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

+ CS(COMM) 983/2024 & I.A. Nos. 44302/2024, 44303/2024,
44304/2024 & 44305/2024

BRITANNIA INDUSTRIES LTDPlaintiff

Through: Mr. Sachin Gupta with Mr. Rohit Pradhan, Mr. Ajay Kumar, Mr. Prashansa Singh, Mr. Adarsh Aggarwal. Ms. Archana and Mr. Tanmay Sharma, Advocates.
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versus

DESI BITES SNACKS P LTD & ORS.Defendants

Through: None.

CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA

ORDER

% **07.11.2024**

I.A. 44304/2024 (Exemption from filing certified and clear copies of documents)

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 certified clearer/typed or translated copies of documents.
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. 44303/2024 (Exemption from instituting Pre-Institution Mediation)

5. 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.

6. 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.

7. Accordingly, the application stands disposed of.

I.A. 44305/2024 (Exemption from advance service to the defendants)

8. The present is an application under Section 151 CPC, seeking exemption from advance service to the defendants.

9. The plaintiff seeks urgent interim relief. Therefore, in the peculiar facts and circumstances of this case, exemption from effecting advance service upon the defendants, is granted.

10. For the reasons stated in the application, the same is allowed and disposed of.

CS(COMM) 983/2024

11. Let the plaint be registered as suit.

12. 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.

13. 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.

14. List before the Joint Registrar (Judicial) for marking of exhibits, on 10th January, 2025.

15. List before the Court on 10th March, 2025.


I.A. 44302/2024 (Application under Order XXXIX Rules 1 and 2 CPC)

16. The present suit has been filed for permanent injunction restraining infringement of registered trade mark, passing off, unfair competition, delivery up, damages/rendition of accounts of profits etc.




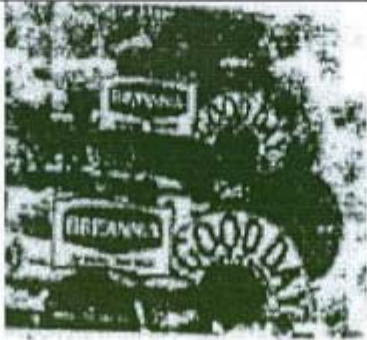
17. Learned counsel appearing for the plaintiff submits that by way of the present suit, the plaintiff complains against the defendants for selling confectionery/sweetmeats, namely, "Soan Papdi" and food products, namely 'Papad' under the impugned mark GOOD DAY, which is identical to the plaintiff's well-known and registered trade mark GOOD DAY. The pictures of the competing products, as given in the plaint, are reproduced as under:-





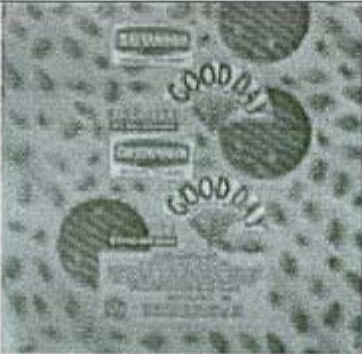
18. It is submitted that the plaintiff holds several trade mark registrations for the mark GOOD DAY in Class 30, with the oldest registration dating back to 03rd April, 1986, under registration no. 452003 for biscuits, bread and non-medicated confectionery. Some of the trade mark registrations of the plaintiff, as given in the plaint, are reproduced as under:-

| S.N | Reg. No. / dated | Mark | Class / Goods |
|-----|----------------------|---|--|
| 1. | 452003 dt. 3.4.1986 | GOOD DAY | <i>Biscuits, bread and non-medicated confectionery in class 30</i> |
| 4. | 474949 dt. 10.7.1987 | BRITANNIA GOOD DAY | <i>Biscuits (not for animals) in class 30</i> |
| 5. | 488808 dt. 7.4.1988 |  'GOOD DAY CHOCOLATE' | |





| | | | |
|----|------------------------|---|---|
| 6. | 752299 dt. 7.1.1997 |  'BRITANNIA GOOD DAY' | |
| 7. | 752300 dt. 7.1.1997 |  'BRITANNIA GOOD DAY' | |
| 8. | 768700 dt. 8.9.1997 |  BRITANNIAS GOOD DAY | <i>Coffee, tea, cocoa, sugar, rice, tapioca, sago, artificial coffee, flour, and preparations made from cereals, bread, cakes, biscuits, pastry and confecitonery, ices, honey, treacle, yeast, baking poweder, salt, mustard, vinegar, sauces (except salad dressings), spices, ice in Class 30.</i> |
| 9. | 768701 dt. 8.9.1997 |  | |



