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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(COMM) 941/2024 & I.A. 43238/2024, I.A. 43239/2024, I.A.
43240/2024, I.A. 43241/2024, I.A. 43242/2024
TECHNO SPORTSWEAR P LTD.Plaintiff

Through: Mr. Sachin Gupta, Mr. Rohit Pradhan,
Ms. Prashansa Singh, Mr. Ajay
Kumar and Ms. Archana, Advocates.
Mob: 9811180270

versus

LAXMI PAT BENGANIDefendant

Through: None.

CORAM:

HON'BLE MS. JUSTICE MINI PUSHKARNA

ORDER

% **24.10.2024**

I.A. 43239/2024 (Exemption from filing certified clearer/ typed 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 original, clearer, 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. 43238/2024 (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

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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. 43241/2024 (Exemption from advance service to the defendants)

8. The present is an application under Rule 22 of Delhi High Court Intellectual Property Rights Division Rules, 2022, read with Section 151 CPC, seeking exemption from advance service to the defendant.

9. The plaintiff seeks urgent interim relief, and has also sought appointment of a Local Commissioner. Therefore, in the peculiar facts and circumstances of this case, exemption from effecting advance service upon the defendant, is granted.

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

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11. Let the plaint be registered as suit.

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

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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 defendant, 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 17th December, 2024.

15. List before the Court on 07th March, 2025.

I.A. 43240/2024 (Under Order XXXIX Rules 1 and 2 CPC)

16. The present suit has been filed for permanent injunction restraining the defendant from infringement of trademark, copyright, passing off, unfair competition, delivery up, damages/rendition of accounts of profits, etc.

17. By way of the present suit, the plaintiff complains against the

defendant for using the impugned mark  /
TECDRISPORT', which is deceptively similar to the plaintiff's registered

and prior used trade mark  / TECHNOSPORT'.

18. It is submitted that the plaintiff through its predecessor has been continuously, openly and extensively using its trade mark TECHNOSPORT since 2009, and has an annual turnover of Rs. 3,80,64,86,325/- in the FY 2023-24.

19. It is submitted that the plaintiff's predecessor was established in the


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year 2009. Since then, the predecessor has made all the efforts to evolve his proprietorship firm into a well-established manufacturer of Hosiery including vests, briefs, knitted trunks, underwears, brassiers, chemises, slips, patiyalas, petti-coats, casual wears etc.

20. It is submitted that the All India Sports Goods Directory (AISGD), which is a niche B2B Annual Trade Directory registered with the Registrar of Newspaper for India and being the India's only sporting goods & fitness equipment trade directory, in its 16th Edition has recognized and published one of the authorized dealers of the predecessor and the plaintiff- Prakash Sports & Hosiery at page 13 of the said directory with the trade mark of the



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predecessor and the plaintiff " ", which in turn gave a good exposure to the predecessor and products of the plaintiff's predecessor and the plaintiff.



21. It is submitted that the plaintiff's predecessor and the plaintiff herein have an online presence via various social media platforms, as well as e-commerce sites which in turn lead to an enormous growth and goodwill to the plaintiff's predecessor and the plaintiff. The plaintiff's predecessor and the plaintiff herein have an official website, www.technosport.in, through which the consumers can purchase the products of the plaintiff's predecessor and the plaintiff directly from them.

22. It is further submitted that, the plaintiff's predecessor and the plaintiff herein owns an Instagram handle with the user name [technosportindia](#) with around forty thousand (39.6k) followers and a Facebook account with the

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name 'TechnoSport with over forty four thousand (44k) followers. Apart from all these, the products of the plaintiff's predecessor and the plaintiff are available via popular e-commerce platforms namely Amazon, Myntra, Flipkart etc.

23. It is submitted that the plaintiff's predecessor, coined and adopted the

trademarks '  ' and '  ' and obtained registration under no. 1819411 and 5434922 on 18th May, 2009 and 04th May, 2022 respectively. The said marks are registered under class 25 for the goods covering hosiery including vests, briefs, knitted trunks, underwears, brassieres, chemises, slips, petti-coats, casual wears etc. It is submitted that the plaintiff's trademarks are unique and highly distinctive from any other trademarks. The said trademarks are being used continuously for almost fifteen years. The plaintiff and its predecessor have been providing superior quality products under the said trademarks and have established a name for themselves among the public. Also, as a result of its long usage and high-quality goods, the said trademarks have acquired a good reputation in the trade market as well as among the target customers.


