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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(COMM) 913/2023 & I.As. 25692-95/2023**

M/S BLUE HEAVEN COSMETICS PVT LTD Plaintiff

Through: Mr. Rishab Srivastva, Mr. Sanjay
Aggarwal, Ms. Yasheswini Sharma
& Mr Sahil Gupta, Advs. (M.
9958349040)

versus

MR ANISH JAIN TRADING AS M/S NAVKAR COSMO
& ANR. Defendants

Through: None.

CORAM:
JUSTICE PRATHIBA M. SINGH

ORDER
% **20.12.2023**

1. This hearing has been done through hybrid mode.

I.A. 25693/2023 (for exemption)

2. This is an application filed by the Plaintiff seeking exemption from filing Original/certified/translated copies of documents with proper margins, etc. Original documents shall be produced/filed at the time of Admission/Denial, if sought, strictly as per the provisions of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 (*hereinafter, 'Commercial Courts Act'*) and the DHC (Original Side) Rules, 2018.

3. Exemption is allowed, subject to all just exceptions. Accordingly, the application is disposed of.

I.A. 25694/2023 (for additional documents)

4. This is an application filed by the Plaintiff seeking leave to file



additional documents under the Commercial Courts Act, 2015. 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.

5. The application is disposed of.

I.A. 25695/2023 (u/S 12A of the Commercial Courts Act)

6. This is an application filed by the Plaintiff seeking exemption instituting pre-litigation mediation under Section 12A of the Commercial Courts Act.

7. Considering that the products in question are cosmetic products and the Defendants are almost making look alike products, wherein the likelihood of confusion can cause harm/ chemical reaction or even damage to skin and health of the consumers, the Court is satisfied that in terms of the judgment of the Hon'ble Supreme Court in *Yamini Manohar v. T.K.D Keerthi*, (2023 LiveLaw (SC) 906), that the present suit contemplates urgent interim relief.

8. The exemption is granted to the Plaintiff. Accordingly, the application is disposed of.

CS(COMM) 913/2023

9. Let the plaint be registered as a suit.

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

11. The summons to the Defendants shall indicate that the written statement to the plaint shall be positively filed within 30 days from date of receipt of summons. Along with the written statement, the Defendants 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.

12. Liberty is given to the Plaintiff to file the replication within 15 days of the receipt of the written statement. 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 any documents, the same shall be sought and given within the timelines.

13. List before the Joint Registrar for marking of exhibits on 15th February, 2024. It is made clear that any party unjustifiably denying documents would be liable to be burdened with costs.

14. List before Court on 15th May, 2024.

I.A. 25692/2023 (u/O XXXIX Rules 1 & 2 CPC)

15. Issue notice in the application.

16. The present suit has been filed by the Plaintiff - M/S BLUE HEAVEN COSMETICS PVT. LTD. which sells cosmetics under the mark 'BLUE HEAVEN'. The packaging which is used by the Plaintiff in respect of its cosmetic products is the subject matter of the present suit.

17. It is stated that the Plaintiff's 'BLUE HEAVEN' mark is an established brand since the year 1972 in India as well as overseas in respect of cosmetic products included in classes-03 and 35 under the provisions of the Trade Marks Act, 1999. Further, it is also stated that the Plaintiff has protected its rights in its packaging/label etc., by seeking registration of its trade mark/ trade-dress/colour combination as well as copyright registration. The registered marks of the Plaintiff is provided in paragraph 10 of the Plaintiff.



18. The Plaintiff's case is that it has adopted extremely distinctive packaging for various products including Eye Liner, Kajal, Mascara and other cosmetic products which are used regularly. The said packaging have several distinctive elements including the white background, stylized writing and other creative elements in the packaging. The colour combination and the writing style of various descriptive matters and of distinctive matters is also unique to that of the Plaintiff.

19. In the present case, the subject matter of the suit is the following three packagings of the Plaintiff relating to 'BLUE HEAVEN GET BOLD EYELINER' waterproof, 'BLUE HEAVEN GET BOLD MASCARA' and, 'BLUE HEAVEN CLASSIC KAJAL'.

20. The Plaintiff's case is that the Defendants- Mr. Anish Jain trading as Mi s. Navkar Cosmo and Mr. Atinder Kumar Jain are manufacturing and selling cosmetics under the mark 'NAMO NAVKAR' which has identical packaging to that of the Plaintiff's packaging.

