *prima facie* case in line with the finding by the Court of Appeal in the case of **Mrao Ltd v First American Bank of Kenya Ltd & 2 others** (supra), to warrant being granted interlocutory injunctive orders. He argued that the plaintiffs have not demonstrated that the 1st defendant's actions were intended to cause confusion among consumers, damage the plaintiffs' reputation, or take advantage of their goodwill. He further submitted that while ownership of a registered Trademark confers exclusive rights of use, the plaintiffs have not demonstrated any act of deception by the 1st defendant, who merely retailed goods obtained from ASL Limited, an authorized dealer of Havells–India branded products. Counsel relied on the case of **Solpia Kenya Limited v Style Industries Limited & another** [2015] KEHC 8101 (KLR), and asserted that registration of a Trademark alone does not constitute a *prima facie* case.
16. Mr. Ogada stated that the plaintiffs failed to establish goodwill or prove any misrepresentation by the 1st defendant likely to mislead consumers and that no evidence was provided to show that the goods in the 1st defendant's possession were counterfeit or of inferior quality. Counsel submitted that the 1st defendant annexed receipts from ASL Limited showing legitimate procurement of Havells–India branded goods, including receipts dated 26th June 2023, 4th December 2023 and 26th February 2024, which pre-date the institution of these

proceedings on 22nd February 2024, confirming lawful sourcing of genuine goods from an authorized distributor. He referred to the case of **JM v SMK & 4 others** [2022] KEHC 2265 (KLR) and submitted that the plaintiffs have not demonstrated any harm that cannot be compensated by damages. Counsel argued that the alleged harm is speculative and that the 1st defendant being a legitimate reseller of authorized products, has not caused and he is unlikely to cause any damage to the plaintiffs/applicants warranting equitable relief.

ANALYSIS AND DETERMINATION.

17. I have considered the application herein, the grounds on the face of it, and the affidavits filed in support thereof. I have also considered the replying affidavit filed by the 1st defendant and the written submissions by Counsel for the plaintiffs and the 1st defendant. The issue that arises for determination is whether an order of temporary injunction should issue.
18. I however note that the plaintiffs and the 2nd defendant entered into a consent dated 19th February 2025 which was adopted as an Order of the Court on 20th February 2025, whereby the 2nd defendant by themselves and their representatives, employees and agents undertook not to engage in any importation, distribution, listing, marketing and sale of goods bearing any Mark which is identical, confusingly similar and/or deceptively similar in part or whole to the plaintiffs Trademarks. The consent further stated that in the event of default of the undertaking, the plaintiffs shall be at liberty to enforce the breach in the same manner as a breach of an order of permanent injunction issued by this Honourable Court. The said parties further agreed to have the suit against the 2nd defendant marked as settled. The foregoing therefore means that the plaintiffs' suit herein as it stands, is only against the 1st and the 3rd defendants.

19. Before I delve into the merits and demerits of the application herein, it is important to note that contrary to the 1st defendant's averments, the plaintiffs produced a certificate confirming the accuracy of electronic evidence relied on as annexure No. "HRA-6", in compliance with Section 78A of the Evidence Act.
20. Interlocutory injunctions are provided for under Order 40 Rules (1)(a) and (b) of the Civil Procedure Rules, 2010, which states that -

Where in any suit it is proved by affidavit or otherwise-

a) that any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree; or

b) that the defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit,

the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal, or disposition of the property as the court thinks fit until the disposal of the suit or until further orders.

21. In the case of **Giella v Cassman Brown & Company Limited** (supra), the Court set out the principles to be considered in applications for interlocutory injunction-

Firstly, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages. Thirdly, if the Court is in doubt, it will decide an application on the balance of convenience.

22. The plaintiffs' case is that the 1st & 2nd defendants without authorization, have been importing, distributing, marketing, and selling counterfeit electrical goods bearing marks identical to their registered Trademarks through the 3rd defendant's online platform, www.jiji.co.ke, thereby infringing on their intellectual property rights and misleading consumers. They further aver that the 3rd defendant facilitates and profits from these infringing activities by hosting and promoting the impugned listings despite being aware of the infringement. The plaintiffs assert that investigations and test purchases confirmed the goods to be counterfeit, substandard, and hazardous to consumers. They argue that the defendants' actions amount to Trademark infringement, passing off, deceit, and unfair competition contrary to Section 7 of the Trademarks Act.
23. It is not disputed that the plaintiffs are the registered proprietors in Kenya of the "Havells" Trademarks used in connection with various industrial and consumer electrical products, and they have built considerable goodwill and reputation through extensive use. While the 1st defendant admits dealing in electrical goods bearing the Mark "Havells", he asserted that his products are genuine and sourced from ASL Limited, a reputable distributor. He denied any Trademarks' infringement.

