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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(COMM) 678/2023& I.As. 18958/2023, 18959/2023, 18960/2023,**
18961/2023

TIBRA COLLECTION Plaintiff
Through: Mr. Anshuman Upadhyay, Mr.
Naseem& Ms. Apoorva, Advs.
(M:8527200103)
versus

FASHNEAR TECHNOLOGIES PRIVATE LIMITED
& ORS. Defendants
Through: Mr. Sidharth Chopra, Ms. Sneha Jain,
Mr. Vivek Ayyagari and Ms R Ramya,
Advs. for D-1. (M:9845057887)

CORAM:
JUSTICE PRATHIBA M. SINGH
ORDER
% **27.09.2023**

1. This hearing has been done hybrid mode.

I.A. 18959/2023 (for additional documents)

2. This is an application filed by the Plaintiff seeking leave to file additional documents under the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 (hereinafter, 'Commercial Courts Act'). The Plaintiff, if it wishes to file additional documents at a later stage, shall do so strictly as per the provisions of the Commercial Courts Act and the DHC (Original Side) Rules, 2018.

3. Application is disposed of.



I.A.18961/2023 (exemption from advance service to the Defendants)

4. In view of the fact that the Plaintiff has sought *ex parte ad-interim* injunction along with the appointment of the Local Commissioner, the exemption from advance service to the Defendant Nos.2 to 7 is granted.

5. Application is disposed of.

I.A.18960/2023 (for exemption)

6. This is an application seeking exemption from filing certified/cleared/typed or translated copies of documents. Exemption is allowed, subject to all just exceptions. Application is disposed of.

CS (COMM) 678/2023

7. Let the plaint be registered as a suit.

8. Issue summons to the Defendants through all modes upon filing of Process Fee.

9. The summons to the Defendants shall indicate that the written statements to the plaint shall be positively filed within 30 days from date of receipt of summons. Along with the written statements, the Defendants shall also file an affidavit of admission/denial of the documents of the Plaintiff, without which the written statements shall not be taken on record.

10. Liberty is given to the Plaintiff to file the replication(s) within 15 days of the receipt of the written statements. Along with the replication(s), 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 any documents, the same shall be sought and given within the timelines.



11. List before the Joint Registrar for marking of exhibits on 17th November, 2023. It is made clear that any party unjustifiably denying documents would be liable to be burdened with costs.

12. List before Court on 21st March, 2024.

I.A.18958/2023 (u/O XXXIX Rules 1 & 2 CPC)

13. Issue notice.

14. The present suit has been filed by the Plaintiff - Tibra Collection for copyright infringement, passing off, delivery up and other reliefs including damages through its sole proprietor namely Sh. Uvais Ansari against the known Defendant Nos.2 to 6 and unknown Defendant No.7, who are advertising, publishing and offering for sale the garments, which are a complete copy of the Plaintiff's garments and are also misusing the photographs and images in which the Plaintiff owns rights.

15. The case of the Plaintiff is that the Plaintiff is a retailer in clothing items for men and women. It also specializes in ethnic wear, which are designed by its own in-house designers. It offers for sale and advertises its goods on various E-Commerce platforms as well, such as Amazon, Flipkart and Meesho. Expenditure incurred to run these advertisements is claimed to be around 10 Lakh for Flipkart from 22nd June, 2023 to 20th September, 2023 and for Meesho as well it is more than 10 lakh since 2021 till date.

