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

+ CS(COMM) 302/2024, I.A. 8103/2024, I.A. 8104/2024, I.A. 8105/2024, I.A. 8106/2024 & I.A. 8107/2024.

ADRET RETAIL PRIVATE LIMITED Plaintiff

Through: Mr. Jayant Mehta, Sr. Adv. with Mr. Aditya Mukherjee, Mr. Puneeth Ganapath, Mr. Aditya Malhotra, Ms. Meera Menon, Ms. Chandani and Mr. Raghav Dutta, Advs.

versus

ABHINANDAN INDUSTRIES & ORS. Defendant

Through: None

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

% **ORDER**
09.04.2024

I.A. 8104/2024 (exemption from filing certified, typed copies)

1. Exemption is granted, subject to all just exceptions.
2. Applicant shall file legible, clear, and original copies of the documents on which the applicant may seek to place reliance before the next date of hearing.
3. Accordingly, the present application is disposed of.

I.A. 8105/2024 (exemption from instituting pre-litigation mediation)

1. 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., FAO (COMM) 128/2021, exemption from attempting pre institution mediation is allowed.

2. Accordingly, the application stands disposed of.

I.A. No.8107/2024 (seeking leave to file additional documents)

1. The present application has been filed on behalf of the plaintiff under Order 11 Rule 1(4) of the Code of Civil Procedure, 1908 as applicable to commercial suits under the Commercial Courts Act, 2015 seeking to place on record additional documents.

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

3. Accordingly, the present application is disposed of.

CS(COMM) 302/2024

1. Let the plaint be registered as a suit.

2. Upon filing of process fee, issue summons to the defendants by all permissible modes. Summons shall state that the written statement be filed by the defendants within 30 days from the date of receipt of summons. Along with the written statement, the defendants shall also file affidavit of admission/denial of plaintiff's documents, without which the written statement shall not be taken on record. Liberty is given to plaintiff to file a replication within 30 days of the receipt of the written statement. Along with the replication, if any, filed by the plaintiff, affidavits of admission/denial of documents filed by the defendants, be filed by plaintiff, 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.

3. List before the Joint Registrar for marking of exhibits on 12th July, 2024.

4. It is made clear that any party unjustifiably denying documents would be liable to be burdened with costs.

I.A. 8103/2024 (under Order XXXIX Rule 1 & 2 CPC)

1. This application under Order XXXIX Rules 1 and 2 of Code of Civil Procedure, 1908 ('CPC') has been filed by plaintiff as part of the suit seeking a decree for permanent injunction restraining infringement of registered trademark, passing off of goods of plaintiff by defendants by using plaintiff's marks, KAPIVA,



and KAPIVA

HIM FOODS (being the Kapiva Family of marks) or any other marks which are deceptively similar to the plaintiff's marks or in relation of sale of defendants' products.

2. Plaintiff is a company incorporated in India and sells ayurvedic products under the brand name and style of 'KAPIVA'. Various categories of products have been launched by plaintiff. Plaintiff registered KAPIVA as a trademark in December 2015, after incorporation of the company.



3. Plaintiff's products bear  'KAPIVA' mark and other composite marks from the Kapiva family of marks such as 'KAPIVA HIM FOODS'.
4. The said marks are a prominent feature of plaintiff's products. Various sub brands have also been launched including "KAPIVA HIM FOODS", "KAPIVA PURE FOODS", "KAPIVA HER FOODS", "KAPIVA AYUR FOODS", "KAPIVA SKIN FOODS", "KAPIVA DIA FOODS", KAPIVA HEALTH FOODS" etc.
5. Trademarks registered in favour of plaintiff are tabulated as under:

Sr. No.	Trademark Name	Application Number	Classes
1.	KAPIVA	3141757	5
2.	KAPIVA	3145345	44
3.	KAPIVA	3672926	3
4.	KAPIVA	3672927	30



5.	KAPIVA	3672928	35
6.	KAPIVA	3954192	29
7.	KAPIVA	3954193	32
8.	KAPIVA	4277494	31
9.	KAPIVA	4370121	3
10.	KAPIVA	4370122	5
11.	KAPIVA	4370123	29
12.	KAPIVA	4370124	30
13.	KAPIVA	4370126	31
14.	KAPIVA	4370127	32
15.	KAPIVA	4370128	35
16.	KAPIVA	4370129	44
17.	KAPIVA	4817870	1
18.	KAPIVA	4817871	2
19.	KAPIVA	4817872	4
20.	KAPIVA	4817873	6
21.	KAPIVA	4817874	7
22.	KAPIVA	4817875	8

This is a digitally signed order.

