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

+ CS(COMM) 893/2024 & I.A. 41909/2024, I.A. 41910/2024, I.A. 41911/2024, I.A. 41912/2024, I.A. 41913/2024, I.A. 41914/2024, I.A. 41915/2024

MM STYLES PRIVATE LIMITED

.....Plaintiff

Through: Mr. Pravin Anand, Mr. Safir Anand,
Mr. Dhruv Anand, Ms. Udit Patro,
Ms. Twinky Rampal, Ms. Nimrat
Singh, Ms. Sampurnaa Sanyal, Mr.
Dhananjay Khanna, Advocates
(M:9837461666)

versus

MASABA COUTURE & ORS.

.....Defendants

Through: None.

CORAM:

HON'BLE MS. JUSTICE MINI PUSHKARNA

ORDER

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09.10.2024

I.A. 41912/2024 (Exemption from filing originals, clearer copies, translated copies, left side margins)

1. The present is an application under Section 151 of the Code of Civil Procedure, 1908 ("CPC"), on behalf of the plaintiff, seeking exemption from filing original/certified and clear copies of documents with correct margins and exemption from filing documents in separate volumes.
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. 41911/2024 (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.

I.A. 41915/2024 (Application seeking time for filing Certificate under 63(4)(c) of Bharatiya Sakshya Adhiniyam)

8. This is an application under Section 151 CPC seeking time for filing required Certificate under Section 63(4)(c) of Bharatiya Sakshya Adhiniyam, 2023 (“BSA”).

9. In view of the averments made in the application, the same is allowed, and the time as sought, is granted.

10. Let the needful be done, accordingly.

11. With the aforesaid directions, the present application is disposed of.

I.A. 41914/2024 (Exemption from instituting Pre-Institution Mediation)

12. The present is an application under Section 12A of the Commercial Courts Act, 2015, read with Section 151 of CPC, seeking exemption from undergoing Pre-Institution Mediation.

13. Having regard to the facts of the present case and in the light of the judgment of Supreme Court in the case of *Yamini Manohar Versus T.K.D. Keerthi*, 2023 SCC OnLine SC 1382, and Division Bench of this Court in *Chandra Kishore Chaurasia Versus RA Perfumery Works Private Ltd.*, 2022 SCC OnLine Del 3529, exemption from attempting Pre-Institution Mediation, is granted.

14. Accordingly, the application stands disposed of.



I.A. 41913/2024 (Application seeking extension of time for filing Court Fees)

15. The present application has been filed under Section 149 read with Section 151 of the CPC, seeking extension of time to file the Court Fees.

16. Learned counsel appearing for the plaintiff submits that the Court fees, has already been deposited.

17. Noting the aforesaid, the present application is disposed of.

I.A. 41910/2024 (Application for Discovery)

18. The present application has been filed on behalf of the plaintiff under Order XI Rule 1, 3 and 5 of CPC, as amended by the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015, read with Section 151 CPC, seeking discovery, production and inspection of defendant's documents.

19. Issue notice to the defendants by all permissible modes, returnable on the next date of hearing.

CS(COMM) 893/2024

20. Let the plaint be registered as suit.

21. Upon filing of the process fee, issue summons to the 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 plaintiff's documents, without which, the written statement shall not be taken on record.

22. Liberty is given to the plaintiff 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 plaintiff, an affidavit of admission/denial of documents of the defendants, be filed by the plaintiff, 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.

23. List before the Joint Registrar (Judicial) for marking of exhibits, on 27th November, 2024.

24. List before the Court on 07th February, 2025.

I.A. 41909/2024 (Application under Order XXXIX Rules 1 and 2 read with Section 151 of CPC)

25. The present suit has been filed for permanent injunction restraining infringement of plaintiff's copyright, trademark, passing off, unfair competition, dilution and tarnishment, damages, rendition of accounts and delivery up.

26. It is submitted that the plaintiff, MM Styles Private Limited, is a company, incorporated on 19th January, 2007, having its registered office at *5th Floor, 18A, Gurunanak Road, Bandra West, Mumbai, Maharashtra, India, 40005*. The plaintiff is primarily engaged in the business of manufacturing, selling/retailing designer garments, jewellery, cosmetics and other luxury products, designed and conceptualised by Mr. Manish Malhotra, which are marketed under his eponymous brand "Manish



Malhotra" and/or

27. It is submitted that the plaintiff Company has been established by Mr. Manish Malhotra, who is a well-renowned and internationally acclaimed Indian fashion designer, couturier, costume stylist, entrepreneur, filmmaker and revivalist, based in Mumbai, India. Manish Malhotra is one of India's most successful and celebrated fashion designers. He is known in the industry for his unique styles and his ability to envision a distinctive 'look'



for movie characters in the Bollywood Film Industry. Mr. Malhotra's career, spanning over 30 years, has seen him redefine Indian fashion, especially when it comes to the film industry in India.