21. It is stated that, in respect of the said cosmetic products i.e., Eyeline, Mascara and Kajal, the Defendants have adopted similar expressions by using the words 'GET BOLD' which has been changed to 'NEW BOLD' and including the writing style which has been completely copied. In addition, the artwork which is used for packaging the kajal has also been completely copied. The competing images are set out below:

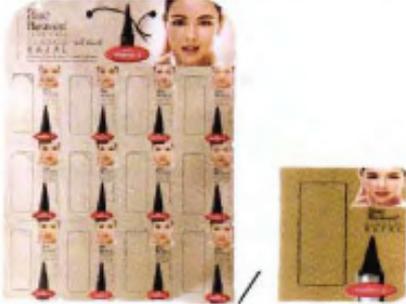


<u>PLAINTIFF'S</u> <u>TRADEMARK/PRODUCT/</u> <u>PACKAGING/LABEL</u>		<u>DEFENDANT'S</u> <u>TRADEMARK/PRODUCT/</u> <u>PACKAGING/LABEL</u>	
GET BOLD EYELINER	GET BOLD MASCARA	DEFENDANT'S EYELINER	DEFENDANT'S MASCARA

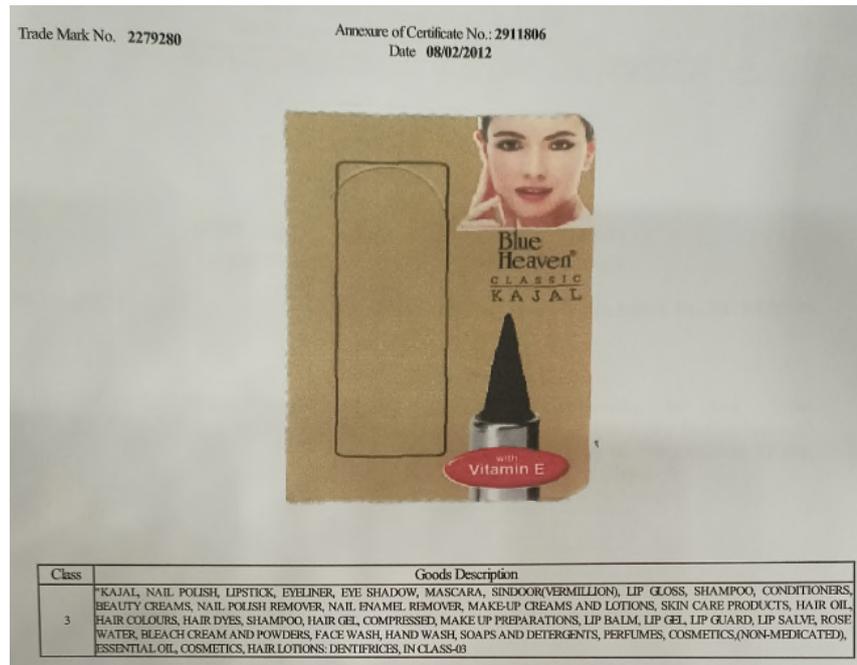


<p>GET BOLD EYELINER</p>	<p>DEFENDANT'S EYELINER</p>
<p>GET BOLD MASCARA</p>	<p>DEFENDANT'S MASCARA</p>



	
	
BLUE HEAVEN KAJAL	DEFENDANT'S KAJAL
	
	

22. Further, Id. counsel for the Plaintiff points out the specific artwork which is a registered trade mark bearing no. 2279280 in class 3 which is registered since 8th February, 2012. The extract of the said trademark is set out below:



23. The Defendants' have copied the exact packaging and the artwork. However, the submission on behalf of the Plaintiff is also that the Defendants' product artwork does not even bear the expiry date and they have copied even the descriptive matter from the Plaintiff's artwork.

24. Further, it is stated that the Plaintiff has repeatedly enforced its rights against the third party use of the said marks.

25. Considering that the products involved are cosmetics in the present case, clearly the use of such identical artwork and packaging is likely to create deception amongst the consumers that the Defendants' products also emanates from that of the Plaintiff. Defendants' use of a similar mark/ packaging in similar combinations not only raises concerns about potential confusion but also suggests an attempt to free ride on the Plaintiff's established reputation.

26. Under such circumstances, the Court is convinced that the Plaintiff



has made out a *prima facie* case for grant of an *ad interim* injunction. Considering the products in question are cosmetic products, the balance of convenience is also clearly in favour of the Plaintiff. Further, irreparable injury shall be caused not just to the Plaintiff, but maybe caused to the public at large as well, in case products with a deceptively similar packaging as that of the Plaintiff are allowed to continue. Therefore, the Plaintiffs have made out a case for the grant of an *ex-parte ad-interim* injunction against the Defendants.

27. Accordingly, the Defendants and anyone acting for and/or on their behalf shall stand restrained from using, manufacturing, offering for sale the following three cosmetic products which are imitative of the Plaintiff's products and packaging:





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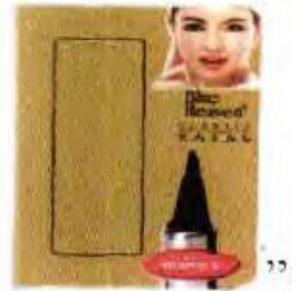
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28. Reply to the application be filed within four weeks after service of pleadings and documents.
29. Compliance under Order XXXIX Rule 3 of CPC within one week.
30. List before the Joint Registrar on the 15th February, 2024.
31. List before Court on 15th May, 2024.

PRAITHIBA M. SINGH, J.

DECEMBER 20, 2023

dj/bh