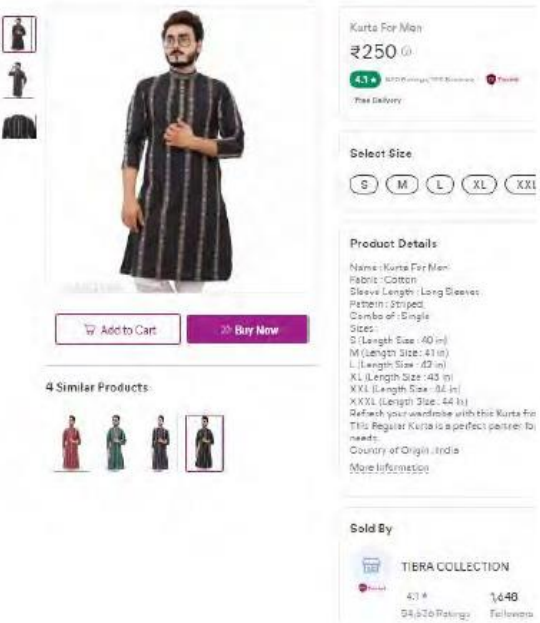
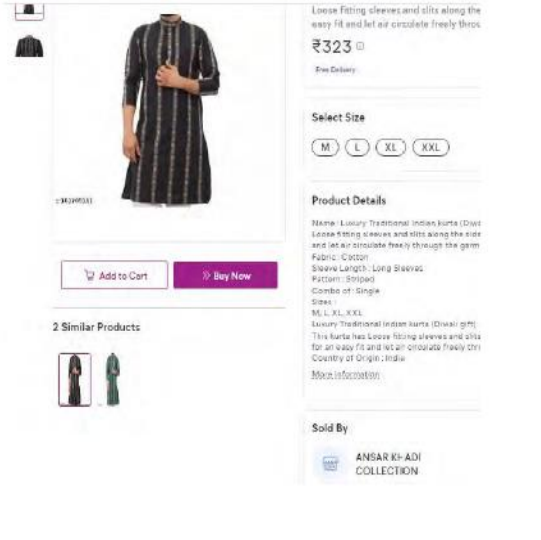
16. The Plaintiff claims to be having sufficient presence even on social media platforms and its gross turnover for the year 2022-23 is over Rs.10 crores.

17. The Defendant No.1- Fashnear Technologies Private Limited in the present case is the company which runs www.meesho.com, the e-commerce platform. Defendant Nos. 2, 3, 4, 5 and 6 are unlawful and unauthorized




operators who use Plaintiff’s copyrighted pictures and photographs and sell their own counterfeit goods thereunder on the online platform owned, run, managed and administered by Defendant No. 1. Defendant No.7- Ashok Kumar (John Doe) are unknown identities that may be one or various unlawful parties who are using Plaintiff’s product images to sell products.

18. Ld. counsel for the Plaintiff submits that the present suit has been filed against various known and unknown sellers, who are offering to sale garments and ethnic wears by misusing the Plaintiff’s photographs. The following images are relied upon to show the manner in which the Defendants have completely imitated the Plaintiff’s products as also the images of the models:

PLAINTIFF’S LISTINGS	DEFENDANT’S LISTINGS
<p>https://www.meesho.com/kurta-for-men/p/1c044w?_ms=2</p> 	<p>https://www.meesho.com/luxury-traditional-indian-kurta-diwali-gift-this-kurta-has-loose-fitting-sleeves-and-slits-along-the-sides-allow-for-an-easy-fit-and-let-air-circulate-freely-through-the-garment/p/306nop?_ms=2&source=Meri+Shop</p> 



https://www.meesho.com/kurta-for-men/p/1c044w?_ms=2



Kurta For Men
 ₹250
 4.3★ (507 Ratings, 190 Reviews)
 Free Delivery


Select Size
 S M L XL XXL

Product Details
 Name: Kurta For Men
 Fabric: Cotton
 Sleeve Length: Long Sleeves
 Pattern: Striped
 Combo of: Single
 Size:
 S (Length Size: 40 in)
 M (Length Size: 41 in)
 L (Length Size: 42 in)
 XL (Length Size: 43 in)
 XXL (Length Size: 44 in)
 Refresh your wardrobe with this Kurta for Men. This Regular Kurta is a perfect partner for needs.
 Country of Origin: India
 More Information

Sold By
 TIBRA COLLECTION
 4.1★ (118 Ratings, 1,648 Followers)
 59,835 Ratings Followers

4 Similar Products

https://www.meesho.com/s/p/31ie5k?utm_source=s_w



Unique (FR) khadi kurta
 ₹366
 Free Delivery


Select Size
 M L XL XXL

Product Details
 Name: Unique (FR) khadi kurta
 Fabric: Cotton
 Sleeve Length: Long Sleeves
 Pattern: Striped
 Combo of: Single
 Size:
 M (Length Size: 38 in)
 L (Length Size: 39 in)
 XL (Length Size: 41 in)
 XXL (Length Size: 42 in)
 Country of Origin: India
 More Information

Sold By
 Shehzad Textile

3 Similar Products

https://www.meesho.com/elegant-men-kurta-sets/p/dwuqa?_ms=2&source=Meri+Shop



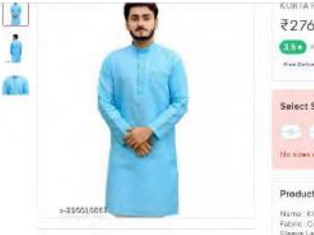
Elegant Men Kurta Set
 ₹375
 4.1★ (233 Ratings, 09 Reviews)
 Free Delivery

