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

\+ CS(COMM) 230/2025

JOY CREATORS LLP .....Plaintiff

Through: Mr. Hemant Daswani and Ms. Saumya Bajpai, Advocates.

versus

LEAFS AND ROOTS INDIA PRIVATE LIMITED & ORS. .....Defendants

Through: None.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

<u>O R D E R</u>

% 17.03.2025

<u>I.A. 6718/2025</u> <u>(Exemption)</u>

1. Subject to the Plaintiff filing clearer copies of the documents, which it may seek to place reliance on, within four weeks from today, exemption is granted.

2. Application is allowed and disposed of.

<u>I.A. 6717/2025</u> <u>(for pre-institution mediation)</u>

3. Present application is preferred on behalf of the Plaintiff under Section 12-A of the Commercial Courts Act, 2015 read with Section 151 of CPC seeking exemption from Pre-Institution Mediation.

4. Having regard to the facts of the present case wherein urgent relief is prayed and in light of the judgment of Supreme Court in ***Yamini Manohar v. T.K.D. Keerthi, (2024) 5 SCC 815,*** as also Division Bench of this Court

in ***Chandra Kishore Chaurasia v. RA Perfumery Works Private Ltd., 2022 SCC OnLine Del 3529***, exemption is granted to the Plaintiff from Pre-Institution Mediation.

5. Application is allowed and disposed of.

I.A. 6719/2025 (exemption from advance service)

6. On account of the urgent relief prayed for by the Plaintiff which needs hearing today, Plaintiff is exempted from serving advance notice on Defendants.

7. Application is allowed and disposed of.

CS(COMM) 230/2025

8. Let plaint be registered as a suit.

9. Upon filing of process fee, issue summons to the Defendants, through all permissible modes, returnable on 16.05.2025.

10. Summons shall state that the written statement shall be filed by the Defendants within 30 days from the receipt of summons. Along with the written statement, Defendants shall also file an affidavit of admission/denial of the documents filed by the Plaintiff.

11. Replication be filed by the Plaintiff within 15 days of the receipt of the written statement. Along with the replication, an affidavit of admission/denial of documents filed by the Defendants, shall be filed by the Plaintiff.

12. If any of the parties wish to seek inspection of any documents, the same shall be sought and given within the timelines prescribed.

13. List before the learned Joint Registrar on 16.05.2025 for completion of pleadings, admission/denial of documents and marking of exhibits.

I.A. 6715/2025

14. Present application has been preferred by the Plaintiff under Order 39 Rules 1 and 2 read with Section 151 of the Code of Civil Procedure, 1908 for grant of an *ex-parte ad-interim* injunction.

15. Issue notice to the Defendants, through all prescribed modes, returnable on 28.05.2025, before the Court.

16. Reply be filed before the next date of hearing.

17. Plaintiff is a Limited Liability Partnership Firm duly incorporated under the Limited Liability Partnership Act, 2008 as per the averment in the plaint and is stated to be one of the leading and reputed manufacturers of wide range of cosmetics and personal care products namely, creams, lotions, scrubs, face washes, gels, hair care products etc. in India. Inception of Plaintiff's business traces back to 1988 when 'Joy Creators' was formed as a Sole Proprietorship Firm at Kolkata, when the operations were restricted to talcum powders, creams etc.

18. It is averred that since 2004, the Firm started sourcing goods under its own brand from manufacturers and in 2008 took over marketing operations from known marketeers. On 30.07.2009, Private Limited Firm by the name of Joy Creators Private Limited was formed and on 31.03.2010, the sole proprietor, by virtue of a Deed of Assignment and Supplementary Deed assigned the mark 'JOY' and all other trademarks, copyrights etc. to the present Plaintiff.

