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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(COMM) 757/2023 and I.A. 20845-47/2023**

SUNSHINE TEAHOUSE PVT LTD Plaintiff
Through: Mr. Ankit Miglani and Ms. Shreya
Mansi James, Advs. (M:
9462699664)

versus

GREY MANTRA SOLUTIONS Defendant
Through: None.

CORAM:
JUSTICE PRATHIBA M. SINGH

ORDER
% **19.10.2023**

1. This hearing has been done through hybrid mode.

I.A. 20847/2023 (for exemption)

2. This is an application filed by the Plaintiff seeking exemption from filing true typed/better 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 Act, 2015 and the DHC (Original Side) Rules, 2018.

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

I.A. 20846/2023 (for additional documents)

4. 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.

5. Application is disposed of.

CS(COMM) 757/2023

6. Let the plaint be registered as a suit.

7. Issue summons to the Defendant through all modes upon filing of Process Fee.

8. The summons to the Defendant 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 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.

9. 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.

10. List before the Joint Registrar for marking of exhibits on 4th December, 2023. It is made clear that any party unjustifiably denying documents would be liable to be burdened with costs.

11. List before Court on 29th January, 2024.

I.A. 20845/2023 (u/O XXXIX Rules 1 & 2 CPC)

12. Issue notice in the application.



13. This is a suit filed by the Plaintiff-M/s Sunshine Teahouse Ltd. which is the owner of the brand name 'CHAAYOS', used in respect of tea and

related products. The Plaintiff also runs and maintains tea cafes serving tea, beverages, sandwiches, cakes, pastries, cookies under the name ‘CHAAYOS’. The mark ‘CHAAYOS’ was adopted by the Plaintiff in the year 2012 and has a registration for the mark ‘CHAAYOS’ since 2017.

14. The Plaintiff, apart from running and operating its tea outlets, has also launched products under the brand name ‘CHAAYOS’ in various flavours and variants. The Plaintiff has registrations for the mark ‘CHAAYOS’ in various classes i.e., 43, 16, 29, 30, 32, 47. The said products are manufactured and marketed in distinctive packaging which are set out below:

S.no	Trade Dress of Plaintiff
1.	
2.	

3.	 A sachet of Chaayos Masala Chai. The packaging is primarily red with a yellow label at the bottom. It features the brand name 'Chaayos' in white and Hindi text 'देसी चाय ++' and 'चाय'. The word 'MASALA CHAI' is printed in bold on the yellow label. Images of cinnamon sticks, ginger, and tea leaves are visible.
4.	 A sachet of Chaayos Chai Masala. The packaging is red with a yellow label. It features the brand name 'Chaayos' in white and Hindi text 'चाय masala ++' and 'मसाला'. The word 'CHAI MASALA' is printed in bold on the yellow label. Images of cinnamon sticks, ginger, and a bowl of masala are visible.
5.	 A sachet of Chaayos Lemongrass Ginger. The packaging is red with a green label at the bottom. It features the brand name 'Chaayos' in white and Hindi text 'देसी चाय ++' and 'चाय'. The words 'LEMONGRASS GINGER' are printed in bold on the green label. Images of lemongrass stalks and ginger are visible.
6.	 A sachet of Chaayos Instant Chai Ginger. The packaging is orange and white. It features the brand name 'Chaayos' in white and Hindi text 'इंस्टैंट चाय ++' and 'चाय'. The word 'GINGER' is printed in bold. It also includes the text 'pack of 36' and 'rectors ginger tea'. Images of ginger pieces are visible.

7.	
8.	

15. The sales turnover of the Plaintiff of ‘CHAAYOS’ branded products is stated to be approximately Rs.10 crores in the last financial year 2022-23 and the total sales turnover of the Plaintiff is approximately Rs. 250 crores. The Plaintiff also claims to sell goods under its trade dress in other countries *i.e.*, United States, Canada, UAE and Singapore. The Plaintiff operates its website through domain name www.chaayos.com and sells its products through various online websites *i.e.*, www.amazon.in , www.flipkart.com, Bigbasket, Instamart *etc.* A substantial amount of money has also been invested in promotional and advertising activities, for Plaintiff’s brand ‘CHAAYOS’ which amounts to more than Rs.25 crores for the financial year 2022-23.

16. The Defendant, in the present case, is M/s Grey Mantra Solutions which is offering various flavours of tea on online platforms. The Plaintiff's claim is that the Defendant has also been selling its products on Amazon using the brand names i.e., 'TEACURRY' and 'JUST VEDIC'.

17. The case of the Plaintiff is that the Defendant has adopted and copied several distinctive elements of Plaintiff's packaging, which forms a substantial imitation of the Plaintiff's trade dress. The products of the Defendants are sold under the mark 'TEACURRY' and 'JUST VEDIC'. The said packagings of the Defendant have imitated the colours, some flavour names and the water mark of the word 'chaai'.

18. According to the Plaintiff the products show that the overall trade dress including the colour combination, the manner of writing the word 'chai', or 'masala', the writing script, the various creative embellishments on the packaging, the depiction of flower, ellachi, tea, *etc.* are all almost identical to that of the Plaintiff.

19. Ld. counsel for the Plaintiff- Mr. Ankit Miglani, submits that the Plaintiff gave an opportunity to the Defendant to resolve the disputes, and addressed an email to the Defendant in June, 2023. The Defendant responded stating that they wish to settle the matter, however, they sought certain information. After the information was provided there has been no response from the Defendant at all.

