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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CS(COMM) 111/2023 & I.A. 4147/2023, I.A. 4148/2023, I.A. 4149/2023, I.A. 4150/2023, I.A. 4151/2023, I.A. 4152/2023, I.A. 4153/2023

ARCHIAN FOODS PRIVATE LIMITED Plaintiff
Through: Mr. Sagar Chandra, Ms. Ishani Chandra, Mr. Nikhil Chawla, Mr. Ashutosh Ranga and Mr. Himanshu Sharma, Advs.

versus

SWAMI FOODS & ORS. Defendants
Through: None

CORAM:
HON'BLE MR. JUSTICE C.HARI SHANKAR

% **ORDER**
01.03.2023

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1. The plaintiff alleges passing off, by the defendant, of its product 'LAOREE ZEERA SODA' as the product of the plaintiff, which is 'LAHORI ZEERA SODA'. Passing off, it is alleged has been effected by adopting a trade dress which is deceptively similar to the trade dress of the plaintiff's product. Both the products are flavoured carbonated non-alcoholic beverages. For the sake of comparison, copies of the plaintiff's and defendants' products, with the points of similarity between the two, have been presented in a tabular fashion in para 41 of the plaint, thus:



Plaintiff's Product	Defendant's Product	Points of Similarity
 - Colour combination of Yellow, Green, White, Red. - The font, artistic representation and stylised manner of writing. - Colour of the cap/crown is green. - Placement of the all the elements on the label	 - Colour combination of Yellow, Green, White, Red completely copied by the Defendant in the same manner. In fact the complete label seems to have been blatantly copied. - The font, artistic representation and stylised manner of writing has been copied identically by the Defendant. - Colour of the cap/crown is green. - Placement of the all the elements on the label has been copied	• Use of nearly identical expression LAOREE ZEERA as the Plaintiff's Trade Mark "LAHORI ZEERA". • Use of identical artwork/label as that of the Plaintiff. • Use of similar colour scheme as used by the Plaintiff. • Use of similar arrangement and/or layout as employed by the Plaintiff. • Use of similar font style/typeface as used by the Plaintiff in its product. • Use of similar shape/size of the bottle as used by the Plaintiff. • Writing "MASALA



	identical by the Defendant.	MAR KE” in devnagiri script in similar fashion below LAOREE ZEERA SODA as employed by the Plaintiff in its label. • Mention of same customer care no., website and email id of the Plaintiff in the impugned mark. • Placement of descriptive content such as quantity, price, contact, website in similar fashion as done by the Plaintiff.
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2. The plaintiff claims to be a leader in the non-carbonated drinks business in the State of U.P. and that it has, in its favour, a number of registered marks involving “Lahori” as a part thereof. Among the marks

in which the plaintiff holds registration are



and

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3. The plaintiff has also applied for registration of the “LAHORI ZEERA” mark both as a word mark as well as device mark in various forms and colour combinations. The said applications are presently under objections. The plaintiff submits that the word “LAOREE” used by the defendant is phonetically and otherwise deceptively similar to the “LAHORI” mark of the plaintiff which is a dominant part even of the marks in which the plaintiff holds registrations. In order to underscore the invidious attempts of the defendant to capitalise on the goodwill earned by the plaintiff, the plaintiff points out, in para 35, that the defendant has, on the label on its bottles, referred the plaintiff’s customer helpline number as well as the plaintiff’s website www.lahorizeera.com and the plaintiff’s Email Id info@lahorizeera.com as the contact id for the defendant.

4. As such, Mr. Sagar Chandra, learned Counsel for the plaintiff submits that the defendant is engaging in manufacturing duplicate and counterfeit products, mimicking the products of the plaintiff’s and using a deceptively similar mark and the deceptively similar trade dress, which would influence any purchaser of average intelligence and imperfect recollection into mistaking the product of the defendant for that of the plaintiff or otherwise presuming the existence of an association between the two. Mr. Sagar Chandra submits, therefore, that a clear case of passing off, by the defendant, of the plaintiff’s product is made out.

