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

+ **CS(COMM) 674/2023 I.A. 18850/2023**

ZYDUS HEALTHCARE LIMITED

..... Plaintiff

Through: Mr. Chander M. Lall, Senior Advocate with Ms. Aadya Chawla, Mr. George Vithayathil, Ms. Nandini Choudhary, Ahaana Singhrana, Mr. Abhinay Bhalla and Ms. Annanya Mehan.

versus

FLIPKART INTERNET PVT LTD & ORS.

..... Defendant

Through: Mr. Jayant Mehta, Sr. Advocate with Mr. Ankur Sangal, Mr. Ankit Arvind and Mr. Kiratraj Sadana, Advocates.
Mr. Sharad Malhotra, Advocate of D-6.

CORAM:

HON'BLE MR. JUSTICE ANISH DAYAL

ORDER

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25.04.2024

1. Pursuant to the previous order of the 5th March 2024, an affidavit of compliance has been filed on behalf of defendant no. 1, (*Flipkart*), placing on record the steps taken by defendant no. 1 to ensure due diligence while discharging its duties as an e-commerce marketplace.
2. In a sense, defendant no. 1 has stated that, *firstly*, it publishes on its website, rules and regulations, privacy policy, and user agreement which every user/buyer/seller needs to accept before using the platform; *secondly*, as part of this agreement, there are certain warranties, which are applicable to the seller that they shall not upload, post, or display products that violate any intellectual



property rights or any other proprietary rights; *thirdly*, as per the Information Technology (Intermediary Guidelines and Digital Media Ethics Code Rules) 2021, since they qualify as an intermediary, they have provided an agreement mechanism for intellectual property infringement on its platforms with a take down mechanism; *fourthly*, they follow the measures to prevent counterfeiting, which are taken both as proactive measures, at the time of onboarding the seller, and reactive measures, taken after receipt of complaint.

3. Focus by Mr. Jayant Mehta, Senior Counsel for defendant no. 1, has been on the seller onboarding policy, followed by defendant no. 1, which mandates the following information to be provided by a seller:

- i. PAN Card;
- ii. Bank account in the name of the individual or business;
- iii. GST Number;
- iv. Proof of Identification;
- v. Proof of address;
- vi. Valid email ID and contact details;
- vii. Bank details including a cancelled cheque of the account registered.

4. In addition, every seller is required to share documents of ownership like purchasing documents as sample, and/or wholesale invoice of purchase for certain category of products. Since the seller is required to comply with terms of use, all these relevant conditions are placed in that agreement. Aside from the grievance redressal mechanism, defendant no. 1 says that they have a blacklisting process to blacklist sellers which are habitual offenders.

5. Senior Counsel for plaintiff has brought on record a note on processes



adopted by other e-commerce websites regarding management and filtration of counterfeit sellers from their platforms. In a sense, what he has drawn attention to is the onboarding requirements on other e-commerce websites *like Nykaa, Myntra, Amazon, Tyra, and Ajio*. The onboarding requirements of other e-commerce websites have been perused by the Court which would incontrovertibly show that aside from the basic information relating to identification and bank account and GST, each of them require a seller to submit some kind of document to show authority to sell the product, which could be a trademark certificate, manufacturing license, selling license, distribution license, authorization letter, permission from the brand representative, etc.

6. It seems *prima facie* that e-commerce websites are cognizant of counterfeit issues and are taking steps to counter the same on their e-commerce platforms in order to give assurance to brand owners, as well as, users that the website is predominantly sanitized and counterfeit products would be weeded out by some filtration process.

7. The Court has drawn attention of the parties to a decision of the Coordinate Bench of the Court in *Abhi Traders v. Fashnair Technologies Pvt. Ltd*, CS(COMM) 180/2024 order dated 29.02.2024. where it was observed that there was an obligation on e-commerce platforms to comply with the Consumer Protection (E-Commerce) Rules, 2020 (“**E-Commerce Rules**”) notified on 23rd July 2020. The relevant paragraph 25 and 26 are extracted under for reference:

“25. There is also an obligation upon the E-Commerce platform to ensure that 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 Consumer Protection (E- Commerce) Rules, 2020, notified on 23rd July, 2020, 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.

