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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(COMM) 1256/2025**
MR KARAN AGRAWAL PROPRIETOR, OM SHIVA PRODUCTS
INCPlaintiff

Through: Mr. Ankur Sangal & Mr. Shashwat
Rakshit, Advocates.

Versus

ANIL HERBALS AND FOODS PRIVATE LIMITED
& ORS.Defendants

Through: Mr. Junaid Alam, Mr. Nishant Mahtta
& Mr. S. Nithin, Advocates for D-
1&4.

CORAM:

HON'BLE MR. JUSTICE TEJAS KARIA

ORDER

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27.11.2025

I.A. No.29347/2025(Exemption)

1. Exemption is allowed, subject to all just exceptions.
2. The Application stands disposed of.

I.A. No.29342/2025 (Exemption from pre-institution Mediation)

3. This is an Application filed by the Plaintiff seeking exemption from instituting pre-litigation Mediation under Section 12A of the Commercial Courts Act, 2015 (“CC Act”).
4. As the present matter 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.
5. The Application stands disposed of.

I.A. No.29345/2025 (Exemption from advance service to the Defendants)

6. This is an Application filed by the Plaintiff under Section 151 of the



Code of Civil Procedure, 1908 (“CPC”), seeking exemption from advance service to the Defendants.

7. Mr. Ankur Sangal, the learned Counsel for the Plaintiff, submitted that there is a real and imminent likelihood that the Defendants may take immediate steps to dispose of, conceal or suppress its infringing business operations and digital footprints bearing the deceptively similar Trade Mark.

8. In view of the fact that the Plaintiff has sought an urgent *ex-parte ad-interim* injunction along with the appointment of the Local Commissioners, the exemption from advance service to the Defendants is granted.

9. The Application is disposed of.

I.A. No.29346/2025 (Extension of time to file Court Fees)

10. The present Application has been filed by the Plaintiff under Section 149 read with Section 151 of the CPC, seeking exemption from payment of Court Fees at the time of the filing of the Suit.

11. Considering the submissions made in the present Application, time of two weeks is granted to deposit the Court Fees.

12. The Application stands disposed of.

CS(COMM) 1256/2025

13. Let the Plaint be registered as a Suit.

14. Issue Summons. The learned Counsel Defendant Nos. 1 and 4 accepts Summons.

15. Let the Summons be served to Defendant Nos. 2 and 3 through all permissible modes upon filing of the Process Fee.

16. The Summons shall state that the Written Statement(s) shall be filed by the Defendants within 30 days from the date of the receipt of Summons. Along with the Written Statement(s), the Defendants shall also file an



Affidavit of Admission / Denial of the documents of the Plaintiff, without which the Written Statement(s) shall not be taken on record.

17. Liberty is granted to the Plaintiff to file Replication(s), if any, within 30 days from the receipt of the Written Statement(s). Along with the Replication(s) filed by the Plaintiff, an Affidavit of Admission / Denial of the documents of Defendants be filed by the Plaintiff, without which the Replication(s) shall not be taken on record.

18. In case any Party is placing reliance on a document, which is not in their power and possession, its details and source shall be mentioned in the list of reliance, which shall also be filed with the pleadings.

19. If any of the Parties wish to seek inspection of any documents, the same shall be sought and given within the prescribed timelines.

20. List before the learned Joint Registrar on 21.01.2026 for completion of service and pleadings.

I.A. No.29344/2025 (O-XI R-1(4) of the Code of Civil Procedure, 1908)

21. The present Application has been filed on behalf of the Plaintiff under Order XI Rule 1(4) of the CPC as applicable to Commercial Suits under the CC Act seeking leave to place on record additional documents.

22. The Plaintiff is permitted to file additional documents in accordance with the provisions of the CC Act and the Delhi High Court (Original Side) Rules, 2018.

23. Accordingly, the Application stands disposed of.

I.A. No.29341/2025 (U/O XXXIX Rule 1 & 2 of CPC)

24. Issue Notice. The learned Counsel Defendant Nos. 1 and 4 accepts Notice.

25. Notice be served to Defendant Nos. 2 and 3 through all permissible



modes upon filing of the Process Fees.

