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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 21st December, 2023

+ CS(COMM) 926/2023, I.As. 25850/2023, 25851/2023 & 25852/2023

JOY CREATORS LLP

..... Plaintiff

Through: Mr. Hemant Daswani, Ms. Saumya Bajpai, Ms. Pranjal, Mr. Kunal Prakash, Advs. (M. 9810556744)

versus

PARFUMS CHRISTIAN DIOR AND ORS

..... Defendants

Through: Ms. Pooja Dodd, Ms. Akanksha Singh, Ms. Saumya Agarwal, Ms. Rishika Aggarwal, Advs. for D-1 (M. 9550433496)
Mr. Kapil Midha & Mr. Garv Singh, Advs. for D-2 (M. 8826977395)

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

I.A. 25852/2023 (for exemption)

2. This is an application filed by the Plaintiff seeking exemption from filing originals/certified/cleared/typed or translated copies of documents, proper margins, electronic documents, 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 and the DHC (Original Side) Rules, 2018.

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



I.A.25851/2023 (u/S 12A of the Commercial Courts Act)

4. This is an application filed by the Plaintiff seeking exemption instituting pre-litigation mediation under Section 12A of the Commercial Courts Act. Considering the facts and circumstances of the case, the Court is satisfied that in terms of the judgment of the Hon'ble Supreme Court in *Yamini Manohar v. T.K.D Keerthi, SLP(C) 023488/2023*, that the present suit contemplates urgent interim relief. Thus the exemption is granted to the Plaintiff.

5. Accordingly, the application is disposed of.

CS(COMM) 926/2023

6. Let the plaint be registered as a suit.

7. Issue summons to the Defendants through all modes upon filing of Process Fee. Summons are accepted by Defendant Nos.1 & 2.

8. 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.

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 29th January, 2024. It is made clear that any party unjustifiably denying documents would




be liable to be burdened with costs.

11. List before Court on 14th February, 2024.

I.A. 25850/2023 (u/O XXXIX Rules 1 & 2 CPC)


12. Issue notice in the application. Notice is accepted on behalf of the Defendant Nos.1 & 2.

13. The present suit relates to the trademark 'JOY' in which the Plaintiff – JOY Creators LLP claims both statutory and common law rights in the said mark and seeks an injunction against Defendant No.1- M/s. Parfums

Christian Dior & Ors. herein from using the mark  bearing no. 4070959 under class 3 for perfumes.

14. The Plaintiff has adopted the mark 'JOY' in respect of a large variety of cosmetic products including perfumes since 1988. It is stated that the firm had started manufacturing and marketing of talcum powders, creams, lotions, and other personal care products.

15. The case of the Plaintiff is that it had adopted the mark 'JOY' in respect of soaps and various other cosmetic products. The Plaintiff also has

registration for 'JOY/  ' mark and logo, the details of which are set out as under:



S. No	Mark	Reg No	Date	Class	Status
1	JOY HONEY & ALMONDS	1224383	14-Sep-2003	3	Registered
2	JOY SKIN FRUITS	1224384	14-Aug-2003	3	Registered
3	JOY XYZ	1284978	19-May-2004	3	Registered
4	JOY NATURALS	1285107	03-Jun-2009	3	Registered
5	JOY BEAUTY	1825110	03-Jun-2009	3	Registered
6	JOY (VITAMIN RICH)	2100188	15-Feb-2011	3	Registered
7	JOY PURE HERBAL	2283983	15-Feb-2012	3	Registered
8	JOY ULTRA SOFT NATURAL SKIN CARE	2283984	15-Feb-2012	3	Registered
9	JOY HAR PAL BEAUTIFUL	2283985	15-Feb-2012	3	Registered
10	JOY ACTIVE	2283986	15-Feb-2012	3	Registered
11	JOY SKIN FRUITS PURIFYING FACE WASH	2304353	23-Mar-2012	3	Registered
12	JOY SKIN FRUITS NOURISHING FACE WASH	2304354	23-Mar-2012	3	Registered



