

# The Hershey Company vs Ashok Kumar & Ors on 30 September, 2024

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IN THE HIGH COURT OF DELHI AT NEW  
CS(COMM) 836/2024, I.A. 40561/2024  
40563/2024, I.A. 40564/2024, I.A.  
THE HERSHEY COMPANY

ASHOK KUMAR & ORS.

Through:

CORAM:

HON'BLE MS. JUSTICE MINI PUSHKARNA

% 30.09.2024 I.A. 40563/2024 (Exemption from filing original and certified copies of documents)

1. The present is an application under Section 151 of the Code of Civil Procedure, 1908 ("CPC"), on behalf of the plaintiff, seeking exemption from filing original/certified copies and permission to file and rely upon documents without proper margins, handwritten documents etc.

2. Exemption is granted, subject to all just exceptions.

3. Plaintiff shall file legible, clear, and translated copies of the documents, on which the plaintiff may seek to place reliance, before the next date of hearing.

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4. Accordingly, the present application is disposed of. I.A. 40564/2024 (Exemption from instituting Pre-Institution Mediation)

5. The present is an application under Section 12A of the Commercial Courts Act, 2015, read with Section 151 of CPC, seeking exemption from undergoing Pre-Institution Mediation.

6. Having regard to the facts of the present case and in the light of the judgment of Supreme Court

in the case of Yamini Manohar Versus T.K.D. Keerthi, 2023 SCC OnLine SC 1382, and Division Bench of this Court in Chandra Kishore Chaurasia Versus RA Perfumery Works Private Ltd., 2022 SCC OnLine Del 3529, exemption from attempting Pre-Institution Mediation, is granted.

7. Accordingly, the application stands disposed of. I.A. 40562/2024 (under Order XI Rule 1(4) of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Court Act, 2015)

8. This is an application under Order XI Rule 1(4) read with Section 151 CPC as amended by the Commercial Courts Act, 2015, seeking leave to file additional documents.

9. The plaintiff, if wishes to file additional documents at a later stage, shall do so strictly as per the provisions of Commercial Courts Act, 2015, and the Delhi High Court (Original Side) Rules, 2018.

10. The application is disposed of, with the aforesaid directions. I.A. 40612/2024 (Application seeking extension for filing hash report)

11. This is an application under Section 151 CPC seeking extension of time for filing Hash Report and Expert Certificate under Section 63(4)(C) of Bharatiya Sakshya Adhiniyam, 2023 ("BSA").

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12. In view of the averments made in the application, the same is allowed, and extension as sought, is granted.

13. Let the needful be done, accordingly.

14. With the aforesaid directions, the present application is disposed of. I.A. 40613/2024 (Exemption from advance service to the defendant nos. 5 & 6)

15. The present is an application under Section 151 CPC, seeking dispensing with the requirement of advance service of paper book to the defendants as per Delhi High Court Practice Direction dated 03rd December, 2019.

16. The plaintiff seeks urgent interim relief. Therefore, in the peculiar facts and circumstances of this case, exemption from effecting advance service upon the defendant, is granted.

17. For the reasons stated in the application, the same is allowed and disposed of.

CS(COMM) 836/2024

18. Let the plaint be registered as suit.

19. Issue summons. Summons is accepted by learned counsel appearing for defendant no.2.

20. Upon filing of the process fee, issue summons to the other defendants by all permissible modes. Summons shall state that the written statement be filed by the defendants within thirty days from the date of receipt of summons. Along with the written statement, the defendants shall also file affidavit of admission/denial of the plaintiff's documents, without which, the written statement shall not be taken on record.

21. Liberty is given to the plaintiff to file replication within thirty days This is a digitally signed order.

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22. List before the Joint Registrar (Judicial) for marking of exhibits, on 21st November, 2024.

23. List before the Court on 21st January, 2025.

I.A. 40561/2024 (Application under Order XXXIX Rules 1 & 2 read with Section 151 of CPC)

24. The present suit has been filed for permanent injunction restraining trademark infringement, copyright infringement, passing off, acts of unfair competition, seeking damages/rendition of accounts, freezing of assets, delivery up and other appropriate relief.