26. The present suit has been filed for permanent injunction restraining infringement of copyright, passing off, unfair trade practice, delivery up, damages, etc.

27. The learned Counsel for the Plaintiff made the following submissions:

27.1. The Plaintiff is, *inter alia*, engaged in the business of manufacturing, processing, exporting, trading, packaging, supplying, marketing and distribution of range of readymade tobacco including tobacco products (“**Plaintiff’s Products**”) under the Mark ‘PAN MS’ (“**Subject Mark**”) bearing the Label / Artistic



Work / Trade Dress ‘ , /



‘ (“**Subject Trade Dress**”).

The Plaintiff adopted the Subject Trade Dress for the Plaintiff’s Products in the year 2015 and has been extensively and continuously using the Subject Trade Dress since its adoption.



- 27.2. The Plaintiff also adopted the Subject Mark for the Plaintiff's Product *Gutkha* in the year 2015 and has been using the Subject Mark continuously and extensively since its adoption. Thereafter, in the year 2018, the Plaintiff also introduced another product, namely Betelnuts under the Subject Mark.
- 27.3. The Plaintiff's Products have a customer base that transcends geographical boundaries and are exported to countries across the world namely Afghanistan, Malaysia, Kenya, USA and many countries in Europe. The Plaintiff also operates a website, <http://www.ospindia.net/> which provides information regarding the Plaintiff's business.
- 27.4. Under the provisions of the Copyright Act, 1957, the Plaintiff is the owner of the copyright of the original artistic work in the Subject Trade Dress which was conceived, designed and created as per the directions of the Plaintiff, for and on behalf of the Plaintiff, by one of the Plaintiff's employees during its employment with the Plaintiff, after having received valuable consideration. Ever since the creation of the Subject Trade Dress, the Plaintiff has been continuously and commercially reproducing the Subject Trade Dress and as per the provisions of the Copyright Act, 1957, the Plaintiff has the exclusive right to, *inter alia*, reproduce the Subject Trade Dress in any material form, to communicate the original artistic work therein to the public and to issue copies of the same to the public in terms of Section 14 of the Copyright Act, 1957.
- 27.5. The Plaintiff has invested a lot of time, effort and money in promoting the Plaintiff's Products under the Subject Trade Dress.



Through the long, continuous and extensive usage, the Subject Trade Dress is associated solely and exclusively with the Plaintiff. Owing to the Plaintiff's continuous and extensive use, the members of the general public and trade see the Subject Trade Dress as a source identifier of the Plaintiff and no one else, especially for the tobacco products under Class 34.

- 27.6. The sale and exports under the Subject Trade Dress on a large scale over the years has generated substantial revenues for the Plaintiff. The success, reputation, popularity and goodwill attributed to the Subject Trade Dress can be gauged from the substantial sales of the Plaintiff's Products under the Subject Trade Dress.
- 27.7. As per the information available with the Plaintiff, Defendant No. 1 is engaged in the business of supplying, exporting and trading in tobacco and related products and is involved in the manufacture, sale and export of the products bearing Artistic Works / Trade Dress



‘ / ‘ Outer Packaging



/ ‘ , / ‘ , Inner Pouches (“**Impugned Trade Dress**”) through the rest of the Defendants.

27.8. Defendant No. 2 is engaged in the business of manufacturing and packaging of various types of products. Defendant No. 3 is the manufacturer of the products of the Defendants bearing the Impugned Trade Dress (“**Impugned Products**”). Defendant No. 4 is an entity carrying the business of supplying / exporting goods to Malaysia, Singapore etc. and is exporting the Impugned Products on the behest of the Defendants. All the Defendants accordingly, form part of the nexus which are manufacturing, supplying trading and exporting the Impugned Products.

