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

\+ CS(COMM) 1084/2025 & I.A. 25136-25138/2025

GS1 INDIA .....Plaintiff

Through: Ms. Muskaan Gopal, Adv.

versus

TOPHILL PHARMA LIMITED & ORS. .....Defendants

Through: None

CORAM:
HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

O R D E R

% 10.10.2025

I.A. 25137/2025(seeking exemption from filing originals of the documents)

1. This application under Section 151 of the Code of Civil Procedure, 1908 [‘CPC’], has been filed by the Plaintiff seeking exemption from filing originals of the documents.

2. Original documents shall be produced/filed at the time of Admission/Denial, if sought, strictly as per the provisions of the Commercial Courts Act, 2015 and the Delhi High Court (Original Side) Rules, 2018.

3. Accordingly, the application stands disposed of.

I.A. 25138/2025(seeking exemption from pre-institution mediation)

4. This is an application under Section 151 CPC read with Section 12A (1) of the Commercial Courts Act, 2015, filed by the Plaintiff seeking exemption from instituting pre-litigation mediation.

5. Learned counsel for the Plaintiff states that the Plaintiff has served cease and desist notice to the Defendants on 17.01.2025 and 20.01.2025 and 12.02.2025.

6. She states that Defendant No. 1 and 2 vide reply/e-mail dated 20.03.2025 acknowledged the liability to pay the renewal fee and sought additional time. She however, states that the Defendants' have failed to pay the deposit of the admitted fee.

7. She also states that an advance service of the paper book has also been affected on the Defendant in accordance with the Rules, however none appears.

8. Keeping in view the aforesaid facts, having regard to the facts that the present suit contemplates urgent interim relief and in light of the judgement of the Supreme Court in **Yamini Manohar v. T.K.D. Keerthi**[1], exemption from the requirement of pre-institution mediation is granted to the Plaintiff.

9. Accordingly, the application stands disposed of.

CS(COMM) 1084/2025

10. The present suit has been filed for permanent and mandatory injunction for infringement of trademarks, passing off, rendition of accounts, dilution, damages, etc. and for unauthorized use of Barcode beginning with '890' by the Defendants'.

11. Let the plaint be registered as a suit.

12. Summons be issued to Defendants by all permissible modes on filing of process fee. Affidavit of service be filed within two (2) weeks.

13. The summons shall indicate that the written statement(s) must be filed within thirty (30) days from the date of receipt of the summons. The

Defendants shall also file affidavit(s) of admission/denial of the documents filed by the Plaintiff, failing which the written statement(s) shall not be taken on record.

14. The Plaintiff is at liberty to file replication thereto within thirty (30) days after filing of the written statement(s). The replication shall be accompanied by affidavit of admission/denial in respect of the documents filed by Defendants, failing which the replication shall not be taken on record.

15. It is made clear that any unjustified denial of documents may lead to an order of costs against the concerned party.

16. Any party seeking inspection of documents may do so in accordance with the Delhi High Court (Original Side) Rules, 2018.

17. List on **22.12.2025.**

I.A. 25136/2025(under order XXXIX Rule 1 and 2 CPC)

18. This is an application under Order XXXIX, Rules 1, 2 and 10 of the CPC read with Section 151 of the CPC, filed on behalf of the Plaintiff seeking ad - interim injunction against the Defendants.

19. The case set up by the Plaintiff in the plaint that may be summarized are as under:

19.1. The Plaintiff is affiliated to GS1 *Association International Sans But Lucratif* ('GS1 AISBL'), headquarter at Brussels, Belgium, which manages a Network of 116 such member organisations worldwide. It is a not-for profit, standards organization dedicated to the development of open, global, ISO endorsed standards on user industry and regulatory requirements. The Agreement on intellectual Property and Data Management ('AIPDM') dated

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[1] (2024) 5 SCC 815

29.10.2015 with respect to the territory of India between GS1 AISBL and the Plaintiff is filed as Document No. 1, along with the plaint.

19.2. The Plaintiff has been granted an exclusive licence by GS1 AISBL for allocation of GS1 company prefix numbers starting with '890' to organizations in India. This is a part and process which is adopted worldwide for allocating unique barcodes which are used by the various entities for identification of a particular product. These numbers of the barcode, '890', signify the country of origin i.e., India and range from a total of 7 to 10 digits as company prefix numbers, depending upon the number of stock keeping units ('SKUs') on which barcodes are to be applied. Using the GS1 Company Prefix Number, the company is able to generate 13- digit product codes, also referred to as the Global Trade item Number (GTIN), for identifying each of its SKUs uniquely across the world.

