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

+ **CS(COMM) 452/2025**

HELL ENERGY MAGYARORSZAG KFTPlaintiff

Through: Mr. Nihit Nagpal, Ms. Livya P.
Lalu, Mr. Sohan Singh Rana, Ms.
Bindra Rana, Advocates

versus

SIPSNAP SODA LLP & ORS.Defendants

Through: None.

CORAM:

HON'BLE MR. JUSTICE SAURABH BANERJEE

ORDER

% **09.05.2025**

I.A. 11862/2025 (Section 12A CCA, 2015)

1. The plaintiff, *vide* the present application under Section 12A of the Commercial Courts Act, 2015, read with Section 151 of the Code of Civil Procedure, 1908 (CPC), is seeking exemption from instituting pre-litigation mediation.

2. Considering the averments made therein and as the plaintiff is seeking an *ad-interim* relief as also appointment of a Local Commissioner and in view of the judgment passed by the Hon'ble Supreme Court in ***Yamini Manohar v. T.K.D. Krithi*** 2024 (5) SCC 815 and followed by a Division Bench of this Court in ***Chandra Kishore Chaurasia vs. R. A. Perfumery Works Private Limited*** 2022:DHC:4454-DB, the plaintiff is exempted from instituting pre-litigation mediation.

3. Accordingly, the present application is allowed and disposed of.

I.A. 11861/2025 (Exemption from effecting advance service)



4. The plaintiff, *vide* the present application under *Section 151* of the CPC, seeks exemption from effecting advance service upon the defendants.

5. Learned counsel for the plaintiff submits that considering the position involved, particularly since appointment of a Local Commissioner for execution of search and seizure of evidence at the premises of defendants are being sought, there is a likelihood that the apprehensions of the plaintiff will become a reality in case advance service is affected and therefore, an exemption from effecting advance service is necessary.

6. For the reasons stated in the application as also taking into account the aforesaid factors and in the interest of justice, the plaintiff is granted exemption from effecting advance service upon the defendants.

7. Accordingly, the present application is allowed and disposed of.

I.A. 11860/2025 (*Leave to file additional documents*)

8. The plaintiff, *vide* the present application under *Order XI Rule 1(4)* read with *Section 151* of the CPC, seeks leave of this Court to file additional documents at a belated stage.

9. The plaintiff will be at liberty to file additional documents at a later stage, *albeit*, after initiating appropriate steps, strictly as per the provisions of the Commercial Courts Act, 2015 read with *Section 151* of the CPC and the Delhi High Court (Original Side) Rules, 2018.

10. Accordingly, the present application is allowed and disposed of.

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11. The plaintiff, by way of the present plaint seeks grant of permanent injunction restraining the infringement of trademark, copyright, trade



dress, passing off, rendition of accounts and damages.

12. Let the plaint be registered as a suit.

13. Upon filing of the process fee, issue summons of the suit to the defendants through all permissible modes, returnable before the learned Joint Registrar on 08.08.2025.

14. Needless to say, it shall be specified in the summons that the written statement(s) shall be filed by each of the defendants within a period of *thirty days* from the date of the receipt of the summons. Written statement(s) shall be accompanied by affidavit(s) of admission/ denial of documents of the plaintiff, without which the written statement(s) shall not be taken on record.

15. Replication(s) thereto, if any, be filed by the plaintiff within a period of *fifteen days* from the date of receipt of written statement(s). The said replication(s), if any, shall be accompanied by with affidavit(s) of admission/ denial of documents filed by the defendants, without which the replication(s) shall not be taken on record within the aforesaid period of fifteen days.

16. If, and when, any of the parties wish to seek inspection of any document(s), the same shall be sought and given within the requisite timelines.

17. List before the learned Joint Registrar for marking exhibits of documents on 08.08.2025. It is made clear that if any party unjustifiably denies any document(s), then it would be liable to be burdened with costs.

I.A. 11858/2025 (*Order XXXIX rule 1 & 2 CPC: Stay*)

18. The plaintiff, *vide* the present application, seeks to restrain the defendants from infringing upon the registered trademark 'HELL', 'HELL



ENERGY’, and trade dress  and/ or any trademarks/ trade dress deceptively similar to that of the plaintiff.

19. At the outset, learned counsel for the plaintiff submits that although



the pleadings are *qua* the mark ‘SELL’ and trade dress , however, due to sheer inadvertance on his part, the prayer clause wrongly mentions another mark namely ‘HELLFIRE’, when clearly it is to be read as ‘SELL’. Accordingly, learned counsel for the plaintiff makes an oral request to make the said amendment and read the impugned mark ‘HELLFIRE’ as ‘SELL’.

20. In the interest of justice, as also since the prayer clause in the captioned suit suffers from no such error, this Court is not considering the mark ‘HELLFIRE’ in the present application and is only proceeding *qua* the mark ‘SELL’.