27.9. In the second week of November 2025, the Plaintiff came to know through market sources that Defendant No. 1 is manufacturing and supplying the Impugned Products within various markets across India including in Delhi and exporting the Impugned Products to Malaysia, that Defendant No. 2 is printing the Impugned Trade Dress of the Impugned Products, that Defendant No. 3 is manufacturing the Impugned Products as per the details provided on the Impugned Trade Dress, and that the Impugned Products are



being exported by Defendant No. 4. Therefore, all the Defendants are related parties and are furthering the cause of infringement. A table comparing the Subject Trade Dress and the Impugned Trade Dress is reproduced below:

Plaintiff's Trade Dress / Artistic Works	Defendant's Impugned Trade Dress / Artistic Work



PACKAGING OF INNER POUCHES



A perusal of the Impugned Products reveals that the Impugned Products are being manufactured by Defendant No. 3 and Defendant No. 1 is having the Impugned Products exported through Defendant No. 4. The screenshot evidencing the same is reproduced below:



- 27.10. The Plaintiff is the original owner of the Subject Trade Dress. The Defendants are not the proprietors or the licensee of the Subject Trade Dress and have no right to use / reproduce any identical / deceptively similar trade dress / artistic works in any manner for any other specification of products and business whatsoever. As the Defendants are illegally using the Impugned Trade Dress which is almost identical / highly similar to the Subject Trade Dress for identical products, i.e., *Gutkha* and tobacco products, the alleged acts of the Defendants amount to infringement of copyright, passing off and unfair trade practice.
- 27.11. The Defendants have dishonestly and *mala fide*ly affixed the Impugned Trade Dress which is almost identical / deceptively similar to the Subject Trade Dress. The Defendants are deliberately trying to mislead the consumers into buying the sub-standard Impugned Products and trying to deceive the consumers by adopting the Impugned Trade Dress.
- 27.12. The Defendants have adopted the Impugned Trade Dress with the *mala fide* intention to mislead the industry, trade and general public into the belief that the Impugned Products are originating / emanating from the Plaintiff and its business partners. There is no



other reason whatsoever for the Defendants' adoption and use of the Impugned Trade Dress, except to intentionally and illegally benefit from the goodwill and reputation of the Plaintiff which has been built and acquired by the Plaintiff for the Plaintiff's Products under the Subject Trade Dress. Therefore, all the three intrinsic requirements of passing off viz goodwill / reputation, deception / misrepresentation, and damage to goodwill have been met to constitute the act of passing off the Impugned Products as those of the Plaintiff.

- 27.13. The Defendants by simply copying the Subject Trade Dress are taking unfair advantage of all financial and human resources invested by the Plaintiff without incurring any cost by themselves and riding on the coattail of the Plaintiff. Therefore, the act of the Defendants of selling the Impugned Products clandestinely by taking advantage of brand equity and goodwill built by the Plaintiff, constitute unfair trade practices.
- 27.14. The Plaintiff has no control, access or supervision over the mode of manufacture, technical expertise, plant and machinery and the raw material used by the Defendants for the manufacturing and selling of the Impugned Products. Any deficiency in the quality of the Impugned Products will directly and adversely affect and cause irreparable prejudice, damage and injury to the goodwill and reputation that exists in the Plaintiff's Products being sold under the Subject Trade Dress. Such damage to the goodwill and reputation of the Plaintiff's Products under the Subject Trade Dress unless injuncted immediately, will be irreparable and beyond any monetary



compensation.

27.15. Thus, the Plaintiff has a *prima facie* case, and balance of convenience is in the favour of the Plaintiff. Irreparable loss would be caused to the Plaintiff if the Defendants are permitted to continue using the Impugned Trade Dress.

28. The learned Counsel for Defendant Nos. 1 and 4 submitted that Defendant Nos. 1 and 4 have no connection with Defendant Nos. 2 and 3 and, on instructions, further submitted, that Defendant Nos. 1 and 4 have never manufactured / sold any kind of *Gutkha* or tobacco products and are only engaged in the business of mouth freshener, sweet *supari* and *katha*. The learned Counsel for Defendant Nos. 1 and 4 submitted that Defendant Nos. 1 and 4 cannot be made Parties to the present proceedings as Defendant Nos. 1 and 4 have never used the Impugned Trade Dress and do not know how the names of Defendant Nos. 1 and 4 are appearing on the Impugned Trade Dress. The only basis on which the Plaintiff has impleaded Defendant Nos. 1 and 4 is that the names of Defendant Nos. 1 and 4 are mentioned on the Impugned Trade Dress.