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The Order is downloaded from the DHC Server on 04/05/2024 at 14:41:24



23.	KAPIVA	4817876	9
24.	KAPIVA	4817877	10
25.	KAPIVA	4817878	11
26.	KAPIVA	4817879	12
27.	KAPIVA	4817880	13
28.	KAPIVA	4817881	14
29.	KAPIVA	4817882	15
30.	KAPIVA	4817883	16
31.	KAPIVA	4817884	17
32.	KAPIVA	4817885	18
33.	KAPIVA	4817886	19
34.	KAPIVA	4817887	20
35.	KAPIVA	4817888	22
36.	KAPIVA	4817889	23
37.	KAPIVA	4817890	24
38.	KAPIVA	4817891	25
39.	KAPIVA	4817892	27
40.	KAPIVA	4817893	26
41.	KAPIVA	4817897	36
42.	KAPIVA	4817898	37
43.	KAPIVA	4817899	38
44.	KAPIVA	4817900	39
45.	KAPIVA	4817901	40
46.	KAPIVA	4817894	28
47.	KAPIVA	4817902	41



48.	KAPIVA	4817903	43
49.	KAPIVA	4817904	45
50.	KAPIVA	4817546	21
51.	KAPIVA HIM FOODS	5342477	5

6. Plaintiff is the owner of the website www.kapiva.in through which they provide information and sell their products. Products of plaintiff are listed on various e-commerce websites, such as Amazon, Flipkart etc. Screenshot of plaintiff's website is as under:



7. A perusal of petition bears out that 'Kapiva Shilajit Gold Resin' was introduced on 12th November, 2022 and was marketed under the brand name "Kapiva Him Foods Shilajit Gold Resin".

8. The plaintiff claims to have received various distinctions and awards in respect of their products. Sales turnover claimed by plaintiff is tabulated as under:



#	Year	Turnover (INR)
1.	2016-2017	1,02,65,030/-
2.	2017-2018	2,96,20,843/-
3.	2018-2019	8,27,43,466/-
4.	2019-2020	14,68,91,280/-
5.	2020-2021	40,76,96,728/-
6.	2021-2022	59,12,96,000/-
7.	2022-2023	1,14,46,18,000/-
8.	2023-2024 (till February 2024)	2,07,59,63,436/-

9. Revenue generated from “*Kapiva Him Foods Shilajit Gold Resin*”, is claimed as under:

#	Period	Quantity / Units Sold	Revenue (INR)
1.	Quater 3 Financial Year 2023	5,441	55,04,304

2.	Quater 4 Financial Year 2023	23,255	2,38,62,775
3.	Quater 1 Financial Year 2024	39,139	3,87,08,146
4.	Quater 2 Financial Year 2024	64,110	7,06,17,103
5.	Quater 3 Financial Year 2024	129,217	14,10,00,873
6.	Quater 4 Financial (January till February 2024)	127,630	14,40,78,487
	TOTAL	388,729	42,37,71,689



10. Sales figures of *Kapiva Shilajit*, which was being sold since 2020, are claimed as under:

#	Year	Quantity / Units Sold	Revenue (INR)
1.	2021-2022	73,174	6,95,06,602/-
2.	2022-2023	3,42,623	27,95,44,562/-
3.	2023-2024 (till February 2024, estimated)	6,94,078	56,00,41,603/-

11. Expenses on advertising for 'KAPIVA' brand are claimed as under:

Sr. No.	Year	Expenditure (INR)
1.	2021-2022	38,75,39,000/-
2.	2022-2023	64,31,37,000/-
3.	2023-Present (Till February 2024, estimated)	1,10,88,06,235 /-

