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

+ CS(COMM) 828/2022

M/S KOHINOOR SEED FIELDS INDIA PVT LTD..... Plaintiff

Through: Mr. Saurabh Agarwal, Mr. Sharad
Kumar, Mr.Shantanu Agarwal,
Ms.Surabhi Katyal, Ms.Sulekha
Agarwal and Mr.Anshuman
Chaudhary, Advocates

versus

M/S VEDA SEED SCIENCES PVT LTD Defendant

Through: Mr. Kailash Pandey, Mr.Ranjeet
Singh and Mr. Krishna Yadav,
Advocates

CORAM:

HON'BLE MR. JUSTICE AMIT BANSAL

ORDER

% **01.12.2022**

I.A. 20136/2022 (Exemption)

1. Subject to the plaintiff's filing the original/ translated/ legible copies of the documents and physical copy of the suit papers on which the plaintiff may seek to place reliance, within four weeks from today, exemption is granted for the present.

2. The application is disposed of.

I.A. 20142/2022 (Exemption from advance service of Suit Papers)

3. The counsel for the defendant appeared when the matter was taken up at 10.30 A.M. A copy of the complete set of the paperbook has been supplied to him by the counsel for the plaintiff.

4. Accordingly, the present application is disposed of.

I.A. 20139/2022 (O-XI R-2 Commercial Court Act)

5. Counsel for the plaintiff does not wish to press the present application at this stage and seeks to withdraw the same with liberty to file at an appropriate stage.

6. Accordingly, the application is dismissed as withdrawn with liberty as

prayed for.

I.A. 20141/2022 (u/s 12A of Commercial Courts Act)

7. In view of the urgent interim relief sought, plaintiff is granted exemption from the requirement of pre-institution mediation in terms of Section 12A of the Commercial Courts Act, 2015.

8. The application stands disposed of.

I.A. 20137/2022 (O-XI R-1(4) Commercial Court Act)

9. The present application has been filed on behalf of the plaintiff seeking leave to file additional documents under the Commercial Courts Act, 2015.

10. The plaintiff is granted thirty days' time to file additional documents.

11. Accordingly, the application is disposed of.

I.A. 20138/2022 (O-II R-2 of CPC)

12. Issue notice.

13. Notice is accepted by the counsel appearing for the defendant.

14. Reply be filed within four weeks.

15. List before the Joint Registrar on 10th January, 2023 for completion of pleadings.

16. List before Court on 6th February, 2023.

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17. Let the plaint be registered as a suit.

18. Issue summons.

19. Summons are accepted on behalf of the defendant.

20. Written statement shall be filed by the defendant within thirty days from today. Along with the written statement, the defendant shall also file an affidavit of admission/denial of the documents of the plaintiff, without which the written statement shall not be taken on record.

21. Liberty is given to the plaintiff to file replication, if any, within thirty

days from the receipt of the written statement. Along with the replication filed by the plaintiff, an affidavit of admission/denial of the documents of the defendant, be filed by the plaintiff.

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 be also 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 10th January, 2023 for completion of pleadings.

25. List before Court on 6th February, 2023.

I.A. 20135/2022 (O-XXXIX R-1 & 2)

26. The plaintiff is a leading Indian seed company. It obtained the necessary approvals from the Genetic Engineering Appraisal Committee ('GEAC') for developing/producing and selling transgenic BT Cotton hybrid seeds with the following denominations:

- (i) KSCH-207 BG II
- (ii) KSCH-232 BG II
- (iii) KSCH-212 BG II

27. The plaintiff has been selling the aforesaid varieties/hybrids under its trademarks, as per the details below:

Seed Variety	GEAC Approval	Brand	Registration
KSCH 232	Dated 03.06.2014	SADANAND®	Registered on 14.08.2017

KSCH 207	<ul style="list-style-type: none"> • Dated 30.06.2010 for South Zone • Dated 12.05.2010 for Central Zone 	TADAAKHA®	Registered on 07.08.2017
KSCH 212	<ul style="list-style-type: none"> • Dated 23.05.2012 for South Zone • Dated 10.05.2011 for Central Zone 	BASANT™	Not Registered

28. The GEAC approvals as well as the trademark registration certificates have been placed on record. The plaintiff has been selling the cotton hybrid seeds under its aforesaid trademarks from the year 2014/2015. The sales figures as well as promotional expenses have been given in the plaint.

29. In the year 2014, the plaintiff entered into a non-exclusive co-marketing agreements with defendant, renewed on an annual basis, for the purposes of marking and distribution of the aforesaid hybrid seed varieties. Last of these co-marketing agreements was entered into between the plaintiff and the defendant on 1st January, 2022 for a period of one year. The relevant clauses of the aforesaid agreement are set out below:

“3. VSSPL agrees to market and distribute the hybrid seeds of (a) KSCH-207 BG II cotton hybrid under the brand name of Tadaakha (b) KSCH-211 BG II Cotton Hybrid under the brand name of SaiCharan (c) KSCH-212 BG II Cotton Hybrid under the brand name of Basant (d) KSCH-232 BG II Cotton Hybrid under the brand name of Sadanand (e) KSCH-213 BG II Cotton Hybrid under the brand name of KSCH-213 BGII in states of M.P., Gujarat, Maharashtra, A.P., Telangana, Karnataka and Tamil Nadu as per respective state permissions.

