

Shri Ved Prakash Garg Trading As M/S. ... vs Mr. Sagar Garg on 2 August, 2024

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IN THE HIGH COURT OF DELHI AT NEW DELHI
CS(COMM) 638/2024 & I.A. 35330/2024, I.A.
35332/2024, I.A. 35333/2024, I.A. 35334/

SHRI VED PRAKASH GARG TRADING AS M/S. PA
PRODUCTS

MR. SAGAR GARG

CORAM:

HON'BLE MS. JUSTICE MINI PUSHKARNA

% 02.08.2024 I.A. 35333/2024 (Exemption from filing clearer copies)

1. The present is an application under Section 151 of the Code of Civil Procedure ("CPC"), 1908 seeking an exemption from filing clearer copies or documents with exact margins and/or which are handwritten or English translations, certified copies and from filing originals of the relevant documents at this stage, along with supporting affidavit.

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

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

4. Accordingly, the present application is disposed of. I.A. 35331/2024 (Application seeking leave to file additional documents)

5. The present is an application filed on behalf of the plaintiff under Order XI Rule 1(4) of the CPC, as amended by the Commercial Courts Act, 2015, seeking leave to file additional documents.

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

7. The application is disposed of, with the aforesaid directions. I.A. 35335/2024 (Exemption from advance service to the defendant)

8. The present is an application under Rule 22 of Delhi High Court Intellectual Property Rights Division Rules, 2022, read with Section 151 CPC, seeking exemption from advance service to the defendant.

9. The plaintiff seeks urgent interim relief, and has also sought appointment of a Local Commissioner. Therefore, in the peculiar facts and circumstances of this case, exemption from effecting advance service upon the defendant, is granted.

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

I.A. 35332/2024 (Exemption from instituting Pre-Litigation Mediation)

11. 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.

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12. 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.

13. Accordingly, the application stands disposed of. CS(COMM) 638/2024

14. Let the plaint be registered as suit.

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

16. Liberty is given to the plaintiff to file replication within thirty days from the date of receipt of the written statement. Further, along with the replication, if any, filed by the plaintiff, an affidavit of admission/denial of documents of the defendant, be filed by the plaintiff, without which, the replication shall not be taken on record. If any of the parties wish to seek inspection of the documents, the same shall be sought, and given within the timelines.

17. List before the Joint Registrar (Judicial) for marking of exhibits on 19th September, 2024.

18. List before the Court on 19th December, 2024.

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19. The present suit has been filed for permanent injunction restraining infringement and passing off, of trademark/trade name/artistic work, damages, rendition of account, delivery up, etc.

20. It is submitted that the plaintiff is engaged in the business of manufacturing and marketing of Puffs, Namkeen, Biscuits, Rusk, Chips and Confectionery goods included in Class 30, since the year 2005, by using the trademark/label/artistic work 'FUN FINE'.

21. It is submitted that the plaintiff had conceived and bonafidely/ honestly adopted the trademark/label/artistic work 'FUN FINE' as well as the original artistic work 'FUN FINE', in respect of the said goods in the year 2005, and it has continuously, extensively, openly been using the same, in relation to its business of said goods, since then.

22. Learned Senior Counsel appearing for the plaintiff submits that the plaintiff is the registered owner of the trademark/artistic work 'FUN FINE' and other formative marks, along with the lettering style, lay out, colour combination, patterns, etc. and accordingly the plaintiff is also the proprietor of the colour combination/art work/copyright involved in the said trademarks/labels.

23. Thus, it is submitted that the plaintiff is the exclusive proprietor of the trademark/label/artistic work 'FUN FINE' for the goods and other related items, included in Class 30 & 35. The details of registered trademark and other pending applications filed by the plaintiff, as given in the plaint, are reproduced as below:

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24. Attention of this Court has been drawn to the registration certificate issued in favour of the plaintiff by the Registrar of Trade Marks, to submit that the user of the plaintiff is from 1st April, 2005, and with respect to the applications for registration of trademark, the date of applications are of the year 2008, 2013, etc.

