

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
M.A. No. 70 of 2018.

Date	Order with signature of Judge
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1. For hearing of CMA No. 9360 of 2018 (Stay).
2. For hearing of main case.

25th November 2019.

M/s. Sultan Ahmed Shaikh and Salman Ahmed Shaikh, advocates for appellant.

Mirza Mehmood Baig, advocate for respondents.

Salahuddin Panhwar, J. Admittedly, parties are not at dispute with regard to trademark registration, however, issue relates to the alike (similar) packing of two products. Order dated 04.10.2018 passed by Presiding Officer, Intellectual Property Tribunal reflects that same is *ex-parte*, as only Respondents were heard and after hearing them, the appellant was restrained from marketing of its products on the issue of resemblance in packing. It seems that through interim order the appellant has been deprived of marketing its products, which is duly registered; without there being any justification in this behalf and the said order merely rests on the arguments and *prima facie* is without adjudication of such issue, which *normally* is the core issue in such like matters. Needless to mention that *normally* mandatory injunction can't be granted without hearing of other side because same surely operates against certain *legal* rights or *obligations*. It may well be added that such like *mandatory* injunction be not granted without allowing opportunity of hearing which, otherwise, is *integral* part of every proceedings within meaning of Article 10-A of Constitution, particularly when the decision of such like proceedings is likely to effect upon rights or obligations. A departure, however, may be made only if such right is being used to delay/frustrate the proceedings

or exceptional circumstances so justifies which (*exceptional circumstances*) must include *irreparable loss*. Reliance in this regard may be made to the decision given by the Hon'ble Supreme Court of Pakistan in the case of *Cantonment Board, Rawalpindi and another Vs. Muhammad Yaqoob and 49 others (1994 SCMR 2024)*, relevant paragraph whereof is reproduced as under:

“Be that as it may, the learned High Court appears to have acted in, haste in the issuance of ad interim mandatory injunction without hearing the opposite side and considering the legal aspect of the case. The impugned order is; therefore, not sustainable. We accordingly, convert this petition into appeal and by allowing the same, set aside the impugned order of the High Court. However, it is directed that the main revision petition may be disposed of as early as possible preferably within one month.”

2. In the instant matter status of *both* marks as registered is not disputed as well marketing thereof, therefore, it is always demand of safe administration of justice to provide an *opportunity* of hearing even while granting a *mandatory injunction* which (*injunction*) has been assailed to have deprived appellant of its rights which, *too*, without hearing. Accordingly, impugned order is found to be unjustified and *ab-initio void*, same is set aside and application for injunction be deemed to be pending which, the tribunal shall decide afresh within one month after hearing the parties. The parties shall ensure their presences before tribunal. The instant appeal stands disposed of alongwith listed application.

J U D G E