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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(COMM) 727/2024 & I.A. Nos. 37524/2024, 37525/2024 & 37526/2024

TRIOLOGY SOLUTIONS PRIVATE LIMITEDPlaintiff

Through: Mr. Anshuman Upadhyay with
Mr. Naseem, Mr. Rahul Singh and
Ms. Apoorva Sharma, Advocates.
(M): 9911373783
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versus

FLIPKART INTERNET PRIVATE LIMITED & ORS.Defendants

Through: Mr. Siddharth Chopra, Ms. Shilpa
Gupta, Mr. Naman Tandon and Ms.
Arushi Mann, Advs. for D-1 & 5.
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Mr. Nitin Sharma and Ms. Swathi
Pande, Advs. for D-6.
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Mr. Saikrishna Rajgopal, Mr. Vivek
Ayyagari, Ms. Anjali Agrawal and
Mr. Abhay, Advs. for D-3.
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Ms. Disha Sharma and Mr. Yatinder
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Ms. Tanya Varma and Mr. Shiv



Mehrotra, Advs. for D-8.
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Mr. Naman Joshi, Ms. Ritika Vohra,
Mr. Rahul and Ms. Amber Tickoo,
Advs. for A-10.
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CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA

ORDER
30.08.2024

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I.A. 37525/2024 (Application seeking exemption from filing clearer, typed copies, vernacular and originals of certain documents)

1. The present is an application under Section 151 of the Code of Civil Procedure, 1908 ("CPC"), on behalf of the plaintiffs, seeking exemption from filing originals, certified copies, clearer copies, translated copies, left side margins, electronic documents etc.
2. Exemption is granted, subject to all just exceptions.
3. Plaintiff shall file legible, clear, and translated copies of the documents, on which the plaintiff may seek to place reliance, before the next date of hearing.
4. Accordingly, the present application is disposed of.

I.A. 37526/2024 (Application seeking leave to file additional documents)

5. This is an application under Order XI Rule 1(4) read with Section 151 CPC as amended by the Commercial Courts Act, 2015, seeking leave to file additional documents.
6. The plaintiff, if it wishes to file additional documents at a later stage, shall do so strictly as per the provisions of Commercial Courts Act, 2015,



and the Delhi High Court (Original Side) Rules, 2018.

7. The application is disposed of, with the aforesaid directions.

CS(COMM) 727/2024

1. At the outset, learned counsel appearing for defendant nos. 1 and 5 submits that defendant no.5 is not a separate legal entity and is part of defendant no.1. He, thus, submits that defendant no.5 be deleted from array of parties.
2. Learned counsel appearing for the plaintiff submits that he has no objection to the same.
3. Accordingly, let amended Memo of Parties be filed by the plaintiff within a period of one week from today.
4. Let the plaint be registered as suit.
5. Issue summons. Summons is accepted by learned counsels appearing for defendant nos. 1, 3, 4, 6, 8 and 10.
6. Let summons be issued to other defendants by all permissible modes. Summons shall state that the written statement be filed by the defendants within thirty days from the date of receipt of summons. Along with the written statement, the defendants shall also file affidavit of admission/denial of the plaintiffs documents, without which, the written statement shall not be taken on record.
7. Liberty is given to the plaintiffs to file replication within thirty days from the date of receipt of the written statement. Further, along with the replication, if any, filed by the plaintiffs, an affidavit of admission/denial of documents of the defendants, 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 the documents, the same shall be sought and given within the



timelines.

8. List before the Joint Registrar (Judicial) for marking of exhibits, on 21st October, 2024.

9. List before the Court, on 17th December, 2024.

I.A. 37524/2024 (Application under Order XXXIX Rules 1 and 2 read with Section 151 CPC on behalf of the plaintiff)

10. The present suit has been filed for permanent and mandatory injunction against the trademark infringement and passing off, copyright infringement, unfair trade practice and for delivery up, rendition of accounts and damages.

11. Learned counsel appearing for the plaintiff submits that plaintiff is a private limited company and lawful and bonafide proprietor of the



trademarks and copyrights subsisting in the labels/packaging



and the word mark '**Muuchstac**'. It is submitted that the goods sold by the plaintiff under its trademarks are medicated and non-medicated cosmetic products, including, hair growth



oils, facewash, creams, etc. The plaintiff is the creator and owner of the concoctions/recipes for its cosmetic products.

12. It is submitted that the plaintiff holds proprietary as well as moral rights over the photographs/pictures/artistic work and labels that are used for the packaging of its products. These pictures/packaging, are used by the plaintiff for showcasing its products on the online retail platforms.