Select Size
 S M L

Product Details
 Name: Elegant Men Kurta Set
 Top Fabric: Cotton
 Bottom Fabric: Cotton
 Shirt Fabric: No Scarf
 Sleeve Length: Long Slee
 Bottom Type: Straight Pa
 Stitch Type: Stitched
 Pattern: Checked
 Size:
 S (Top Length Size: 43 in, Size: 41 in)
 M (Top Length Size: 44 in, Size: 41 in)
 L (Top Length Size: 44 in, Size: 41 in)
 XL (Top Length Size: 45 in, Size: 41 in)

4 Similar Products

<https://www.meesho.com/kurta-for-men/p/3h19f7>



KURTA FOR MEN
 ₹276
 4.3★ (16 Ratings, 10 Reviews)
 Free Delivery

Select Size
 No items available for similar products


Product Details
 Name: KURTA FOR MEN
 Fabric: Cotton
 Sleeve Length: Long Sleeves
 Pattern: Striped
 Combo of: Single
 Size:
 M (Length Size: 41 in)
 L (Length Size: 42 in)
 XL (Length Size: 42 in)
 XXL (Length Size: 44 in)
 Country of Origin: India
 More Information

Sold By
 SD TEXTILES
 View Shop

4 Similar Products



https://www.meesho.com/kurta-pyjama-for-men/p/16j5ff?_ms=2



Kurta Pyjama for Men
 ₹375
 4.1★ 72 Ratings, 17 Reviews
 Free Delivery

Select Size
 S M L XL

Product Details
 Name: Kurta Pyjama for Men
 Top Fabric: Cotton
 Bottom Fabric: Cotton
 Scarf Fabric: Cotton
 Sleeve Length: Long Sleeves
 Bottom Type: Straight Pyjama
 Stitch Type: Stitched
 Pattern: Solid
 Sizes: S (Top Length Size: 43 in, Bottom W Size: 41 in) M (Top Length Size: 43 in, Bottom W

5 Similar Products

<https://www.meesho.com/men-kurata-full-sleeve-knee-length-round-neck-only-kurata/p/5a006g>



Men Kurata Full Sleeve Knee Length Round Neck
 ₹320
 Free Delivery

Select Size
 M L XL XXL

Product Details
 Name: Men Kurata Full Sleeve Knee Length R Kurata
 Fabric: Cotton
 Sleeve Length: Long Sleeves
 Pattern: Solid
 Combo of: Single
 Sizes: M (Length Size: 38 in) L (Length Size: 40 in) XL (Length Size: 42 in) XXL (Length Size: 44 in)
 Fit Type: Regular
 Available Size: M To XXL
 Care Instructions: Machine Wash
 Item Length Description: Knee Length
 Sleeve Type: Full Sleeve
 Neck Style: Round Neck
 Age Range: Adult
 Occasion: Festival
 Color: Black, Navy Blue, Yellow, Red, Maroon
 Country of Origin: India

4 Similar Products

https://www.meesho.com/kurta-for-men/p/3waqnh?_ms=2&source=Meri+Shop



Kurta for men
 ₹299
 4.1★ 104 Ratings, 103 Reviews
 Free Delivery


Select Size
 S M L XL XXL

Product Details
 Name: Kurta for men
 Fabric: Cotton
 Sleeve Length: Long Sleeves
 Pattern: Embroidered
 Combo of: Single
 Sizes: S (Chest Size: 36 in, Length Size: 40 in, Waist Size: 35 in) M (Chest Size: 38 in, Length Size: 41 in, Waist Size: 40 in) L (Chest Size: 40 in, Length Size: 42 in, Waist Size: 42 in) XL (Chest Size: 42 in, Length Size: 43 in, Waist Size: 43 in) XXL (Chest Size: 44 in, Length Size: 44 in, Waist Size: 44 in)
 Tibra Collection is a brand of clothing quality and affordability. We take pride in our commitment to maintain quality standards in each piece manufactured by us. Look your best always wearing with this kurta for men from the fashion house of Tibra Collection.
 Country of Origin: India