26. Under these circumstances and considering the complete imitation, which has been indulged by Defendant Nos.2 to 9 and other unknown Defendants, the Plaintiff has made out a case for grant of an ex-parte ad 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 online platforms and marketplaces, it is extremely easy for sellers to proliferate the images and continue to dupe customers.”

8. Aside from the larger issue of process involved in onboarding sellers, the grievance addressing mechanism, and the blacklisting mechanism, two specific issues have been pointed out by Senior Counsel for the plaintiffs, which have occurred in the facts and conspectus of the matter.
 - i. As pointed out by defendant no. 5 & 6, their GST number was used by one of the rogue sellers selling counterfeit products, thereby, submitting that a genuine GST number of seller ‘A’ can be used on the platform by seller ‘B’ and for selling counterfeit products.
 - ii. A unique number is assigned to a particular product, (defendant number 1 calls it an FSN number), and the same FSN number is allotted to other sellers selling the same product on the marketplace. Thereby, when the brand owner complains to defendant no. 1 about a counterfeit product,



and defendant no. 1 does take it down, it takes down the listing for all the sellers selling that product with the same FSN number, resulting in authorized and genuine sellers, as well, from being de-listed.

- iii. Since bank account details have not been provided, the defendant no. 1 has only partly complied with directions of this Court given on 27th September, 2023, in particular in para 21 (v) which is as under:

(v) Defendant 1 is also directed to provide, to the plaintiff, the names, addresses, phone numbers, email IDs, GST, PAN and bank account details and other details in its possession relating to the persons who have posted the 55 URLs enlisted from pages 238 to 247, as well as of any future counterfeiting URLs. The said details would also be placed on record by way of an affidavit by Defendant 1 before this Court.

9. In order to address these issues, defendant no.1 has been called upon to take instructions and file an affidavit regarding the following:

- i. Considering that defendant no. 1 does seek bank details including a cancelled cheque of the registered account of a seller, and the order noted above had directed “*to give the bank account details and other details in possession*”, defendant no. 1 shall provide the bank account details along with the cancelled cheque details which they have used for onboarding these persons, as noted in paragraph 21 (v) above, and place it on record.
- ii. Defendant no. 1 shall investigate the issue of misuse of GST by rogue sellers and provide solutions for verification of the GST number with the bank account details and any other steps which can be taken in order to ensure that misuse of GST does not take place on their site. In replying to



this, they will be cognizant of their own process and policy which is *inter alia* part of the ‘*Beginners Guide to selling on Flipkart*’ and disclose as to how are these implemented.

- iii. Defendant no. 1 shall investigate into whether different FSN numbers can be provided for different sellers of the same product, considering that the marketplace allows any seller to sell their product.
 - iv. Defendant no. 1 shall file a tabulation demonstrating compliance with Rules 5 and 6 of the E-commerce Rules, specifically tabulating the Rule in question and the nature of compliance which is done by them currently. They shall append whatever documents are necessary in order to bear out the assertions made in the tabulation.
10. The said affidavit shall be filed within a period of 4 weeks with copy to the opposing side.
 11. The said affidavit will be provided to the counsel for plaintiff at least three days before the next date of hearing.
 12. Counsel for plaintiff shall inform by written communication about their authorised sellers whose products were taken down because of FSN issue; this written communication may be addressed to counsel for defendant no.1; defendant no.1 will revert back within 48 hours on the process to be followed in order that such listings are activated; parties shall collaborate in order to ensure that due technical process is followed in order that these listings of authorised sellers are activated.
 13. List on 28th May, 2024.
 14. Order be uploaded on the website of this Court.

ANISH DAYAL, J

APRIL 25, 2024/RK/ig