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

+ **CS(COMM) 410/2025**

SANDISK LLC

.....Plaintiff

Through: Mr. Prithvi Singh, Mr. Prithvi Gulati
and Mr. Ritwik Marwaha, Advocates.

versus

NARESH SAHU AND ANR

.....Defendants

Through:

CORAM:

HON'BLE MR. JUSTICE AMIT BANSAL

ORDER

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05.05.2025

I.A. 11266/2025 (exemption from filing original copies)

1. Allowed, subject to just exceptions.
2. The plaintiff is exempted from filing original/ clearer documents at this stage.
3. The application stands disposed of.

I.A. 11265/2025 (O-XI R-1(4) of the Commercial Courts Act)

4. The present application has been filed on behalf of the plaintiff seeking leave to file additional documents.
5. The plaintiff is permitted to file additional documents in accordance with the provisions of the Commercial Courts Act, 2015 and the Delhi High Court (Original Side) Rules, 2018.
6. Accordingly, the application is disposed of.

I.A. 11264/2025 (u/s 12A of Commercial Courts Act)

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7. As the present suit contemplates urgent interim relief, in light of the judgment of the Supreme Court in *Yamini Manohar v. T.K.D. Krithi*, 2023 SCC Online SC 1382, exemption from the requirement of pre-institution mediation is granted.

8. The application stands disposed of.

I.A. 11263/2025 (seeking exemption from advance service to defendants)

9. Plaintiff seeks urgent interim relief against counterfeit products and for this purpose, an *ex-parte* appointment of Local Commissioner is also sought to confiscate the goods.

10. It is submitted that there is a probability that the defendants may remove the infringing products if the defendants are given advance service of the plaint paper book. Therefore, in the peculiar facts and circumstances of this case, exemption from effecting advance service upon the defendants is granted.

11. The application is disposed of.

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12. Let the plaint be registered as a suit.

13. Issue summons.

14. Summons be issued to the defendants through all modes. The summons shall state that the written statement(s) shall be filed by the defendants within thirty days from the date of the receipt of summons. Along with the written statement(s), the defendants shall also file affidavit of admission/denial of the documents of the plaintiff, without which the written statement(s) shall not be taken on record.

15. Liberty is given to the plaintiff to file replications, if any, within thirty days from the receipt of the written statement(s). Along with the replications

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filed by the plaintiff, affidavit of admission/denial of the documents of the defendants be filed by the plaintiff.

16. The parties shall file all original documents in support of their respective claims along with their respective pleadings. In case parties are placing reliance on a document, which is not in their power and possession, its detail and source shall be mentioned in the list of reliance, which shall also be filed with the pleadings.

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

18. List before the Joint Registrar on 4th August, 2025 for completion of service and pleadings.

19. List before the Court on 9th October, 2025.

I.A. 11261/2025 (u/O-XXXIX Rule 1 & 2 of Code of Civil Procedure, 1908)

20. The present suit has been filed seeking permanent injunction restraining the infringement of the trademarks of the plaintiff, along with passing off and other ancillary reliefs.

21. The plaintiff, SanDisk LLC, is an entity organized and existing under the laws of the State of Delaware in the United States of America and is one of the world's largest dedicated providers of flash memory storage solutions under the house mark "SanDisk".

22. The plaintiff is also the registered proprietor of the several trademarks in India, all of which are valid and subsisting, including SanDisk and SanDisk Ultra (hereinafter 'SanDisk trademarks'), the details of which are given in paragraph no.10 of the plaint.

23. Owing to the popularity and iconic nature of the plaintiff's products,

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the Trade Marks Registry has declared SanDisk as a well-known trademark. The list of well-known trademarks maintained by the Trademarks Registry has been filed in the present proceedings along with an extract of Trademark Journal no.2113 dated 17th July, 2023 where the plaintiff's mark was advertised (page 235 of the plaintiff's documents).

24. The case set up in the plaint is that in January, 2024, the plaintiff came across the trademark application filed by the defendant no.1 for the

mark  under trademark no.6065766 filed on a '*proposed to be used*' basis.

25. The plaintiff filed an opposition against the impugned mark on 24th January, 2024. Thereafter, the defendant no.1 filed his counter-statement on 25th September, 2024, wherein he alleged that his mark has been originally coined and conceived by him and no similar name/mark is either in use or registered by any third party. At this point, the plaintiff did not come across any products of the defendants bearing the impugned mark.

26. Thereafter, the plaintiff filed their evidence in support of the opposition on 11th December, 2024 and subsequently, the defendant no.1 filed their evidence in support of the application on 2nd January, 2025 where for the first time, the defendants filed invoices to demonstrate use of the impugned mark.

27. Thereafter, the plaintiff deputed a team of investigators to visit the premises of the defendant no.1 at the address mentioned in the trademark application. At the premises of the defendant no.1, which was a warehouse, the investigator noticed that a laser printing machine was being used for

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engraving/embossing the impugned trademark on various types of lighting products.

28. The only defence taken on behalf of the defendant no.1 in the opposition proceedings before the Trade Mark Registry is that their goods under the impugned mark are different from the plaintiff's goods. The defendant no.1 has acknowledged that the plaintiff's trademark is distinctive and associated with the plaintiff's product.

29. A comparison of the marks used by the plaintiff and the defendants is set out below: -

Plaintiff's trademarks	Defendants' trademark
	

30. As is evident from the comparison above, the defendants are using an identical mark as that of the plaintiff. Further, even the manner of use is identical, the letters 'S' and 'D' are both in capital letters and the style of writing is also similar.