19.3. Once the Plaintiff allocates the Global Company Prefix Number (GCP) to a company, the details of the relevant company, such as its name, address and contact details, are entered into a database which is maintained by the Plaintiff as well as integrated with the global repository maintained by GS1 AISBL. This process helps entities/companies worldwide to identify the origin of a specific product through the unique Global trade Item Number [GTIN] and GS1 Company Prefix Number which is available publicly at https://www.gsl.org/services/verified-by-gsl. This procedure helps industry and regulatory authorities to adopt best practices related to counterfeit detection, product authentication, track and trace of products, etc. The diagrammatic representation of such barcodes given at page no. 17 of the plaint is as under:

iv. Examples:

a. 7-digit company prefix number:

8	9	0	4	5	6	7	X	X	X	X	X	CD

Global Company Prefix Number (GCP) (7 digits) — Product Code (5 digits) (00000 to 99999) — Check digit (1 digit)

Sample Product Code (GTIN): 8904567[illegible]4

b. 8-digit company prefix number:

8	9	0	3	4	5	6	7	X	X	X	X	CD

Global Company Prefix Number (GCP) (8 digits) — Product Code (4 digits) (0000 to 9999) — Check digit (1 digit)

Sample product code (GTIN): 89034567[illegible]4

c. 9-digit company prefix number:

8	9	0	2	3	4	5	6	7	X	X	X	CD

Global Company Prefix Number (GCP) (9 digits) — Product Code (3 digits) (000 to 999) — Check digit (1 digit)

Sample product code (GTIN): 890234567[illegible]4

d. 10-digit company prefix number:

8	9	0	1	2	3	4	5	6	7	X	X	CD

Global Company Prefix Number (GCP) (10digits) — Product Code (2 digits) (00 to 99) — Check digit (1 digit)

Sample product code (GTIN): 8901234567[illegible]4

19.4. The Plaintiff also has a trademark registration in '890'/ with effect from the year 2004 in class 35 for the following services i.e, business method of barcoding products and items to indicate origin, source, manufacturer and category of the item bearing the bar code.

19.5. The Plaintiff has provided 13- digit barcode numbers starting with '890' to approximately 58000 companies so far and has had an annual revenue of approx. INR 71 crores.

19.6. The Plaintiff's 13-digit barcode numbers starting with '890' is well known among the members of the trade that they are immediately led to believe that such barcode numbers comply with the GS1 Global standards and the first 7, 8, 9, or 10 digits of the barcode represent the Company Prefix Number and can be used to trace the identity of the relevant company.

20. Defendant No. 1 is a company selling Herbal Cosmetics, Personal care products for babies, Ayurvedic products, Nutritional supplements, Natural health and general wellness products, with the Defendant No. 2 as its Chief Executive Officer. Defendant No. 3 is the manufacturer of the said goods sold under the brand of the Defendant. No. 1 company. The Defendants are engaged in illegal usage of the Plaintiff's trademarked 13-digit barcode numbers beginning with '890' without a valid subsisting license in favour of Defendant No. 1.

21. It is submitted that the Defendant Nos. 1 and 2 vide its application dated 21.06.2018 applied to the Plaintiff seeking to procure a license to use the GS1 India registered barcodes beginning with '890' for the Defendant no. 1 company requesting for 1000 barcodes for a duration of 3 years. A photocopy of the application dated 21.06.2018 is filed as Document No. 14, filed along with the plaint.

22. The said application was accepted by the Plaintiff vide letter dated 25.06.2018 . The Plaintiff exclusively allotted 1000 GTINs to the Defendant

No. 1 company using GS1 company prefix (GCP) 890610511 which was valid upto 31.03.2021 for continued use of the barcodes, thereafter, it would require to renew the subscription. Only the Defendant No. 1 had the right to use the GTINs and no other organizations were permitted to use the same.

23. On 31.03.2021, the licence of the Defendant no. 1 expired by efflux of time as despite multiple reminders from the Plaintiff, the Defendant no. 1 & 2 failed to renew the said license. However, the Plaintiff in good faith vide its email dated 06.05.2021 addressed to the Defendant No. l, had extended the date for renewal of the license to 31.05.2021 due to the Covid pandemic. On 31.03.2021 the Defendant Nos. 1 and 2 failed to remit any payments towards renewal of the license for GCP number 890610511; hence, the license stood revoked/cancelled by the Plaintiff. The formal intimation of the revocation/cancellation was issued to Defendant Nos. 1 and 2 on 15.07.2021 and consequently the barcodes stood cancelled. The Defendant Nos. 1 and 2 therefore had due notice that they cannot use the allocated barcodes any further.

24. However, the Plaintiff, in January 2025, while conducting a due diligence search, came across the products of the Defendants being sold on online marketplaces like Amazon, etc., which were using the Plaintiff's proprietary prefix of '890' without the Plaintiff's consent, authorization or license. Photograph of a few products of the Defendants indicating the infringing barcode numbers is given <u>at paragraph 32 of the plaint.</u> The Plaintiff also sent a Cease - and - Desist Notice via email dated 17.01.2025, 20.01.2025 and thereafter a reminder email dated 20.01.2025. The Plaintiff gave a last opportunity to the Defendant no. 1 and 2 vide its email dated 17.03.2025 to renew the licence and provided them with a fee quote towards

the re-registration charges to which the Defendants replied vide its email dated 20.03.2025 requesting to extend time till 30.04.2025, acknowledging their liability to pay re-registration charges for using the GCPs without a valid licence, however, further requested for waiver of charges towards the penalty imposed on them falsely stating that the GCP was not being used by the Defendants in the previous years.

