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

+ **CS(COMM) 1125/2024 with I.A. 48396-48401/2024**

M/S SOPARIWALA EXPORTS & ORS.Plaintiffs

Through: **Mr. Pravind Anand, Ms. Jaya Negi
and Ms. Yashi Agrawal, Advocates**

versus

3G ENTERPRISES & ANR.Defendants

Through:

CORAM:

HON'BLE MR. JUSTICE AMIT BANSAL

ORDER

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16.12.2024

I.A. 48398/2024 (exemption from filing original documents)

1. Allowed, subject to plaintiffs filing typed/translated/legible/original copies of documents within four weeks.
2. The application stands disposed of.

I.A. 48397/2024 (O-XI R-1(4) of the Commercial Courts Act)

3. The present application has been filed on behalf of the plaintiffs seeking leave to file additional documents under the Commercial Courts Act, 2015.
4. The plaintiffs are permitted to file additional documents in accordance with the provisions of the Commercial Courts Act, 2015 and the Delhi High Court (Original Side) Rules, 2018.
5. Accordingly, the application is disposed of.

I.A. 48399/2024 (u/s 12A of Commercial Courts Act, 2015)

6. As the present suit contemplates urgent interim relief, in light of the



judgment of the Supreme Court in *Yamini Manohar v. T.K.D. Krithi*, 2023 SCC Online SC 1382, exemption from the requirement of pre-institution mediation is granted.

7. The application stands disposed of.

I.A. 48400/2024 (u/s 149 of the CPC)

8. Mr. Mr. Pravind Anand, counsel appearing on behalf of the plaintiffs, submits that the requisite court fees shall be paid within two weeks.

9. The statement of counsel is taken on record.

10. The application is disposed of.

I.A. 48401/2024 (seeking leave to serve the defendants with the enclosed interrogatories)

11. The present application has been preferred by the plaintiffs under Order XI Rule 2 of Code of Civil Procedure, 1908 ('CPC') read with Section 151 of the CPC seeking leave to serve the defendants with the enclosed interrogatories.

12. Issue notice.

13. Notice be issued to the defendants through all prescribed modes.

14. Reply to the application be filed within four (4) weeks.

15. Rejoinder thereto, if any, be filed within two (2) weeks thereafter

16. List before the Joint Registrar on 19th February, 2025 for completion of pleadings

CS(COMM) 1125/2024

17. Let the plaint be registered as a suit.

18. To be noted, the defendants were served in advance by the plaintiffs through E-mail dated 13th December, 2024. However, none appears on behalf of the defendant despite advance service.



19. Issue summons.

20. Summons be issued to the defendants through all modes. The summons shall state that the written statement(s) shall be filed by the defendants within thirty days from the date of the receipt of summons. Along with the written statement(s), the defendants shall also file affidavit of admission/denial of the documents of the plaintiffs, without which the written statement(s) shall not be taken on record.

21. Liberty is given to the plaintiffs to file replications, if any, within thirty days from the receipt of the written statement(s). Along with the replications filed by the plaintiffs, affidavit of admission/denial of the documents of the defendants be filed by the plaintiffs.

22. The parties shall file all original documents in support of their respective claims along with their respective pleadings. In case parties are placing reliance on a document, which is not in their power and possession, its detail and source shall be mentioned in the list of reliance, which shall also be filed with the pleadings.

23. If any of the parties wish to seek inspection of any documents, the same shall be sought and given within the timelines.

24. List before the Joint Registrar on 19th February, 2025 for completion of service and pleadings.

25. List before the Court on 27th March, 2025.

I.A. 48396/2024 (u/O-XXXIX Rule 1 & 2 of Code of Civil Procedure, 1908)

26. The present suit has been preferred by the plaintiffs seeking relief of permanent injunction restraining the defendants from infringing the trademark and copyright, passing off the goods as those of the plaintiff along



with other ancillary reliefs.