31. To be noted, plaintiff's mark has been declared a well-known trade mark. Any unvary consumer who is aware of plaintiff's trade mark is likely to think that the products of the defendants originate from the plaintiff which would cause confusion in the market.

32. Based on the averments made in the plaint, the plaintiff has

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established its statutory as well as common law rights over the SanDisk marks. The mark being adopted by the defendants is deceptively similar to that of the plaintiff.

33. On a *prima-facie* view, the unauthorized use of the well-known SanDisk trademarks by the defendants appears to be infringing the trademarks of the plaintiff.

34. Balance of convenience is in favour of the plaintiff and against the defendants. Irreparable injury would be caused to the plaintiff if the defendants continue to use the impugned device mark. Prejudice would also be caused to the public as the mark of the defendants is deceptively similar to that of the plaintiff and is likely to cause confusion in the market.

35. Consequently, till the next date of hearing, the defendants, their partners, proprietors, servants, agents and all others in active concert with them are restrained from manufacturing, selling, offering for sale, advertising, directly or indirectly dealing in products bearing the impugned



marks / SanDisk and/ or any other mark infringing the plaintiff's SanDisk trademarks in any manner.

36. In view of the fact that the plaintiff has sought appointment of a Local Commissioner to seize the infringing goods, the very purpose of grant of *ex-parte ad interim* injunction would be defeated if the defendants are given notices contemplated in Order XXXIX Rule 3 of Code of Civil Procedure, 1908 (hereinafter "CPC") prior to the execution of the commission. Hence, it is directed that the plaintiff shall serve notices under Order XXXIX Rule 3 of CPC at the time of execution of the commission which shall not be later than two (2) weeks from today. The prescribed affidavit in terms of Order

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XXXIX Rule 3 of the Code of Civil Procedure, 1908 shall be filed within one week of the execution of the commission.

37. Issue Notice.

38. Notice be issued to the defendants *via* all permissible modes, including e-mail.

39. Reply(ies) be filed within four (4) weeks.

40. Rejoinder(s) thereto, if any, be filed within two (2) weeks thereafter.

41. List before the Joint Registrar on 4th August, 2025 for completion of service and pleadings.

42. List before the Court on 9th October, 2025.

I.A. 11262/2025 (O-XXVI R-9 of CPC)

43. The present application has been filed under Order XXVI Rule 9 of the CPC seeking appointment of a Local Commissioner to visit the premises of the defendants, make an inventory of all the goods having the impugned design and effect seizure of the same.

44. In view of what is stated above, the plaintiff has made out a case for appointment of a Local Commissioner.

45. Accordingly, Mr. Anshuman Sood, Advocate (Mobile No. +91 9811215189) is appointed as Local Commissioner to visit the premises of the defendants situated at:

- i. *Naresh Sahu,*
Proprietor of Pratik Enterprises,
968, New Gouri Nagar,
Indore, Madhya Pradesh – 452010.
- ii. *Nitesh Patidar,*
Proprietor of Polarise,
8–B, Laxmibai Nagar,
Industrial Area, Near Indore Wire Square,

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Indore, Madhya Pradesh – 452006.

46. The following directions are passed in this regard:

- i. The Local Commissioner, along with a representative of the plaintiff and its counsel, shall be permitted to enter upon the premises of the defendants mentioned above or any other location/premises that may be identified during the course of commission, in order to conduct the search and seizure.
- ii. The Local Commissioner shall conduct a search at the defendants' premises and seize the infringing goods, including any packaging/ promotional material reflecting infringement.
- iii. The Local Commissioner shall make an inventory of all the infringing products bearing the impugned mark including but not limited to label/packaging material (hereinafter referred to as 'infringing material').
- iv. After seizing infringing material, the same shall be sealed and signed by the Local Commissioner, in the presence of the parties, and released on *superdari* to the defendants on their undertaking to produce the same as and when further directions are issued in this regard.
- v. The Local Commissioner shall also be permitted to make copies of the books of accounts including ledgers, cash registers, stock registers, invoices, books, etc. insofar as they pertain to the infringing products.
- vi. The defendants and its representatives are directed to provide full assistance to the Local Commissioner for executing the present commission.

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- vii. In case, the aforesaid premises of the defendants or any part thereof are found locked, the Local Commissioner is permitted to break open the locks and doors for execution of the commission.
- viii. To ensure an unhindered and effective resolution of this order, the SHO of the local police station having jurisdiction of the aforesaid premises and the DCP concerned are directed to render the necessary protection and assistance to the local commissioners, if and when sought.
- ix. The Local Commissioner shall have the liberty to take photographs and/or videos of the stock seized and to take a sample of the infringing products to be filed along with the Report.
47. The Local Commissioner shall file his Report within two (2) weeks of executing the commission, along with photographs taken and photocopies of the books of account and stock and the inventory procured pursuant thereto.
48. The fees of the Local Commissioner, to be borne by the plaintiff, is fixed at Rs.1,50,000/-. The plaintiff shall also bear expenses for travel and lodging of the Local Commissioner and other miscellaneous out-of-pocket expenses for the execution of the commission.
49. The application stands disposed of in the above terms.
50. The order passed today shall not be uploaded for a period of two (2) weeks from today.
51. *Dasti.*

AMIT BANSAL, J

MAY 05, 2025/kd

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