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

+ **CS(COMM) 76/2024**

AJANTA PHARMA LTD

..... Plaintiff

Through: Mr. Sachin Gupta, Ms. Prashansa
Singh, Mr. Manan Mondal & Mr.
Rohit Pradhan, Advs.

versus

M/S R.R. ENTERPRISES & ORS.

..... Defendants

Through: Mr. Siddharth Chopra, Mr. Nitin
Sharma, Ms. Shilpa Gupta,
Ms. Surbhi Pande, Ms. Arishi Mann,
Ms. Naman Tando & Mr. Kuber
Mahajan, Advs. for D-5 & 6
Mr. Vivek Ayyargari, Ms. R Ramya
& Mr. S, Maheshwari, Advs. for D-7

CORAM:

HON'BLE MR. JUSTICE ANISH DAYAL

ORDER

25.01.2024

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I.A. No.1922/2024 (*exemption from filing certified, typed copies of dim annexures etc.*)

1. Exemption is granted, subject to all just exceptions.
2. Applicant shall file legible, clear, and original copies of the documents on which the applicant may seek to place reliance within four weeks from today or before the next date of hearing, whichever is earlier.
3. Accordingly, the present application is disposed of.

I.A. 1921/2024 (*exemption from instituting pre-litigation mediation*)

1. Having regard to the facts of the present case and in light of the judgement of Division Bench of this Court in ***Chandra Kishore Chaurasia***



v. R.A. Perfumery Works Private Ltd., FAO (COMM) 128/2021, exemption from attempting pre-institution mediation is allowed.

2. Accordingly, the application stands disposed of.

CS (COMM) 76/2024

1. Let the plaint be registered as a suit.

2. Upon filing of process fee, issue summons to the defendants by all permissible modes. Summons shall state that the written statements be filed by the defendants within 30 days from the date of receipt of summons. Along with the written statements, the defendants shall also file affidavit of admission/denial of the documents of the plaintiff, without which the written statements shall not be taken on record.

3. Liberty is given to the plaintiff to file replications within 30 days of the receipt of the written statements. Along with the replications, if any, filed by the plaintiff, affidavit of admission/denial of documents filed by the defendants, be filed by the plaintiff, without which the replications shall not be taken on record.

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

5. List before the Joint Registrar for marking of exhibits on 1st April, 2024.

6. It is made clear that any party unjustifiably denying documents would be liable to be burdened with costs.

I.A. 1923/2024 (under Order XXXIX Rules 1 & 2 CPC).

1. This application has been filed as part of the present suit which seeks permanent injunction restraining the counterfeiting, infringement of



trademark, passing off and other attendant reliefs against the defendants. It is the plaintiff's case that they are the registered proprietor of trademark AQUASOFT having nos.1370430 dated 12th July, 2005 in Class 5 and 1507320 dated 24th November, 2006 in Class 3, both on proposed to be used basis. Plaintiff has been selling the product bearing trademark AQUASOFT since 2013 and has achieved an annual sale of Rs. 25.2 crores in the fiscal year 2022-23.

2. It is claimed that in the third week of March, 2023 plaintiff came across listings on e-commerce websites selling counterfeit AQUASOFT products. A pictorial view of the original product AQUASOFT FC and the counterfeit has been placed on record by the plaintiff which is reproduced hereinbelow:

	Original AQUASOFT FC Cream	Counterfeit AQUASOFT FC Cream
<u>Front View</u>		
<u>Back View</u>		

3. Plaintiff also received an e-mail from a customer, complaining that



they have received sub-standard quality cream from the online platform of defendant no.5. Pursuant to an investigation for listings of such counterfeit products, it was found that counterfeit AQUASOFT FC creams were being sold on various online platforms *inter alia* Shopsy, Flipkart, and Meesho (defendant nos. 5-7 herein).

4. In order to investigate further, purchase orders were placed by the plaintiff, products were received which were clearly counterfeit. In order to identify the source of these counterfeit products, which were listed under the name of M/s R. R. Enterprises (defendant no.1 herein), the plaintiff's investigator visited the premises on the address of the same; however, all addresses listed on the internet did not lead to defendant no.1. In fact, whatever addresses were retrieved, which were available with defendant nos. 5 to 7, through GST numbers which had been given by defendant no.1, happened to be incorrect. Also, address of defendant no.2. retrieved through GST number, was visited by the plaintiff's representative. However, on visiting the residents of the said address, it was discovered that their daughter-in-law "Kanika Kapoor" who also resides at the address, is a Chartered Accountant and is not involved in or aware of any business of AQUASOFT products. Accordingly, it is the plaintiff's allegation that these are cases of identity theft, wherein the counterfeiters are conducting business under a stolen identity.

5. Pursuant to laboratory testing of the counterfeit product, it was found that the same was of highly inferior quality posing significant health risks to the consumers. It is notably pointed out that plaintiff's product is a cosmetic product to be applied on face, neck, and hands for skin care and thus, sub-standard quality of the same can have serious ramifications on the health of the consumers.



