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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ CS(COMM) 801/2023 & I.A. Nos. 1741/2024, 31224/2024,  
31225/2024, 31226/2024 & 1880/2025

JOHNSON & JOHNSON PTE. LTD. ....Plaintiff  
Through: Ms. Nancy Roy with Mr. Lalit Alley  
and Ms. Prakriti Varshney,  
Advocates.  
(M): 9899257363  
Email: [pvarshney@indiaip.com](mailto:pvarshney@indiaip.com)

versus

MR. ABBIREDDI SATISH KUMAR & ORS. ....Defendants  
Through: Mr. Kishore Babu Manne, Advocate  
for defendant nos. 1 to 6.  
8610374697  
Email: [babumannefirst@gmail.com](mailto:babumannefirst@gmail.com)  
Mr. Vinay Kumar, Advocate for  
defendant no. 2 and 5.  
(M): 8096321409  
Email: [I.vinay@icloud.com](mailto:I.vinay@icloud.com)

**CORAM:**  
**HON'BLE MS. JUSTICE MINI PUSHKARNA**

**JUDGMENT**

% **04.02.2025**

**MINI PUSHKARNA, J:**

**I.A. No. 31224/2024 (Application on behalf of defendant no. 1 for rejection of the plaint)**

1. The present application has been filed on behalf of the defendant no. 1 seeking rejection of plaint under Order VII Rule 11 of the Civil Procedure Code, 1908 ("CPC") read with Section 151, CPC, on the ground that this Court has no territorial jurisdiction, as there is no cause of action in Delhi.



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2. The present suit has been filed by the plaintiff under Section 134(1) read with Sections 27 and 29 of the Trade Marks Act, 1999 (“the Trademarks Act”), read with Section 20 (c) of the CPC, seeking permanent and mandatory injunction restraining passing off and infringement by the defendants with the use of a deceptively similar mark, “ORSI” and deceptively similar packaging/trade dress, to that of plaintiff, i.e., “ORS-L”/

“ORSL”/  /  /  (“ORSL marks and trade dress”) under which the plaintiff manufactures and sells electrolyte drinks.

3. The facts, as canvassed in the plaint, are as follows:

3.1 Plaintiff-company was founded in 1974 and is registered under the laws of Singapore. It is a manufacturer of consumer healthcare products and acquired the brand ORS-L, ORSL and its formatives from Jagdale Industries Limited *vide* an Assignment Deed dated 07<sup>th</sup> November, 2014.

3.2 The products bearing the brand ORS-L were first introduced by Jagdale Industries Limited in 2003 as an electrolyte drink in Orange flavour. The ORS-L Lemon flavour has been in used in India since 2003 and the ORS-L Orange and Apple flavours have been in use since 2005.

3.3 Since 2003 till December, 2013, the products of plaintiff were sold under the trademark, ORS-L. Thereafter, the plaintiff adopted the trademark, ORSL, which is closely associated with goods of the plaintiff only.



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3.4 The plaintiff is the registered proprietor of various formative marks associated with ORS-L and ORSL with relevant registrations in Classes 30, 31, 32 and 33.

3.5 The defendant no. 1, i.e., sole proprietor of M/s Sree International India and defendant nos. 2, 3, 4 and 5 are partners of M/s Pure Tropic. The defendants are involved in the business of *inter alia* energy and refreshment drinks.

3.6 The defendant no. 1 is the marketer of the products bearing the

**ORSI ORSI**  
Fruit Drink / Fruit Drink

deceptively similar mark, “ORSI”/ (“impugned marks”), using a deceptively similar packaging and a trade dress/



(“impugned trade dress”), and has obtained registration no. 5323696 dated 10<sup>th</sup> February, 2022 for the impugned mark,

**ORSI**

Fruit Drink

and has applied for various other registrations for its marks and trade dress in Class 32 on a “*proposed to be used basis*” in November, 2022. M/s Pure Tropic is the manufacturer of the products bearing the impugned marks and impugned trade dress and operates the website, [www.juscoco.com](http://www.juscoco.com).



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3.7 In September, 2022, the plaintiff came across goods of defendants bearing the impugned marks and impugned trade dress in India. Upon gaining knowledge of the same, the plaintiff's counsel sent a Cease-and-Desist notice dated 5<sup>th</sup> September, 2022 to defendant no. 1 and M/s Pure Tropic which could not be delivered to defendant no. 1. In view of this, the plaintiff sent a reminder letter dated 20<sup>th</sup> September, 2022 which again remained undelivered upon defendant no. 1.

3.8 Thereafter, during an internet check around June, 2023, plaintiff found that defendant no. 1 had filed an application no. 5525855 dated 12<sup>th</sup>

**ERSI**

July, 2022 for registration of the impugned mark, **Fruit Drink**, in Class 32 against which plaintiff filed an opposition on 13<sup>th</sup> June, 2023.

