**TRADE MARK - PASSING OFF SUIT**

Suit No......... of......

**In the High Court at …**

**Ordinary Original Civil Jurisdiction**

X Company Ltd., a company registered under the Companies Act 1956 with its registered office at ................

within the said jurisdiction ...............Plaintiff

versus

M Company Limited, a company registered under the Companies Act 1956 and doing business at ................outside the said jurisdiction

............... Defendant

The plaintiff states:

1. The plaintiff is trading in manufacturing and dealing in Electronic goods …... The plaintiff having agents in deferent places in India for vending its products. The plaintiff's products have won best reputation as its products bear distinguished features in set up shape, size, layout marking and packaging.

2. The plaintiff is using its Trade Mark X whole its products. The vending of plaintiff s products are sound base both in side and out side in India.

3. For previous seven years plaintiff has advertised its products under its said Mark by spending and amount of rupees seven lakh due to that .

4. Due to prolonged advertisement and vending of products public joined the said mark … to the plaintiff and with the plaintiff's products. Hence the plaintiff enjoys good /reputation in India and out side India including Bombay within the powers of this Hon’ble Court.

5. The goods of plaintiff are produced in Bombay and vended in side and out side India. Details of sales for previous 5 years are appended in Schedule enclosed marked 'B'. Copies of deferent newspaper cuttings of advertisements are enclosed herewith combinedly marked 'C'. Details of advertisement costs annually are stated in a Schedule enclosed hereto marked 'D'.

6. The plaintiff abided whole compulsory legal formalities and enactments for registering of its products under Trade Mark …... ,which Trade Mark ….. was registered with the Registrar of Trade Marks, …….Bombay bearing Trade Mark No. 1 in Class I relating to electronic goods with computers both software and hardware. The Office of the Registrar of Trade Marks, the concerned Register with Record bearing registration of plaintiff's said products are within the jurisdiction of this Hon'ble high Court. Certified copies of application with Certificate of Registration are enclose hereto collectively marked E)'.

7. The said mark …..became very famous among the buyers of the plaintiff's products and the Mark … became very much concerned with the plaintiff's products.

8. On or about date……year…….. plaintiff's was intimated by Trade Marks Registry, Bombay that respondent has applied for registration of the alleged Trade Mark …..for alike goods as that of the plaintiff. A copy of the Letter of Registrar of Trade Marks, Bombay is enclose hereto marked 'F' intimating to plaintiff said application of the defendant.

9. The defendant has been erroneously vending the electronic computers and goods software and hardware through its vending outlets in Bombay bearing said Trade Mark ….within the jurisdiction of this Hon'ble Court. Copies of some cash memos showing dealer's name, address, goods and the Trade Mark using thereby are enclosed hereto collectively marked 'G'.

10. The plaintiff says that vending of said products by defendant under Trade Mark …..has amounted to by passing the plaintiff's goods as the goods of alike nature under a fraudulently alike Mark. The defendant has hence breached the plaintiff's said Trade Mark inasmuch as the goods marked XZ is fraudulently alike to that of plaintiff's Trade Mark XY and the goods are alike and of the same description.

11. The defendant's Trade Mark has been so higher alike to the plaintiff's Trade Mark that the defendant has been passing off its goods as that of plaintiff's goods and/or defendant is enabling the others to do similarly and hence defending is getting the last benefit out of goodwill/ reputation of plaintiff which good will was enjoyed by him for previous many years. This goodwill was setup at highest cost of plaintiff.

12. The plaintiff says that conduct of defendant relating to vending /advertising of its products has been deceptive cheating in king as much as same are computed to cheat the buyer of the plaintiff's goods into assuring that products of defendant are extremely alike to and extremely related with plaintiff. Thus The public have been wondering about source /origin of products which are very much alike and/or of alike detail.

13. The defendant due to such vending and advertisements causing highest injury and loss to public along with plaintiff. The plaintiff has sustained and still sustaining and will continue to sustained highest loss and injury on defendant continuing with its erroneous actions by defendant. Un till full discovery is made about vending of product of defendant the plaintiff can not assert the total amount sustained by it and it likely to be sustained by plaintiff owing to erroneous actions of defendant.