24. It is submitted that the plaintiff's predecessor and the plaintiff, in order to safeguard and to protect their long earned goodwill and to prevent the dilution of their brand name, filed several trademark applications for registration within India. The following are the trademarks which were applied for registration and got registered, inclusive of those which are registered under the name of plaintiff's predecessor:

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S.N	Reg. No.	Cl.	Mark	Class/ Goods
1.	1819411 dt. 18.05.2009	25		<i>hosiery including vests, briefs, knitted trunks, underwears, brassieres, chemises, slips, petti-coats, panties, bermudas, nighties, casual wears, pajamas, polo shirts, t-shirts, sweat shirts, shorts, pants, trousers, kidswears, caps, baba-suits, frocks, sports wears, head gears, gloves, swim wears, undergarments, uniforms, knitted and woven readymade garments, etc.</i>
2.	5434922 dt. 4.5.2022	25		
3.	3735518 dt. 24.1.2018	25	TECHNODRY	
4.	3929748 dt. 29.8.2018	25	TechnoCool+	
5.	3929749 dt. 29.8.2018	25	TECHNOW.ARM+	
6.	4104301 dt. 1.3.2019	25	TECHNO	
7.	5043753 dt. 14.7.2021	25	TECHNO LITE	
8.	5043752 dt. 14.7.2021	25	TECHNO GUARD	

5.	3929749 dt. 29.8.2018	25	TECHNOW.ARM+	
6.	4104301 dt. 1.3.2019	25	TECHNO	

25. It is submitted that the plaintiff has also applied for copyright registration, namely 'TECHNOSPORT', and the device of the running man

 under no. 123780 and 123781, both dated 03rd May, 2023, which are

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original artistic works within the meaning of Indian Copyright Act, 1957.

26. It is submitted that the plaintiff's predecessor assigned the rights to the above trademarks and artistic works to the plaintiff, making the plaintiff the rightful proprietor through the Deed of Assignment dated 13th March, 2024. The plaintiff has filed an application for substituting its name in place of the erstwhile proprietor, which is currently pending before the Trade Marks Registry and Copyright Office.

27. It is submitted that the plaintiff came across the defendant's application for registration of the impugned mark sometime in March of 2024, and immediately filed an opposition against the said application on 21st March, 2024. It is most respectfully submitted that given the similarity between the competing marks, the plaintiff is confident that the opposition will be decided in its favour.

28. It is submitted that the plaintiff in July, 2024, became aware that the defendant is marketing and manufacturing products under the impugned mark.


29. Below is the comparison of the plaintiff's registered trademark and the defendant's impugned trademark:


COMPARISON OF THE TRADE MARKS	
PLAINTIFF'S REGISTERED TRADE MARK	DEFENDANT'S IMPUGNED MARK
	



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30. It is submitted that a simple comparison between the plaintiff's registered trademark and the defendant's impugned trademark shows the *mala fide* intention of the defendant, and one can get easily confused. It is submitted that the defendant has arrived at the impugned trade mark "TECDRISPORT", by merely replacing the letters 'HNO' with 'DRI' from the plaintiff's registered trade mark "TECHNOSPORT".


31. It is further submitted that the font style used by the defendant in their

trade mark '  ' is identical and deceptively similar to that of

the plaintiff's registered trade mark '  '.

32. Further, the defendant has chosen a logo  which is structurally similar to the plaintiff's well established logo '  ', which is also registered as a separate trademark in the name of the plaintiff. The defendant has deliberately copied the plaintiff's logo and made minimal cosmetic changes to arrive at the impugned logo.

33. Further, the defendant willfully, deliberately and with the sole intention to ride on the goodwill of the plaintiff herein, constructed the


impugned trade mark '  ' in such a way that he even placed the logo in the exact position as that of the plaintiff registered trademark

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34. It is submitted that it is a very common practice in the textile industry to use only the logo of the concerned brands in their respective products.

This is the reason as to why the plaintiff has registered the logo '  ' separately. The impugned logo easily deceives the target customers since the logo of the defendant is deceptively similar to the plaintiff's.

35. Learned counsel appearing for the plaintiff has brought before this Court a copy of the document which is the registration certificate for the word mark 'TECDRI' in favour of the defendant, which is reproduced as under:

Forma 3001 - 2
Forma 301 - 2

भारत सरकार
Government of India
भारत चिह्न पंजीयन
Trade Marks Registry
भारत चिह्न पंजीयन, 1999
Trade Marks Act, 1999
भारत चिह्न पंजीयन अधिनियम, 1999, धारा 23 (2), नियम 56 (1)
Certificate of Registration of Trade Mark, Section 23 (2), Rule 56 (1)

भारत चिह्न पंजीयन / Trade Mark No. 3903061 दिनांक/Date: 31/07/2018 आ. सं./A. No.: 1867

यदि चिह्न/Trade Mark/ a representation in common parlance, has been registered in the name(s) of:-
MR LAXMPAT BENGALI, B-271, P-3, RAMPRASHTHA, CHAZABAD, (U.P), Individual, (Single Firm)

In Class: 25 Under No.: 3903061 as of the date: 31 July 2018 in respect of:
Clothing (readymade garments), Sarees, headgear

