

The TRADE MARKS ACT, 1999

Section 135 - Relief in suits for infringement or for passing off .—

1) The relief which a court may grant in any suit for infringement or for passing off referred to in section 134 includes injunction (subject to such terms, if any, as the court thinks fit) and at the option of the plaintiff, either damages or an account of profits, together with or without any order for the delivery-up of the infringing labels and marks for destruction or erasure. (2) The order of injunction under sub-section (1) may include an ex parte injunction or any interlocutory order for any of the following matters, namely: (a) for discovery of documents; (b) preserving of infringing goods, documents or other evidence which are related to the subject-matter of the suit; (c) restraining the defendant from disposing of or dealing with his assets in a manner which may adversely affect plaintiff's ability to recover damages, costs or other pecuniary remedies which may be finally awarded to the plaintiff. (3) Notwithstanding anything contained in sub-section (1), the court shall not grant relief by way of damages (other than nominal damages) or on account of profits in any case (a) where in a suit for infringement of a trade mark, the infringement complained of is in relation to a certification trade mark or collective mark; or (b) where in a suit for infringement the defendant satisfies the court (i) that at the time he commenced to use the trade mark complained of in the suit, he was unaware and had no reasonable ground for believing that the trade mark of the plaintiff was on the register or that the plaintiff was a registered user using by way of permitted use; and (ii) that when he became aware of the existence and nature of the plaintiff's right in the trade mark, he forthwith ceased to use the trade mark in relation to goods or services in respect of which it was registered; or (c) where in a suit for passing off, the defendant satisfies the court (i) that at the time he commenced to use the trade mark complained of in the suit, he was unaware and had no reasonable ground for believing that the trade mark for the plaintiff was in use; and (ii) that when he became aware of the existence and nature of the plaintiff's trade mark he forthwith ceased to use the trade mark complained of.