| | | | |
|----|------------------------|---|--|
| | | BRITANNIAS GOOD DAY | |
| 5. | 768702 dt. 8.9.1997 |  BRITANNIA GOOD DAY | |
| 6. | 768703 dt. 8.9.1997 |  BRITANNIAS GOOD DAY | |
| 7. | 768704 dt. 8.9.1997 |  BRITANNIA'S GOOD DAY | |



| | | | |
|----|------------------------|--|--|
| 8. | 768705 dt. 8.9.1997 |  BRITANNIAS GOOD DAY | |
| 9. | 907532 dt. 3.3.2000 |  GOOD DAY | <i>biscuits, bread, buns, rolls, bakery products, coffee, tea, cocoa, sugar, rice, tapioca, sago, artificial coffee, flour and preparations made from cereals, savories, snacks, cookies, cakes, pastry and confectionery, ices, honey, treacle, yeast, baking-powder, salt, mustard, vinegar, sauces (except salad dressings), spices, all being goods included in class 30</i> |

19. It is further submitted that the learned Intellectual Property Appellate Board (“IPAB”) in the case of *Britannia Industries Ltd. versus Rakesh Kumar Jain & Others*, ORA/68/2013/TM/AMD, vide Order dated 23rd December 2020, has declared that the plaintiff’s trade mark ‘GOOD DAY’ is a well-known mark.

20. It is submitted that the plaintiff has been protected in various cases by this Court, details of which as given in the plaint, are reproduced as under:-



| Particulars | Plaintiff's trade mark | Defendant's trade mark |
|--|------------------------|------------------------|
| Britannia Industries Ltd. v. Amar Biscuit P. | GOOD DAY Biscuit | GOOD TIME Biscuit |

| | | |
|---|------------------|------------------------|
| Ltd. & Ors., CS(COMM) 728/2023 | | |
| Britannia Industries Ltd. v. JK Agro Nuts & Ors., CS(COMM) 405/2022 | GOOD DAY Biscuit | GOOD DAY Walnut Kernel |
| Sh. Gian Chand Garg v. Britannia Industries Ltd. 2023 SCC Online 910 | GOOD DAY Biscuit | GOOD DAY Rice |
| Britannia Industries Ltd. v. Good Day Oral Care & Ors., CS (COMM) No. 572 of 2021 | GOOD DAY Biscuit | GOOD DAY Tooth Paste |

21. It is further submitted that the plaintiff in the third week of October 2024 came across the defendants' product under the impugned mark GOOD DAY being sold in Delhi and on internet, namely, <https://www.bikaneribasket.com/>, and <https://www.indiamart.com/>, which is identical to the plaintiff's registered trade mark GOOD DAY. The table, as



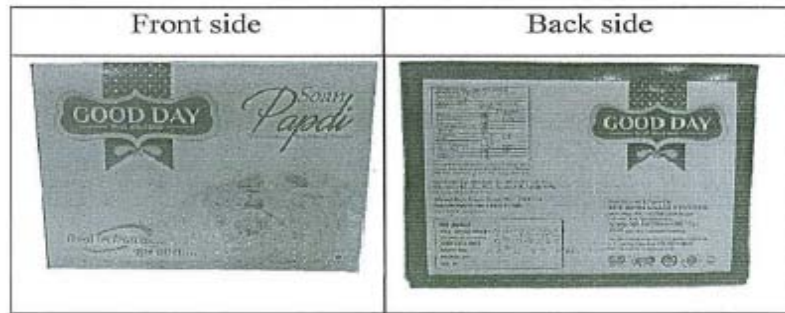
given in the plaint which tabulates the URL, wherein the goods with the impugned marks are being listed and sold, is reproduced as under:-

| Website | URL |
|----------------------|---|
| Bikaneribasket et | https://www.bikaneribasket.com/400-gms-good-day-soan-papdi-5640756.html |

| | |
|--------------------|---|
| IndiaMArt | https://www.indiamart.com/proddetail/premium-soan-papdi-200g-21383777955.html?mTd=1 |
| Bikaneri Basket | https://www.bikaneribasket.com/soan-papdi.html |

22. It is submitted that the defendants have, in all likelihood, very recently adopted the impugned trade mark. The packaging indicates a manufacturing date of 10th October, 2024, suggesting that the defendants commenced marketing activities as close as filing of the present suit.

