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

\+ **CS(COMM) 652/2023 and I.A. 18237/2023-18243/2023**

ANIL KAPOOR ..... Plaintiff

Through: Mr. Pravin Anand, Mr. Ameet Naik, Ms. Vaishali Mittal, Ms. Madhu Gadodia, Mr. Dhruv Anand, Ms. Udita Patro, Mr. Vibhav Mitthal, Ms. Nimrat Singh, Ms. Sampurna Sanyal, Ms. Abha Shah, Ms. Sujoy Mukherjee, Ms. Tarini Kulkarni, Ms. Muskkaan Verma & Mr. Siddhant Chamola, Advs. (M: 9999052646)

versus

SIMPLY LIFE INDIA & ORS. ..... Defendants

Through: Mr. Debarshi Dutta, Mr. Mrinal Ojha, Mr. Anand Raja & Ms Tanya Chaudhry, Advs. for D-18 & 19 (M: 9990952258)

Mr. Harish Vaidyanathan Shankar, CGSC, with Mr. Srish Kumar Mishra, Mr. Sagar Mehlawat, Mr. Alexander Mathai Paikaday, Mr. M Sriram and Mr. Krishnan V., Advs. (M: 98107 88606)

CORAM:
JUSTICE PRATHIBA M. SINGH

O R D E R

% 20.09.2023

1. This hearing has been done through hybrid mode.

I.A. 18239/2023 (for exemption)

2. This is an application filed by the Plaintiff seeking exemption from filing originals/certified/cleared/typed or translated copies of documents, left

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side 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, 2015 and the DHC (Original Side) Rules, 2018.

3. Exemption is allowed, subject to all just exceptions.

4. Accordingly, application is disposed of.

I.A. 18238/2023 (for additional documents)

5. This is an application 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.

6. Application is disposed of.

I.A. 18241/2023 (u/S 12A of the Commercial Courts Act)

7. This is an application filed by the Plaintiff seeking exemption from instituting pre-litigation mediation proceedings. The Plaintiff has preferred an application under Order XXXIX Rules 1 and 2 of the CPC, 1908 and has also sought an *ex-parte ad-interim* injunction against the defendants. In view of the orders passed in ***Chandra Kishore Chaurasia v. R A Perfumery Works Private Ltd, 2022/DHC/004454***, the application is allowed and accordingly disposed of.

I.A. 18240/2023 (seeking extension of time for filing court fees)

8. This is an application seeking extension of time for filing court fee. The same is allowed. Let the court fee be deposited within a week. Registry to put up a report within a week, if the court fee is not filed.

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9. Accordingly, application is disposed of.

I.A. 18243/2023 (for seeking leave to file documents on a pen drive or CD)

10. This is an application seeking leave to file documents on a pen drive or CD. The same is allowed. Let the pen drive be filed and the files from the same be scanned along with the electronic record of the Court.

11. Accordingly, application is disposed of.

I.A. 18242/2023 (for exemption)

12. This is an exemption from filing a properly executed plaint which bears the complete signature of the Plaintiff on each page. The same is allowed. Let the plaint with the complete signatures as per Rules, be filed within four weeks.

13. Accordingly, application is disposed of.

CS (COMM) 652/2023

14. Let the plaint be registered as a suit.

15. Issue summons, to all the Defendants through email.

16. 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.

17. Liberty is given to the Plaintiff to file a replication within 15 days of the receipt of the written statement(s). 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

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documents, the same shall be sought and given within the timelines.

18. List before the Joint Registrar for marking of exhibits on 16th November, 2023. It is made clear that if any party unjustifiably, denies any documents, then they would be liable to be burdened with costs.

19. List before Court on 12th March, 2024.

I.A. 18237/2023 (u/O XXXIX Rules 1 & 2 CPC)

20. Issue notice.

21. The Plaintiff- Mr. Anil Kapoor, a well-known Indian actor, has filed the present suit seeking protection of his own name, image, likeness, persona, voice and various other attributes of his personality against misuse of all hues over the internet.