13. It is submitted that the defendant nos. 12 to 23 are parties that indulge in counterfeiting plaintiff's products on the online retail platform of defendant nos. 1 to 11 by copying the labels, artistic works being the registered trademarks of the plaintiff, packaging, trade dress of the plaintiff's products.

14. It is submitted that plaintiff started the use of its trademark '**Muuchstac**' with a unique and distinctive packaging, on 03rd May, 2017. In a short span of time it gained popularity amongst the consumers on all major online retail platforms.

15. It is submitted that the plaintiff is the owner of the domain name www.Muuchstac.com, which is valid and subsisting, as on date. The plaintiff also sells its products from its own website where the mark '**Muuchstac**' and copyrights and other artistic work showcasing plaintiff's goods, are clearly visible to the public on the said website www.Muuchstac.com.

16. It is submitted that the business carried on by the plaintiff is extensive and the goods bearing the trademark '**Muuchstac**' are available throughout India. Ever since the adoption of its trademark by the plaintiff, the same has been used exclusively, extensively, continuously, without interruption. Owing to the extensive and exclusive use of the trademark '**Muuchstac**', the



same has acquired significant distinctiveness. Therefore, the plaintiff has absolute and exclusive rights to use the same to the exclusion of all others in relation to its goods.

17. It is submitted that in order to acquire statutory rights, the plaintiff has obtained registration of the trademark '**Muuchstac**' and the device mark in its favour in the Register of Trademarks. The details of the plaintiff's registration of its marks and a pending application are reproduced, as under:

Reg No.	Trademark	Class	Current Status
3919768	Muuchstac	03	Registered till 18.08.2028
5662413		03	Registered till 28.10.2032
4244558		05	Registered till 24.07.2029
5662409	Muuchstac	05	Registered till 28.10.2032
5662411	Muuchstac X	05	Registered till 28.10.2032
5662410	Muuchstac X	03	Accepted & Advertised

18. Attention of this Court has also been drawn to the Certificate issued by the Trademark for the device in favour of the plaintiff, which is reproduced as under:



(NOT FOR LEGAL USE)

As on Date : 13/08/2024

Status : Registered

[View Registration Certificate](#)

[View Examination Report](#)

TM Application No.	4244558
Class	5
Date of Application	24/07/2019
Appropriate Office	MUMBAI
State	MAHARASHTRA
Country	India
Filing Mode	e-Filing
TM Applied For	MUUCHSTAC
TM Category	TRADE MARK
Trade Mark Type	DEVICE
User Detail	18/08/2018
Certificate Detail	Certificate No. 2398963 Dated : 17/02/2020 Notified in Journal No : 1943
Valid upto/ Renewed upto	24/07/2029
Proprietor name	(1) TRIOLGY SOLUTIONS PRIVATE LIMITED Body Incorporate
Proprietor Address	D/03, Kasturi Vandana Complex, Opp. Navghar Phatak Road, Opp Swagat Hotel, Bhayandar East, Thane, Maharashtra - 401105, India
Email Id	****@markshield.in
Attorney name	MARK SHIELD[26958]
Attorney Address	1061, B/13, Ward 7 Mehrauli, New Delhi- 110030, India
Goods & Service Details	[CLASS : 5] Ayurvedic pharmaceuticals preparations, medicines for human purpose, medicated soap; medicated beauty soap; medicated soap for Men; medicated liquid soap; medicated skin creams; multipurpose medicated antibiotic cream, analgesic balm and mentholated slave; aromatherapy creams for treating headaches, relieving stress; medicated skin care preparations, namely creams, lotions, gels, toners, cleaners and peels; medicated lotions and creams for the body, skin, face and hands; medicated nappy rash cream; medicated baby oils; medicated massage oils; medicinal oils; medicated shampoo; medicated dandruff shampoo; medicated shampoos for babies; analgesic balm; multipurpose medicated analgesic balms; insect repellent preparations, Ayurvedic, homeopathic, Unani and Siddha Medicines for Men including Preparations and Formulations, Medicated Oils and Ointments
Publication Details	Published in Journal No. : 1921-0 Dated : 30/09/2019

Trade Mark Image : (1)



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19. It is submitted that the plaintiff is the owner of the copyright on the original and artistic designs of its labels, the display photographs/pictures showing plaintiff's products, photographed from different angles to showcase on the online retail platforms.

20. Defendant nos. 12 to 23 who counterfeit products by unlawfully copying the plaintiff's trademarks, copyrights and trade dress, use different words such as 'Ovlin', 'Welkin', 'GoReady', 'Semilla', 'Cassidy', 'Vellasio', 'TrimmerOn', 'Chandanvan', 'Man Up', 'Urbanguru', 'Dr.Sparsh' etc. as their trademarks. However, the use of such different trademarks is immaterial as the trade dress of the plaintiff is imitated/reproduced by such defendants in exact identical fashion.