13	JOY SKIN FRUITS OIL CONTROL FACE WASH	2304355	23- Mar- 2012	3	Registered
14	JOY SKIN FRUITS GENTLE FACE WASH	2304356	23- Mar- 2012	3	Registered
15	JOY SKIN FRUITS REJUVENATING FACE WASH	2304357	23- Mar- 2012	3	Registered
16	JOY SKIN FRUITS FAIRNESS FACE WASH	2304358	23- Mar- 2012	3	Registered
17	JOY PAPAYA SUN	2304359	23- Mar- 2012	3	Registered
18	JOY PAPAYA WASH	2304360	23- Mar- 2012	3	Registered
19	JOY ACTIVE MOISTURE	2395049	12- Sept- 2012	3	Registered
20	JOY ACTIVE WHITE	2395050	12- Sept- 2012	3	Registered
21	JOY ACTIVE LIGHT	2395051	12- Sept- 2012	3	Registered
22	JOY ACTIVE FRUIT BUBBLES	2395052	12- Sept- 2012	3	Registered



23	JOY HONEY & ALMONDS	2397687	17-Sept-2012	3	Registered
24	JOY BE SOFT	2485465	26-Feb-2013	3	Registered
25	JOY SKIN FRUITS	2487827	01-Mar-2013	3	Registered
26	JOY SKIN FRUITS	2487830	01-Mar-2013	3	Registered
27	JOY SKIN FRUITS	2487831	01-Mar-2013	3	Registered
28	JOY SKIN FRUITS	2487832	01-Mar-2013	3	Registered
29	JOY HAIR FRUITS CONDITIONING SHAMPOO	2500868	23-Mar-2013	3	Registered
30	JOY HAIR FRUITS	2500869	23-Mar-2013	3	Registered
31	JOY FRUIT WASH	2533259	17-May-2013	3	Registered
32	JOY PURE NEEM	2629628	19-Nov-2013	3	Registered
33	JOY NUTRISILK	3032664	14-Aug-2015	3	Registered
34	JOY BEAUTIFUL BY NATURE	3117208	04-Dec-2015	3	Registered



35	JOY	3117740	07-Dec-2015	3	Registered
36	JOY HELLO SUN	3117742	07-Dec-2015	3	Registered
37	JOY ACTIVE FRUIT	3258754	12-May-2016	3	Registered
38	JOY SOFT SKIN JELLY	3698510	08-Dec-2017	3	Registered
39	JOY SUMMER WALA LOTION	3794840	03-Apr-2018	3	Registered
40	JOY REVIVIFY	4169753	07-May-2019	3	Registered
41	JOY FRUIT EXPRESS	4169754	07-May-2019	3	Registered
42	JOY VELVET SHEA	4169755	07-May-2019	3	Registered
43	JOY PURE &SAFE	4555447	03-July-2020	3	Registered
44	JOY 3T	4555450	03-July-2020	3	Registered
45	JOY ALMOND SMOOTH	4787945	19-Dec-2020	3	Registered
46	JOY COCOA RICH INTENSE	5222198	25-Nov-2021	3	Registered




	NOURISHING SKIN CREAM				
47	JOY COCOA RICH INTENSE NOURISHING BODY LOTION	5222199	25- Nov- 2021	3	Registered

16. It is averred that the Plaintiff also has copyright registrations for the mark and logo 'JOY' bearing no.A-119220/2017. The sale of the Plaintiff for the financial year 2022-23 is stated to be over Rs.403 crores. It is further claimed that the Plaintiff also exports its goods across the world to different countries including Russia, Romania, Africa *etc.* The Plaintiff also claims to have extensively advertised the products under the 'JOY' mark across the print and electronic media. The products of the Plaintiff are also available on e-commerce platforms like Amazon, Flipkart, Walmart Best Price, Metro Cash & Carry, Reliance Retail Limited, Big Bazaar, Vishal Mega Mart, Nykaa, Big Basket, Easy day, Apollo Pharmacy, D'Mart as also in various other pharmacies and retail stores as stated in paragraph 16 of the Plaint.

17. According to the Plaintiff, it has 3.7% share in the skincare market, 36.4% share in the moist cream category for women and has substantial market share in other skin care segments as well, including sunscreen *etc.* It is claimed that the Plaintiff is 4th among the top 10 players for the skin care segment in India along with other leading cosmetic manufacturing companies.


18. Defendant No.1 in the present case is the principal company selling the said products *i.e.*, perfumes, make-up preparations and cosmetics in





India under the mark  and Defendant No.2 - Dior, Select Citywalk Retail Pvt. Ltd. is the entity running a retail outlet for the DIOR products. Defendant No.3 - RSH Global Pvt. Ltd. is a proforma Defendant, which is manufacturing and marketing JOY products as a licensee for the Plaintiff.