22. The Plaintiff's case is that he is one of the most celebrated, acclaimed and successful actors in the Indian film industry, and has extensive appearance in over 100 films, multiple television shows and web series. He has endorsed a large variety of products & services and has appeared in several advertisements as well.

23. The films and serials in which the Plaintiff had acted are a matter of public knowledge, and have also been pleaded at paragraph 15 of the plaint. Some of the Plaintiff's well-known films include *'Meri Jung'* (1985), *'Karma'* (1986), *'Janbaaz'* (1986), *'Aap Ke Saath'* (1986), *'Mr. India'* (1987), *'Ghar Ho To Aisa'* (1990), *'Gandhi, My Father'* (2005), *'Welcome'* (2007), *'Aisha'* (2010), *'Khoobsurat'* (2014), and also his role in British film *'Slumdog Millionaire'* (2008) through which he gained international recognition.

24. The Plaintiff claims that he has won several prestigious awards including the Filmfare Award for the years 1984, 1988, 1992 and 1997 as

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also the National Film Awards, Zee Cine Awards, IIFA etc. amongst others. The Plaintiff also has registered trademarks in favour of its production company- Anil Kapoor Films Company, bearing registration number '*1811341'* in class 41, details of which are set out in paragraph 17 of the plaint. The Plaintiff also claims to have produced several successful and critically acclaimed films, such as *"Gandhi, My Father", "Veere di Wedding", "Fanney Khan", "Thar"*, as also produced various web-series and TV shows.

25. It is his case that his name and persona, apart from having immense commercial value, is liable to be protected against misuse and tarnishment over the internet. In the present suit, the Plaintiff seeks protection of his personality rights, publicity rights and elements associated with his persona such as:

- His name;
- His voice;
- His photograph/image/likeness;
- His manner of speaking and dialogue delivery;
- His gestures;
- His signatures etc.

26. According to the Plaintiff, his voice is also of immense value as he has lent his voice for Hindi dubbing of some of the most viewed films such as *"Baloo the bear"* which is a Hindi dubbed version of the film *"Mowgli: Legend of the Jungle"* for the character *"Baloo"*. He also provided his voice for the character *"Karna"* in *"Mahabharat 3D Film"* (2013), and the Hindi dubbed version of *Mani Ratnam's "PSI"* (2022).

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27. The Plaintiff also claims that the expression *'Jhakaas'*, which is a Marathi slang word, roughly translated as 'fantastic', 'awesome' or 'superb' in English, was popularized by him through one of his Hindi movies, namely *'Yudh'*. A perusal of the press reports and videos would show, that the manner in which he delivers the said word, while speaking a dialogue, and the nature of expression is exclusively synonymous with the Plaintiff's energetic and enthusiastic persona.

28. The rights claimed by the Plaintiff, in the present suit, are stated below:

A. Personality rights, including right to publicity;

B. Copyright in the dialogue, image as also in other associated works;

C. Common law rights including the right to be protected against passing off, dilution and unfair competition.

29. It is the case of the Plaintiff that the Defendants have committed the following illegal acts:

S. No.	*Defendants*	*Unauthorized acts*
1	Defendant No.1- Simply Life India	▪ False endorsement of Anil Kapoor as a motivational Speaker. ▪ Fees (*'Dark Pattern'*) charged by the Defendant for its service. ▪ Name & images of the Plaintiff being used- 'Passing off'.
2.	Defendant No. 12-	▪ Plaintiff's voice/