23. It is further submitted that the impugned mark “GOOD DAY” adopted by the defendants is identical to the plaintiff’s registered trade mark “GOOD DAY”. The defendants have blatantly adopted the plaintiff’s well-known mark without authorization, attempting to ride on the goodwill and reputation established by the plaintiff. This unauthorized use of an identical mark is likely to tarnish and dilute the plaintiff’s trade mark, causing significant harm to the brand’s reputation and market presence. The defendants’ packaging, as given in the plaint, is reproduced as under:-



24. It is submitted that by adopting the identical mark, the defendants are attempting to create an association with the plaintiff's range of products bearing the trade mark "GOOD DAY". Such actions are likely to cause confusion among the public, leading consumers to believe that the defendants' products are associated with or endorsed by the plaintiff, thereby damaging the distinctiveness and goodwill that the plaintiff has built over decades.

25. It is further submitted that the defendants have unethically and unlawfully adopted the impugned mark GOOD DAY. Being in the food and



confectionery business, the defendants are well aware of the plaintiff's long-standing adoption and use of its trade mark "GOOD DAY" for a wide range of biscuits and cookies. Given the plaintiff's status as a pioneer in marketing these goods under the well-known trade mark "GOOD DAY", the defendants' use of the identical mark "GOOD DAY" cannot be considered a mere coincidence, but rather a deliberate and dishonest attempt to exploit the plaintiff's established reputation.

26. It is submitted that the defendants' blatant adoption of the plaintiff's trade mark strongly indicates an intention to capitalize on the goodwill and market position built by the plaintiff over decades. The defendants' actions constitute infringement, passing off, unfair trade practices, and unfair competition, as well as misrepresentation and misappropriation of the plaintiff's well-known trade mark "GOOD DAY".

27. It is further submitted that the plaintiff has a *prima facie* case in its favour, and the balance of convenience also lies in favour of the plaintiff. The plaintiff is suffering irreparable harm and damage due to the defendants' misappropriation of its goodwill and reputation associated with the mark "GOOD DAY". The injury caused to the plaintiff's brand and reputation cannot be quantified in monetary terms. As such, it is submitted that the defendant's illegal activities must be urgently restrained by an order of injunction.

28. It is submitted that apart from the injury to the plaintiff, there is a serious injury to the purchasing public, who would be misled into purchasing the food product of the defendants as those of the plaintiff. This public confusion must be urgently protected by this Court. Consumers ought to be safeguarded against any chances of confusion or deception regarding



the source of the food products, which do not originate from the plaintiff. The defendants are, therefore, liable to be enjoined urgently to protect the public interest at large.

29. In 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, balance of convenience also lies in favour of the plaintiff, and against the defendants.

30. Accordingly, it is directed that till the next date of hearing, the defendants, their Directors, partners or proprietors as the case may be, their assignees and affiliates in business, predecessors, successors in business, their distributors, dealers, stockists, super stockist, wholesalers, retailers, franchisees, licensees, importers, exporters, servants agents and all person claiming through them, are restrained from distributing, selling, offering for sale, promoting, advertising, marketing, trading in or otherwise directly or indirectly, dealing in confectionery/sweetmeats/food products, including, but not limited to papads or any other product under the impugned mark GOOD DAY, or any other extensions and/or any other trade mark containing the word GOOD DAY, and/or any other trade mark as may be identical with and/or deceptively similar to the plaintiff's registered trade mark GOOD DAY or its formative marks, amounting to infringement of the registered trademark of the plaintiff, as well as passing off of the defendants' goods and business for those of the plaintiff's goods under the mark GOOD DAY.

31. The defendants are further directed to take down their infringing listings on their website and other e-commerce websites.



32. However, it is clarified that the defendants are at liberty to manufacture their products and sell the same without the use of the mark GOOD DAY or any other deceptively similar mark, thereto.
33. Issue notice to the defendants by all permissible modes upon filing of the Process Fee, returnable on the next date of hearing.
34. Let reply be filed within a period of four weeks.
35. Rejoinder thereto, if any, be filed within two weeks, thereafter.
36. Compliance of Order XXXIX Rule 3 CPC, be done, within a period of one week.
37. List before the Court on 10th March, 2025.

MINI PUSHKARNA, J

NOVEMBER 7, 2024

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