24. In the case of **Solpia Kenya Limited v Style Industries Limited & another** (supra) relied on by the 1st defendant herein, the Court held as follows -

Therefore, as a principle of law, the fact of registration of trade mark per se does not entitle the proprietor of trade mark to an automatic injunction to restrain use of the trade mark by a person who has continuously used the trade mark prior to, during and after the registration of trade mark. In other words, in the face of a claim of prior user of trade mark, and absent other strong and cogent evidence, the fact of registration of trade mark does not invariably constitute a prima facie case with a probability of success

25. The import of the above decision is that registration of a Trademark though conferring certain statutory rights, is not conclusive proof of ownership or exclusive entitlement to the use of the Mark registered, particularly where there exists credible evidence of prior and continuous use by another party.
26. In this case, upon perusal of the plaintiffs' Trademarks registration certificates annexed to their affidavits in support of the instant application, it is evident that the plaintiffs' Trademarks were registered in the years 2010 & 2016. On the other hand, the 1st defendant's business, Dantrixx Electrical Merchants, under which he sells the goods bearing Marks that are identical, to or which closely resemble the plaintiffs' registered Trademarks, was registered in the year 2020, which is after the registration of the plaintiffs' Trademarks.
27. In the circumstances, I find the facts and holding in the **Solpia Kenya Limited** case (supra), distinguishable, and it is therefore not applicable to the facts in the instant application.

28. Having demonstrated ownership of the impugned Trademarks and shown that the 1st defendant is using the same for commercial gain, without the plaintiffs' authorization, and with no indication of ceasing such usage, I am persuaded that the plaintiffs have established a *prima facie* case with a probability of success. What constitutes a *prima facie* case was defined by the Court of Appeal in the case of **Mrao Ltd v First American Bank of Kenya Ltd & 2 others** (supra) as hereunder -

So, what is a prima facie case" I would say that in civil cases it is a case in which on the material presented to the Court a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter. A prima facie case is more than an arguable case. It is not sufficient to raise issues but the evidence must show an infringement of a right, and the probability of success of the Applicant's case upon trial. That is clearly a standard, which is higher than an arguable case.

29. On the issue of damages, the plaintiffs aver that they stand to suffer irreparable harm incapable of being compensated by damages if the orders being sought herein are not granted. They submitted that the goods being sold by the 1st defendant do not meet the plaintiffs' quality and safety standards and their circulation in the market poses risks of electrical faults, short circuits, and fires, thereby endangering lives and property. They argued that the Havells Trademarks are globally recognized and associated with high-quality electrical products, therefore the sale and distribution of counterfeit goods bearing identical or confusingly similar Marks is likely to erode their goodwill and reputation. In the case of **Olympic Sports House Limited v School**

Equipment Centre Limited [2012] KEHC 1071 (KLR), the Court in dealing with an application for injunction with respect to infringement of a Trademark held thus -

In the present case, I believe that the Defendant is in breach of Section 7 of the Act. Even if it can compensate the Plaintiff with damages, I hold the view that an injunction should still issue to restrain the continued breach of the law. I therefore do not need to address the issue as to whether damages are adequate.

However, if my view was to be sought, I hold the view that it would be very difficult to quantify the damages the Plaintiff will suffer as a result of the continued infringement of its trademark. Trade marks as are patents, are properties that should be constitutionally protected. To quantify the loss of their invasion is quite difficult and therefore hold that damages will not be an adequate remedy to compensate the Plaintiff.

30. I concur with the above position and hold that loss of goodwill, reputation, and customer trust is not readily quantifiable in monetary terms.
31. From the analysis that I have made in the instant application, it is my finding that the plaintiffs herein have sufficiently demonstrated that they stand to suffer irreparable harm in the event that the instant application is not allowed.
32. In light of the foregoing, and having found that the plaintiffs have established a *prima facie* case with a probability of success, and having demonstrated that they stand to suffer irreparable harm, I am satisfied that the balance of convenience also tilts in their favour.

33. The upshot is that the application herein is merited. It is hereby allowed in the following terms –

- i) An order of temporary injunction is hereby granted restraining the 1st and 3rd defendants, whether by themselves, their servants, agents, or representatives, from importing, distributing, listing, marketing, or selling goods bearing Marks identical to or confusingly similar to the plaintiffs' registered Trademarks, pending the hearing and determination of the suit between the plaintiffs, the 1st and 3rd defendants herein; and**
- ii) Costs of the application dated 23rd May 2024 shall be borne by the 1st and 3rd defendants.**

It is so ordered.

DELIVERED, DATED and SIGNED at NAIROBI on this 24th day of October 2025. Ruling delivered through Microsoft Teams Online Platform.

NJOKI MWANGI

JUDGE

In the presence of:-

Mr. Wesonga for the plaintiffs/applicants

Ms Njeru holding brief for Mr. Ogada for the 1st defendant/respondent

No appearance for the 2nd & 3rd defendants.

Ms B. Wokabi - Court Assistant.