27. The plaintiff no.1 [Sopariwala Exports] is a registered partnership firm, registered in 1977, under the Indian Partnership Act, 1932 having its office in Mumbai, Maharashtra. The plaintiff no.1 forayed into the Tobacco business in the year 1927 with a small shop in Mumbai and since then, the trade mark 'AFZAL' has been used in association with plaintiff no.1's products.

28. It is averred that the plaintiff no.1, through a 'Licensed User Agreement' dated 16th August, 2010, granted a non-exclusive license to the plaintiff no.2 for use of the trade mark and label/device mark 'AFZAL', in India and for export, for a period of 10 years, with effect from 15th September, 2006. The said 'Licensed User Agreement' was further extended for an indefinite term through a 'Trademark License Agreement' dated 30th March, 2015.

29. It is averred that the plaintiff no.1 granted a non-exclusive license to the plaintiff no.3 through a 'Trademark License Agreement' dated 6th November, 2020 with effect from 1st April, 2019, for use of trade mark as well as label/device mark 'AFZAL' worldwide, including in India, for an indefinite term.

30. It is stated that the plaintiffs no. 2 and 3, formed by the partners of plaintiff no.1, are mainly engaged in export activities *vis-à-vis* tobacco products under the trade mark 'AFZAL'. It is stated that all the plaintiffs are closely connected to each other, having common directors/partners and are part of Fazlani Group, earlier known as Sopariwala Group, which is stated to be one of India's largest exporters of



tobacco and tobacco products.

31. It is averred that the plaintiffs have established and maintained their market leadership in handmade beedis, snuff tobacco, chewing tobacco, zafrani zarda, tobacco molasses, herbal beedis, herbal molasses, charcoal tablets and filter cigarettes, with brands like 'AFZAL', 'AL AFZAL', 'FAZAL'. The products of the plaintiffs are also available in various flavours and are sold across the world, including in India.

32. The plaintiffs' chewing tobacco bearing the mark 'AFZAL' is exported and sold in various countries outside India. However, the plaintiff's molasses bearing the mark 'AFZAL' is sold in the Indian market. The plaintiffs have also introduced herbal products, which are free from 'nicotine', 'tobacco', and 'tar'. The aforesaid range of products are sold by the plaintiffs under the key brand 'AFZAL'.

33. It is averred that since 1977, the plaintiff no.1 has remained committed to creating premium quality products. It is further averred that plaintiff no.1 has been recognized by the Government of India as a "STAR EXPORT HOUSE" – a status conferred on very few companies in India. The plaintiffs are also the recipients of "Certificate of Excellence" for their performance in exports in "Tobacco Products" and "Certificate of Excellence for Second best export performance in Unmanufactured Tobacco" for the past several years, not only from various Government Agencies but also from the Hon'ble President of India. Recently, the plaintiffs have also been awarded with the "Best Exporter of Tobacco Products from India".

34. It is averred that the trademark 'AFZAL' was first adopted and used in India in relation to tobacco products by plaintiff no.1 in the year 1977



and has since been continuously, extensively and openly used by the plaintiffs in India as well as across the globe. The plaintiffs have a wide portfolio of trademarks including the word and service/label mark 'AFZAL' and its formative marks (hereinafter collectively referred to as the 'AFZAL' marks). It is stated that the tobacco products under the trade mark 'AFZAL' are highly popular in various countries across several continents like Asia, the Gulf, Europe, and America, where they are widely sold by the plaintiffs.

35. It is averred that the plaintiffs' products sold under the trade mark 'AFZAL' have considerable sales volumes and a loyal customer base. The sales figures of the products being sold by the plaintiff under the trade mark AFZAL have been given in paragraph 27 of the plaint.

36. It is further averred that in addition to the long, continuous and *bona-fide* use of the mark 'AFZAL' and the concerned packaging, plaintiff no.1 enjoys statutory rights by virtue of registrations for the said 'AFZAL' marks in Class 34 in connection with its tobacco goods. Currently, the plaintiffs own over 100 registrations for 'AFZAL' and its formative marks, with some of the registrations pending adjudication. The details of the plaintiffs' valid and subsisting trademarks have been mentioned in paragraph 31 of the plaint.