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	https:/mobcup.net/	dialogues and name being used.
3.	Defendant No. 14- Kareti Rama Krishna	▪ Plaintiff's face being morphed. ▪ Payment sought from consumers.
4.	Defendant No.2- Vision Computers	▪ Wallpapers on mobile phones using Plaintiff's images.
5.	Defendant No.3- TP Apparel LLC	▪ Merchandise- magnets, t-shirts, cups, stickers including *'Jhakaas'*.
6.	Defendant No.4-MAD Ventures (Book My Face)	▪ Face masks with Plaintiff's pictures on it.
7.	Defendant No. 7- Khajistan	▪ Stickers of Plaintiff.
8.	Defendant No. 8- VIP Cutouts	▪ Cutouts and face masks of Plaintiff.
9.	Defendant No. 9- Merchbay Products Pvt. Ltd.	▪ Posters of Plaintiff.
10.	Defendant No.10- Thunder Buddy Enterprise Private Limited	▪ Key chains with Plaintiff's image.
11.	Defendant No.11- Paridhan Showroom	▪ Suits being sold using Plaintiff's name.
12.	Defendant No.13- Firma Stella	▪ Autographed photos of Plaintiff.
13.	Defendant No. 5- Refaceshorts 2.023 (Jitendra Mishra)	▪ Deep fakes using Artificial Intelligence representing Plaintiff as Katrina Kaif.
14.	Defendant No.15- Shahid SK	▪ Plaintiff's generative Artificial Intelligence as a Disney characters.
15.	Defendant No.6- Giphy	▪ GIF- image keeps

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		moving.
16.	Defendant Nos. 16 and 17- Sun Systems & Solutions and PDR Limited	▪ Anilkapoor.net
17.	Defendant Nos.18 and 19- Domains by Proxy LLC and GoDaddy LLC	▪ Anilkapoor.com
18.	Defendant No.20-Dynadot LLC	▪ Anilkapoor.in
19.	Defendant No.21-John Doe(s)	▪ 44 links annexed as Annexure-A along with application under Order 39 Rules 1 & 2 of CPC.

30. The allegation of the Plaintiff is that all the Defendants are in some manner utilizing various features of the Plaintiff's persona, and are misusing the same in malicious ways. Some examples are illustrated below:

- Publishing and collecting fee by using his photographs that he would be attending an event, as a motivational speaker;
- Using morphed images of the Plaintiff and collecting monies for selling prints of his images;
- Creating wallpapers on mobile phones using Plaintiff's image;
- Using voice, dialogues and names from his movies in his own voice, as ringtones and ring back tones;
- Promoting and selling merchandise such as magnets, T-shirts, cups, stickers, keychains, using his photographs with/without the word 'Jhakaas'.
- Advertising and selling face masks with the Plaintiff's pictures;

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- Providing electronic stickers with Plaintiff's image and collecting monies for the same;
- Using his name and photographs for posters;
- Selling suits under the Plaintiff's name and image;
- Providing forged autographs and photographs of the Plaintiff;
- Creating images and videos of the Plaintiff in a morphed manner;
- Using Artificial Intelligence to produce images and videos that are extremely derogatory, not merely to the Plaintiff but to other actresses as well including Katrina Kaif, Madhuri Dixit and Late Sridevi, whose faces are being morphed with the Plaintiff's face – resultantly picturising the Plaintiff on a song or photograph with the clothes worn by these actresses;
- Generating images of the Plaintiff as cartoon characters using Artificial Intelligence;
- Providing GIF images of the Plaintiff on various social media handles;
- Squatting on domain names such as www.anilkapoor.in, www.anilkapoor.net and www.anilkapoor.com;
- Creating, publishing, and disseminating fake pornographic videos of the Plaintiff along with other actresses.

31. The above incidents of misuse are merely illustrative in nature and is meant to demonstrate the spectrum of illegalities and unlawful conduct which the Defendants are indulging in.

32. According to the plaint, a large number of these websites/Defendants are collecting monies, fee *etc*. by selling various merchandise with

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Plaintiff's image, likeness and other elements of his persona, and are gaining monetary benefits out of it.

33. Mr. Anand, ld. Counsel appearing for the Plaintiff has relied upon a few decisions of foreign courts and Indian courts to argue that elements of a personality such as name, image, likeness, voice, and other attributes are protectable elements. He places reliance on the following decisions:

- ***Bette Midler v. Ford Motor Company [849 F.2d 460 (1988)]***
- ***Vanna White v. Samsung Electronics America [971 F.2d 1395 (1992)].***

34. Another recent development that has been brought to the notice of the Court are the proposed guidelines titled '*Prevention and Regulation of Dark Patterns 2023' (hereinafter, 'Draft Guidelines')* issued under Section 18 of the Consumer Protection Act, 2019 by the Ministry of Consumer Affairs, Government of India, seeking to protect consumers against what is termed as *"dark patterns"*. Such dark patterns include practices on the internet that are deceptive in nature in order to somehow mislead and trick the consumers, and subvert or impair their decision-making skills, which is violative of consumer rights. Some illustrative dark patterns are also contained in ***Annexure 1*** to the said Draft Guidelines that have been placed before the Court.