8 Similar Products

Sold By
 TIBRA COLLECTION
 4.1★ 54,636 Ratings, 1,418 Followers, 37 Products

https://www.meesho.com/s/p/4xoym7?utm_source=s_w

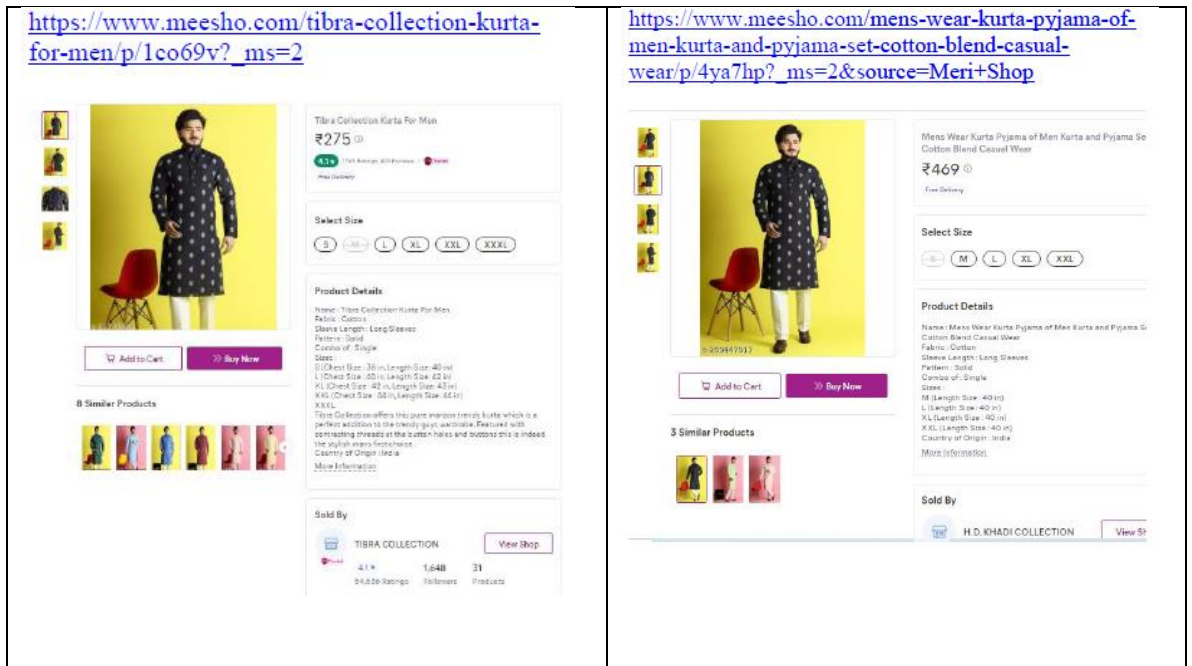


Men's Wear Kurta Pyjama of Men Kurta and Pyjama Set
 Cotton Blend Casual Wear
 ₹469
 Free Delivery

Select Size
 S M L XL XXL

Product Details
 Name: Men's Wear Kurta Pyjama of Men Kurta and Pyjama Set
 Cotton Blend Casual Wear
 Top Fabric: Cotton Blend
 Bottom Fabric: Cotton
 Scarf Fabric: No Scarf
 Sleeve Length: Long Sleeves
 Bottom Type: Straight Pyjama
 Stitch Type: Stitched
 Pattern: Embroidered
 Sizes: S, M, L, XL, XXL
 Upgrade your ethnic wardrobe with this stylish and comfortable Men's Kurta Pyjama Set. Made from a blend of cotton, this set offers a perfect balance of style and comfort. The kurta features a classic design with a beautiful shawl collar and mandarin collar, while the pyjama offers a relaxed fit for easy movement. Together, they provide a perfect choice for a traditional yet modern look.
 Country of Origin: India
 More Information

Sold By
 H.D. KHADI COLLECTION
 3.8★ 10,297 Ratings, 965 Followers, 60 Products



19. It is further submitted by Id. Counsel for the Plaintiff that the Defendants are going to the extent of imitating the products as also copying the identical photographs, but under-pricing the goods so as to cause monetary damage to the Plaintiff.

20. A large number of products, which have been imitated, have also been produced in the Court. The product of the Defendants is claimed to be of lower quality, though it is completely imitative in appearance, to the Plaintiff's product.

21. It is also highlighted that the Defendants do not even disclose the complete address on the invoice, which is generated. It is difficult to trace the Defendants because the addresses on the invoice, on the GST platform and other E - Commerce platforms such as Amazon, Flipkart and Meesho are all different. Listings in the JustDial also reflect different addresses and most of the addresses are incomplete.