TECDRI

दिनांक/Date: 31st day of January, 2019

भारत चिह्न पंजीयन
Trade Marks Registry MUMBAI

भारत चिह्न पंजीयन
Registrar of Trademarks


REGISTRATION OF TRADE MARKS IN INDIA IS VALID IN ALL STATES AND IN ALL TERRITORIES OF INDIA AND IN ALL COUNTRIES TO WHICH THE TRADE MARKS ACT, 1999 APPLIES. THE TRADE MARKS ACT, 1999 IS APPLICABLE TO THE TRADE MARKS REGISTERED IN INDIA. THE TRADE MARKS REGISTERED IN INDIA ARE VALID IN ALL STATES AND IN ALL TERRITORIES OF INDIA AND IN ALL COUNTRIES TO WHICH THE TRADE MARKS ACT, 1999 APPLIES. THE TRADE MARKS REGISTERED IN INDIA ARE VALID IN ALL STATES AND IN ALL TERRITORIES OF INDIA AND IN ALL COUNTRIES TO WHICH THE TRADE MARKS ACT, 1999 APPLIES. THE TRADE MARKS REGISTERED IN INDIA ARE VALID IN ALL STATES AND IN ALL TERRITORIES OF INDIA AND IN ALL COUNTRIES TO WHICH THE TRADE MARKS ACT, 1999 APPLIES.

36. Learned counsel appearing for the plaintiff submits that he has no objection if the defendant continues its business under its registered mark 'TECDRI'.

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37. 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 defendant.

38. Accordingly, till the next date of hearing the defendant, their assignees, affiliates, associates, predecessors, successors in business, their distributors, dealers, stockists, retailers, custodians, franchisees, licensees, importers, exporters, servants, agents and all persons claiming through and/or under them or acting on their behalf, are restrained from manufacturing, selling, offering for sale, advertising, distributing, marketing, exhibiting- for sale, trading in or otherwise directly or indirectly dealing in manufacture and sale of garments or similar or like or allied goods under the

impugned mark  , amounting to infringement of the mark of the plaintiff/passing off of the defendant's goods and business for those of the plaintiff's goods under the mark TECHNOSPORT.

39. It is clarified that the defendant is free to carry on its business by using its registered mark 'TECDRI'.

40. Issue notice to the defendant by all permissible modes upon filing of the Process Fee, returnable on the next date of hearing.

41. Let reply be filed within a period of four weeks.

42. Rejoinder thereto, if any, be filed within two weeks, thereafter.

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43. Compliance of Order XXXIX Rule 3 CPC, be done, within a period of two weeks from today.

44. List before the Court on 7th March, 2025.

I.A. 43242/2024 (Application for appointment of Local Commissioner)

45. The present application has been filed on behalf of the plaintiff under Order XXVI Rule 9 and Order XXXIX Rule 7 read with Section 151 CPC, seeking appointment of a Local Commissioner.

46. It is submitted that in order to preserve evidence of infringement, it is necessary that a Local Commissioner be appointed to visit the premises of the defendant.

47. Accordingly, the following directions are issued:

I. Mr. Hemant Sharma, Advocate, (Mob. No. 9716540655, 9871023251), is appointed as Local Commissioner, with a direction to visit the following premises of defendant:

***M/s. S. S. Garments 3793, Nehru
Gali Ajeet Nagar, Gandhi Nagar
Delhi-110031***

II. After seizing the infringing material, the same shall be inventorized, sealed, and signed by the learned Local Commissioner, in the presence of the parties, and released on *superdari* to the defendant, on its undertaking to produce the same, as and when further directions are issued, in this regard.

III. The learned Local Commissioner shall also be permitted to make copies of the books of accounts, including, ledgers, cash books, stock registers, invoices, books, etc., in so far as they pertain to the infringing products.

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IV. Further, the learned Local Commissioner shall be permitted to undertake/arrange for photography/videography of the execution of the commission.

V. Both the parties shall provide assistance to the learned Local Commissioner, for carrying out the aforesaid directions.

VI. In case, the premises are found locked, the learned Local Commissioner shall be permitted to break open the lock(s). To ensure an unhindered and effective execution of this order, the Station House Officer (“SHO”) of the local Police Station, is directed to render all assistance and protection to the Local Commissioner, as and when, sought.

VII. The fee of the learned Local Commissioner, to be borne out by the plaintiff, is fixed at ₹ 1,00,000/- (Rupees One Lakh). The plaintiff shall also bear all the expenses for travel of the Local Commissioner, and other miscellaneous out-of-pocket expenses, for the execution of the commission. The fee of the Local Commissioner shall be paid in advance by the plaintiff.

VIII. The local commission shall be executed within a period of two weeks from today. The local commissioner shall file the report within a period of two weeks from the date, on which the commission is executed.

48. The order passed today, shall not be uploaded for a period of two weeks.

49. The present application is accordingly disposed of in the aforesaid terms.

50. *Dasti* under signatures of the Court Master.

OCTOBER 24, 2024/ ak


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MINI PUSHKARNA, J