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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(COMM) 702/2021
M/S. BLUE HEAVEN COSMETICS PVT. LTD. Plaintiff
Through: Mr. Sanjay Aggarwal, Mr. Rishabh
Srivastava and Ms. Radhika Arora,
Advocates.

versus

SHIVANI COSMETICS THROUGH ITS PARTNERS
VINOD MONGA AND NISHANT MONGA Defendants
Through: None.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

% **23.12.2021**

[VIA HYBRID MODE]

This matter has been listed pursuant to an urgent listing.

I.A. No. 17435/2021 (*seeking exemption from filing certain documents, clear copies and English translations*) **and**

I.A. No. 17437/2021 (*u/Section 151 of CPC, r/w Order XI Rule 6(3) Commercial Court Act, 2015 for declaration of the copies of the documents filed alongwith the plaint*)

1. Exemption is granted, subject to all just exceptions.
2. The Plaintiff shall file better copies of exempted documents, compliant with practice rules, before the next date of hearing.
3. Accordingly, the application stands disposed of.

I.A. No. 17436/2021 (*u/Order XI Rule 1(4) (as amended by the Commercial Appellate Division of High Courts Act, 2015 r/w Section 151 of CPC, 1908) seeking leave to file additional documents*)

4. This is an application seeking leave to file additional documents under

the Commercial Courts Act, 2015.

5. The Plaintiff, if they wish to file additional documents at a later stage, shall do so strictly as per the provisions of the said Act.

6. Accordingly, the application stands disposed of.

I.A. No. 17438/2021 (for exemption from exhausting the remedy of pre-institution mediation)

7. Having regard to the facts of the present case, exemption from attempting pre-institution mediation is allowed.

8. Accordingly, the application stands disposed of.

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9 Let the plaint be registered as a suit.

10. Issue summons. Upon filing of process fee, issue summons to the remaining Defendants by all permissible modes. Summons shall state that the written statement shall be filed by the Defendants within 30 days from the date of receipt of summons. The written statements shall be filed by the Defendants within 30 days from today. 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 statements shall not be taken on record.

11. Liberty is given to the Plaintiff to file replications within 15 days of the receipt of the written statements. Along with the replications, if any, filed by the Plaintiff, an affidavit of admission/denial of documents of the Defendants, be filed by the Plaintiff, without which the replications 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.



12. List before the Joint Registrar for marking of exhibits on 11th April, 2022. It is made clear that any party unjustifiably denying documents would be liable to be burdened with costs.

13. List before the Roster Bench on 18th May, 2022

I.A. 17434/2021 (u/Order XXXIX Rules 1 & 2 r/w Section 151 of Code of Civil Procedure, 1908, seeking interim injunction)

14. The Plaintiff has filed the above captioned suit for infringement of registered trademark / trade-dress / copyright / writing style / colour combination / label / packaging / passing off goods, delivery up, rendition of Accounts of profits, and other ancillary reliefs.

15. The case as set out in the plaint is that, the Plaintiff is a private limited company dealing in the manufacturing and marketing of goods falling in Class-03 and 35 under the provisions of the Trade Marks Act, 1999 under


the registered trademarks  and  (word mark as well as formative marks) since 1972, (details of registration whereof are mentioned in the plaint). It is stated that the Plaintiff/Applicant keeps changing the packaging/labels of its products from time to time to adapt to competition in the market, and has protected its rights in such packaging/label etc. by seeking registration of its trademark / trade-dress / colour combination as well as copyright registration. One such unique mark of the Plaintiff is **“BLUE HEAVEN GsET BOLD”** Eyeliner (word mark as well as formative marks) which was adopted sometime in the year 2020.

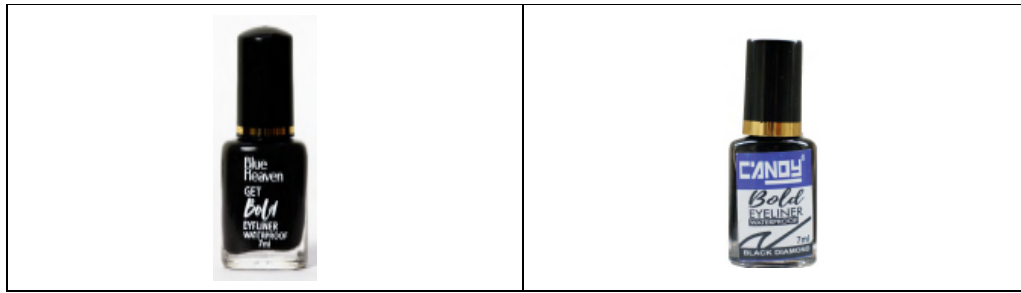
16. It is pleaded that on 12th December, 2021, the Plaintiff came across the impugned product (eyeliner) of the Defendant which is an exact replica

of the Plaintiff's registered trademark / copyright / trade-dress / colour combination / writing style/package/label/ overall get up.

17. Plaintiff is aggrieved by the Defendants' use / violation of the Plaintiff's registered trade-dress / label / copyright / writing style / colour

combination/package rights in  ,  and **"BLUE HEAVEN GET BOLD"** (word as well as formative marks). A comparison thereof is depicted in a tabular form hereinbelow:

PLAINTIFF/APPLICANT'S TRADEMARK / PRODUCT / PACKAGING / LABEL	DEFENDANT'S TRADEMARK/PRODUCT/ PACKAGING/LABEL
	
	




18. It has been further argued that conduct of the Defendant is neither *bona fide* nor that of an innocent adoption, as the Defendant is in the same trade/business and have ought to been aware of the overwhelming reputation the Defendant's impugned mark. The Defendant has been trying to threaten and ride upon the goodwill and reputation of the Plaintiff's products.



19. The Plaintiff has also placed reliance on several orders passed by this Court where injunction in favour of the Plaintiff in relation to protecting Plaintiff's trademarks and trade dress have been granted.

DIRECTIONS:


20. In the opinion of the court, upon an evaluation of the Plaintiff's trademark / label / product with the Defendant's product is it *prima facie* evident that the Defendant copied not only the trademark but also the trade dress / copyright / writing style / colour combination / label / packaging / overall get up of the Plaintiff's mark. The balance of convenience also lies in its favour, and irreparable loss is likely be caused in case an injunction is not granted.

21. Accordingly, till the next date of hearing, Defendants, their directors, successors, franchisees, licensees, distributors, representatives, assignees, agents and all others in active concert / participation with them or on their behalf are restrained from using the trade dress / copyright / writing style/

colour combination/label/packaging/ overall getup “ &
 or in any other manner whereby directly or indirectly infringing the
 Plaintiff’s/Applicant’s registered trade dress/ colour combination/ writing

style/ packaging/ label/copyright  , **Blue Heaven** and 
 (word as well as formative marks) or passing off its goods as that of the
 Plaintiff/Applicant for the goods Eyeliner and other allied and cognate
 goods and services related thereto in Classes 03 & 35.

22. Let the provisions under Order XXXIX Rule 3 be complied with
 within a period of one week from today.

23. Counsel for the Plaintiff very fairly states that it has no objection with
 the Defendant/Respondent’s use of its own mark. Accordingly, it is clarified
 that the Defendants are free to use the mark “CANDY/ ”.

24. List before the Joint Registrar for completion of pleadings on 11th
 April, 2022.

25. List before the Roster Bench on 18th May, 2022.

SANJEEV NARULA, J

DECEMBER 23, 2021
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