28. It is submitted that Manish Malhotra's bold approach to costume designing in Bollywood movies-reinvention of bridalwear in unusual colours, saris with modern drapes, giving a contemporary aesthetic look to traditional Indian garments, has left an indelible mark and influence not only on the perceived quintessential image of an Indian Girl but also on International red carpets. He has dressed international celebrities like Kate Moss, Demi Moore, Naomi Campbell, late Michael Jackson, and designed bridalwear for famous Indian actors like Kareena Kapoor Khan, Karishma Kapoor, Priety Zinta, Urmila Matondkar, Kiara Advani, Siddharth Malhotra and many more.

29. It is submitted that most significantly, Manish Malhotra has also been commended with the prestigious *Padma Shri* Award in the year 2014 for his contribution to the Indian Fashion and Design Industry.

30. It is submitted that in the year 2005, Manish Malhotra launched his couture label 'Manish Malhotra', and thereafter, incorporated the plaintiff company in 2007 to carry on this business. Through the label



, Manish Malhotra and the plaintiff now offer Bridalwear, Couture services, Men's wear, a Diffusion line, Bespoke collections, Cosmetics, Skincare and High Jewellery.

31. It is submitted that in 2008, plaintiff opened its first flagship store in Khar West, Mumbai, India, under the label 'Manish Malhotra'. Thereafter, in the year 2013, it opened India's first largest stand-alone couture store in a



haveli on Kalkadas Marg in Mehrauli, New Delhi. The plaintiff then went on to open its Hyderabad store in the year 2019.

32. It is submitted that Manish Malhotra through the plaintiff has also successfully ventured into the space of beauty and cosmetics by launching its make-up line '*Manish Malhotra Beauty*' in collaboration with 'My Glamm' in December, 2018. In the same year, Manish Malhotra also launched '*Manish Malhotra Productions*' and designed and conceptualized the pre-wedding celebrations for Isha Ambani and Anant Piramal in Udaipur. In 2019, he introduced '*Manish Malhotra Jewellery*' and in 2020, he introduced a skincare line under 'Manish Malhotra Beauty'.

33. It is submitted that the plaintiff operates out of its shops located in Delhi, Mumbai and Hyderabad. Apart from its physical stores, the plaintiff also commercially deals with customers through its online store <https://manishmalhotra.in/> as well as its Instagram handles - @manishmalhotraworld, @manishmalhotravows and @manishmalhotrajewellery. The plaintiff's Instagram account @manishmalhotravows also chronicles the wedding journey of Manish Malhotra's brides and grooms.

34. It is submitted that all the creative works undertaken by the plaintiff are executed under the aegis of Manish Malhotra, based upon his concept, with him guiding the entire process with detailed instructions – the entire process is undertaken under his close supervision. His team comprising of designers and karigaars assist him and are employed by him through the plaintiff company under contracts of service. The team is responsible for execution and completion of the plaintiff's works of artistic craftsmanship, under the strictest supervision of Manish Malhotra.

35. It is submitted that the outfits created by the plaintiff/Manish Malhotra are 'works of artistic craftsmanship' as defined under Section



2(c)(iii) and are protectable under Section 13(1)(a) of the Copyright Act, 1957, being 'original artistic works'. The plaintiff, thus, enjoys copyright in each costume / outfit created by Manish Malhotra as well as in the various drawings / sketches prepared by him in relation to such costumes / outfits.

36. It is submitted that the garments/outfits so produced by the plaintiff are limited edition garments, which are not mass produced by any industrial process. This is also because fashion trends have a short life span, and garments enjoy only transient marketability, changing seasonally. Thus, Section 15(2) of the Copyright Act, 1957 is not applicable to the plaintiff's works and the plaintiff's creations / works are duly protectable as artistic works in which copyright subsists.

37. It is submitted that the plaintiff's style and his outfit designs are completely arbitrary and capricious and as such these style elements constitute and act as strong trademarks. The entire get-up, look and feel, and trade dress of the plaintiff's outfits are so unique that any attempt by third party to misappropriate them would cause immense confusion amongst the public as to the source of origin of these goods.

38. It is submitted that since the year 2006, the plaintiff has continuously and consistently used the trademarks 'Manish Malhotra' and



in relation to all its products and services, including but not limited to its costumes / garments, Couture services, Jewellery, Cosmetics and Skincare products. The plaintiff is the registered proprietor of these trademarks in Classes 3, 23, 24, 25, 26 and 27, amongst other relevant classes. The plaintiff is providing a list of its trademark registrations for the said marks, which is annexed as document-1 to the present plaint.

39. It is submitted that the plaintiff's entire business is dependent upon its



Intellectual Property Rights, which are central to the viability of its business. It is for this reason that it becomes essential that the plaintiff's Intellectual Property rights are duly protected against any kind of misappropriation.