19. It is further averred that the present dispute relates to four cosmetic products with different getups and trade dresses. Predecessors of the Plaintiff filed several applications before the Registrar of Trade Marks for registration of the mark 'Honey & Almonds' comprising of various trade dresses, of

which four were registered. Additionally, Plaintiff is also the registered owner of artwork under copyright registration in respect of the getup/trade dress of its Honey & Almonds Nourishing Skin Cream. The trade dress has unique colour combination of light yellow background and gold/yellow top, which was designed by a professional designer to distinguish Plaintiff's products from others and is the 'original artistic work' within the meaning of Section 2(c) of the Copyrights Act, 1957 (1957 Act). A wide range of products are sold under the trademark 'Honey & Almonds' both in India and abroad. Revenue generated for the year 2023-24 was Rs.130.65 crores. In 2013, the product 'Honey & Almonds Lotions' won the prestigious Product of the Year 2013 award.

20. It is averred that in 2003, Plaintiff launched another range of products namely, facewashes, body lotions, scrubs etc. under the mark 'Skin Fruits' which received wide appreciation from members of the public and trade. To protect its statutory rights, Plaintiff applied for and obtained registration in five marks, as mentioned in the plaint. Plaintiff is also the registered owner of the artwork under Copyright Registration No. A-112969/2014 in respect of getup/trade dress in Skin Fruits nourishing body lotion and the trade dress is distinctive and vibrant with a prominent picture of an uncut red coloured apple on a white background. Annual turnover of the sale of goods under this mark for the year 2023-24 was Rs.157.88 crores.

21. It is averred that in 2008, Plaintiff launched hydrating and refreshing skin products enriched with soothing aloe vera under the mark 'PURE ALOE' and sold the same across the length and breadth of the country. Plaintiff obtained registration in the mark under Registration No. 1712760. Annual turnover of sale of products under the mark 'PURE ALOE' for the

year 2023-24 was Rs.26.78 crores. Realising that like other products, these goods would be sold Over The Counter ('OTC) to a range of persons, who would purchase based on an overall impression, Plaintiff ensured that the trade dress was distinctive for the goods and with the help of a professional designed the same with a prominent picture of an aloe vera plant on mint green background and a leaf green top and till the said date, there was no manufacturer or marketeer in the cosmetic industry with similar trade dress. Like other three products, even in this trade dress, Plaintiff claims that its work constitutes 'original artistic work' within the meaning of Section 2(c) of the 1957 Act.

22. It is averred that in September, 2015, Plaintiff launched Joy Cocoa Rich Intense Nourishing Body Lotion formulated with pure cocoa butter to offer extra rich nourishment to the skin. Plaintiff applied for and obtained registration for the mark 'COCOA RICH'. Annual turnover of the Plaintiff for the goods under the mark 'COCOA RICH' for the year 2023-24 was Rs.548.92 lacs. Plaintiff introduced a vibrant trade dress for the bottle with a prominent picture of cocoa bean on coffee brown background and a chocolate brown top and claims that its work is 'original artistic work' under Section 2(c) of the 1957 Act. Plaintiff also avers that it developed and obtained design registration under the Designs Act, 2000, with respect to shape of the bottle under Registration No. 231243 dated 03.09.2010.

23. Learned counsel for the Plaintiff submits that Plaintiff has registrations in the trademarks under which the products referred to in the plaint are sold. The trade dresses are unique and distinctive of the products contained in the bottles. It is emphasised that the shapes of the bottles in which the products are sold are unique in layouts, patterns, designs, shapes

and configurations. Shapes of the bottles were indigenously conceptualized by the Plaintiff and the products were re-released in the market with unique and shaped bottles which are in cuboid shapes with slightly thin waist and the caps of the bottles are shaped in a slanting line.

24. It is further argued that being registered proprietor of the trademarks, Plaintiff is entitled to their exclusive use and protection from infringement by third parties under Section 28(1) of the Trade Marks Act, 1999 (1999 Act). The dishonest intention of the Defendants in adopting the trade dresses and designs of the bottles amounts to infringement under Section 29 of the 1999 Act as on account of similarity of the trade dresses/designs and identity of goods as also the same class of customers and trade channels, there is likelihood of confusion amongst purchasers. The sales figures and other factors reflect that Plaintiff has generated immense goodwill and reputation and the acts of the Defendants are calculated to encash on the reputation and goodwill of the Plaintiff and cause irreparable injury and harm by misrepresenting to the customers that their products emanate from the Plaintiff. Defendants are thus also guilty of violating the common law rights of the Plaintiff by passing off their goods. Use of deceptively similar trade dresses and designs also infringes the copyrights of the Plaintiff.