35. Ld. Counsel for the Plaintiff also seeks to distinguish the recent decision of this Court in ***Digital Collectibles PTE Ltd. v. Galactus Funware Technology Pvt. Ltd. & Anr., 2023:DHC:2796,*** by arguing that in the said judgment, the case involved two competing gaming platforms where the Defendants' business would have shut down, lest the cricketers' images were not permitted to be used. It is, further, submitted that in the said case,

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there was a disclaimer on the website and the real images themselves were not being used as non-fungible token ('NFTs').

36. The Plaintiff has placed some additional documents on record which show that images of other well-known celebrities are being used in a manner that is totally offensive to their personalities, for example, *'Gandhi Ji with a gun'*. Such images, though, may constitute satire for some people, would be offensive to the society in general.

37. Heard ld. Counsel for the Plaintiff and perused the record.

38. Fame can come with its own disadvantages. This case shows that reputation and fame can transcend into damaging various rights of a person including his right to livelihood, right to privacy, right to live with dignity within a social structure, *etc*. There can be no doubt that free speech in respect of a well-known person is protected in the form of right to information, news, satire, parody that is authentic, and also genuine criticism. However, when the same crosses a line, and results in tarnishment, blackening or jeopardises the individual's personality, or attributes associated with the said individual, it would be illegal.

39. There can be no justification for any unauthorised website or platform to mislead consumers into believing that they are permitted to collect fee by incorrectly portraying that they can bring the Plaintiff as a motivational speaker. Using a person's name, voice, dialogues, images in an illegal manner, that too for commercial purposes, cannot be permitted.

40. The celebrity's right of endorsement would in fact be a major source of livelihood for the celebrity, which cannot be destroyed completely by permitting unlawful dissemination and sale of merchandise such as t-shirts, magnets, key chains, cups, stickers, masks, *etc*. bearing the face or attributes

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of their persona on it without their lawful authorisation.

41. Moreover, any form of misuse or commercial use of a celebrity's name, voice, persona, likeness has also been disapproved by the Supreme Court in the seminal judgment of ***R. Rajagopal v. State of T.N., (1994) 6 SCC 632***, famously called as the *'Auto Shankar case'*. The relevant extracts of the same are set out below:

> *"9. The right to privacy as an independent and distinctive concept originated in the field of Tort law, under which a new cause of action for damages resulting from unlawful invasion of privacy was recognised. This right has two aspects which are but two faces of the same coin — (1) the general law of privacy which affords a tort action for damages resulting from an unlawful invasion of privacy and (2) the constitutional recognition given to the right to privacy which protects personal privacy against unlawful governmental invasion. The first aspect of this right must be said to have been violated where, for example, a person's name or likeness is used, without his consent, for advertising — or non-advertising — purposes or for that matter, his life story is written — whether laudatory or otherwise — and published without his consent as explained hereinafter [...]*
>
> *….*
>
> *26. We may now summarise the broad principles flowing from the above discussion:*
>
> *(1) The right to privacy is implicit in the right to life and liberty guaranteed to the citizens of this country by Article 21. It is a "right to be let alone". A citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child-bearing and education among other matters. None can publish anything concerning the above matters without his consent — whether truthful or otherwise and whether laudatory or critical. If he does so, he would be*

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violating the right to privacy of the person concerned and would be liable in an action for damages. Position may, however, be different, if a person voluntarily thrusts himself into controversy or voluntarily invites or raises a controversy.

(2) The rule aforesaid is subject to the exception, that any publication concerning the aforesaid aspects becomes unobjectionable if such publication is based upon public records including court records. This is for the reason that once a matter becomes a matter of public record, the right to privacy no longer subsists and it becomes a legitimate subject for comment by press and media among others. We are, however, of the opinion that in the interests of decency [Article 19(2)] an exception must be carved out to this rule, viz., a female who is the victim of a sexual assault, kidnap, abduction or a like offence should not further be subjected to the indignity of her name and the incident being publicised in press/media.