25. It is submitted that since its founding in 1894, the plaintiff has used, and continues to use, the mark HERSHEY (derived from the surname of the plaintiff's founder), the possessive form of the mark HERSHEY, and marks that incorporate the marks HERSHEY/HERSHEY'S, both standalone as well as in conjunction with other word/device mark(s), as part of the corporate name(s) of the plaintiff and its affiliates, as well as on and in relation to almost all of the plaintiff's products, which are primarily chocolate and related confectionary products. Further, the mark HERSHEY is also used/incorporated in many device marks owned/used by the plaintiff (hereinafter collectively referred to as "plaintiff's Name and Marks"), in many different forms, including:

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26. It is submitted that the mark HERSHEY, which is also the plaintiff's house mark, has been used, and continues to be used, by the plaintiff, as part of the corporate names of the plaintiff's affiliate companies all over the world. Some examples include Hershey Netherlands B.V., Hershey Canada, Inc., Hershey Mexico S.A. de C.V., The Hershey Sales Company, The Hershey Licensing Company, Hershey UK Holding Ltd., Hershey Japan Co. Ltd., Hershey India Pvt. Ltd., Hershey Philippines, Inc., to name a few.

27. It is submitted that the plaintiff has had, and continues to have, significant commercial ties with India. Since 1997, the plaintiff has had a subsidiary named Hershey India Private Limited ("plaintiff's Indian Subsidiary") through which the plaintiff has done, and continues to do, business in India.

28. It is submitted that the plaintiff has filed the present suit being aggrieved by the defendant no. 1 and other persons/entities, the particulars of whom are not known to the plaintiff at the moment, who are together dishonestly and illegally misrepresenting themselves as being authorized by/associated with the plaintiff and carrying out fraudulent activities in the name of the plaintiff. The defendant no. 1, in association with certain unknown other persons/entities, is/are issuing fake job offers/walk-in interview letters, unauthorizedly containing and bearing the plaintiff's Name and Marks. These notices/letters have been deliberately prepared in a manner that they are bound to mislead and confuse even persons who are This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 02/10/2024 at 01:05:02 well acquainted with the plaintiff and its business as to their actual source, let alone impressionable and unwary job aspirants. The issuance of these letters and emails by the defendant no. 1 amounts to infringement of the plaintiff's Name and Marks and also amounts to penal offences of fraud, cheating, impersonation, and misrepresentation.

29. It is submitted that the defendant no. 1 is/are primarily functioning from the infringing domain name THEHERSHEYCOMPANY.IN, and the website located thereat (currently inaccessible on account of endeavours of the plaintiffs internet security team). The defendant no. 1 is/are also operating E-mail IDs associated with the said infringing domain name for sending the fake job offers/walk-in interview letters and for reaching out to various persons, purporting to be acting on behalf of the plaintiff, and seeking to elicit monies from such persons under the garb of "security deposits" for appearing for job interviews for a prospective job opening with the plaintiff company.

30. Since the infringing domain name incorporates the entirety of the name/mark HERSHEY, and since it is also identical to the plaintiff's official domain name THEHERSHEYCOMPANY.COM, save for the .IN top level domain name, as well as since the defendant no. 1 is using the plaintiff's corporate logo, consumers, irrespective of whether they are of average intelligence and imperfect recollection or if they have a trained and cautious eye for detail, are bound to be hoodwinked and deceived into associating the defendant no. 1 and its/their dishonest and fraudulent activities with the plaintiff. Such confusion will have disastrous effects on the plaintiff's enviable goodwill and reputation. In fact, there have been actual instances of people having confused the E-mails received

from the defendant no. 1 as This is a digitally signed order.