12. Grievance is against defendants who are using *Kapiva family of marks* in relation to '*Kapiva Shilajit*' and '*Kapiva Him Foods Shilajit Gold Resin*' products and are selling counterfeit products in the market. Defendants are not authorised to use the marks of plaintiff and have misappropriated the said marks for their products. Plaintiff came to know of the same in March 2024, through a consumer complaint filed being supplied with a fake product. A comparative representation of products of plaintiff and defendants, as provided by plaintiff is reproduced as under:



Plaintiff's Product: Kapiva Shilajit (10 gram)	Counterfeit Product (10 gram) sold by Defendant No 1
	
The primary packing is different. While the original product of the Plaintiff weighing 10 grams is sold in a container as displayed above, the counterfeit product imitates the jar/container, label and cap which	

is used by the Plaintiff for the Kapiva Shilajit product sold weighing 20 grams.



The product of the Plaintiff is sold with a metal screw cap while the counterfeit product sold by the Defendant No. 1 uses a metal lug cap.

For Manufacturer, Marketer, Customer Care Information, Barcode and Ingredients refer outside carton.

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While the components of the label have been copied, the word 'Marketer' is misspelt as 'Merketer' in the counterfeit product sold by the Defendant No. 1.

"KAPIVA" is a brand owned by Adret Retail Pvt. Ltd. Imitation of trademark &/or label is a punishable offence.

"KAPIVA" is a brand owned by Adret Retail Pvt. Ltd. Imitation of trademark &/or label is a punishable offence.



Plaintiff's Product: Kapiva Him Foods Shilajit Gold Resin	Counterfeit Product
 Label	
The Plaintiff's label substrate is Polypropylene Sheet (PP) Opaque	The label of the counterfeit product has paper label
with matt lamination and gold foiling on Him foods and on border.	substrate with no special effects.
 Top and Bottom Label	
The Plaintiff's product uses the PP opaque substrate for the top and bottom label as used for the wrap around label.	The counterfeit product has a paper label substrate.
 Top box/Carton	
The Plaintiff uses a specific font style for the Him Foods mark and has added special effects like Spot	The counterfeit product has the Him Foods logo in a different font style and font



UV on Kapiva logo and product name. The dimensions of the box/carton used by the Plaintiff is 68.10Lx68.10Wx49.30H.	size. Print quality throughout the pack is poor as compared to the quality specifications used by the Plaintiff and there are variations in the font colours. The dimensions of the box/carton used for the counterfeit product is 68.10Lx68.10Wx59.30H.
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Batch Coding

The batch coding on the product of the Plaintiff is printed using an inkjet printer.	The batch coding on the counterfeit product does not appear to be printed by an inkjet printer.
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leaflet and further there is a specific approved 4 fold zigzag folding pattern which is followed for all products of the Plaintiff.	as 'strenght'; drink as 'dring' & stamina as 'stemina'. The folding pattern is also not as per approved pattern.
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Certificate of Analysis



The Plaintiff provides a certificate of analysis with each product and this certificate of analysis is standardised to certain specifications in terms of font size and colour, and the signature on the certificate is done using blue colour.	The certificate of analysis provided in the counterfeit product has slight variations and the signature on the certificate is in black ink.
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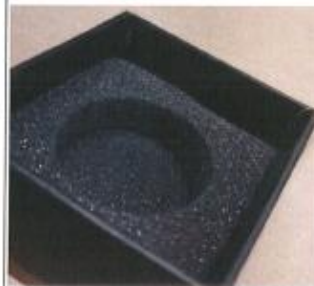


The overall box/carton size of the counterfeit product is also different from that of the Plaintiff's product. The counterfeit product is larger in size as can be seen from the image above.



Box Interior

The Plaintiff's product box has a vendor registration mark inside and is made of a single layer of foam in the product cavity.



The counterfeit product box does not carry any vendor registration mark and has a second layer of foam on the product cavity.