25. It is submitted that the artistic work/trademark used by the plaintiff is an original artistic work, within the meaning of Section 2(c) of the Copyright Act, 1957. Attention of this Court has been drawn to the copyright registration in favour of the plaintiff, document pertaining to which, is reproduced as under:

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26. Attention of this Court has also been drawn to the invoices filed on behalf of the plaintiff for sale of its goods, from 22nd April, 2009 to 24th This is a digitally signed order.

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27. It is submitted that the plaintiff, in order to support his real brother Mr. Pawan Garg, and his son Mr. Sagar Garg, employed them in his firm and also started paying salary to them. Subsequently, both Mr. Pawan Garg and Mr. Sagar Garg, left the plaintiff's firm in the month of May, 2022.

28. It is submitted that to the best knowledge of the plaintiff, the defendant is a sole proprietor and doing his business from the address as mentioned in the Memo of Parties and is engaged in identical business of identical goods, as that of the plaintiff's.

29. It is submitted that the business being done by the defendant, is same and also overlaps with the business of the plaintiff. The defendant is engaged in the business of processing, marketing and selling of confectionary items under the impugned trademark/artistic work 'FUN TWIST' falling in Class 30. It is submitted that the defendant is malafidely using the trademark/ trade dress/artistic

work 'FUN TWIST' by giving an identical impression, in order to create confusion and deception in the mind of purchasing public, with an intention to en-cash the goodwill/reputation of the plaintiff's trade mark/label.

30. It is submitted that the defendant on 16th June, 2022, malafidely applied for the registration of a deceptively similar trademark/artistic work 'FUN TWIST', in Class 30 with the user claim, as proposed to be used vide application no. 5491533, and the same was registered vide registration certificate no. 3178159 dated 16th March, 2023 in Class 30.

31. Attention of this Court has been drawn to the trademark registration in favour of the defendant, which is reproduced as below:

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32. By referring to the aforesaid document, learned Senior Counsel appearing for the plaintiff submits that the date of application made by the This is a digitally signed order.

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33. Attention of this Court has also been drawn to another registration in favour of the defendant, which is reproduced as under:

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34. By reference to the aforesaid, it is submitted that the date of application made by the defendant is 24th June, 2022, with user detail again, as, 'proposed to be used'.

35. Thus, it is submitted that it is evident that the defendant has got the registered trade mark 'FUN TWIST' in its favour and the same is deliberate imitation of the plaintiff's registered trademark/artistic work 'FUN FINE'. It is submitted that the said registration is malafide and invalid in the eyes of law and the same seems to have been obtained by playing fraud upon the Trademark Registry.

36. It is further submitted that defendant has intentionally adopted a deceptively and confusingly similar trademark/artistic work 'FUN TWIST' in Class 30 with the user claim as 'Proposed to be used', whereas, the plaintiff is using the trademark/artistic work 'FUN FINE' since the year 2005. Thus, it is submitted that the defendant cannot be said to be the bonafide adopter of the trademark/artistic work 'FUN TWIST' as the same has been done malafidely and deliberately adopted by the defendant to en- cash upon the hard earned goodwill and reputation of the plaintiff. It is 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 30/08/2024 at 20:40:14 submitted that the defendant has no plausible explanation for adopting the trademark/artistic work 'FUN TWIST'. The said trademark/artistic work is deceptively and confusingly similar to the trademark/artistic work, 'FUN FINE' of the plaintiff.

37. Thus, it is submitted that the plaintiff has filed a rectification petition being C.O.(COMM.IPD-TM) 153/2024, seeking rectification/cancellation of the trademark/artistic work 'FUN TWIST' bearing application no. 5491533 in Class-30 from the Registrar of Trade Marks, which is the defendant's mark.

38. The comparison of the packaging material of the plaintiff and defendant, as filed in the document file, along with the plaint, is reproduced as under:

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39. Learned Senior Counsel appearing for the plaintiff submits that there is similarity of goods/channel for selling the products of the plaintiff, as well as the defendant. It is submitted that the plaintiff, being the proprietor of the registered trademark/artistic work 'FUN FINE' in Class 30 since 2005, no other party can have the right to use the trademark/artistic work 'FUN TWIST' or any other similar or deceptively similar trademark/artistic work, without the consent and permission of the plaintiff.