29. The learned Counsel for Defendant Nos. 1 and 4 submitted that Defendant Nos. 1 and 4 are willing to file an Affidavit to the effect that Defendant Nos. 1 and 4 have never used the Impugned Trade Dress and have not undertaken any transaction with Defendant Nos. 2 and 3.

30. The learned Counsel for the Plaintiff submits that in view of the statement made on behalf of Defendant Nos. 1 and 4 that Defendant Nos. 1 and 4 have never used the Impugned Trade Dress and have not undertaken any transaction with Defendant Nos. 2 and 3, an *ex-parte ad-interim* injunction be passed against Defendant Nos. 2 and 3 only.



31. The material placed on record indicates that the Plaintiff is the prior adopter and continuous user of the Subject Mark along with the Subject Trade Dress. The Plaintiff adopted the Subject Trade Dress in 2015 and has since used it extensively for the Plaintiff's Products, resulting in the Subject Trade Dress being exclusively associated with the Plaintiff. The material placed on record further shows that the Plaintiff has invested considerable time, effort and resources in promoting the Plaintiff's Products, thereby acquiring goodwill and reputation in the relevant trade.

32. The material placed on record further shows that the Impugned Trade Dress contains the replication of essential and distinctive elements of the Subject Trade Dress. Therefore, the use of the Impugned Trade Dress for identical products is likely to cause confusion and mislead consumers into believing that the Impugned Products originate from the Plaintiff.

33. Having considered the material placed on record and the submissions made by the learned Counsel for the Plaintiff, a *prima facie* case is made out in favour of the Plaintiff. The use of the Impugned Trade Dress for identical products is likely to cause confusion, deception and dilution of the goodwill vested in the Subject Trade Dress. The balance of convenience lies with the Plaintiff, and the continued circulation of the Impugned Products bearing the Impugned Trade Dress would cause irreparable injury to the Plaintiff's reputation and goodwill.

34. Accordingly, till the next date of hearing, Defendant Nos. 2 and 3, their proprietors, partners or directors, their principal officers, servants, distributors, licensees, dealers and agents, and all others acting for and on behalf Defendant Nos. 2 and 3 are restrained from manufacturing, selling, offering for sale, advertising, directly or indirectly dealing in the Impugned



Trade Dress ‘ / ‘



‘ / ‘ or any other Trade Dress identical / deceptively similar to the Subject Trade Dress



‘ / ‘

35. Let the Reply to the present Application be filed on behalf of Defendant Nos. 2 and 3 within four weeks after service of Notice. Rejoinder thereto, if



any, be filed before the next date of hearing.

36. Defendant Nos. 1 and 4 shall also file an Affidavit to the effect that Defendant Nos. 1 and 4 have never used the Impugned Trade Dress and have not undertaken any transaction with Defendant Nos. 2 and 3 within two weeks.

37. List before this Court on 18.03.2026.

I.A. No.29343/2025 (for Appointment of Local Commissioner)

38. The present Application has been filed by the Plaintiff under Order XXVI Rule 9 read with Order XXXIX Rule 7 of the CPC, seeking appointment of Local Commissioners. The Court has considered the merits of the Plaintiff's case and has granted an *ex-parte ad-interim* injunction as recorded above in I.A. No.29341/2025 under Order XXXIX Rule 1 and 2 of the CPC.