40. It is submitted that each of these costumes which have been copied by the defendants herein, have been adopted and commercially used by the plaintiff much prior in point of time to the defendants. Given the priority of adoption and usage and the notoriety that the plaintiff's distinctive style has obtained through extensive advertisements and promotion, the defendants' adoption of these styles amounts to misrepresentation and unfair competition, which has the potentiality to cause tremendous and irreparable harm and injury to the plaintiff. The costumes created by the plaintiff are of such a distinctive style that they are instantly recognizable as emanating from the plaintiff alone and thus copying of the plaintiff's distinctive style by an unauthorized third party in their costumes / outfits would result in Passing Off.

41. It is submitted that the plaintiff has a right to prevent third parties from misappropriating the goodwill and reputation associated with the signature designs/styles of its costumes, so as to prevent such parties from unjustly benefiting from the same. Also, if an association is being drawn to the plaintiff, by the use by the defendants of designs/styles which are instantly recognizable as emanating from the plaintiff/Manish Malhotra, this would cause immense confusion amongst the members of the public, leading them to believe that the plaintiff has endorsed / sponsored such product/service. The defendants in the present case are involved in such blatant copying of the plaintiff's signature distinctive style, which has evidently been undertaken by them to draw a false association with the plaintiff, for the purpose of Passing Off their products as being associated with the plaintiff.



42. It is submitted that it is verily believed that the defendant nos. 1, 2 and 3 are related and operating in collusion as the infringing activities found on their respective Instagram handles are similar, as they have all copied images from the plaintiff's social media handles. Moreover, the manner in which the defendants offer their services are similar i.e., 'customised clothing' through Instagram, with a common manner provided of contacting the defendants for their services i.e., through WhatsApp. It is also pertinent to point out that the defendants seem to be operating out of the same geographical area of Gujarat, India, as can be seen from the memo of parties.

43. It is submitted that plaintiff sometime in May, 2023 came across the defendant no.1's Instagram handle @masabacouture wherein they were found having copied images directly from the plaintiff's websites and social media handles, being used by the plaintiff to denote its various collections. The defendant was also found soliciting orders for reproduction of the styles /outfits denoted in the copied images, claiming to customise the exact same outfit for customers.

44. It is submitted that a bare comparison of the plaintiff's work and the defendant's impugned pictures on their Instagram handle illustrates that the defendant no.1 has strained every nerve to (i) infringe the plaintiff's copyright in the proprietary images present on the plaintiff's website and social media handles, (ii) infringe the copyright in the plaintiff's artistic works i.e., the outfits designed and created by the plaintiff, and (iii) Pass Off themselves as being associated with the plaintiff. The defendant no.1's activities are motivated towards earning illegal profits by infringing the plaintiff's Intellectual Property Rights, by copying images from the plaintiff's official website and social media handles, most of which comprise photographs of well-known celebrities wearing the plaintiff's garments. A

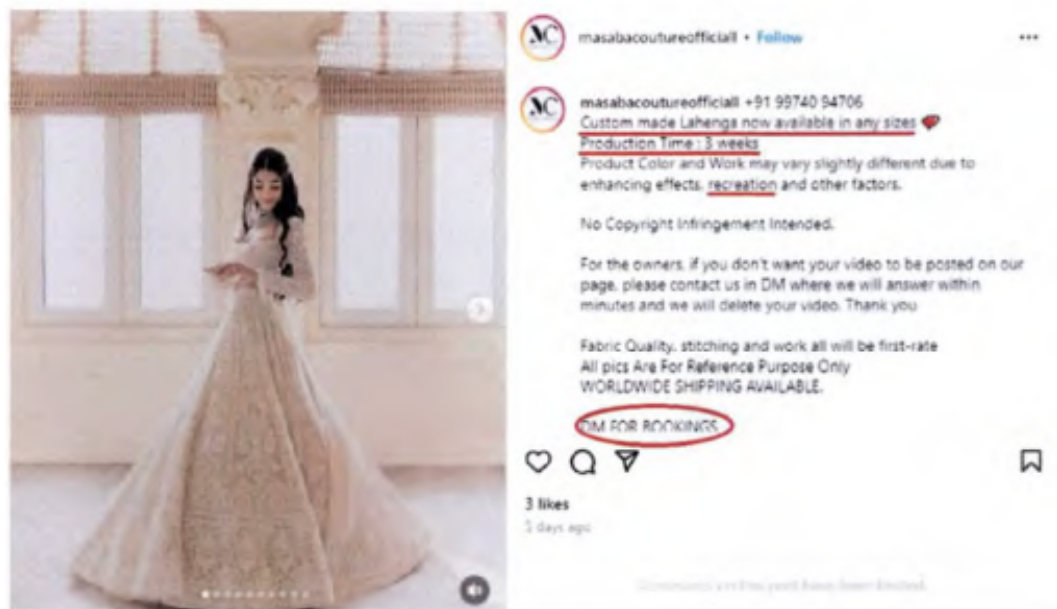


comparison of the defendant no.1's Instagram posts and the original images on plaintiff's Instagram handle is as under:

Plaintiff's original photographs and designs/styles – on its Instagram handle	Defendant No.1's Instagram posts, blatantly copying the Plaintiff's images
	
	
	
	



45. It is submitted that the defendant no. 1 on its Instagram posts, while blatantly reproducing the plaintiff's images, was found illegally soliciting orders for custom making the same for its customers. This is evident from the Instagram posts of this entity, each of which has the following language as shown below:



46. It is submitted that from the above, it is evident that the said defendant is blatantly infringing the plaintiff's rights, in spite of knowing fully well that its *modus operandi* is illegal and that Owners of the images and dress styles would have a problem with the manner in which their images are being used for unlawful activities.

47. It is submitted that in spite of complaining and sending a cease and



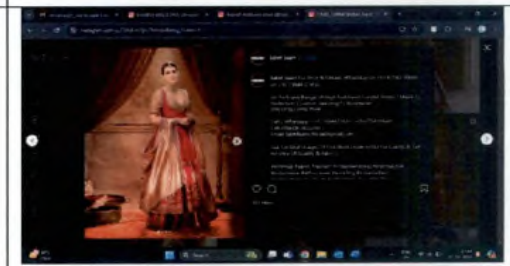
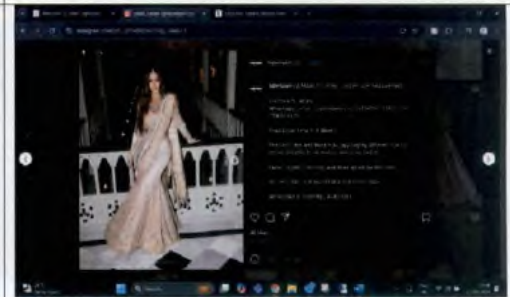
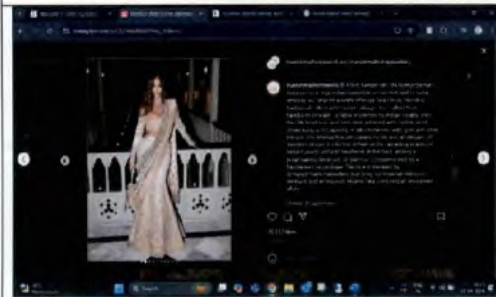
notice to the defendant through Instagram on 13th June 2023, which the defendant acknowledged by saying "Sorry 🙏" and removing the infringing pages, the defendant continues to upload infringing images, which are blatantly copied from the plaintiff's website and social media handles. The defendant by doing this is not only infringing the plaintiff's rights in its proprietary images as posted on its website and Instagram handles, it is also infringing the plaintiff's copyright in the artistic work i.e., its outfit/garment, by offering to reproduce/recreate the same for its customers. It is further submitted that the images of celebrities wearing the plaintiff's outfits are also instantly recognizable by the relevant members of the public, who upon seeing the images may be confused into believing an association / nexus between the plaintiff and the defendant. Thus, the defendant is clearly trying to illegally monopolise on the plaintiff's works to derive unjust profits, while totally relying upon the renown and reputation of the plaintiff to operate its business.

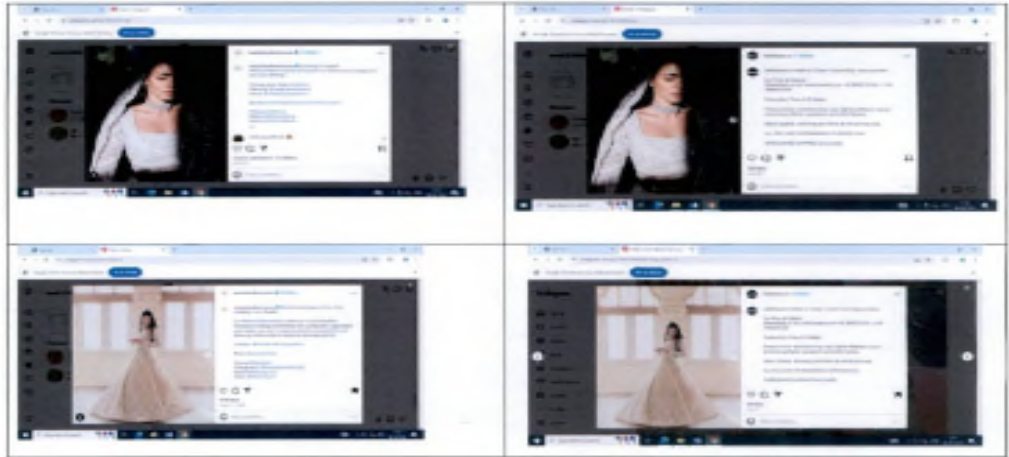
48. It is submitted that defendant no. 2 was also discovered by the Plaintiff to carry on illegal activities identical to the defendant no. 1. Similar to the defendant no. 1, this defendant has also blatantly copied proprietary images from the plaintiff's websites / social media handles and has reproduced the same on their own Instagram handles to illegally solicit orders for reproducing the plaintiff's styles as shown in the copied image. A comparison of the defendant no. 2's Instagram posts and the original images on plaintiff's Instagram handle, is reproduced as under:



Plaintiff's original photographs and designs/styles – on its Instagram handle / website

Defendant No.2's Instagram posts, blatantly copying the Plaintiff's images

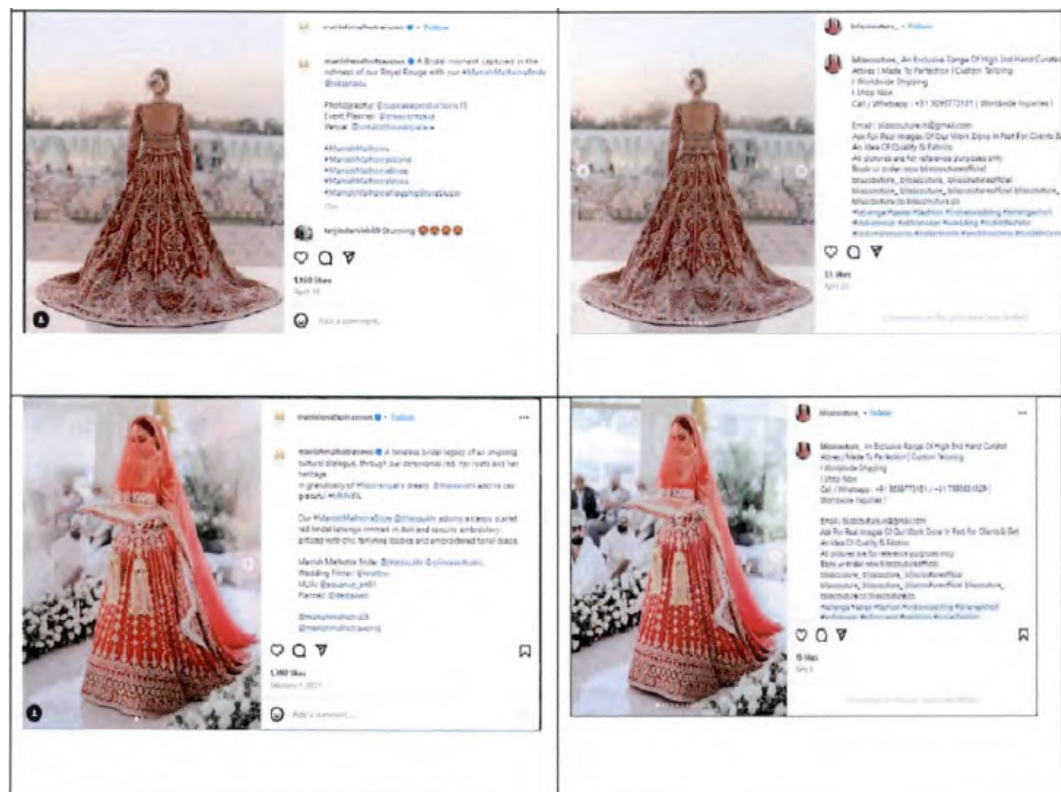


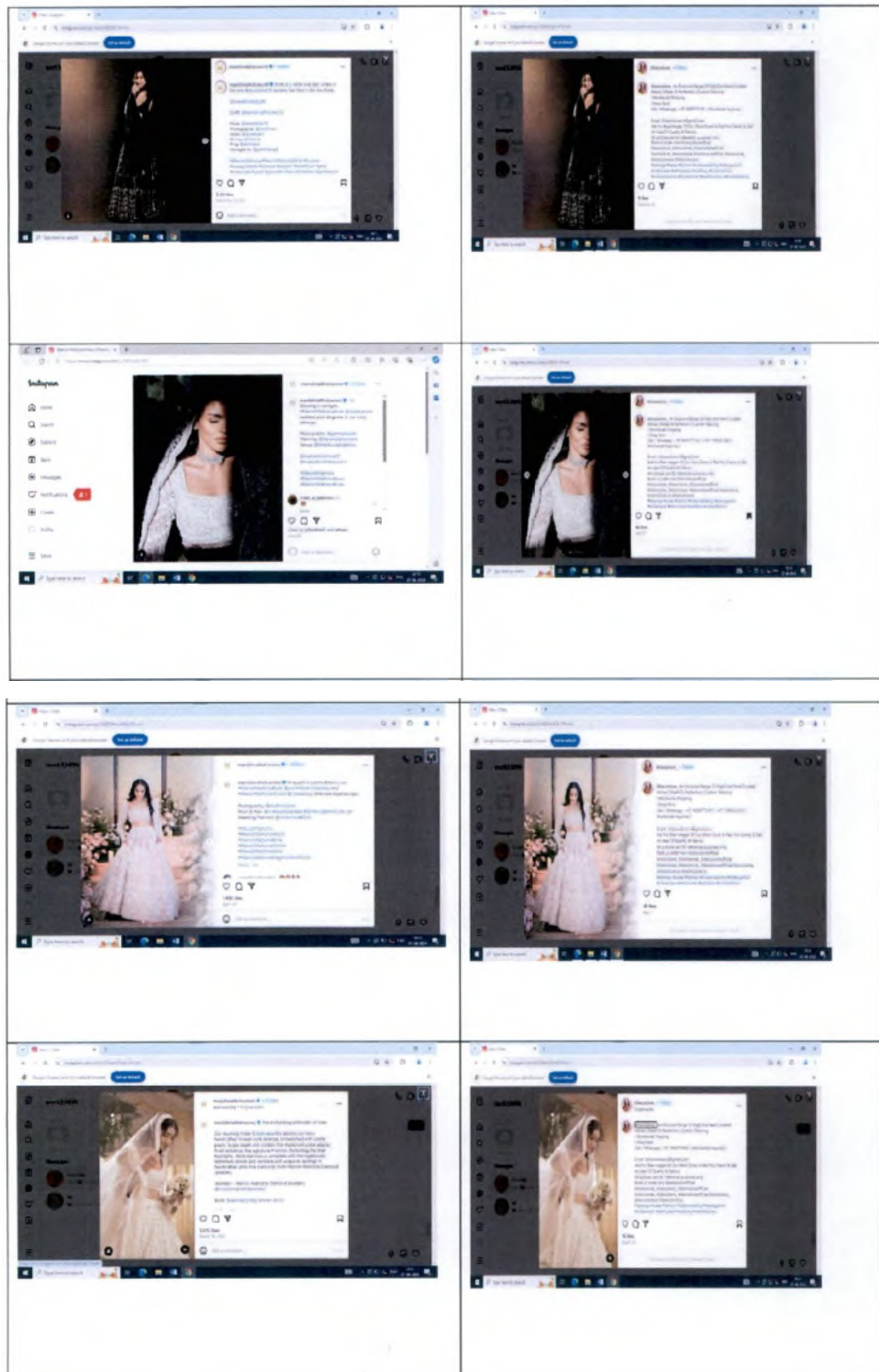


49. It is submitted that a bare comparison of the plaintiff's work and the defendant's impugned pictures on their Instagram handle clearly illustrates that the defendant no. 2 has clearly infringed upon the rights of the plaintiff, similar to that as committed by defendant no. 1.

50. It is submitted that defendant no. 3 was also found infringing the plaintiff's rights in a manner identical to the defendant nos. 1 and 2. The comparison table provided below, clearly shows the same:

Plaintiff's original photographs and designs/styles – on its Instagram handle / website	Defendant No.3's Instagram posts, blatantly copying the Plaintiff's images





51. It is submitted that the defendant no. 4 was also discovered by the plaintiff to carry on illegal activities identical to the above-mentioned



defendants i.e., blatantly lifting the images of the plaintiff's designs without any permission or diligence. The plaintiff found out about this defendant's Instagram page in 2021 had written to them on 18th January, 2021 to immediately cease and desist from such infringing activities.

52. It is submitted that the defendant no.4 wrote back to the plaintiff's counsel on 01st March, 2021 and stated the following:

"We upload pictures just for reference purpose (you can check our caption also) and apart from that we had no idea that it 's your design. Still we have already removed the on same day of receiving your mail. If you find any other post of related you please let us know we will take it down."