21. As per pleadings, the plaintiff is a company incorporated in Hungry on 24.09.2004 and is engaged in the business of production and sale of energy drinks and beverages under the brand name ‘HELL ENERGY’ and its variations. The said trademark ‘HELL ENERGY’ was adopted by it as a company name, trade name and mark for all its energy drinks and other related drinks.



22. The plaintiff obtained registration for the trademark registration no. 189569 in Hungry on 17.03.2006 with respect to “*Beer; mineral and aerated waters; other non-alcoholic beverages; fruit drinks and fruit juices; syrups and other preparations for making beverages*”. Then on 11.06.2006, the plaintiff registered the domain name *www.hellenergy.com* showcasing the plaintiff’s products bearing the



registered trademark/ original artistic works HELL, and variations thereof.



23. The trade dress/ artistic work , which incorporates the plaintiff’s word mark and company name ‘HELL’, in a unique get up and colour scheme of red, black and white, having a distinct copyright since the year 2007.

24. For carrying on with its business activities, the plaintiff has, upon application, registered its various trademarks, artistic logo, including but

not limited to ‘HELL’, HELL ENERGY,





in India under Class 32 as also in various international jurisdictions.

25. Ever since its inception, the plaintiff has spent tremendous time, effort, and resources for promoting and marketing the trade mark 'HELL',



'HELL ENERGY' brand around the world via TV, Digital Media, Event/ Tournament Sponsorships, Athletes, Actors, etc. and generated considerable revenue.

26. The plaintiff herein received an information that defendant no.1 in connivance with defendant no.2 are selling the impugned cans under the



name/ mark 'SELL Energy Premium Drink' and trade dress in the market. The defendants do not operate any physical storefront and instead carry out their infringing activities through online platforms. It is apparent from the website of defendant no.1 i.e. '<https://sipnsnap.co.in/>', it deals with variants of fruit mocktails on a pan India level.

27. Further investigation revealed that the defendant no.2 has on 27.02.2025 applied for registration of the mark 'SELL' with Device of Bull face under Class 32 vide application no.6880931 before the Trade Marks Registry. The respondent no.3 is *john doe*.



28. Since the defendants are still continuing with the usage of the impugned mark and trade dress, the plaintiff has instituted the captioned suit against the defendants wherein the present application has been filed.

29. This Court has heard the submissions advanced by the learned counsel for the plaintiff and gone through the pleadings as also perused the documents on record.

30. Based on what is before this Court, given hereinbelow is the comparative table of the competing marks of the parties:-

<u>Plaintiff's Mark</u>	<u>Defendants' Mark</u>
	
	
	



31. Considering what is borne out from the aforesaid table *prima facie* there is hardly any difference between the registered trademark HELL,



HELL ENERGY, and trade dress and the impugned mark 'SELL'



and trade dress . The defendants have clearly adopted an identical colour scheme, get up and colour combination of red, white and black. More over the overall getup of the two marks also the trade dress is strikingly, visually, structurally and deceptively similar to the plaintiff's registered trademark and trade dress.

32. In fact, the product of the defendants creates an inference in the minds of the general public as also the members of the trade that the energy drink sold by the defendants under the impugned mark and trade dress is nothing but a variation and/ or a derivative of the registered trade



mark 'HELL', 'HELL ENERGY', of the plaintiff. The mere difference being substitution of the alphabet HELL with the alphabet SELL,

33. Not only this, but the defendants have also blatantly copied the



distinctive trademark and have simply replaced the same



with a deceptively looking character .

34. Furthermore, the pictorial comparison hereinabove suggests that it is extremely difficult for an average man with imperfect recollection to decipher the actual difference *inter se* the products of the plaintiff and the defendants as the same are miniscule changes/ alterations/ modifications which are hardly visible to bare naked eyes thus, showcasing the *mala fides* of the defendants to ride upon the goodwill of the plaintiff.

35. Moreover, since it is a matter of fact that the defendants have sought registration under the same Class and are operating in the same line of business and are dealing in the same trade channels, with an identical customer base, and lastly very much existing within the presence of the same market therefore, there is more than one chance of causing confusion amongst not only the members of the trade but also the members of the general public.



36. Under such circumstances, being the prior adopter and the prior user as also the prior registrant of the trademark 'HELL', 'HELL



ENERGY', and trade dress , the plaintiff has better rights than those of the defendants. The plaintiff is thus *prima facie* entitled for protection as sought by them against the defendants.

37. In view of the aforesaid, the *balance of convenience* and probabilities tilt in favour of the plaintiff for grant of an *ex parte ad interim* injunction in its favour and against the defendants. So much so, as per the existing circumstances, the plaintiff has been able to make out a *prima facie* case in its favour and against the defendants as well. Therefore, allowing the defendants to continue using the products under



the impugned mark 'SELL' and trade dress which is deceptively similar to that of the registered trademark 'HELL', 'HELL ENERGY', and



trade dress of the plaintiff, is prone to cause *irreparable harm, loss and injury* to the plaintiff.