40. It is submitted that the defendant is well aware of the trademark/label/artistic work 'FUN FINE' of the plaintiff and its adoption/use by the plaintiff in relation to the said business and goods since the very beginning. The defendant is also aware of the enviable goodwill and reputation attached to the goods of the plaintiff, and as such in order to ride upon the hard earned reputation and goodwill of the plaintiff, has malafidely and deliberately adopted/used the identical mark/label/artistic work 'FUN TWIST' in relation to its business of identical goods.

41. It is submitted that the malafide and fraudulent use of the mark 'FUN 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 30/08/2024 at 20:40:14 'TWIST' and similar expressions and other details pertaining to the plaintiff by the defendant on his goods/packaging material, are bound to cause deception and confusion amongst the purchasing public and trade, who will undoubtedly be misled into thinking that goods of the defendant also originate from the plaintiff, in one or the other manner. Therefore, there is every likelihood, that the public at large, is bound to become confused and deceived due to the infringement of trademark/label/artistic work and also passing off the goods, as that of the plaintiff by the defendant. Thus, it is submitted that the use of the impugned trademark/label/artistic work by the defendant, constitutes infringement and passing off, of trademark/label/artistic work of the plaintiffs.

42. Thus, it is submitted that the illegal activities on the part of the defendant are causing irreparable loss/injury to the reputation/goodwill/business of the plaintiff, which cannot be compensated in terms of money.

43. It is submitted that it is apparent from the face of it that the defendant has adopted the similar and identical label/artistic work as that of the plaintiff which is a well-known label/artistic work of the plaintiff. It is submitted that defendant has not obtained any license, permission or consent of the plaintiff to use the label/artistic work 'FUN TWIST' in any manner, and such use on the part of the defendant, is malafide and dishonest, with a view to ride upon the hard earned reputation and goodwill of the plaintiff.

44. Learned Senior Counsel appearing for the plaintiff also relies upon the judgment of the Supreme Court in the case of S. Syed Mohideen Versus P. Sulochana Bai, (2016) 2 SCC 683, to submit that the registrations, are subject to rights of the prior user of the trade mark. Thus, he relies upon the This is a digitally signed order.

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"xxx xxx xxx

29. After considering the entire matter in the light of the various provisions of the Act and the scheme, our answer to the aforesaid question would be in the affirmative. Our reasons for arriving at this conclusion are the following.

30. Firstly, the answer to this proposition can be seen by carefully looking at the provisions of the Trade Marks Act, 1999 (the Act). Collective reading of the provisions especially Sections 27, 28, 29 and 34 of the Trade Marks Act, 1999 would show that the rights conferred by registration are subject to the rights of the prior user of the trade mark. We have already reproduced Section 27 and Section 29 of the Act.

30.1. From the reading of Section 27(2) of the Act, it is clear that the right of action of any person for passing off the goods/services of another person and remedies thereof are not affected by the provisions of the Act. Thus, the rights in passing off are emanating from the common law and not from the provisions of the Act and they are independent from the rights conferred by the Act. This is evident from the reading of the opening words of Section 27(2) which are "Nothing in this Act shall be deemed to affect rights...."

30.2. Likewise, the registration of the mark shall give exclusive rights to the use of the trade mark subject to the other provisions of this Act. Thus, the rights granted by the registration in the form of exclusivity are not absolute but are subject to the provisions of the Act.

30.3. Section 28(3) of the Act provides that the rights of two registered proprietors of identical or nearly resembling trademarks shall not be enforced against each other. However, they shall be same against the third parties. Section 28(3) merely provides that there shall be no rights of one registered proprietor vis-à-vis another but only for the purpose of registration. The said provision 28(3) nowhere comments about the rights of passing off which shall remain unaffected due to overriding effect of Section 27(2) of the Act and thus the rights emanating from the common law shall remain undisturbed by the enactment of Section 28(3) which clearly states that the rights of one registered proprietor shall not be enforced against the another person.

30.4. Section 34 of the Trade Marks Act, 1999 provides that nothing in this Act shall entitle the registered proprietor or registered user to This is a digitally signed order.

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the registration rights under the Act.

31. Secondly, there are other additional reasonings as to why the passing off rights are considered to be superior than that of registration rights.