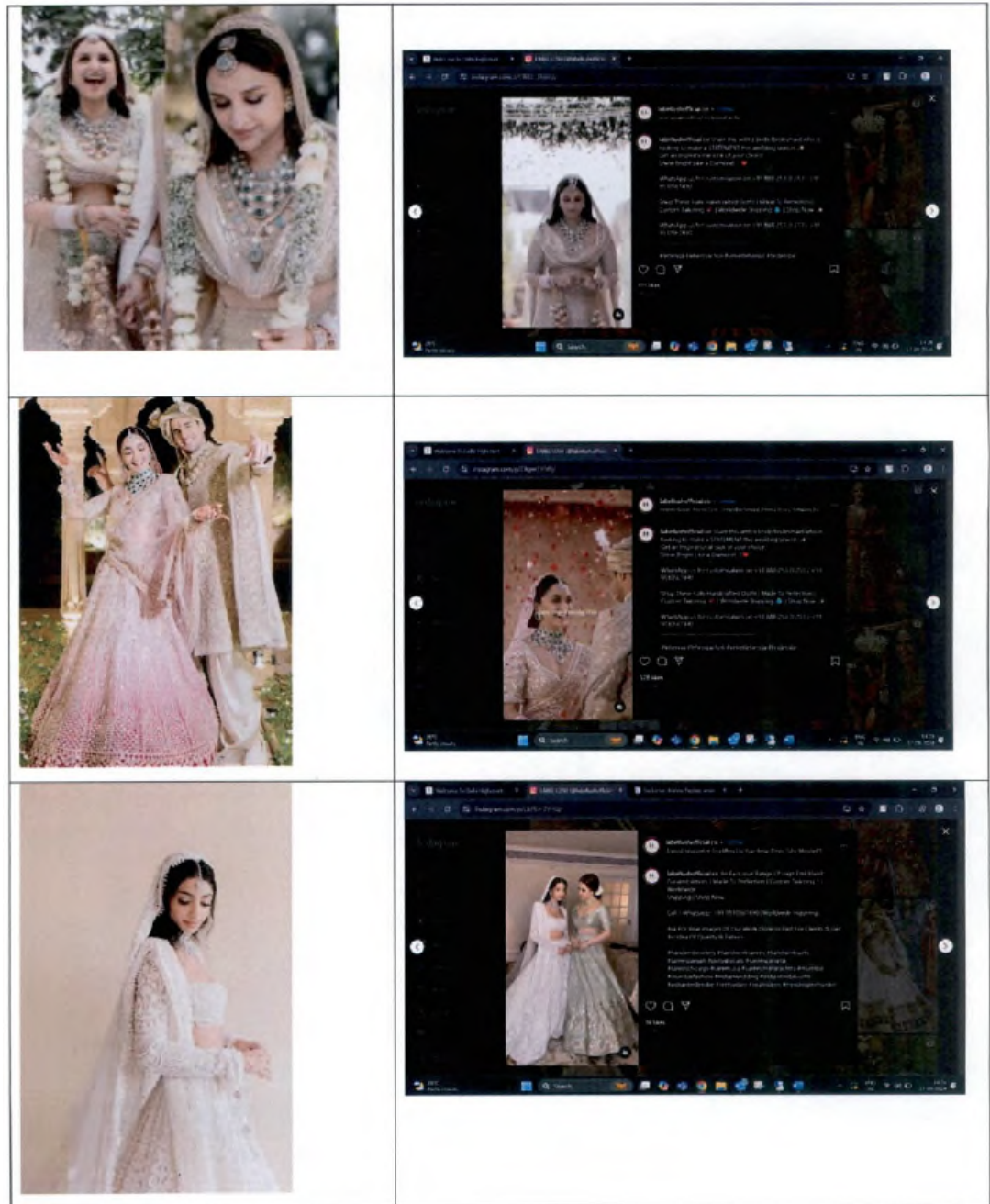
53. It is submitted that despite the defendant no.4 already having been made aware of the plaintiff's rights, the plaintiff had to write to the defendant no.4 once again on 19th July, 2021. Since the said defendant did not respond, the plaintiff issued a reminder to the said defendant on 10th August, 2021 and thereafter on 6th February, 2024.

54. It is submitted that the defendant no.4 only responded to the plaintiff on 13th February, 2024 wherein they merely stated that *"We don't have any such post on our page. You can have a look."*

55. It is submitted that despite the above correspondence exchanged between the plaintiff and the defendant no.4, the said defendant continues to infringe the Intellectual Property Rights of the plaintiff. A comparison of the defendant no. 4's Instagram posts and the original images on plaintiff's Instagram handle, is as under:



Plaintiff's original photographs and designs/styles – on its Instagram handle / website	Defendant No4's Instagram posts, blatantly copying the Plaintiff's images/artistic works
INFRINGMENT BY THE DEFENDANT NO.4 OF THE PLAINTIFF'S IMAGES	
	
	
	
INFRINGMENT BY THE DEFENDANT NO.4 OF THE PLAINTIFF'S ARTSITIC WORK (AS OF SEPTEMBER 2024)	



56. It is submitted that the plaintiff and the label Manish Malhotra have a persona attached to it, whereby, the public at large identifies him with his



exclusive collection and elite clothing. The Manish Malhotra brand enjoys a certain image amongst its clientele and amongst reputed designers and it is important that the plaintiff's Intellectual Property Rights are duly protected to ensure that the brand does not suffer dilution and/or loss of goodwill, which the plaintiff, and Manish Malhotra himself, have built painstakingly over the years.

57. It is submitted that the misrepresentation undertaken by the defendants creates a false impression on the general public, whereby it seems as if the plaintiff has given permission to such parties to commercially exploit its creative works/designs/trade name/trademark. It is submitted that such blatant copying, as shown above by the defendants is an unfair trade practice and amounts to infringement of not only the plaintiff's Copyright in its images and its artistic works / outfits but also Passing Off.