21. It is submitted that the defendant no.12 has not only copied the trade dress of the plaintiff's products but is also using a deceptively similar mark '**Mootech**' in place of plaintiff's registered word mark 'Muuchstac'.

22. It is further submitted that the defendant no.12 has also filed application for registration of the impugned mark '**Mootech**' which has been opposed by the plaintiff. The details of the same are as follows:

App. No.	Mark	Applicant	Cls	Status
5613469	Mootech	Kathiriya Harshkumar Mukeshbhai	3	Opposed by the Plaintiff

23. It is submitted that the plaintiff has also been regularly receiving the complaints from its consumers about the quality, smell and packaging of its products. The plaintiff has found that all such complaints are in relation to the products that have been sold off to unwary consumers by



unlawful/dishonest imposters and the products so sold off by them are, in fact, counterfeit.

24. The table showing the comparison between the products of the plaintiff and that of the defendants, filed as Document-1, is reproduced as under:

DEFENDANTS PRODUCT	PLAINTIFF'S PRODUCT
 Defendant No. 13	
	







Defendant No. 17



Defendant No. 18



Defendant No. 19





Defendant No. 20



Defendant No. 21





25. Thus, it is submitted that on account of the unlawful use and enjoyment of the plaintiff's trademarks by the defendants, the plaintiff has suffered significant damage to its reputation and goodwill associated with its trademark. It is submitted that defendants are guilty of passing of their counterfeit products as if such products and services emanated from the plaintiff.

26. At this stage, learned counsel appearing for defendant nos. 1 and 5 submits that similar prayer as sought in the present suit, has also been prayed in a previous suit filed by the plaintiff, i.e., *CS(COMM) 709/2022*, wherein, judgment dated 28th August, 2023, has been passed. It is submitted that pursuant to the judgment dated 28th August, 2023, the defendant no.1 along with other defendants, is already taking the requisite action and wherever information is provided by the plaintiff, the said listings are brought down.

27. Learned counsel appearing for defendant no.10/India Mart submits that India Mart is the listing site and does not maintain any revenue records.

28. Per contra, learned counsel appearing for the plaintiff has relied upon



the order dated 16th November, 2022, passed in *FAO(OS)(COMM)* 304/2022, wherein, the learned Division Bench has made observations with respect to the counterfeit goods being allowed to be sold by the defendants.

29. Learned counsels appearing for the defendants, whose presence is marked as aforesaid, have further pointed out that the plaintiff has not given the details of the URLs in the plaint, on account of which, in case this Court gives any direction, no action can be taken by the defendants, in the absence of information regarding the URLs.

30. Learned counsel appearing for the plaintiff submits that since the list of URLs was long, therefore the same has not been filed along with the present plaint. However, he submits that the list of URLs shall be provided to defendant nos. 1 to 11 for appropriate action, in case directions are passed by this Court.

31. In the above circumstances, the plaintiff has demonstrated a *prima facie* case of injunction and in case no *ex-parte ad interim* injunction is granted, the plaintiff will suffer an irreparable loss. Further, balance of convenience also lies in favour of the plaintiff and against the defendants.

32. Accordingly, till the next date of hearing, the defendant nos. 12 to 23, their family members, servants, subsidiaries, aides, agents, representatives and assigns, or others who are acting on their behalf, are restrained from using the registered device mark of the plaintiff and the trade dress/package amounting to infringement/passing off of the trademark device and trade dress/package of the plaintiff.

33. Further, it is directed that the plaintiff shall provide the list of URLs to defendant nos. 1 to 11. As and when such information is provided by the plaintiff to the said defendants, the defendant nos. 1 to 11 shall take



appropriate steps to take down the listings of defendant nos. 12 to 23, which amount to passing off counterfeit cosmetic products of the plaintiff.

34. Further, defendant nos. 1 to 11, are also directed to disclose the sales and revenue made by defendant nos. 12 to 22, on their platforms.

35. Issue notice. Notice is accepted by learned counsels appearing for defendant nos. 1, 3, 4, 6, 8 and 10.

36. Let notice be issued to other defendants by all permissible modes, upon filing of Process Fee, returnable on the next date of hearing.

37. Let reply be filed within a period of four weeks.

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

39. Compliance of Order XXXIX Rule 3 be done, within a period of one week, from today.

40. Re-notify on 17th December, 2024.

MINI PUSHKARNA, J

AUGUST 30, 2024/kr