31.1. Traditionally, passing off in common law is considered to be a right for protection of goodwill in the business against misrepresentation caused in the course of trade and for prevention of resultant damage on account of the said misrepresentation. The three ingredients of passing off are goodwill, misrepresentation and damage. These ingredients are considered to be classical trinity under the law of passing off as per the speech of Lord Oliver laid down in *Reckitt & Colman Products Ltd. v. Borden Inc.* [*Reckitt & Colman Products Ltd. v. Borden Inc.*, (1990) 1 WLR 491 : (1990) 1 All ER 873 (HL)] which is more popularly known as "Jif Lemon" case wherein Lord Oliver reduced the five guidelines laid out by Lord Diplock in *Erven Warnink Besloten Vennootschap v. J. Townend & Sons* 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 30/08/2024 at 20:40:14 (Hull) Ltd. [*Erven Warnink Besloten Vennootschap v. J. Townend & Sons (Hull) Ltd.*, 1979 AC 731 at p. 742 : (1979) 3 WLR 68 : (1979) 2 All ER 927 (HL)] ("the Advocaat case") to three elements: (1) goodwill owned by a trader, (2) misrepresentation, and (3) damage to goodwill. Thus, the passing off action is essentially an action in deceit where the common law rule is that no person is entitled to carry on his or her business on pretext that the said business is of that of another. This Court has given its imprimatur to the above principle in *Laxmikant V. Patel v. Chetanbhai Shah* [*Laxmikant V. Patel v. Chetanbhai Shah*, (2002) 3 SCC 65] 31.2. The applicability of the said principle can be seen as to which proprietor has generated the goodwill by way of use of the mark/name in the business. The use of the mark/carrying on business under the name confers the rights in favour of the person and generates goodwill in the market. Accordingly, the latter user of the mark/name or in the business cannot misrepresent his business as that of business of the prior right holder. That is the reason why essentially the prior user is considered to be superior than that of any other rights. Consequently, the examination of rights in common law which are based on goodwill, misrepresentation and damage are independent to that of registered rights. The mere fact that both prior user and subsequent user are registered proprietors are irrelevant for the purposes of examining who generated the goodwill first in the market and whether the latter user is causing misrepresentation in the course of trade and damaging the goodwill and reputation of the prior right holder/former user. That is the additional reasoning that the statutory rights must pave the way for common law rights of passing off.

32. Thirdly, it is also recognised principle in common law jurisdiction that passing off right is broader remedy than that of infringement. This is due to the reason that the passing off doctrine operates on the general principle that no person is entitled to represent his or her business as business of other person. The said action in deceit is maintainable for diverse reasons other than that of registered rights which are allocated rights under the Act. The authorities of other common law jurisdictions like England more specifically Kerly's Law of Trade Marks and Trade Names, 14th Edn., Thomson, Sweet & Maxwell South Asian Edition recognises the principle that where trade

mark action fails, passing off action may still succeed on the same evidence. This has been explained by the learned author by observing the following:

"15-033. A claimant may fail to make out a case of infringement of a trade mark for various reasons and may yet show that by This is a digitally signed order.

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32.1. The same author also recognises the principle that the Trade Marks Act affords no bar to the passing off action. This has been explained by the learned author as under:

"15-034. Subject to possibly one qualification, nothing in the Trade Marks Act, 1994 affects a trader's right against another in an action for passing off. It is, therefore, no bar to an action for passing off that the trade name, get up or any other of the badges identified with the claimant's business, which are alleged to have been copied or imitated by the defendant, might have been, but are not registered as, trade marks, even though the evidence is wholly addressed to what may be a mark capable of registration. Again, it is no defence to passing off that the defendant's mark is registered. The Act offers advantages to those who register their trade marks, but imposes no penalty upon those who do not. It is equally no bar to an action for passing off that the false representation relied upon is an imitation of a trade mark that is incapable of registration. A passing off action can even lie against a registered proprietor of the mark sued upon. The fact that a claimant is using a mark registered by another party (or even the defendant) does not of itself prevent goodwill being generated by the use of the mark, or prevent such a claimant from relying on such goodwill in an action against the registered proprietor. Such unregistered marks are frequently referred to as 'common law trade marks'."