19. It is the case of the Plaintiff that in January, 2022 it came across the



impugned mark , bearing no. 4070959 under class 3 in respect of perfumery, make-up preparations and cosmetics by the Defendant No. 1, claiming usage since 2018, which was published in the trademark journal no.2017 dated 13th September, 2021. An opposition was filed by the Plaintiff on 12th January, 2022. The said opposition proceedings are currently pending. It is further averred that in February, 2023, the Plaintiff found the products of the Defendant No.1 being openly sold in retail stores including that of the Defendant No.2 *etc.* The said products include perfumes, eau de toilette, cosmetic sprays, deodorants and other products. A comparative chart of the Plaintiff's and Defendant's mark are set out below:

Plaintiff's mark/logo	Defendants' mark/logo
	



20. It is claimed that a cease and desist notice dated 27th February, 2023 was sent to Defendant No.1. The Defendant No.1 replied to the same on 6th March, 2023 and on 21st March, 2023, wherein the Defendant refused to accede to the demands of the Plaintiff. Thereafter the present suit was filed.

21. Ld. counsel for the Plaintiff submits that the mark



is identical and the manner in which the Defendant uses the said mark clearly shows that the prominent word in the mark is 'JOY' and not 'DIOR'.

22. The Defendant No.1 is represented on caveat by Ms. Pooja Dodd, ld. Counsel. She submits that a legal notice dated 27th February, 2023 was issued to the Defendant No.1, which was replied to on 6th March, 2023 and 21st March, 2023. Since she is on caveat, she may be given time to file a reply.


23. On a specific query as to which are the products which have been launched by the Defendant No.1 in India, she submits that apart from perfumes the Defendant No.1 also manufactures skin care products such as body lotion *etc.*

24. The Court has considered the matter. The Plaintiff is clearly the prior user of the mark 'JOY' having rights since 1988. In reply to the legal notice, the three pronged response given by the Defendant No.1 is that the mark:

1. Is common to the trade and that various 'JOY' formative marks are co-existing in class 3;
2. The Plaintiff's registration is primarily for a device/logo. It is



The logo for 'JOY' perfume, featuring the word 'JOY' in a stylized, bold font. The letter 'O' is replaced by a circular emblem containing a traditional Indian motif.

also claimed that  perfumes of the Defendant are also endorsed by various celebrities and that and that it has been in use since 2018 and have co-existed with the Plaintiff's products;

3. The target customer class is also sought to be distinguished, by claiming that the product is an expensive product;

25. The reply to the legal notice does not claim any prior user rights in the mark 'JOY' either in India or globally prior to the Plaintiff. The Plaintiff is clearly the prior user of the mark 'JOY' in India. The Plaintiff also has registrations in India. Even though the same may be in respect of logo or device the prominent and essential feature of the Plaintiff's mark is the mark 'JOY'. The Plaintiff and the Defendant No.1 are in the same product segment *i.e.* cosmetics, health care products, body care products *etc.*


26. On behalf of the Defendant No.2, Mr. Kapil Midha, Id. Counsel submits that Dior, Select Citywalk Retail Pvt. Ltd. has a retail sales agreement with Defendant No.1- M/s. Parfums Christian Dior.

27. A perusal of the product listings of the Plaintiff would show that the products of the Plaintiff are a large range and the mere use of the mark 'DIOR' with the mark 'JOY' would not eliminate confusion. The mere fact that the mark DIOR is well known would not be sufficient for the Defendant to believe that it can impinge upon the rights of the Plaintiff as such use would also amount to infringement of the Plaintiff's trademark under Section 29 of the Act. The clear impression that the Court has is that the mark 'JOY', prima facie has been adopted recently by the Defendant No.1.



However, considering the fact that the Defendants may be having certain stock of the products in the market, while the Defendants may file reply to the injunction application, after having *prima facie* considered the matter, the following directions are issued:

(1) The Defendant No.1 shall file a detailed statement of account of

all products sold under the mark 'JOY or ', since inception by way of an affidavit.

(2) Insofar as the existing stock is concerned, which may be available in all retail outlets and shops or online, the Defendant No.1 is free to exhaust the same. However, no fresh products shall be infused into the market by the Defendant No.1 till hearing of the present injunction application.

28. Reply to the application be filed within two weeks. Rejoinder thereto be filed within two weeks thereafter.

29. List for hearing in the injunction application on 14th February, 2024.

PRATHIBA M. SINGH
JUDGE

DECEMBER 21, 2023/dk/ks