22. It is argued by Id. Counsel for the Plaintiff that the sales of the Plaintiff took a complete nose dive when such similar looking products with identical photographs started surfacing on Meesho platform. For the said purpose, Id. Counsel has taken the Court through sales figures from April onwards which would show a drastic reduction over the months.

23. Mr. Siddharth Chopra, Id. Counsel appearing for the Defendant No.1 Meesho submits that as an intermediary the obligation of Meesho is to ensure that whenever any URLs are communicated to Meesho of look-alike images and products, the same be taken down upon the order being passed by the Court. He further submits that the details of the Defendants sellers are available whenever the products are delivered and also can be verified from the GST platform.

24. After hearing Id. Counsel for the Plaintiff and the Defendant No.1, a perusal of the comparative chart would show that this is a case where the known Defendant Nos.2 to 6 and unknown Defendant No.7 are completely misusing the Plaintiff's product images, listing images, product design in order to monetarily ride on the reputation of the Plaintiff. In some cases, the complete images are also not visible in the Defendants' listings, which is nothing but an attempt to conceal the copying.

25. The sellers do not have any right to copy the photographs, images, product design of the Plaintiff in this manner and cause damage to the Plaintiff. While E-Commerce provide new platforms for small designers and businesses, the same ought not to be misused for the purposes of imitating and producing look alike products thereby violating the intellectual property rights of the Plaintiff.



26. There is also an obligation upon the E-Commerce platform to ensure that the complete details of the sellers are available on the platform so that the consumer is aware of the sellers from whom the product has been purchased and the entity, who is listing the product. The invoice dated 26th August, 2023 by way of an illustration, does not give the complete details of the seller and merely mentions Mohd. Dilshad, Meerut, UP. The packaging, however, does give contradictory names and entities in the following manner:

Sold by	Mohd. Dilshad, Meerut, Uttar Pradesh
If undelivered, return to	H.D. KHADI COLLECTION, 99 Bunkar Nagar gali no.2, Islamabad Near minni masjid, Meerut, Uttar Pradesh, 25000

27. There has to be consistency in the name of the seller.

28. Ld. counsel for the Plaintiff relies upon the Consumer Protection (E-Commerce) Rules, 2020, notified on 23rd July, 2020, which imposes an obligation as per section 5, on the e-commerce platform to give the full geographic address, customer care number, rating and other feedback about the seller for enabling consumers to make informed decision at the pre-purchase stage.

29. Under these circumstances and considering the complete imitation, which has been indulged by the Defendant Nos.2 to 6 and unknown Defendants, the Plaintiff has made out a case for grant of an ex-parte interim injunction. It is also in the interest of consumers that such look-alike products are not permitted to be sold. Balance of convenience is also in favour of the



Plaintiff. Irreparable harm would be caused if the injunction is not granted, as on such platforms, it is extremely easy for sellers to proliferate the images and continue to dupe customers. Accordingly, following directions are being issued in the matter.

- (1) The Defendant Nos.2 to 6 and other sellers, who are listing their products on Meesho.com platform are restrained from reproducing, copying, publishing and imitating any of the designs of the Plaintiff's clothes or even reproducing the images including the photographs of the Plaintiff.
- (2) The said Defendants are also restrained from copying the Plaintiff's designs, which are extracted above for a comparative illustration as also any other designs/images of the Plaintiff, in respect of its clothing.
- (3) The Defendant No.1- Meesho.com shall also reveal all the available details of the said sellers including the address, mobile numbers, email addresses, total sales made by the sellers, GST details, payments made to the sellers since the time listings have been put up.
- (4) If there are any payments, which are still to be made by the Defendant No.1 to the sellers, the same shall be held back till further orders.
- (5) The Plaintiff shall give a complete list of infringing URLs to Id. Counsel for the Defendant No.1 within five working days in order to enable the Defendant No.1 to take down the said listings. The said taking down shall be carried out within 72 hours.



(6) The Defendant No.1 shall ensure that the geographic address of all the sellers is clearly generated with the invoice, which is published on the platform.

30. Reply to the applications be filed within four weeks from the service of the present order along with the paper book. If any of the sellers/defendants wish to seek modification of the present order, they are given liberty to move an appropriate application.

31. Compliance of Order XXXIX Rule 3 CPC be made within one week.

32. List the application before the Court on the dates fixed above.

PRATHIBA M. SINGH, J.

SEPTEMBER 27, 2023/dk/ks