6. Defendant no.8 has been impleaded as ‘John Doe’ to represent any and all sellers of counterfeit products.

7. Details of the plaintiff’s reputation (awards and accolades) in the industry, are listed in para 8 of the plaint; annual sales of the product are as under:

Year	Annual Sales Value (Rupees in Lakhs)
2013-14	646.70
2014-15	1,069.38
2015-16	1,184.29
2016-17	1,255.30
2017-18	1,166.01
2018-19	1,299.44
2019-20	1,354.67
2020-21	1,345.88
2021-22	1,841.46
2022-23	2,528.71

8. Further, the plaintiff has international registrations for the mark AQUASOFT which are tabulated as under:

FOREIGN TRADE MARK REGISTRATIONS

Trade Mark	Application No. & Date	Status	Country
AQUASOFT	23835 dt. 24/02/2022	Registered	Madagascar
AQUASOFT	86266 dt. 24.01.2023	Registered	Kazakhstan
AQUASOFT	4-2006-03084 dt. 06.03.2006	Registered	Vietnam

9. In view of the circumstances noted above, this Court is satisfied that the plaintiff has made out a *prima facie* case for grant of an *ex-parte ad*



interim injunction till the next date of hearing. Balance of convenience lies in favour of the plaintiff, and the plaintiff is likely to suffer irreparable harm in case the *ad interim* relief sought is not granted.

10. Defendant nos. 5 to 7, i.e., Shopsy, Flipkart, and Meesho respectively are represented through counsel who have stated that these online platforms are also keen on avoiding such incidents of counterfeit products being listed on their sites. They further undertake to place on record the process followed by them prior to listing any seller on their platforms, in order that a possibly improved system can be evolved to filter out cases of identity theft as well, as seems to be evident in the plaintiff's case.

11. Accordingly, till the next date of hearing, *ex-parte ad interim* injunction is granted to the plaintiff and against the defendants with the following directions:

- i. Defendant nos. 1 to 4, and their directors, proprietors, partners, distributors, dealers, officers or agents are restrained from manufacturing, selling, offering for sale, advertising, directly or indirectly, in any manner, on any platform, products under the plaintiff's mark and trade dress AQUASOFT or any other trademark and trade dress as may be identical or deceptively similar to the plaintiff's trademark and trade dress.
- ii. Defendant nos. 5 to 7 shall place on record all the information, including all data including financial and banking details, that they possess in respect of the sellers, whose listings are available on the following sites (as provided by the plaintiff),:

Defendant no.5:

<https://www.shopsy.in/aquasoft-fc->



[facecream/p/itm8ed5442671e8e?pid=MSCFYC56ZK5QY62X&cmpid=product.share.pp&_refId=PP.19975653-eldl-435ba5d2de9j99d6c24c.MSCFYC56ZK5QY62X&_apld=WA](https://www.flipkart.com/aquasoft-aqu-fc-100gm-cream/p/itm8ed5442671e8e?pid=MSCFYC56ZK5QY62X&cmpid=product.share.pp&_refId=PP.19975653-eldl-435ba5d2de9j99d6c24c.MSCFYC56ZK5QY62X&_apld=WA)

Defendant no.6:

[https://www.flipkart.com/aquasoft-aqu-fc-100gm-cream/p/itm090679fa5920f?pid=MSCFJ8GNRUM7KTME&lid=LSTMSCFJ8GNRUM7KTMEYCF6PG&marketplace=FLIPKART&q=aquasoft%20fc%20moisturizer&sattr\[\]=quantity&st=quantity&otracker=AS_QueryStore_OrganicAutoSuggest_1_11_na_na_na](https://www.flipkart.com/aquasoft-aqu-fc-100gm-cream/p/itm090679fa5920f?pid=MSCFJ8GNRUM7KTME&lid=LSTMSCFJ8GNRUM7KTMEYCF6PG&marketplace=FLIPKART&q=aquasoft%20fc%20moisturizer&sattr[]=quantity&st=quantity&otracker=AS_QueryStore_OrganicAutoSuggest_1_11_na_na_na)

Defendant no.7:https://www.meesho.com/s/p/5kmvsx?utm_source=s_w

- iii. Defendant nos. 5 to 7 shall ensure that all listings noted above (as applicable to them), are taken down (if not already done so) within 36 hours of receipt of this order and note of compliance be mentioned in the affidavit to be filed by them.
- iv. Defendant nos. 5 to 7 are further directed to place on record the policy/process which they adopt for listing any seller of products on their platforms. The same may also be placed as part of the affidavit to be filed by defendant nos. 5 to 7.
- v. Plaintiff is at liberty to communicate any listings, which it may come across in future, which is selling its counterfeit products, to defendant nos. 5 to 7 (copy to the counsel representing these defendants), who shall duly take them down within 36 hours of receiving such request. If defendant nos. 5 to 7 have any reservation with regard to a particular listing, they shall revert back to the plaintiff who shall be at liberty to



approach this Court for appropriate relief. These future listings will also be placed on record by way of an affidavit by the plaintiff within 3 days of sending communication to the defendant nos. 5 to 7.

vi. The affidavits shall be filed by defendant nos. 5 to 7 within a period of 4 weeks with copy to the counsel for the plaintiff.

12. It is noted that compliance with Order XXXIX Rule 3, CPC may not be possible and necessary at this stage considering that addresses of defendant nos. 1 to 4 are not yet known and there is no possible way of issuing any notices to them or serving them. It may be done within one week of obtaining any information from the Defendant no. 5-7.

I.A. 1924/2024 (under Order XI Rule 2 & 5 CPC).

1. This application has been filed by the plaintiff seeking discovery of information from defendant nos. 5 to 7.
2. In view of the directions passed hereinabove in I.A. No.1923/2024, this application is not being pressed at this stage by the counsel for the plaintiff.
3. List this application along with I.A. No.1923/2024 on 15th March, 2024.
4. Order be uploaded on the website of this Court.

ANISH DAYAL, J

JANUARY 25, 2024/sm/sc