39. Accordingly, in order to ensure that the injunction is fully complied with, it is deemed appropriate to appoint Local Commissioners to visit the Defendant Nos. 2 and 3 premises at the following address:

Sr. No.	Particulars	Name of Local Commissioner
1.	Defendant No. 2 Apple Printpack Private Limited Plot No. 102-103, HSIIDC Industrial Area, Phase V, Sector 53, Kundli Sonipat, Haryana, 131028.	Mr. Upendra Pratap Singh [Mobile No. 8744922595]



2.	Defendant No. 3 Munis TMC Shed No. 283, Kasez Road, Sector-111, Gandhidham, Kandla, Gujarat, 370230.	Mr. Shivang Bansal [Mobile No. 7838984630]
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40. The mandate of the learned Local Commissioners is as under:

- i) The learned Local Commissioners shall visit the premises of the Defendant Nos. 2 and 3 as per the above table, to inspect and seize any Impugned Products, fully or semi-manufactured Impugned Products bearing the Impugned Trade dress.
- ii) If knowledge is acquired of any other premises than the aforesaid premises, where the Impugned Products could be stored or services can be provided from, the learned Local Commissioners are free to record the same and then visit the other premises and conduct a seizure there as well;
- iii) The learned Local Commissioners shall also inspect and seize any product materials including pamphlets, brochures, stickers, packaging materials, dyes or blocks used for preparing the manufacturing materials, display boards, sign boards, advertising material, dies or blocks, unfinished, packed, unpacked Impugned Products or any other documents, wrapper etc. so that it can be ensured that no fresh manufacturing of the Impugned Products can take place;
- iv) The learned Local Commissioners shall also obtain the details as to since when Impugned Products are being dealt with by Defendant



Nos. 2 and 3 and obtain copies of the accounts if the same is found to be sold in market;

v) The learned Local Commissioners shall obtain accounts including ledgers, stock registers, invoice books, receipt books, cash books, purchase and sale records and any other books of record or commercial transactions kept at the premises of Defendant Nos. 2 and 3, and take photocopy and / or record of all such transactions that pertain to Impugned Products, if any. Defendant Nos. 2 and 3 shall cooperate and give passwords to the computers and the files containing the accounts, if the same is stored on the computer or a specific software;

vi) After preparation of the inventory, the Impugned Products including packaging materials, advertising, promotional materials, pamphlets, brochures, boxes, videos, hoardings, banners, signage, cartons and other material bearing the Impugned Trade Dress and Trade Dress which is similar to the Subject Trade Dress shall be released to Defendant Nos. 2 and 3 on *superdari*. The monetary value of the stock shall also be ascertained;

vii) The learned Local Commissioners are also permitted to break open the locks, with police help, if access to the premises where the Impugned Products have been stocked / manufactured, is denied to the Commissioner;

viii) Upon being requested, the concerned Station House Officer (SHO) shall render necessary cooperation for execution of the Commission, as per this order;



ix) The learned Local Commissioners are permitted to take photographs and record videos of the proceedings of the Commission, if it is deemed appropriate. Two representatives of the Plaintiff, which would include a lawyer, are permitted to accompany the learned Local Commissioners;

x) The learned Local Commissioners, while executing the Commissions, shall ensure that there is no disruption to the business of Defendant Nos. 2 and 3, except for the purposes of the execution of the Commissions. The Commissions shall be executed in a peaceful manner.

41. Either the learned Counsel for the Plaintiff or the learned Local Commissioners are directed to collect the certified copy of this Order from the Registry (Dispatch Branch) before the execution of the Commissions.

42. The learned Local Commissioners shall carry the certified copy of this Order for execution of the Commissions and a copy of the same shall be served upon Defendant Nos. 2 and 3 by the learned Local Commissioners at the time of the execution of the Commissions.

43. The fees of the learned Local Commissioners is fixed at ₹ 2,00,000/- (Rupees Two Lakh only) each excluding out of pocket expenses, travel, lodging etc. All the aforesaid expenses shall be borne by the Plaintiff and paid in advance to the learned Local Commissioners named hereinabove.

44. The Commissions shall be executed within two weeks, and the report of the learned Local Commissioners shall be filed within a period of two weeks thereafter.

45. Compliance of Order XXXIX Rule 3 of CPC shall be done within two



weeks after the execution of the Commission.

46. It is directed that this Order shall be uploaded on the Court's website after the execution of the Commissions is completed, to enable effective execution thereof.

47. The Application stands disposed of.

48. Order *dasti* under the signature of the Court Master.

TEJAS KARIA, J

NOVEMBER 27, 2025/‘gsr’