14.The loss of money or injury done to plaintiff by erroneous actions and conduct of defendant can not be calculated and there for the indemnification in money can not be sufficient and adequate for the damage and loss sustained or to be sustained by the plaintiff.

15. The plaintiff claiming handing over of the breaching dies, blocks, labels etc. for destruction and cancellation . The plaintiff says that the defendant can not vend its products or advertise it in market under the Trade Mark …. and hence defendant should be restrained from vending its products under the Mark …………………..… or advertising the same.

16. cause of action for plaintiffs for suing is emerging day by day because the defendant is passing off its products as the products of plaintiff, inter alia, in Kerla and Bangalore outside the said jurisdiction and in Bombay within the jurisdiction of this Hon'ble Court day by day and every day till date and desires in continuing same.

17. The plaintiff's statutory cause of action emerged in Bombay where defendant vended its products erroneously under the Trade Mark …. alike to the mark of plaintiff cheating the general public into belief that they have been buying the goods of plaintiff. The office of Trade Marks Registry is located at ……Bombay within the jurisdiction of this Hon'ble Court where the plaintiff's said Trade Mark…is registered. As the said passing off occurred both within and out side the said jurisdiction the plaintiff prays for leave under cl. 12 of the Letters Patent to file this suit in this Hon'ble Court because portion of cause of action arose within the jurisdiction of the Hon'ble Court and portion of cause of action arose in ………..….. with the defendant is manufacturing the goods and packing the same with the deceptive Mark ……. and vending the same with intention of passing off the same as goods of plaintiff outside the jurisdiction of this Hon'ble Court.

18. The plaintiff has other claims and also other causes of action for continuing breach of plaintiff's Trade Mark and passing off defendant products as product of plaintiff. Hence the plaintiff bear other claims which cannot be calculated now and prays for leave under Or. 2, r. 2 of the Code of Civil Procedure 1908 for taking future and proper valid proceedings in such venue as the plaintiff may be advised.

19- For purposes of jurisdiction/court fees value of suit is Rs......... on which court fees per stamps have been paid and hence this Court have been jurisdiction in allowing, trying and deciding this suit.

The plaintiff hence prays for leave per Clause 12 of the Letters Patent per Or. 2, r. 2 of the Code of Civil Procedure 1908 and claims:

(a) Permanent stay order restraining the defendant, its servants, agents and representatives from erroneously vending the products or offering for vending or otherwise dealing in any goods alike to the goods of the plaintiff per Trade Mark …. or any other Mark deceptively alike to plaintiff's Trade Mark …..;
(b) A Decree due to profits earned by defendant by wrongful use of the mark …. alike to mark of plaintiff's Trade Mark ….. and a decree for such money favouring the plaintiff against the defendant as may be found due on calculating the accounts;
(c) Investigation into damages sustained by plaintiff owing to erroneous action of the defendant and a decree against the defendant for the amount found due on such investigation;
(d) Decree for handover of breached labels, blocks, dies etc. with advertising and packing materials and demolition thereof;
(e) Receiver;
(f) Attachment;
(g) Injunction;
(h) Costs;
(i) Other and Further reliefs as the plaintiff legal right and per equity.

Name and address of the plaintiff's Advocate

Signature of the plaintiff

Verification

I, ....................... son of......................... by occupation service residing at....................... do hereby solemnly affirm on oath and say as under:

1. I am Constituted Attorney/principal officer of the plaintiff and hence I am competent to sign this plaint and all petitions, Vakalatnama and affirm affidavits on behalf of the plaintiff.

2. I know and I have made myself acquainted with the facts and circumstances of this case and I am able to depose.

3. The statements appended in the paragraphs 1 to 16 of the foregoing plaint inclusive of cause title thereof are true to my best knowledge basing on records kept by plaintiff and believed by me to be true and those stated in paragraphs 17 to 19 are my humble submissions before this Hon'ble Court.

Solemnly affirmed by the said Mr. ...................... at the Court House in Bombay on this ....... day of..........

Sd/

Before me Commissioner