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31. Attention of this Court has been drawn to the document showing fake interview letters issued thereby infringing the mark of the plaintiff. Document-33 of the plaint in this regard, is reproduced as hereunder:

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32. By referring to the aforesaid letter, it is submitted that the defendant no. 1 has, reproduced the plaintiff's Name and Marks as well as various features/insignia used by the plaintiff on the plaintiff's official website (located at: [www.thehersheycompany.com](http://www.thehersheycompany.com)) in order to lend a sense of authenticity to the fake interview letter. Such features/elements include, most prominently, the plaintiff's Name and Marks, the plaintiff's HERSHEY device mark, the use of the silhouette of the plaintiff's KISSES mark as a water mark, reproducing pictures of various products manufactured and sold by the plaintiff bearing the plaintiff's Name and Marks, and so on. It is submitted that most of the word and device marks, reproduced by the defendant no. 1 in the interview letter unauthorizedly, are registered in the name of the plaintiff and its affiliates, and such unauthorized use amounts to infringement of the plaintiff's registered trademarks and passing off, as also infringement of the plaintiff's copyright therein.

33. Further, there are several other similar letters being circulated by the defendant no. 1, with slight changes, such as replacing the name of the signatory of the fake letter from Mr. Hari Gupta, Mr. Suraj Jain, and Mr. This is a digitally signed order.

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34. Attention of this Court has also been drawn to the various E-mails which have been received by the plaintiff from the members of the public who have been duped by issuance of such fraud letters, and who have transferred their money in the bank accounts of defendant no.1. One of the E-mails as pointed to this Court, during the course of hearing, is reproduced hereunder:

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35. Attention of this Court has also been drawn to Document-36, which shows the various screenshots showing the fake interview letters being issued using the plaintiff's company name. One such document showing the job fraud alert at the plaintiff company, is reproduced as hereunder:

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36. It is submitted that the plaintiff has expanded its online presence in India by launching India-specific official social media pages and accounts on Facebook, X (formerly known as Twitter), Instagram, three of the world's most popular and trafficked social networking sites, YouTube, the highly trafficked video sharing website, as well as on LinkedIn, one of the world's most popular professional networking sites. The plaintiff's Name and Marks feature prominently on the above-mentioned sites.

37. In so far as trade mark registrations in India are concerned, the Plaintiff is the proprietor of valid and subsisting trade mark registrations for one or more of the plaintiff's Name and Marks. Details of these registrations are listed below:

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38. The defendant no. 1 is/are running/perpetrating the elaborate scam by unauthorizedly and infringingly using the plaintiff's Name and Marks, including from the domain name THEHERSHEYCOMPANY.IN, and from the E-mail IDs associated with

THEHERSHEYCOMPANY.IN, namely, hr@thehersheycompany.in, and india@thehersheycompany.in, as well as the contact numbers purportedly belonging to the Ashok Kumar defendants, i.e., 9773876711, 9355097994, 9870160560, and 9870254628.

39. It is submitted that the identity of the registrant of the domain name THEHERSHEYCOMPANY.IN is not known to the plaintiff, as the details of the domain name registrant have been redacted by the registrant by subscribing to the privacy protect features offered by the domain name registrars. As such, the true identity and contact details of the registrant/owner/operator of the domain name THEHERSHEYCOMPANY.IN are not traceable.

40. It is the plaintiff's apprehension that the fraudulent activities of the registrant(s)/owner(s) of these websites are likely to continue even after the passing of an injunction order. It is also likely that the registrants may simply register new domain names containing the plaintiff's Name and Marks and host/shift to fresh website(s) that may continue to defraud the members of the public. Accordingly, the plaintiff seeks a dynamic injunction to cover all future rogue websites that mirror or mimic the contents of the plaintiff's websites and/ or their domain names that contain or are deceptively similar to the plaintiff's Name and Marks.

41. It is submitted that upon the plaintiff learning about such a scam being perpetrated in its name, the plaintiff's Indian counsel conducted Internet searches of their own and came across few posts on the popular social media. This is a digitally signed order.

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42. Further, the plaintiff's Internet security team also flagged the defendant no. 1's fraudulent use of the website and E-mail IDs located at/associated with the infringing domain name THEHERSHEYCOMPANY.IN to the registrant of the domain name, pursuant to which, the website located at THEHERSHEYCOMPANY.IN was taken down. However, while the website located at the domain THEHERSHEYCOMPANY.IN is not accessible any more, the domain and the associated email IDs continue to remain active, and it is likely that the defendant no. 1 continues to operate the associated E-mail IDs which are being used to misrepresent the plaintiff and for issuing the fake interview letters in the name of the plaintiff, amounting to infringement of the plaintiff's Name and Marks.