37. Along with the aforementioned application, the plaintiff no.3 also has a trade mark registration for the word mark 'AFSAR' bearing Registration No. 5235813 dated 6th December, 2021 in Class 34.

38. It is averred that the colour combination, layout, get up and lettering style used on the label/device, i.e. white base, font style and mesh



rectangle enclosing an oval white background, on which the trade mark ‘AFZAL’ is written and the other elements of the label/device, constitute an ‘original artistic work’ within the meaning Section 2(c) of the Copyright Act, 1957 and have remained constant since 1977. The plaintiff no.1 is also the first owner of copyright in the said trade dress/label under Section 17 of the Copyright Act, 1957. The plaintiff no.1 has also obtained a copyright registration for the artistic work bearing Registration No. A-126620/2018 dated 28th August, 2018 in the following label:



39. It is averred that plaintiff no.1’s trade mark ‘AFZAL’ and the trade dress have come to be associated exclusively with the plaintiffs. The packaging, its layout and get-up are unique, and distinctive and qualify as original “artistic work” within the meaning of Section 2(c) of the Copyright Act, 1957.



40. It is contended that the defendants, having the same proprietor, appear to be jointly engaged in the business of manufacturing, supplying, selling and also exporting tobacco products under the impugned mark ‘AFSAR’ which is identical to the plaintiff no. 3’s registered trade mark ‘AFSAR’ and deceptively similar to the plaintiffs’ registered trade mark ‘AFZAL’.

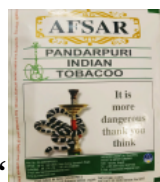
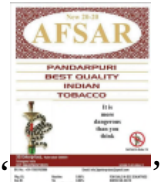
41. A comparative table showing the competing trade marks and labels are tabulated hereinbelow:

PLAINTIFF’S REGISTERED TRADE MARKS/ LABEL	DEFENDANT’S IMPUGNED TRADE MARKS/ LABEL
AFSAR	AFSAR
AFZAL	AFSAR
 AFZAL (LABEL)	



42. In October, 2024, the plaintiffs received a call from one of their clients based in Saudi Arabia informing the plaintiffs' representative that they have been approached by an entity named, 3G Enterprises, i.e. the defendant no. 1, asking them to engage in business talks pertaining to the sale of *pandarpuri* tobacco products under the brand 'AFSAR' in Middle East countries. Upon learning that defendant no.1 is manufacturing, selling, and exporting *pandarpuri* tobacco products under the impugned mark 'AFSAR', the plaintiffs through their counsels instructed a third-party private investigation agency to find more information about defendant no. 1 (3G Enterprises) and the extent of use of the impugned mark 'AFSAR' by the defendants.

43. During the investigation conducted at the behest of the plaintiffs, it was found that the defendants are advertising and promoting tobacco products including *pandarpuri* tobacco products under the impugned mark

'AFSAR' and the impugned packaging '  , / '  ' on



various social media platforms at www.facebook.com and www.x.com and on various online trade directories such as www.indiamart.com, www.tradeindia.com, www.threads.net.

44. The Counsel for the plaintiffs has shown to this Court various official Facebook and Twitter accounts of the defendants, wherein the defendants are displaying the plaintiff's *pandarpuri* tobacco products



bearing the mark 'AFZAL' along with the packaging 'AFZAL PANDARPURI BEST QUALITY INDIAN TOBACCO' and



, prominently containing the plaintiff no.3's corporate name, Sopariwala India LLP and its contact details on their social media handles.

45. It is further contended that presently it is unclear whether the defendants are using and displaying the plaintiff's 'AFZAL' *pandarpuri* tobacco products on its social media handles to draw a nexus/ association with the plaintiffs or whether the said products are counterfeit products of the plaintiffs' 'AFZAL' *pandarpuri* tobacco products.