20. Apart from the packagings, the Plaintiff's grievance is also that the Defendant has copied the Amazon listing. A comparative chart of the same has been extracted hereinbelow:

Plaintiff Image	Defendant Listing (Teacurry)	Defendant Listing (Just Vedic)
		
		
		

<p>A QUALITY FIRST PRODUCT</p>  <p>Chaayos वृद्धां चोडां चाय ADRAK ELAICHI</p> <p>NATURAL Immunity Booster STRONG GOLDEN CHAI NATURAL INGREDIENTS Effective COUGH REMEDY</p>	<p>A QUALITY FIRST PRODUCT</p>  <p>teacurvy kadak chai PAAN CHAI</p> <p>Premium Immunity Booster STRONG GOLDEN CHAI Best QUALITY Effective COUGH REMEDY</p>	<p>A QUALITY FIRST PRODUCT</p>  <p>just vedic kadak chai चाय PAAN CHAI</p> <p>Premium Immunity Booster STRONG GOLDEN CHAI Best QUALITY Effective COUGH REMEDY</p>
<p>A QUALITY FIRST PRODUCT</p>  <p>Chaayos वृद्धां चोडां चाय MASALA CHAI</p> <p>NATURAL Immunity Booster STRONG GOLDEN CHAI NATURAL INGREDIENTS Effective COUGH REMEDY</p>	<p>A QUALITY FIRST PRODUCT</p>  <p>teacurvy kadak chai MASALA CHAI</p> <p>NATURAL Immunity Booster STRONG GOLDEN CHAI NATURAL INGREDIENTS Effective COUGH REMEDY</p>	<p>A QUALITY FIRST PRODUCT</p>  <p>just vedic kadak chai चाय MASALA CHAI</p> <p>NATURAL Immunity Booster STRONG GOLDEN CHAI NATURAL INGREDIENTS Effective COUGH REMEDY</p>
<p>A QUALITY FIRST PRODUCT</p>  <p>Chaayos वृद्धां चोडां चाय ADRAK ELAICHI</p> <p>NATURAL Immunity Booster STRONG GOLDEN CHAI NATURAL INGREDIENTS Effective COUGH REMEDY</p>	<p>A QUALITY FIRST PRODUCT</p>  <p>teacurvy kadak chai CARDAMOM CHAI</p> <p>Premium Immunity Booster STRONG GOLDEN CHAI Best QUALITY Effective COUGH REMEDY</p>	<p>A QUALITY FIRST PRODUCT</p>  <p>just vedic kadak chai चाय CARDAMOM CHAI</p> <p>Premium Immunity Booster STRONG GOLDEN CHAI Best QUALITY Effective COUGH REMEDY</p>
<p>A QUALITY FIRST PRODUCT</p>  <p>Chaayos वृद्धां चोडां चाय ADRAK TULSI</p> <p>NATURAL Immunity Booster STRONG GOLDEN CHAI NATURAL INGREDIENTS Effective COUGH REMEDY</p>	<p>A QUALITY FIRST PRODUCT</p>  <p>teacurvy kadak chai ADRAK TULSI CHAI</p> <p>NATURAL Immunity Booster STRONG GOLDEN CHAI NATURAL INGREDIENTS Effective COUGH REMEDY</p>	<p>A QUALITY FIRST PRODUCT</p>  <p>just vedic kadak chai चाय ADRAK TULSI CHAI</p> <p>NATURAL Immunity Booster STRONG GOLDEN CHAI NATURAL INGREDIENTS Effective COUGH REMEDY</p>



21. The above packagings and listings would show that the Plaintiff's packaging is in the form of paper packaging and the Defendant is using the plastic containers, but the resemblance is clearly present on a physical perusal of the products. The email correspondence has been perused by the Court.

22. The Plaintiff has several trademark registrations for the mark 'CHAAYOS' as also label/mark applications for distinctive packagings. Clearly, there has been an imitation by the Defendant. The distinctive elements of the trade dress has been copied by the Defendant. The copying of the listings and the expressions used in the same also point to the clear *malafide* intention of the Defendant who is clearly trying to sail as close to the wind as possible. Listings play a crucial role in online marketing and sales. Copying of listings also indicates that the Defendant is trying to pass off its products as that of the Plaintiff, in view of the point-of-sale confusion that becomes clearly possible. Another point of concern is that after receiving the notice, Id. Counsel submits that some online listings have been modified to a new packaging with some features having been changed, however, when orders are placed, old products are delivered.

23. Under these circumstances, it is directed that the Defendant shall stand restrained from making any fresh manufacture of their tea products in the impugned trade dress packaging which has copied various distinctive elements, and are a colourable imitation of the Plaintiff's product packaging. Insofar as the already manufactured products are concerned, the details of the inventory shall be placed on record along with the monetary value of the same. Notice be issued in this matter to the Defendant returnable on dates mentioned above.

24. In view of the listings having been copied almost identically, the impugned listings shall be taken down within a week. If the same are not taken down by the Defendant, the Plaintiff is free to approach the online platforms with the specific URLs for taking down the said listings.

25. List on the dates fixed above i.e., 29th January, 2024.

26. Compliance of Order 39 Rule 3 CPC be done within a week.

PRATHIBA M. SINGH, J.

OCTOBER 19, 2023

dj/ks