Product Leaflet

The Plaintiff provides a leaflet which is placed inside the box for each product of the Plaintiff. The leaflet is prepared on a art paper with matte aqueous fabrication having grammage of 110 GSM. The Plaintiff uses this as a standard paper quality for its



The counterfeit product imitates the leaflet of the Plaintiff however the paper is of a different quality than that used by the Plaintiff. There are also spelling mistakes on the leaflet. For example, strength is misspelt

13. Plaintiff also ordered laboratory examination of defendants' products



and analytical report was obtained on 27th March, 2024 showing their products having significant impurities and heavy metal contamination which was not approved as per *Ayurvedic Pharmacopoeia of India*. Further investigations revealed that these counterfeit products were being sold at shops and stores *inter alia* by defendant nos. 2, 3 and 4.

14. Accordingly, in these facts and circumstances, in the opinion of this Court, plaintiff has made out a *prima facie* case for grant of an *ex parte ad interim* injunction till the next date of hearing. Balance of convenience lies in favour of plaintiff, and plaintiff is likely to suffer irreparable harm in case the injunction, as prayed for, is not granted.

15. Accordingly, till the next date of hearing, *ex parte ad interim* injunction is passed against defendants in the following terms:

- a. Defendants, with their subordinates, subsidiaries, officers, directors, partners and all those acting for or / and on their behalf are restrained from producing, selling, dealing with promoting in any manner, products using plaintiff's marks KAPIVA, KAPIVA HIM FOODS,



any other *Kapiva Family of Marks* of which plaintiff has registrations, and or any other marks which are identical or deceptively similar to that of plaintiff's registered marks and device.



- b. Defendant nos. 1 to 4 are directed to disclose the details of all manufacturers / wholesalers / distributors / retailers to whom or through whom said products have been either manufactured or are being sold. The disclosure shall be filed along with reply.
 - c. Defendant nos. 1 to 4 shall place on record all sales figures in these infringing products till date. The disclosure shall be filed along with reply.
 - d. As regards relief is sought against un-named and unidentified sellers and stockers of products, arrayed as defendant no.5 (*John Doe / Ashok Kumar*), in the event plaintiff finds that there are other sellers of infringing products, they shall be at liberty to file an application under Order I Rule 10 CPC in order to implead them.
16. On steps being taken by plaintiff, issue notice to defendants through all permissible modes including speed post, courier, and email. Affidavit of service along with proof thereof be placed on record before the next date of hearing.
17. Reply, if any, be filed within three weeks with advance copy to the counsel for the plaintiff, who may file rejoinder thereto, if so desired, before the next date of hearing.
18. Compliance with Order XXXIX Rule 3, CPC be effected after 25th April, 2024 within a period of one week.
19. List on 29th August, 2024.

I.A. 8106/2024 (Application under Order XXVI Rule 9 CPC)

1. This application has been filed under XXVI Rule 9, CPC by plaintiff seeking appointment of a Local Commissioners ('LC') to *inter alia* inspect



defendants' premises pertaining to manufacture and sale of goods under the impugned trademarks.

2. In view of the facts and circumstances stated above, plaintiff has made out a case for appointment of LC. Accordingly, the following LCs are being appointed for the following premises:

DETAILS OF LC	PREMISES OF DEFENDANTS	FEEs
Ms. Smriti Jain, Advocate Mob.: 9971467161 Smriti.surana@gmail.com	Defendant No. 1: Abhinandan Industries 89, Gali No. 10, Onkar Nagar, Tri Nagar, North- West Delhi, Delhi- 110035 and office address at N-46/8, Gali No. 2, Batla House, Jamia Nagar, Near Khalilullah Masjid, New Delhi - 110025	Rs. 1, 00, 000/- [Rupees One Lakh Only]
Mr. Rakesh Sachdeva, Advocate Mob: +91 98101 92282 Rakeshsachdeva1608@gmail.com B-1/2, Pramod Mahajan Marg, Saket, New Delhi – 110017	Defendant No. 2: Nutrition.com Chitnavispura Road, Plot No. 883, Shakkardhara Road, Mahal, Nagpur- 440032, Maharashtra and Main Bazaar Road, Sai Vasanshah Chowk, Jaripatka, Nagpur- 4400 14, Maharashtra	Rs. 1, 50, 000/- [Rupees One Lakh Fifty Thousand Only]
Ms. Kavya Jindal, Advocate Mob: 9582696807 Jindal.kavya25@gmail.com A-10, Swasthya Vihar, Vikas Marg, New Delhi 110092	Defendant No. 3: S.S. Enterprises Rewari Ground Floor, Shop No. 02. Near Jalbiria Dharmkata, Ward	Rs. 1, 50, 000/- [Rupees One Lakh Fifty Thousand Only]