32.2. From the reading of the aforementioned excerpts from Kerly's Law of Trade Marks and Trade Names, it can be said that not merely it is recognised in India but in other jurisdictions also including England/UK (Provisions of the UK Trade Marks Act, 1994 are analogous to the Indian Trade Marks Act, 1999) that the registration is no defence to a passing off action and nor the Trade Marks Act, 1999 affords any bar to a passing off action. In such an event, the rights conferred by the Act under the provisions of Section 28 have to be subject to the provisions of Section 27(2) of the Act and thus the passing off action has to be considered independent "Iruttukadai Halwa" under the provisions of the Trade Marks Act, 1999.

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33. Fourthly, it is also a well-settled principle of law in the field of the trade marks that the registration merely recognises the rights which are already pre-existing in common law and does not create any rights. This has been explained by the Division Bench of the Delhi High Court in *Century Traders v. Roshan Lal Duggar & Co.* [*Century Traders v. Roshan Lal Duggar & Co.*, 1977 SCC OnLine Del 50 : AIR 1978 Del 250] in the following words: (SCC OnLine Del para 10) "10. '16. ... First is the question of use of the trade mark. Use plays an all-important part. A trader acquires a right of property in a distinctive mark merely by using it upon or in connection with his goods irrespective of the length of such user and the extent of his trade. The trader who adopts such a mark is entitled to protection directly the article having assumed a vendible character is launched upon the market. Registration under the statute does not confer any new right to the mark claimed or any greater rights than what already existed at common law and at equity without registration. It does, however, facilitate a remedy which may be enforced and obtained throughout 'the State and it established the record of facts affecting the right to the mark. Registration itself does not create a trade mark. The trade mark exists independently of the registration which merely affords further protection under the statute. Common law rights are left wholly unaffected.' [Ed.: As observed in *L.D. Malhotra Industries v. Ropi Industries*, 1975 SCC OnLine Del 172, para 16.] "

(emphasis supplied) 33.1. The same view is expressed by the Bombay High Court in *Sunder Parmanand Lalwani v. Caltex (India) Ltd.* [*Sunder Parmanand Lalwani v. Caltex (India) Ltd.*, 1965 SCC OnLine Bom 151 : AIR 1969 Bom 24] in which it has been held vide AIR para 32 as follows: (SCC OnLine Bom paras 1 & 2) "1. A proprietary right in a mark can be ['Iruttukadai Halwa'] obtained in a number of ways. The mark can be originated by a person, or it can be subsequently acquired by him from somebody else. Our Trade Marks law is based on the English Trade Marks law and the English Acts. The first Trade Marks Act in England was passed in 1875. Even prior thereto, it was firmly established in England that a trader acquired a right of property in a distinctive mark merely by using it upon or in connection with goods irrespective of the length of such user and the extent of his trade, and that he was entitled to protect such right of property by appropriate proceedings by way of This is a digitally signed order.

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even prior to its user. He could do the latter after complying with the other requirements of the Act, including the filing of a declaration of his intention to use such mark. See observations of Llyod Jacob, J. in Vitamins Ltd.'s Application, In re [Vitamins Ltd.'s Application, In re, (1956) 1 WLR 1 :

(1955) 3 All ER 827 : 1956 RPC 1] at RPC p. 12, and particularly the following: (WLR p. 10) '... A proprietary right in a mark sought to be registered can be obtained in a number of ways. The mark can be originated by a person or can be acquired, but in all cases it is necessary that the person putting forward the application should be in possession of some proprietary right which, if questioned, can be substantiated.'

2. Law in India under our present Act is similar."

(emphasis supplied) 33.2. We uphold the said view which has been followed and relied upon by the courts in India over a long time. The said views emanating from the courts in India clearly speak in one voice, which is, that the rights in common law can be acquired by way of use and the registration rights were introduced later which made the rights granted under the law equivalent to the public user of such mark. Thus, we hold that registration is merely a recognition of the rights pre-existing in common law and in case of conflict between the two registered proprietors, the evaluation of the better rights in common law is essential as the common law rights would enable the court to determine whose rights between the two registered proprietors are better and superior in common law which have been recognised in the form of the registration by the Act.

xxx xxx xxx"

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45. In the above circumstances, the plaintiff has demonstrated a prima facie case for granting 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 defendant.