...

5. VSSPL hereby agrees and undertakes that except in respect of the Cotton Hybrid Seeds it shall not sell any other hybrid seeds under the brand names permitted under this Agreement.”

30. The plaintiff issued a termination notice dated 25th November, 2022 seeking to terminate the aforesaid agreement with a 15 days’ period to rectify and remedy the breach.

31. In October, 2022, it came to the knowledge of the plaintiff that the defendant was promoting and taking advance bookings for the Kharif season 2023 for the sale of BG II cotton hybrid seeds under the names of ‘VEDA SADANAND GOLD’, ‘VEDA TADAAKHA GOLD’ and ‘VEDA BASANT GOLD’ (hereinafter referred to as the ‘impugned marks’) for which the defendant has obtained registration in Class 31 on a ‘*proposed to be used*’ basis with effect from 7th August, 2021. The defendant started using the impugned marks in relation to cotton hybrid seeds which did not belong to the plaintiff and hence, were outside the permitted scope of the aforesaid marketing agreement. A comparative analysis of the plaintiff’s marks along with the defendants’ marks is as under:

Trademark	Plaintiff	Defendant
SADANAND		

TADAAKHA	 <p>Left side of the Tadaka Hybrid Seed Packet. It features the text 'తదాఖా' (Tadaka) in Telugu and 'TADAAKHA' in English, with 'BG II' below it. Below that is 'తదాఖా' (Tadaka) in Telugu and 'దోని' (Dhani) in English. At the bottom, it says 'Cotton hybrid seeds with Bollgard II Technology'. The background shows green cotton leaves.</p>	 <p>Right side of the Tadaka Hybrid Seed Packet. It features the text 'వేద తదాఖా' (Veda Tadaka) in Telugu and 'VEDA TADAAKHA' in English, with 'GOLD' below it. Below that is 'వేద తదాఖా' (Veda Tadaka) in Telugu and 'గోల్డ్ డోని' (Gold Dhani) in English. At the bottom, it says 'Cotton hybrid seeds with Bollgard II Technology'. The background shows green cotton leaves.</p>
BASANT	 <p>Left side of the Basant Hybrid Seed Packet. It features the text 'KSCH-212 BG II' in English. Below that is 'బసంత' (Basant) in Telugu and 'BASANT' in English, with 'బసంత్' (Basant) in Telugu below it. At the bottom, it says 'Cotton hybrid seeds with Bollgard II Technology'. The background shows green cotton leaves and a field of cotton plants.</p>	 <p>Right side of the Basant Hybrid Seed Packet. It features the text 'GK-238 BG II' in English. Below that is 'బసంత' (Basant) in Telugu and 'Basant' in English. At the bottom, it says 'Cotton hybrid seeds with Bollgard II Technology'. The background shows green cotton leaves and a field of cotton plants.</p>

32. Issue notice.
33. Notice is accepted by the counsel appearing for the defendant.
34. Reply be filed within four weeks.
35. Rejoinder thereto, if any, be filed within two weeks thereafter.
36. The advance bookings taken by the defendant under the impugned marks are in respect of different hybrids, being GK-224 BGII, VSCH-369 BGII and GK-238 BG II, which do not belong to the plaintiff and hence, on

a *prima facie* view, violate the terms of the aforesaid agreement. Use of the impugned marks for goods in the same class by the defendants, *prima facie*, also amounts to infringement as well as passing off. Moreover, the packaging and aesthetic of the defendant's products is deceptively identical to that of the plaintiffs. Use of the plaintiffs' marks, whether with or without a prefix and/or suffix by the defendant for different hybrid seeds would not result in a material difference so as to distinguish the marks of the defendant from those of the plaintiffs. The impugned marks of the defendant were registered in August, 2021. Clearly, the plaintiff is a prior user of the trademarks and has established a reputation and goodwill for its products in the target market.

37. In view of the above, the plaintiff has established a *prima facie* case in its favour. The defendant's use of the impugned marks is likely to cause a greater confusion as the defendant has been a co-marketer of the plaintiff's cotton hybrid seeds and the plaintiffs marks since 2014. Thus, balance of convenience is in favour of the plaintiff. Irreparable harm and injury would be caused to the plaintiff if an *ex-parte* injunction is not granted in favour of the plaintiff.

38. Consequently, till the next date of hearing, defendant, its directors, employees, officers, servants, agents, assignees of the defendant and all other acting for and on the defendant's behalf are restrained from making, using, promoting, marketing, advertising, offering or exposing for sale, selling any product other than plaintiffs BT cotton hybrid seeds under the plaintiffs' trademarks, being 'SADANAND', 'TADAAKHA', and 'BASANT', with or without prefix or suffix or any other mark, which is deceptively similar to the plaintiffs' trademarks.

39. List before the Joint Registrar on 10th January, 2023 for completion of pleadings.

40. List before the Court on 6th February, 2023.

I.A. 20140/2022 (O-XXVI R-9)

41. At this stage, counsel for the plaintiff does not press the present application.

42. List before Court on 6th February, 2023

AMIT BANSAL, J.

DECEMBER 01, 2022

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