	No. 12, Nizampur Road. Nagai Choudhary, Mahendragarh, Haryana- 1 23023	
Mr. Srish Mishra, Advocate Mob: 7800932000 Srish934@gmail.com 76 (service road) Sunder Nagar, Near Zoo, New Delhi 110003.	Defendant No. 4: Ishwar Homeo Store F-25, Jamana Lal Bajaj Marg, C-Scheme, Jaipur. Rajasthan, 302001	Rs. 1, 50, 000/- [Rupees One Lakh Fifty Thousand Only]

3. The aforesaid LCs are appointed to execute the Commission at the respective premises, to carry out the following mandate:

- a. LCs, along with plaintiff's counsel and a responsible representative of the plaintiff, shall visit the premises of defendants as noted above and **seize, seal and make an inventory** of defendants' goods bearing the impugned marks or trade dress or any other mark/ trade dress identical or deceptively similar to plaintiff's trademarks/trade dress family of marks;
- b. LCs shall detail out the serial numbers of such products bearing plaintiff's trademarks. The said products shall, after seizure, be returned on **superdari** to defendants after taking an undertaking that the defendants shall not tamper with the sealed products;
- c. LC shall **inspect the defendants' books of accounts**, including ledgers, stock registers, sale record, and take their screenshots. Same ought to be done in presence of plaintiff's representative.
- d. LCs shall also **retain one sample** of the infringing products which may be provided to plaintiff's representative.



- e. Execution of the Commissions shall be ***videographed*** at the expense of the plaintiff, so that the Court is satisfied that there has been no obstruction to execution of the Commission.
- f. To ensure unhindered and effective execution of this order, the Station House Officers ('SHO') of the local police stations within whose jurisdiction the premises of the defendants lie, are directed to render all necessary assistance and protection to the LCs, if and when sought.
- g. In the event the LCs are informed of any other ***proximate location/premises***, where the defendants carry out operations relating to the alleged infringement, the said premises may also be entered and directions as given in the paragraphs above regarding the execution of the Commissions may be implemented there as well.
- h. In the event the LCs find defendants' premises locked, they may be permitted to ***break open*** the locks for the purpose of execution of the Commissions, however, the same ought to be done strictly in the presence of the local SHOs and/or duly designated Officers.
- i. The LCs, while executing the Commissions shall ensure that there is ***no unnecessary disruption*** to the business of the defendants except for the purposes of the execution of the Commissions. The Commissions shall be executed in a peaceful manner and defendants along with its authorised representatives shall cooperate with the LCs.
- j. The order passed today and complete paper-book ***shall be***



communicated by the LCs to defendants at the time of execution of commissions.

k. Plaintiff shall bear expenses for travel of LCs and other miscellaneous out-of-pocket expenses for the execution of the Commissions at the addresses mentioned above or any other addresses being found.

4. Fees of the Local Commissioners shall be paid in advance by plaintiff. In the event executing the Commission at two premises in the same city is found to consume another day/additional time, the fee of the concerned Local Commissioner will be considered for enhancement.

5. Local Commissioners shall file their reports within two weeks from date of execution of the Commissions.

6. Execution of the Commissions to be done on or before 18th April, 2024, between 09:00 hours to 18:00 hours IST.

7. Registry is directed to not upload a copy of this order and not issue summons till 28th April, 2024, the date of execution of the Commissions.

8. In terms of the foregoing, the application stands disposed of.

9. Copy of the order be given *dasti*.

ANISH DAYAL, J

APRIL 9, 2024/sm/ig