38. Accordingly, till the next date of hearing, anyone person/ entity including the defendants, their directors, partners, proprietors, agents, servants, licenses, sub-licensees, franchisees, sub-franchisees,



representatives, employees, affiliates, stockists, distributors, sub-distributors, dealers, sub-dealers, retailers or any one claiming under them, directly or indirectly, are restrained from infringing in any manner whatsoever the plaintiff's registered trade marks 'HELL', 'HELL



ENERGY', and trade dress by using the trade mark 'SELL' its variations thereof and the trade dress having identical get up and layout,



and/ or any other confusingly or deceptively similar label/ trade dress.

39. Upon the plaintiff taking requisite steps, issue notice to defendants through all permissible modes returnable before the Court on 08.09.2025.

40. Reply, if any, be filed within a period of *four weeks* from the date of service. Rejoinder thereto, if any, be filed within a period of *two weeks* thereafter.

41. The provisions of *Order XXXIX Rule 3 CPC* be complied within one week from the execution of the commission.

42. List before the Court on 08.09.2025.

I.A. 11859/2025 (*Appointment of Local Commissioner*)

43. The plaintiff, *vide* the present application, is seeking appointment of a Local Commissioner to visit the premises of the defendant no.2.

44. Learned counsel for the plaintiff submits that the defendants are aware of the plaintiff and their products and the infringing materials



placed on record are clear evidence of the intention of the defendants to ride upon the goodwill and reputation of the plaintiff. The plaintiff believe that the infringing products are sold at the locations set out in the memo of parties annexed with the plaint and the defendants are likely to remove all physical evidence or deny their involvement in the infringing activities.

45. In view of the aforesaid as also considering the factual matrix involved, and most relevantly, in order to preserve the infringing materials involved, in the considered opinion of this Court, it is deemed appropriate to appoint a Local Commissioner to visit one of the premises of the defendant no.2 at Khokhra Hanuman Road, Near Monolith Ceramic, Tai-Morbi, District Corbi, Gujarat-362642.

46. Accordingly, Mr. Prabhav Pachauri, Advocate (+91-9415126677) is appointed as Local Commissioner with a direction to visit the premises of the defendant no.2 at Khokhra Hanuman Road, Near Monolith Ceramic, Tai- Morbi, District Corbi, Gujarat-362642.

47. The Local Commissioner is to execute the commission in the premises of the defendant no.2 with the following directions:-

- a) The Local Commissioner be accompanied by a representative of the plaintiff and/ or its counsel, who shall be permitted to enter into the premises of the defendant no.2 as per the address hereinabove.
- b) The Local Commissioner to seize, pack and seal the infringing products and handover the same on *Superdari* to the respective defendant upon the said defendant giving an ‘Undertaking’ that he/ they shall not tamper with or remove the



sealed products as also shall in compliance of the orders of this Court, as and when passed, produce the sealed products under *Superdari*.

c) The Local Commissioner is permitted to take photocopies and/ or screenshots of all the books of accounts including ledgers, cashbooks, bill books, purchases and sales records or any document(s) deemed necessary and found in the premises of the defendant no.2, etc. for placing the hard copies or e-copies thereof on record.

d) The Local Commissioner is permitted to make a video recording of the execution of the commission at the premises of the said defendant in compliance of the present order.

e) The Local Commissioner is permitted to take the assistance of the Station House Officer [SHO] of the local Police Station within whose jurisdiction the premises of the defendant no.2 is situated. The said SHO is directed to render and provide all and every necessary assistance and protection to the Local Commissioner, if as and when sought for ensuring unhindered and effective execution of the commission at the premises of the defendant no.2 in compliance of the present order.

f) If the premises of the said defendant is found under lock(s), the Local Commissioner is permitted to break open the said lock(s) in the presence of the SHO/ any designated police officer from the local Police Station.

48. The fee of the Local Commissioner is fixed at Rupees Two Lakhs Only [Rs.2,00,000/-] in addition to all the related expenses for travel as



also any other miscellaneous out of pocket expenses for the execution of the commission. All the aforesaid expenses shall be borne by the plaintiff and paid in advance to the Local Commissioner.

49. In light of the prevailing circumstances, the commission be executed within a period of *ten days* from today, i.e. on or before 19.05.2025.

50. A copy of this order be provided to the Local Commissioner.

51. The report of the Local Commissioner be filed within a period of *two weeks* from the date of execution of the commission.

52. Accordingly, the application is allowed and disposed of.

Dasti under the signatures of the Court Master.

SAURABH BANERJEE, J

MAY 9, 2025/So