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

+ **CS(COMM) 472/2025**

CASTROL LIMITED

.....Plaintiff

Through: Mr. Urfee Roomi, Mr. Janaki Arun,
Ms. Anuja Chaudhary, Ms. Angela
Arora, Mr. Arpit Singhal, Mr.
Jaskaran Singh, Mr. Ritesh Kumar
and Mr. Ayush Dixit, Advocates.

versus

VARISH SHARMA AND ANR.

.....Defendants

Through: None.

CORAM:

HON'BLE MR. JUSTICE SAURABH BANERJEE

ORDER

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14.05.2025

I.A. 12193/2025 (*Exemption from pre-litigation mediation*)

1. *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**), the plaintiff seeks exemption from pre-litigation mediation.
2. Considering the averments made in the present application, as also since the plaintiff is seeking *ex parte ad interim* injunction in an accompanying application, 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, which has been followed by a Division Bench this Court in ***Chandra Kishore Chaurasia v. R. A. Perfumery Works Private Limited*** 2022:DHC:4454-DB, the plaintiff is exempted from instituting pre-litigation mediation.
3. Accordingly, the present application stands disposed of.



I.A. 12191/2025 (*Exemption*)

4. Exemption allowed, subject to all just exceptions.
5. The application stands disposed of.

I.A. 12194/2025 (*Exemption from advance service*)

6. *Vide* the present application under *Section 151* of the CPC, the plaintiff seeks exemption from advance service upon the defendants.
7. 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/ counterfeit products at the premises of defendants are sought, there is a likelihood that the apprehensions of the plaintiff will become a reality in case advance service is effected and therefore, an exemption from effecting advance service is necessary.
8. 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.
9. Accordingly, the present application is allowed and disposed of.

I.A. 12190/2025 (*Additional Documents*)

10. *Vide* the present application under *Order XI Rule 1(4)* read with *Section 151* of the CPC, the plaintiff seeks leave of this Court to file additional documents.
11. 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.
12. Accordingly, the present application stands disposed of.



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13. *Vide* the present plaint, the plaintiff seeks grant of a permanent and mandatory injunction restraining trademark infringement, copyright infringement, passing-off, act of unfair competition, seeking damages, rendition of accounts, delivery up and other appropriate reliefs against the defendants.

14. Let the plaint be registered as a suit.

15. 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 14.08.2025.

16. The summons shall state that the written statement(s) be filed by the defendants within a period of *thirty days* from the date of the receipt of the summons. Written statement(s) be filed by the defendants along with affidavit(s) of admission/ denial of documents of the plaintiff, without which the written statement(s) shall not be taken on record.

17. 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 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.

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

19. List before the learned Joint Registrar for marking exhibits of documents on 14.08.2025. 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. 12189/2025 (Stay)

20. *Vide* the present application, the plaintiff seeks grant of an interim injunction restraining the defendants and any other persons/ entities acting for and on their behalf from dealing in any manner in any engine oils, lubricants, etc., bearing any marks identical/ similar to the plaintiff's trademarks (***impugned marks***), and deceptively similar packaging as that of the plaintiff's packaging (***impugned packaging***).

21. As per pleadings, the plaintiff is a part of British Petroleum group of companies, organized and existing under the laws of England, and is the global market leader in manufacture and sale of lubricants, oils, coolants, grease, etc.

22. Since the year 1909 (approximately), the plaintiff has been using the mark **CASTROL** and its variants in relation to its goods, including, but not limited to engine oils and lubricants. Furthermore, the plaintiff has been selling engine oil and lubricants in containers, which have a distinctive shape and colour combination.

23. The plaintiff has obtained registration of the mark 'CASTROL' in Class 04 of the Trade Marks Act, 1999 (**TM Act**) on 29.06.1942, with user claim from 01.01.1911. The 'CASTROL' mark has been declared to be a well-known mark by the Trade Marks Registry. It has also obtained copyright registration in the label/ artistic work under registration No.A76013/2006. The plaintiff has making significant investments *qua* advertising its products under the said trademarks and generated considerable revenue.

24. The defendant no.1 is an Indian citizen, and is the director of defendant no.2, a company incorporated under the Companies Act, 2013,



which is also engaged in the business of manufacturing, marketing and sale of engine oil, lubricants, transmission oils, transmission fluid, gear oil, etc. and is using certain marks and trade dresses which are identical/deceptively similar to the plaintiff's trademarks and packaging (***impugned products***).

25. The defendants are also advertising and offering for sale the impugned products on various websites located at www.adolf7.com, www.adolf7.org, www.adolf7.net, www.adolf7.in, www.adolf7.co.in, www.shivonlubricants.com, and www.shivon.co.in, through third-party business listing websites, namely, IndiaMart and TradeIndia, and through *ecommerce* platforms, such as Meesho, Flipkart, MyDukaan, etc., as also advertising on the social media websites, Facebook and Instagram.

26. The plaintiff first learnt about the defendant no.2 in September, 2019, when it came across the defendant no.1's trademark application no.4142656 to register CRXACTIVE in Class 4 of the TM Act on a 'proposed to be used' basis, whereafter, the plaintiff sent a cease-and-desist notice to the defendants demanding them to withdraw the said application. Subsequently, *vide* letter dated 06.11.2019, from the plaintiff to the defendants, it was also stated that subsequent to the said 'cease-and-desist' notice dated 11.09.2019, the defendants removed the impugned products bearing the impugned marks from the 'Products' tab of their website 'www.adolf7.com'.