46. Accordingly, till the next date of hearing, the defendant, its proprietors, partners, agents, assigns, representatives, heirs, servants, dealers, distributors, manufacturers, franchisees and/or anyone acting for and on their behalf, are restrained from using the trade mark 'FUN TWIST' or any other trademark/label/artistic work, which is identical and/or deceptively/confusingly similar to the plaintiff's registered trade mark 'FUN FINE'/artistic work, for the goods, i.e., Puffs, Namkeen, Biscuits, Rusk, Chips and Confectionery goods etc., included in Class 30, or other similar goods in any manner whatsoever, so as to result in infringement of the registered

trademark/artistic work of the plaintiff, or its passing off.

47. Issue notice to the defendants by all permissible modes upon filing of process fee, returnable on the next date of hearing.

48. Reply be filed within a period of four weeks from the date of service.

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

50. Compliance of Order XXXIX Rule 3 CPC, be done within a period of two weeks, from today.

51. List before the Court on 19th December, 2024.

I.A. 35334/2024 (Application for appointment of Local Commissioner)

52. The present is an application filed on behalf of the plaintiff under Order XXVI Rule 9 read with Order XXXIX Rule 7 read with Section 151 This is a digitally signed order.

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53. It is submitted that in order to preserve evidence of infringement and passing off, it is necessary that a Local Commissioner be appointed to visit the premises of the defendant.

54. Accordingly, the following directions are issued:

54.1 Mr. R.S. Rathi, Advocate (Mob. No. 9810868733, 8800981054), is appointed as a Local Commissioner, with a direction to visit the following premises of the defendant, as under:-

JAI SHRI BALAJI FOODS, Having Address at, Khasra No. 47/11/2, Ground Floor, Landmark Opp. BG 567 Sanjay Gandhi Transport Nagar Village Samaipur New Delhi-110042 54.2 The learned Local Commissioner, along with a representative of the plaintiff and its counsel, shall be permitted to enter upon the premises of the defendant mentioned above, or any other location/premises, that may be identified during the course of commission, in order to conduct the search and seizure.

54.3 The Local Commissioner shall conduct a search at the defendant premises, and seize the impugned/offending goods bearing any marks, which are similar to the

plaintiff's goods, bearing the defendant's impugned marks, or any other mark, which is identical or deceptively similar, to the plaintiff's trademark/artistic work.

54.4 After seizing the infringing material, the same shall be inventorized, sealed and signed by the learned Local Commissioner, in the presence of the parties, and released on superdari to the defendants, on their undertaking to 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 30/08/2024 at 20:40:14 produce the same, as and when further directions are issued, in this regard. 54.5 The learned Local Commissioner shall also be permitted to make copies of the books of accounts including ledgers, cash books, stock registers, invoices, books, etc., in so far as they pertain to the infringing products.

54.6 Further, the learned Local Commissioner shall be permitted to undertake/arrange for photography/videography of the execution of the commission.

54.7 Both the parties shall provide assistance to the learned Local Commissioner for carrying out the aforesaid directions. 54.8 In case, any of the premises are found locked, the learned Local Commissioner shall be permitted to break open the lock(s). To ensure an unhindered and effective execution of this order, the Station House Officer ("SHO") of the local Police Station, is directed to render all assistance and protection to the Local Commissioner, as and when, sought. 54.9 The fee of the learned Local Commissioner, to be borne out by the 1,5 plaintiff, is fixed at 0,000/-. The plaintiff shall also bear all the expenses for travel of the Local Commissioner and other miscellaneous out- of-pocket expenses, for the execution of the commission. The fee of the Local Commissioner shall be paid in advance by the plaintiff. 54.10 The Local Commission shall be executed within a period of two weeks from today. The Local Commissioner shall file the report within a period of four weeks from the date, on which the commission is executed.

55. The order passed today, shall not be uploaded for a period of two weeks.

56. In terms of the foregoing, the present application stands disposed of.

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57. Dasti under signatures of the Court Master.

MINI PUSHKARNA, J AUGUST 2, 2024 ak This is a digitally signed order.

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