(3)……."

42. The technological tools that are now freely available make it possible for any illegal and unauthorised user to use, produce or imitate any celebrity's persona, by using any tools including Artificial Intelligence. The celebrity enjoys the right of privacy, and does not wish that his or her image, voice, likeness is portrayed in a dark or grim manner, as portrayed on the porn websites. Moreover, the Plaintiff's image is being morphed along with other actresses in videos and images generated in a manner, which are not merely offensive or derogatory to the Plaintiff, but also to such other third-party celebrities and actresses.

43. The Court cannot turn a blind eye to such misuse of a personality's name and other elements of his persona. Dilution, tarnishment, blurring are all actionable torts which the Plaintiff would have to be protected against.

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44. Even the domain names that have been registered are just being squatted upon, and there can be no reason why the same could be allowed to be squatted upon. The creation of ringtones and GIF images for commercial gains would also be a complete misuse of Plaintiff's rights.

45. Under these circumstances, this Court has no doubt in holding that the Plaintiff's name, likeness, image, persona, *etc*., deserves to be protected, not only for Plaintiff's own sake but also for the sake of his family and friends who would not like to see his image, name and other elements being misused, especially for such tarnishing and negative use.

46. The present case shows how elements of intellectual property that protect the attributes of an individual, in fact have other dimensions including rights protected by the Constitution of India.

47. Accordingly, the Plaintiff has established a, *prima facie,* case for grant of an *ex parte* injunction. Balance of convenience lies in favour of the Plaintiff in the present case considering that the Defendants are infringing his personality rights as well as right to privacy. If an injunction is not granted in the present case, it will lead to irreparable loss/harm to the Plaintiff and his family, not only financially but also with his right to live with dignity.

48. Defendant Nos.1 to 16 or anyone acting for or on their behalf are restrained from utilizing the Plaintiff-Anil Kapoor's name, likeness, image, voice, personality or any other aspects of his persona to create any merchandise, ringtones, ring back tones, or in any other manner misuse the said attributes using technological tools such as Artificial Intelligence, Machine Learning, deep fakes, face morphing, GIFs either for monetary gains or otherwise to create any videos, photographs, *etc*., for commercial

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purposes, so as to result in violation of the Plaintiff's rights.

49. Defendant No.17-PDR Ltd., Defendant No.19-GoDaddyLLC and Defendant No.20-Dynadot LLC are directed to immediately lock and suspend the domain names www.anilkapoor.in, www.anilkapoor.net and www.anilkapoor.com.

50. Ld. Counsel for Defendant No.19 submits that Defendant No.18-Domains by Proxy LLC would not be necessary as a party, as Defendant No.19 has the control over the domain name www.anilkapoor.com. Accordingly, Defendant No.18 is deleted as a party. The other unknown persons are also restrained from disseminating the videos, the links of which are attached to the present order as **'Annexure A'**. The said links shall be taken down immediately by all ISPs.

51. The DoT/MeitY upon receipt of this order shall issue blocking orders in respect of all these links and any other links, which may upload pornographic videos of the Plaintiff. Mr. Harish V. Shankar, ld. CGSC is requested to communicate this order to the DoT/MeitY. DoT/MeitY are henceforth impleaded as Defendant Nos.22 and 23 respectively in the present suit. Let an amended memo of parties be filed by the Plaintiff deleting Defendant No.18 as a party within 2 weeks.

52. The three domain name registrars i.e., Defendant Nos.17, 19 and 20 shall inform the Plaintiff of the registrants of the domain name www.anilkapoor.in, www.anilkapoor.net and www.anilkapoor.com, within a period of one week from communication of this order to them.

53. Insofar as these three domain names are concerned, ld. Counsel for the Plaintiff submits that Plaintiff wishes to take over these domain names. Accordingly, the three domain names shall be transferred in favour of the

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Plaintiff upon payment of requisite charges. Details of the account to which the transfer of charges is to be affected shall also be communicated to ld. Counsel for the Plaintiff.