58. It is also submitted that the infringing pictures that have been reproduced by the defendants on their Instagram accounts/handles also infringe the personality rights of the various celebrities whose images have been so used. Therefore, it is submitted that these celebrities have donned the plaintiff's outfits and have been photographed with an understanding that these photographs would be exclusively used by the plaintiff only on the plaintiff's website and social media handles. The indiscriminate and unauthorised copying by the defendants of such photographs to derive illegal commercial benefit can also cause harm to the plaintiff's understanding / arrangement with such celebrities, leading to huge harm to the plaintiff's goodwill and reputation.

59. It is submitted that the plaintiff's products are considered to be luxury products and have an aura of exclusiveness associated with them. They are of extremely high quality and produced with utmost care and are only sold in the plaintiff's stores (physical and online). The defendants' products are of



low quality and cannot in any manner match the duty of care that that the plaintiff expends in respect of its products. In such circumstances, the plaintiff's knock-off products as manufactured and sold by the defendants not only infringe valuable Intellectual Property Rights of the plaintiff but also dilute and cause harm to the plaintiff's reputation and brand, including the unique customer experience that is provided by the plaintiff.

60. It is submitted that the plaintiff's designs are artistic works and by attempting to mimic and/or make alterations to the same, which the defendants would have to necessarily undertake to customize the garments to the needs of its customers clientele, the defendants will also distort the essence of the original piece as also degrade the integrity associated with each piece/garment produced by the plaintiff.

61. Learned counsel for the plaintiff further submits that apart from infringement of trademark and copyright of the plaintiff, the defendants are also indulging in infringement of copyright and trademark of other well-known designers also.

62. Learned counsel for the plaintiff has also handed over a list of the infringing links of defendant nos. 1 to 4.

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

64. Accordingly, till the next date of hearing, the following directions are issued:

64.1 The defendants, their proprietors, partners, franchisees, officers, servants, agents, distributors, stockists and representatives are restrained from infringing the plaintiffs' copyright in its photographs / images as



uploaded on its website and social media handles by unauthorised reproduction/use of the same by the defendants on their social media handles or otherwise in relation to the services rendered by the defendants online or in any manner, whatsoever;

64.2 The defendants, their proprietors, partners, franchisees, officers, servants, agents, distributors, stockists and representatives are restrained from infringing the plaintiffs' copyright in its artistic works/ garments by the unauthorised reproduction/ copying of the same by the defendants to make garments or in relation to their services rendered online or in any manner, whatsoever;

64.3 The defendants, their proprietors, partners, franchisees, officers, servants, agents, distributors, stockists and representatives are restrained from copying the plaintiff's dress styles, which would amount to Passing Off of their garments, as that of the plaintiff;

64.4 The defendants, their proprietors, partners, franchisees, officers, servants, agents, distributors, stockists and representatives are restrained from infringing the plaintiffs' registered trademarks being 'Manish



MANISH MALHOTRA

Malhotra' and by the unauthorised use of the same by the defendants in relation to their services rendered online or in any manner, whatsoever;

64.5 The defendant nos. 1 to 4 are directed to take down their URLs on the online handles, which bear infringing material, details of which, are as follows:



INFRINGING LINKS OF THE DEFENDANT NOS. 1- 4

1. https://www.instagram.com/p/Cs9LfnoVEN/?hl=en&img_index=1
2. https://www.instagram.com/p/CsqE0qSoFil/?hl=en&img_index=2
3. https://www.instagram.com/p/C UXF48Kc0n/?img_index=1
4. https://www.instagram.com/p/C UW99tKH4/?img_index=3
5. https://www.instagram.com/p/C9fyl-dt7p-/?hl=en&img_index=1
6. <https://www.instagram.com/p/C7EL3NltvS3/>
7. <https://www.instagram.com/p/C8cYDiWtntx/>
8. https://www.instagram.com/p/C90u7EWN64e/?img_index=1
9. <https://www.instagram.com/p/C6KEWuxynCC/>
10. <https://www.instagram.com/p/C6KEWuxynCC/>
11. <https://www.instagram.com/p/C6KEWuxynCC/>
12. <https://www.instagram.com/p/C6KEWuxynCC/>
13. <https://www.instagram.com/p/C6KEWuxynCC/>
14. <https://www.instagram.com/p/C7zTldfMH4/>
15. <https://www.instagram.com/p/C68l6C 3B6mp/>
16. <https://www.instagram.com/p/C68gwt2Xh8lj/>
17. <https://www.instagram.com/p/C6YEH-2lF0Q/>

65. Issue notice to the defendants by all permissible modes, upon filing of process fees, returnable on the next date of hearing.
66. Reply be filed within a period of four weeks, from the date of service.
67. Rejoinder thereto, if any, be filed within a period of two weeks, thereafter.
68. Compliance of Order XXXIX Rule 3 CPC, be done, within a period of one week, from today.
69. List before the Court on 07th February, 2025.

MINI PUSHKARNA, J

OCTOBER 9, 2024

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