



\$~25

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(COMM) 303/2023**
MARICO LIMITED & ANR. Plaintiffs

Through: Mr. Chander M. Lall, Senior Advocate with Ms. Shikha Sachdeva, Ms. Mugdha Palsule and Mr. Kranav Kapur, Advocates.

versus

DABUR INDIA LIMITED Defendant

Through: Mr. Rajiv Nayar, Senior Advocate with Mr. Anirudh Bhakru, Mr. Prabhu Tandon, Ms. Kripa Pandit, Ms. Kanika Aeri, Mr. Christopher, Mr. Sazid Rayeen, Mr. Umang Tyagi, Ms. Vijay Laxmi Rathi and Ms. Pragya Choudhary, Advocates with Mr. Mudit Raizada, AR.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER
11.05.2023

%

CAV 243/2023

1. Since counsel for Defendant has appeared, caveat stands discharged.

I.A. No. 9186/2023 (under Section 151 of the Code of Civil Procedure, 1908 [“CPC”] seeking exemption from filing original, certified, translated and fair typed copies of the documents)

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

3. Plaintiffs shall file legible and clearer copies of exempted documents,



compliant with practice rules, before the next date of hearing.

4. Accordingly, the application stands disposed.

I.A. No. 9187/2023 (under Section 151 of CPC seeking exemption from instituting pre-litigation mediation in accordance with Section 21A of the Commercial Courts Act, 2015 [“Commercial Courts Act”])

5. Having regard to the facts of the present case and in light of the judgement of Division Bench of this Court in *Chandra Kishore Chaurasia v. R.A. Perfumery Works Private Ltd.*,¹ exemption from attempting pre-institution mediation is allowed.

6. Accordingly, the application stands disposed of.

I.A. No. 9188/2023 (under Section 149 of CPC seeking exemption from filing court fee and one-time process fee)

7. Mr. Chander M. Lall, Senior Counsel for Plaintiffs, states that the deficient court fee has already been filed yesterday.

8. In view of the above, the application is rendered infructuous and is disposed of as such.

I.A. No. 9189/2023 (Order XI Rule 1(4) of the Commercial Division and Commercial Appellant Division of High Courts Act, 2015 r/w Section 151 of CPC seeking leave to file additional documents)

9. This is an application seeking leave to file additional documents under the Commercial Courts Act.

10. Plaintiffs, if they wish to file additional documents at a later stage, shall do so strictly as per the provisions of the said Act.

11. Accordingly, the application stands disposed of.



CS(COMM) 303/2023

12. Let the plaint be registered as a suit.
13. Issue summons. Summons are accepted by Ms. Kripa Pandit, on behalf of Defendant. Written statement be filed within 30 days from today. Along with the written statement, the Defendant shall also file an affidavit of admission/denial of the documents of the Plaintiffs, without which the written statement shall not be taken on record.
14. Liberty is given to the Plaintiffs to file a replication within 15 days of the receipt of the written statement. Along with the replication, if any, filed by the Plaintiffs, an affidavit of admission/ denial of documents of the Defendant, be filed by the Plaintiffs, without which the replication shall not be taken on record. If any of the parties wish to seek inspection of any documents, the same shall be sought and given within the timelines.
15. List before the Joint Registrar for marking of exhibits on 9th October, 2023. It is made clear that any party unjustifiably denying documents would be liable to be burdened with costs.
16. List before Court for framing of issues thereafter.

I.A. No. 9185/2023 (under Order XXXIX Rules 1 & 2 r/w Section 151 of CPC seeking injunctive reliefs)

17. Plaintiffs have filed the instant suit, *inter alia*, alleging infringement and passing-off of their hair oil products including trade dress, bearing the mark 'REDKING', which was first launched in Bangladesh in May 2021. Mr. Lall states that Defendants have not yet launched the infringing products bearing the mark 'COOL KING' in the Indian market, however, images

¹ DHC Neutral Citation: 2022/DHC/004454.



shown in the pleadings were taken at an event/ exhibition wherein Defendant revealed the product. Defendant has a clear intent to adopt deceptively similar packaging and trade dress as that of Plaintiffs, passing off their goods as that of Plaintiffs. In order to establish Plaintiff No. 1's (Marico Ltd.) trademark rights over 'REDKING' products – Mr. Lall argues that the reputation and cachet of Plaintiff No. 2 (Marico Bangladesh Ltd.), subsidiary of Plaintiff No. 1, has spilled over to India, which is evident from: (i) advertisements on TV channels in Bangladesh, which have also been viewed by consumers in India; (ii) annual report of Plaintiff No. 1 depicting 'REDKING' products; (iii) awards and accolades received by Plaintiffs' 'REDKING' products in India. Further, Mr. Lall draws reference to the pleadings wherein a comparison chart of the two products is shown to highlight the similarities between the packaging / trade dress of the two competing products.

18. Ms. Pandit, on the other hand, states that Defendant has already launched its 'COOL KING' products on 06th May, 2023. Mr. Rajiv Nayar, Senior Counsel for Defendant and Mr. Bakhru argue that deceptively similarity and confusion is entirely absent by pointing out several differences between the two products including the design/ shape of the bottles, colour of caps, overall packaging and the prominent use of Defendant's house marks. Mr. Nayar argues Plaintiffs do not have any trademark/ copyright registrations *qua* the label/ trade dress/ artwork in their product and *ad-interim* injunction is wholly unwarranted as Plaintiffs' products have not been launched in India till date. To the above assertion, Mr. Lall states that the products will be launched in India in June 2023.

19. Having regard to the above facts, in the opinion of the Court, at this



stage, no ground for *ad-interim* injunction is made out. Defendant should be afforded an opportunity to put forth their stand.

20. Issue notice Ms. Kripa Pandit, Advocate, accepts notice on behalf of Defendant.

21. Let reply be filed within four weeks from today. Rejoinder thereto, if any, be filed one week thereafter.

22. Parties shall strictly adhere to the timelines for completion of pleadings and also file brief note of submissions, not exceeding three pages, along with relevant case law(s), at least one week before the next date of hearing. The same be handed over and e-mailed to the Court Master within the same timelines.

23. List the matter for hearing on the above captioned application on 2nd August, 2023.

SANJEEV NARULA, J

MAY 11, 2023

as