25. Having heard learned counsel for the Plaintiff, this Court is of the view that Plaintiff has made out a *prima facie* case for grant of *ex parte ad-interim* injunction. Balance of convenience lies in favour of the Plaintiff and it is likely to suffer irreparable harm in case the injunction, as prayed for, is not granted. For a ready reference, a comparative of the bottles of the Plaintiff and the Defendants with their respective getups/trade dresses/colour schemes and designs is as follows:-

<table>
<tr><th>PLAINTIFF'S PRODUCT</th><th>DEFENDANTS' PRODUCT</th></tr>
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26. Accordingly, Defendants, their principals, partners, officers, employees, agents, distributors, suppliers, affiliates, subsidiaries, franchisees, licensee and/or any other acting on their behalf are restrained from selling their products under the impugned getups/trade dresses which

are identical or deceptively similar to those of the Plaintiff's, amounting to infringement and passing off, till the next date of hearing.

27. This order will, however, not preclude the Defendants from selling their products in bottles with different getups/trade dresses, which are not identical or deceptively similar to those of the Plaintiff and under their own mark 'Leafs & Roots'.

28. Plaintiff shall comply with the provisions of Order 39 Rule 3 CPC within a period of two weeks from the date of execution of the local commission.

I.A. 6716/2025

29. Present application has been preferred by the Plaintiff under Order 26 Rule 9 read with Section 151 CPC, seeking appointment of a Local Commissioner.

30. Upon hearing, the application is allowed.

31. Accordingly, Mr. Divyansh Tiwari, Advocate (Mobile Nos. 8400994444 and 7574002355) is appointed as Local Commissioner, who shall visit the premises of the Defendants at the following address:-

Trassally (A unit of Marvel Bellezza)
Located at Commercial Shop No. 29,
Ground Floor, VDS Market, Sector 110,
Gautam Buddha Nagar, Noida-201301

32. Local Commissioner shall visit the aforesaid premises, search and take into custody the infringing products, finished or unfinished, bearing the impugned getups/trade dresses/designs and/or bearing identical/deceptively similar getups/trade dresses/designs, as also any related brochures, pamphlets etc. and make an inventory of the same.

33. Local Commissioner along with the Representative(s) of the Plaintiff and/or its counsel(s) shall be permitted to enter the premises of the Defendants, as aforementioned.

34. Local Commissioner shall seize the infringing products and hand over the same to the Defendants on *superdari,* upon the Defendants furnishing undertaking that they shall produce the goods, so seized, before the Court, as and when further directions are issued in this regard.

35. Local Commissioner shall make copies and sign books of accounts including ledgers, cash books, bill books, etc. discovered from the premises of the Defendants.

36. Local Commissioner shall be permitted to take photographs/videos of the execution of the Commission. He shall be entitled to seek police assistance or protection of the Local Police Station(s), if so required, for the purpose of execution of the order of this Court. The SHO of the concerned Police Station is directed to provide necessary assistance to the Local Commissioner, if sought for.

37. In case the premises as aforementioned are found locked, the Local Commissioner is at liberty to break open the locks.

38. Plaintiff shall serve a copy of this order upon the Defendants along with paper book of the suit at the time of execution of the proceedings.

39. Fee of the Local Commissioner is fixed at Rs.1,00,000/- as well as other miscellaneous out-of-pocket expenses for the execution of the Commission. Fees of the Local Commissioner shall be paid in advance by the Plaintiff.

40. Report of the Local Commissioner shall be filed within two weeks of the execution of the Commission.

41. Plaintiff shall inform the Registry about the execution of the proceedings by the Local Commissioner and only thereafter Registry shall issue summons of the suit to Defendants.

42. This order shall not be uploaded on the website of this Court till execution of the Commission by the Local Commissioner.

43. Application is disposed of.

44. *Dasti*.

JYOTI SINGH, J

MARCH 17, 2025/shivam