54. Compliance of Order XXXIX Rule 3 CPC is permitted by email considering the large number of Defendants, and the fact that most of the contact details may not be available. Insofar those Defendants for whom postal addresses are available, the Plaintiff shall also in addition do compliance by speed post service.

55. List before the Joint Registrar on 16th November, 2023.

56. List before Court on 12th March, 2024.

PRATHIBA M. SINGH, J

SEPTEMBER 20, 2023
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Annexure A

LIST OF INFRINGING LINKS/URLs OF THIRD PARTIES

1. https://ridhimagupta.ca/product/anil-kapoor-unisex-t-shirt/
2. https://ridhimagupta.ca/?s=anil+kapoor
3. https://www.postoast.com/bollywood-actors-as-oversized-people-aiphotos/
4. https://www.amazon.in/Sticker-Bollywood-Decorative-Decoration-Adhesive/dp/B095CNXYFY/ref=sr_1_1?keywords=Anil+kapoor+Posters&qid=1689070366&sr=8-1
5. https://www.amazon.in/BookMyMask-Kapoor-Celebrity-PaperMask/dp/B087FXM2WR
6. https://www.amazon.in/Sticker-Bollywood-Decorative-Decoration Adhesive/dp/B095CNXYFY/ref=sr_1_1?keywords=Anil+kapoor+Posters&qid=1689070366&sr=8-1
7. https://www.amazon.in/All-Good-Kapoor-Poster-Heroes-Posters/dp/B0979F7QFC/ref=sr_1_2?keywords=Anil+kapoor+Posters&qid=1689070366&sr=8-2
8. https://www.amazon.in/Indian-Decoration-Decorative-Theatre-Adhesive/dp/B09732PKFB/ref=sr_1_4?keywords=Anil+kapoor+Posters&qid=1689070366&sr=8-4
9. https://www.amazon.in/You-Are-Awesome-Bollywood-18inchx12inch/dp/B0916K8SNL/ref=sr_1_7?keywords=Anil+kapoor+Posters&qid=1689070366&sr=8-7
10. https://www.franklywearing.com/d/anil-kapoor
11. https://www.redbubble.com/i/t-shirt/Anil-Kapoor-Jhaakas-by-FilmFactoryRayz/40549781.NL9AC

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12.https://www.ebay.com/itm/364254275220?hash=item54cf3f2694:g:1FayqzrWB2y2IPPLhQwgSNsDVD82oUpQZuLUEnsAMxusD1bXRJAhruW5Rr3BaPRZwS88rMg38uxr0FMpEqGBKKa%2FV5%2Bi0oWam%2FZQ5OuMxe%2BkvC%2B2U3wzLqIdbuKlKDvDdj%2By6kCdKsUpHduyX9vkA6WdjYwHrPBSHuXKrXK4Kbb%2B1P9sGATd%2BAtuaw3%2BzGfBoNH8KZJ1yjSZP5R1%2BrPG2GfU0ikP9lIrAlcfFRXtCK2PGYSxIL0ITc7557QxgVwQGCjd4CsSS5ywPoNYv1wh%2FXTyIDLM57hmBhsI%7Ctkp%3ABFBMyOG3zahi

13.https://www.ebay.com/itm/185781458837?hash=item2b41701795:g:ZHAAAOSwm~Zj7~Ao&amdata=enc%3AAQAIAAAAwCHoPUvftaJnNNL7NyOEe4a8pBJDcQm7fXs1p%2B3Zc1Qqiirfn1840n13Gssnq58NzeC5GpznTQ0Ia10vFXWOeCzNDutDaHHIJMYvUTXUtSgWZordMGv1kAMwp9miEahblAv1T0H%2BauV%2FldexA6Q78WG8kUXxLuSXNkdpbqCCXcatoW01%2BzMRHyt6AUVwGl%2B%2Ftr8KoxFlfjziGAp7o0MaYVEsVaNs9JRhIUt%2FD8WEeXFROZWEwcfB8MhJVdvDwd8MYg%3D%3D%7Ctkp%3ABk9SR8jht82oYg

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