46. It is also stated that the defendant no.1 has also filed a Trade Mark Application seeking registration of the mark 'AFSAR PANDARPURI INDIAN TOBACCO' bearing Application No. 6224711 in Class 34 on



‘proposed to be used’ basis wherein ‘AFSAR’ appears as dominant and essential feature of the mark.

47. It is submitted that the Trade Mark Application of defendant no. 1 seeking registration of the mark ‘AFSAR PANDARPURI INDIAN TOBACCO’ was objected to by the Trade Mark Registry *vide* Examination Report dated 19th December, 2023 wherein the plaintiff no. 3’s Trade Mark Registration for the mark ‘AFSAR’ bearing Registration No. 5235813 was cited as a conflicting mark.

48. The plaintiffs upon conducting an online search on the official website of the Trade Marks Registry found that defendant no.1 has not filed any reply to the said Examination Report. It is further submitted that since the statutory period of one month as prescribed by the Trade Marks Act, 1999 to file a reply has already lapsed, defendant no.1’s Trade Mark Application seeking registration for the mark ‘AFSAR PANDARPURI INDIAN TOBACCO’ bearing Application No. 6224711 is deemed to be ‘abandoned’.

49. Due to the aforementioned acts of the defendants, the plaintiffs were constrained to file the present suit to restrain the defendants from infringing the plaintiffs’ registered trademarks and copyrights, and also from passing off their products as those of the plaintiffs.

50. I have heard counsel for the plaintiff.

51. Based on averments made in the plaint, the plaintiffs have established their proprietary rights over the marks ‘AFZAL’ and ‘AFSAR’ and its formative marks.

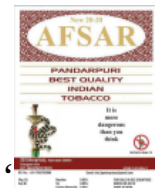
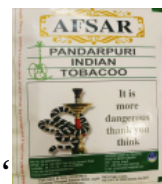
52. Clearly, an attempt has been made by the defendants to create an impression that the products being sold by the defendants are connected to



the plaintiff. The marks/label used by the defendants as well as its packaging, on a *prima facie* view, appears to be a slavish imitation of the plaintiff's marks and packaging.

53. Balance of convenience is in favour of the plaintiff and against the defendants. Irreparable injury would be caused to the plaintiff if the defendants continue to use the impugned marks/labels. Prejudice would also be caused to the public as the marks/labels of the defendants are deceptively similar to that of the plaintiff and likely to cause confusion in the market.

54. Consequently, till the next date of hearing, defendants, its partners, directors, proprietors, subsidiaries, affiliates, franchisees, officers, servants, agents distributors, stockists, representatives, licensees and anyone acting for or on its behalf directly or indirectly, as the case may be, are restrained from selling, offering for sale, advertising, manufacturing, exporting, directly or indirectly mentioning on their websites or any third party website or their social media platforms, dealing in any manner whatsoever including as a part of its trade name and also as part of its domain name/website <afsarchewingtobacco.com> or otherwise using,



the marks 'AFSAR', and packaging/ labels '  ' and '  ', or any other mark identical or deceptively similar to the plaintiffs' registered trade marks 'AFZAR' or 'AFZAL', 'AFZAL (LABEL) Device Mark i.e



, 'AFZAL DE OF HUKKA (LABEL) Device Mark i.e



, 'AFZAL (LABEL) Device Mark i.e



, and 'AFZAL (Device Mark) i.e



, or any

permutations combinations thereof.

55. To be noted, that the defendants were served in advance by the plaintiffs through E-mail dated 13th December, 2024. However, none appears on behalf of the defendant despite advance service.

56. Issue Notice.

57. Notice be issued to the defendants *via* all permissible modes, including e-mail.

58. Reply(ies) be filed within four (4) weeks.

59. Rejoinder(s) thereto, if any, be filed within two (2) weeks thereafter.

60. Compliance of Order XXXIX Rule 3 of CPC shall be filed within three days from today,

61. List before the Joint Registrar on 19th February, 2025 for completion of service and pleadings.

62. List before the Court on 27th March, 2025.

AMIT BANSAL, J

DECEMBER 16, 2024/ds