43. It is submitted that the defendant no. 1 is seeking to unduly and illegally benefit monetarily at the expense of gullible persons, who, being deceived by the unauthorized and infringing use of the plaintiff's Name and Marks in the covering email and the interview letter, are likely to pay the

amount mentioned in the letter in the hope of getting a chance at working for a prestigious organization as the plaintiff. Hence, it is submitted that it is incumbent for this Court to not only preserve and protect the plaintiff's This is a digitally signed order.

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44. Considering the submissions made before this Court, the plaintiff has demonstrated a prima facie case for grant of permanent injunction and in case no ex-parte ad interim injunction is granted, the plaintiff will suffer an irreparable loss. Further, the balance of convenience also lies in favour of the plaintiff, and against the defendants.

45. Accordingly, the following directions are issued:

i. Till the next date of hearing, defendant no.1 and all other acting through them and on their behalf, are restrained from using and/or reproducing one or more of the plaintiff's Name and Marks, including any mark identical with or similar to the plaintiff's Name and Marks, singularly or in conjunction with any other word or device, as part of its domain name THEHERSHEYCOMPANY.IN, the E-mail Ids hr@thehersheycompany.in and india@thehersheycompany.in, on letters and/or other incidentals used/circulated by the defendant no.1, as a trademark, service mark, house mark, trade name, trading style, corporate name, website, domain name, messaging group on any platform, E-mail address, social media handle or otherwise in any manner whatsoever.

ii. Defendant no.2 is directed to provide complete details/addresses of the defendant no.1 and/or any other persons who might be the owners/operators of the infringing domain name THEHERSHEYCOMPANY.IN and the E-mail Ids:

hr@thehersheycompany.in, and india@thehersheycompany.in, and put transfer lock(s) and suspend to the domain name This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 02/10/2024 at 01:05:03 THEHERSHEYCOMPANY.IN and any other domain names discovered during the proceedings to have been engaging in or carrying out fraudulent activities by infringement of the plaintiff's Name and Marks and to transfer the ownership of such domain names to the plaintiff/ applicant. iii. Defendant nos. 5 and 6 are directed to issue a notification calling upon the various Internet Service Providers and Mobile Network Operators registered under it to block access to defendant no. 1's domain name THEHERSHEYCOMPANY.IN and associated mobile application(s), if any, and/or any other domain name(s) or



website(s) which might be revealed during the course of the present proceedings to be associated with THEHERSHEYCOMPANY.IN, as being rogue websites. iv. Defendant nos. 8 and 9 are directed to suspend/freeze the bank account nos. 1942500102211001 and 08781000012317 respectively, belonging to the defendant no. 1, or persons related thereto, and to furnish the details of account holders of the bank accounts to this Court and the plaintiff's Indian representatives, and to suspend/freeze and disclose details of any other bank account(s) which may be discovered to be associated with the defendant no. 1 in carrying out the impugned fraudulent activities. v. Defendant no. 7 is directed to investigate and provide details/take necessary action against the registrant/ owner of the domain name THEHERSHEYCOMPANY.IN and the associated E-mail IDs hr@thehersheycompany.in, and india@thehersheycompany.in, as well as against registrants of mobile numbers 9773876711, 9355097994, 9870160560 and 9870254628 and bank account nos. 1942500102211001 managed by defendant no. 8 and 08781000012317 managed by defendant no.9.

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a. 9773876711 b. 9355097994 c. 9870160560 d. 9870254628

46. Issue notice to the defendants. Notice is accepted by learned counsel appearing for defendant no.2.

47. Let notice be issue to other defendants, including, through the nominated counsels, by all modes.

48. Let reply be filed within a period of four weeks, from the date of service.

49. Rejoinder thereto, if any, be filed within two weeks, thereafter.

50. Compliance of Order XXXIX Rule 3 be done within a period of one week, from today.

51. Re-notify on 21st January, 2025.

MINI PUSHKARNA, J SEPTEMBER 30, 2024/kr This is a digitally signed order.

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