27. In the meanwhile, the plaintiff also filed its Notice of Opposition to the same. In the ensuing proceedings before the Trade Marks Registry, the defendants did not file their evidence in favour of the said application, which, coupled with the fact was on a 'proposed to be used' basis, led the



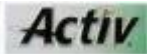
plaintiff to believe that the defendants had given up the impugned marks and impugned packaging.

28. However, in April 2025, the plaintiff discovered the impugned products being sold through WhatsApp by the defendants, whereafter the plaintiff conducted a market search and found the defendants' products being sold through various websites as listed above.

29. In wake of the above, learned counsel submitted that the plaintiff has instituted the captioned suit against the defendants wherein the present application has been filed.

30. 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.

31. Based on what is before this Court, given hereinbelow is the comparative table of the plaintiff's trademarks and packaging juxtaposed with the impugned marks and the impugned packaging, as also detailed in *paragraph no.51* of the captioned plaint:-

DEFENDANTS' (IMPUGNED) MARKS AND PACKAGING	PLAINTIFF'S TRADEMARKS AND PACKAGING
<u>ACTIVE</u> 	<u>ACTIV</u> 
<u>CRX</u> 	<u>CRB</u> 
<u>PRO CRX ACTIVE</u> <u>PRO CRX ACTIVE 7</u> 	<u>CRB</u> 



32. A perusal of the aforesaid reveals that, *prima facie*, the defendants have attempted to come as close as possible to the products of the plaintiff, with hardly any differences visible to the naked eye of any average person with imperfect recollection engaging with the identical line of trade of both the sets of products to be able to discern any distinction between them.

33. Both the words 'ACTIVE' and 'CRX' used by the defendants, as also the packaging, leave no room for doubt *qua* the aforesaid. The letters used borrow freely and unabashedly from those used by the plaintiff, merely inserting single alphabets of variation here and there in the same font, making them both phonetically and visually similar. Further, even the graphical layout, including the shape of the bottles and the screw and oil picture depicted are clear attempts raising the likelihood of confusion amongst the general public.



34. The above, coupled with the fact that the plaintiff's trademarks have acquired a *well-known* status, and have been in the market for a substantial number of years, indicates that the defendants are attempting to misappropriate their goodwill and reputation by taking unfair advantage thereof, as also confusing and deceiving the average consumer.

35. In view of the aforesaid, the *balance of convenience and probabilities* heavily tilts in favour of the plaintiff and against the defendants. Under 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 impugned products under the impugned marks and packaging is likely to cause *irreparable harm, loss and injury* to the plaintiff.

36. Accordingly, till the next date of hearing, the defendants, and any other individuals, officers, managers, employees, agents, dealers, licensees, companies, retailers, or any other persons/ entities that are related or affiliated to the defendants, and all others, acting for and on behalf of the defendants, individually or collectively, is/ are hereby restrained from manufacturing, offering for sale, selling, displaying, advertising, marketing, whether directly or indirectly, and whether on the Internet or otherwise, engine oil, coolants, gear oil and lubricants and/ or similar/ related/ allied/ cognate goods, bearing the marks, CRX, ACTIVE,



, PRO CRX ACTIVE,

PRO CRX ACTIVE 7,



and



and packaging



, and or any other marks which are identical/

similar to the plaintiff's , , ACTIV, ,

, CRB, CASTROL RX, and  trademarks and packaging



37. Upon filing of process fee, issue notice to the defendants through all permissible modes, including through *email*, returnable before the Court on 11.09.2025.

38. Reply be filed within four weeks. Rejoinder thereto, if any, be filed within two weeks thereafter.

39. The provisions of *Order XXXIX Rule 3* of the CPC be complied with within one week after the execution of the commission.

40. List before Court on 11.09.2025.

I.A. 12192/2025 (For appointment of Local Commissioner)

41. *Vide* present application, the plaintiff seeks appointment of a Local Commissioner to visit the premises of the defendant.

42. 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 believes that the infringing products are being marketed from the location 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.

43. In view of the aforesaid as also considering the factual matrix involved, and most relevantly, in order to preserve the counterfeit and infringing materials involved, in the considered opinion of this Court, it is deemed appropriate to appoint a Local Commissioner to visit the premises of the defendant.

44. Accordingly, Ms. Akanksha Bisht, Advocate (+91-9354027093) is appointed as Local Commissioner with a direction to visit the premises of the defendants at *G/F, Plot at KH No. 107/4, Village Mundka, Polo NO. MDK, Near Narayan Dharm Kata, Delhi - 110041.*

45. The Local Commissioner is to execute the commission in the premises of the defendants 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 defendants as per the address hereinabove.
- b) The Local Commissioner is permitted to seize, pack and seal the infringing products and handover the same on *Superdari* to the defendants upon the said defendant giving an '*Undertaking*' that they/ he 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 etc. for placing the hard copies or e-copies thereof on record.

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

f) If the premises of the defendants 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 for acting in compliance of the aforesaid.

46. The fee of the Local Commissioner is fixed at Rs.1,50,000/- 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.

47. The commission be executed within a period of *five days* from today, i.e. on or before 19.05.2025.

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

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

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

Dasti.

SAURABH BANERJEE, J

MAY 14, 2025/NA