25. Ms. Muskaan Gopal, learned counsel for the Plaintiff submits that the Defendants are blatantly infringing the Plaintiff's registered certification trademark aiming to deceive and confuse consumers into believing that the Defendants have lawfully licensed these barcodes and are compliant with all standards of the Plaintiff, which is an act of mislabelling.

25.1. She states that the Defendants are no longer, in any manner associated with, or authorized by the Plaintiff to use the Plaintiff's 13 – digit barcodes beginning with '890' post the revocation of the license effective from 31.03.2021.

25.2. She states that this unauthorized usage of the barcodes by the Defendants without proper authorization from the Plaintiff jeopardises the unique and traceable nature of the global barcode system and database as maintained by the Plaintiff.

25.3. She states that that this continued usage of the Plaintiff's GCP beginning with 890610511 by the Defendants, despite the license being expired on 31.03.2021, is causing grave confusion about the source of origin of the products being offered for sale on the third-party aggregators like Amazon, Flipkart, etc., as they are using the Plaintiff's registered certification trademark to lend a colour of validity to their products

25.4. She states that the Defendants' infringing activity will give rise to further such counterfeiters, who being influenced by the Defendants infringing activities, would use defective 13 – digit barcode numbers starting with '890' to sell their products without purchasing a valid GCP from the Plaintiff.

25.5. She states that currently if a customer who purchases Defendants' products and scans the barcode, they will receive a message that it is invalid and will therefore be unable to authenticate the product.

26. This Court has heard the learned counsel for the Plaintiff and perused the record.

27. The Plaintiff contends that advance paper-book has been served on the Defendants as per Rules; however, none appears.

28. The Plaintiff is the registered proprietor of the trademark '890' .The Defendants' continued use of the impugned barcode despite the license having expired on 31.03.2021 is infringement.

29. The Plaintiff has placed on record its agreement dated 29.10.2015 with the GS1 AISBL having the exclusive right to allocate/license the barcode starting with digits '890' as well the sales figures which shows that it has a substantial goodwill and reputation amongst its consumers.

30. It is contended that the e-market places require the sellers to have barcodes for their products. The Defendants by using the invalid/expired

barcodes is misrepresenting to the e-market places and the customers who purchased the goods from these websites.

31. More importantly, the Defendants are aware that their right to use the barcodes has expired on 31.03.2021 and formal intimation was also issued on 15.07.2021; and therefore, the continuing use of expired barcodes is illegal and without any justification. The terms and conditions at clause 12 (b) also impose a liability on the Defendants to discontinue the use of the barcode upon termination of its license. The Defendants are aware that the license has expired. The email dated 20.03.2025 issued by the Defendant Nos. 1 and 2 acknowledges their liability to pay renewal fees towards the Plaintiff for continued use.

32. Accordingly, the Plaintiff has made out a prima facie case for grant of an ad-interim injunction. The balance of convenience also lies in favour of the Plaintiff, and the Plaintiff will suffer an irreparable loss if the interim injunction is not granted at this stage.

33. In view of the aforesaid, the Defendants, its partners, affiliates, franchisees, officers, servants, agents, distributors, representatives and anyone acting for or on its behalf are restrained from from using, 13- digit barcode numbers starting with ‘890’ or any deceptively similar marks thereto in any manner and for any goods or services leading to confusion as to origin or association or mistaken impression as to certification regarding compliance with GS1 standards (GS1 General Specification), amounting to infringement of Plaintiff’s registered trademark and passing off.

34. The Defendants are directed to remit the outstanding payment along with penalty to the Plaintiff within one (1) week from receipt of this order, failing which the Plaintiff will be at liberty to directly write to the e-market

places to take down the URLs/listings of the Defendants' products on their e-market places, bearing the barcode no. 890610511.

Upon receiving such a request from the Plaintiff, the e-marketplaces will comply with the said request within 48 hours.

35. Upon steps being taken by the Plaintiff issue notice to the Defendants.

36. Reply be filed within four (4) weeks from receipt of notice.

37. Rejoinder within four weeks thereafter.

38. The Defendant Nos. 1 and 2 are also directed to place on record the entire sales turn over after 31.03.2021 till 30.10.2025 along with its reply. So also, Defendant No. 3 will place on record the entire stock statement of the goods manufactured for Defendant Nos. 1 and 2 after 31.03.2021 till 30.10.2025.

39. Compliance of Order XXXIX Rule 3 of CPC be done within a period of one (1) week from today. Affidavit of service be filed within two (2) weeks.

40. List on **22.12.2025.**

41. The digitally signed copy of this order, duly uploaded on the official website of the Delhi High Court, www.delhihighcourt.nic.in, shall be treated as a certified copy of the order for the purpose of ensuring compliance. No physical copy of order shall be insisted by any authority/entity or litigant.

MANMEET PRITAM SINGH ARORA, J

OCTOBER 10, 2025/msh/IB.