5. The aforesaid submissions have been considered. *Prima facie*, they make out a case of deception and passing off, by the defendant, of its products as those of the plaintiff. Perhaps most telling, in this regard, is the assertion, in para 35 of the plaint, that the defendant is, on the labels



of its bottles, using the contact number and the email ids of the plaintiff.

6. *Prima facie*, therefore, the defendant has no independent existence except as an imitator of the plaintiff.

7. The case being one of counterfeit products, there is a pre-eminent element of public interest involved, as the quality of products made by such imitators is also highly suspect. The products being in the nature of consumables, the Court has to take a serious view in such matters.

8. In view thereof, let the plaint be registered as a suit.

9. Issue summons.

10. Written statement, accompanied by affidavit of admission and denial of the documents filed by the plaintiff be filed within 30 days with advance copy to learned Counsel for the plaintiff who may file replication thereto, accompanied by affidavit of admission and denial of the documents filed by the defendant within 30 days thereof.

11. List before the learned Joint Registrar (Judicial) for completion of pleadings, admission and denial of the documents and marking of exhibits on 29th March 2023.

I.A. 4147/2023 (under Order XXXIX Rules 1 & 2 of the CPC)

12. This is an application seeking *ad interim* injunctive reliefs.



13. The facts as narrated ~~aforsaid~~ disclose a *prima facie* case in favour of the plaintiff and against the defendant, of the defendants' passing off counterfeit products as those of the plaintiff by, *inter alia*, employing the plaintiff's telephone number, website and email id. Given the fact that the products are consumable for consumption by the public, the considerations of balance of convenience and irreparable loss would also justify the grant of *ex parte* injunction.

14. As such, issue notice, returnable on 2nd May 2023.

15. Reply to the application, if any, be filed within four weeks with advance copy to learned Counsel for the plaintiff/applicant who may file rejoinder thereto within four weeks thereof.

16. Till the next date of hearing, the defendants, and all others active on their behalf, are restrained from using, directly or indirectly, in relation to any beverages, food drinks or other allied or cognate goods,



the impugned Mark/Name 'LAOREE'/'LAOREE ZEERA' or any other identical or deceptively similar mark, or from advertising or publicising the said mark or any products which are being sought to be sold or publicised under the said mark.

17. The plaintiff shall comply with the requirement of Order XXXIX Rule 3 of the Code of Civil Procedure, 1908 (CPC) within one week from today.



I.A. 4148/2023 (under Order XI Rule 1(4) of the CPC)

18. This application seeks permission to file additional documents.

19. The petitioner is permitted to place additional documents on record in accordance with Order XI Rule 1(4) of the Code of Civil Procedure, 1908 (CPC) as amended by the Commercial Courts Act within 30 days from today.

20. The application stands disposed of accordingly.

I.A. 4149/2023 (under Order XI Rules 2 and 5 read with Section 151 of the CPC)

21. Issue notice, returnable before Court on 2nd May 2023.

22. Reply, if any, be filed within four weeks with advance copy to learned Counsel for the plaintiff who may file rejoinder thereto within four weeks thereof.

I.A. 4150/2023 (under Section 151 of the CPC)

23. Given the nature of the reliefs sought in the suit, the plaintiff is exempted from serving an advance copy of the plaint on the defendants.

24. The application stands allowed accordingly.



I.A. 4151/2023 (seeking exemption to serve notice to D-2 & D-3)

25. For the reasons stated in the application, the plaintiff is exempted from the requirement of serving an advance notice on the defendants.

26. This application stands allowed accordingly.

I.A. 4152/2023 (under Section 151 of the CPC)

27. Subject to the plaintiff filing legible copies of any dim or illegible documents on which it may seek to place reliance within four weeks from today, exemption is granted for the present.

28. The application is disposed of.

I.A. 4153/2023 (under Section 12A of the Commercial Courts Act, 2015)

29. In view of the judgment of the Division Bench of this Court in ***Chandra Kishore Chaurasia v. R.A. Perfumery Works Pvt Ltd¹***, exemption is granted from the requirement of pre-institution mediation under Section 12A of the Commercial Courts Act, 2015.

30. The application stands allowed accordingly.

C.HARI SHANKAR, J

MARCH 1, 2023/ar

¹ 2022 SCC OnLine Del 3529
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