3.9 Subsequent market enquiries and internet investigation by the plaintiff disclosed that the defendants launched another product variant/



and filed fresh applications for registrations of impugned marks and impugned trade dress in Class 32, wherein, it had described its marks as “ERSI FRUIT DRINK”, “ERSI FRUIT DRINK APPLE” and “ERSI FRUIT DRINK ORANGE”, to avoid detection by the plaintiff.

3.10 Thereafter, in September, 2023, plaintiff found that the defendants had commenced inviting enquiries, marketing and selling their products bearing the impugned marks/trade dress on a third party website,



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[www.dhanalakshmiagency.in](http://www.dhanalakshmiagency.in), which is an interactive website and delivers the impugned goods all over the country, including Delhi. The said website specifically caters to the defendants and contains only two products, which belong to the defendants. The defendant nos. 2 to 5, have also posted listings of its products on other third-party websites, such as IndiaMart.

3.11 Thus, the present suit came to be filed.

4. The following submissions have been made by the defendant no. 1 for rejection of the plaint under Order VII Rule 11 of the CPC:

4.1 The present suit has been filed to harass, humiliate and bankrupt defendant no. 1 and to enable the plaintiff to eliminate one of its business competitors.

4.2 The defendant nos. 2-4 are partners of M/s Pure Tropic, whereas, the defendant no. 5 is a retired partner. M/s Pure Tropic is a service provider who, under an order from and on the instructions of M/s Sree International India, fills packaging supplied to it by M/s Sree International India, who affixes the ERSI trade mark to it in advance. M/s Pure Tropic has nothing to do with the present suit.

4.3 No cause of action has arisen in Delhi, within the jurisdiction of this Court.

4.4 The defendant no. 1 is not carrying on any business in any form in Delhi. Around 85% of the business is concentrated in Andhra Pradesh. Around 5% each is in border areas of Odisha and Tamil Nadu and 5% is in and around Hyderabad, Telangana. The business is very much limited to Andhra Pradesh and its border areas, and a very small portion of Telangana.

4.5 The plaintiff has failed to disclose the status of the order placed for the impugned products by it on the third-party website,



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[www.dhanalakshmiagency.in](http://www.dhanalakshmiagency.in). The order was placed by the plaintiff on 20<sup>th</sup> September, 2023, whereas, the suit has been filed by the plaintiff on 04<sup>th</sup> November, 2023 and yet, the plaintiff has failed to bring on record the full details with respect to the invoice, seller details, PAN No., GST registration no., etc. of the order placed by it, based upon which the plaintiff has pleaded territorial jurisdiction before this Court.

4.6 The defendant no. 1 was unaware about the existence of the aforesaid third-party website before filing of the present plaint and has no relation to the website. Upon enquiry, it has been found by the defendant no. 1 that the website is owned and operated by a small trader, Mr. Sagar, who is based out of Vijaywada, Andhra Pradesh and used to work for the plaintiff for 10 years.

4.7 The plaintiff has failed to discharge its obligation to enquire about the website owner and instead, has misled this Court by falsely claiming that the defendants advertise and sell their products on the aforementioned third-party website.

4.8 The plaintiff knowingly and wilfully misrepresented and misled the Court regarding the territorial jurisdiction to institute the present suit in Delhi, when the plaintiff did not include the website owner in the various applications filed by it during the course of the present proceedings. It is further submitted that even during the local commission, the plaintiff failed to take the Local Commissioner to website owner's premises.

4.9 The impugned products have never been advertised or listed on defendant nos. 2 to 5's IndiaMart page or on their website, [www.juscoco.com](http://www.juscoco.com).



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4.10 If a court does not have territorial jurisdiction over the events, then the Court cannot bind the defendant to an obligation or adjudicate any rights involving them. As there is no cause of action in Delhi, this Court does not have jurisdiction to try this case.

4.11 Thus, the defendant no. 1 has prayed to allow its application under Order VII Rule 11 CPC, and reject the present suit filed by the plaintiff.

4.12 The defendant no. 6, by way of a separate rejoinder, has adopted the contentions and averments as raised by the defendant no. 1 in the present application and has prayed for rejection of the plaint.

5. The plaintiff, in its reply to defendant no. 1's application, has made the following submissions:

5.1 The defendant no. 1 has been unable to satisfy the threshold required for an application under Order VII Rule 11 CPC. It is not the defendant no.1's case that the plaint did not disclose any cause of action against the defendants. The present application is liable to be dismissed on this ground alone, that the defendant no.1 has only claimed that the cause of action has not arisen in Delhi and that this Court lacks the territorial jurisdiction. This claim of the defendant no. 1 does not fall within the ambit of Order VII Rule 11 CPC.

5.2 Though the products ordered by the plaintiff have not been delivered, the order has not been cancelled.

5.3 Subsequent to this Court's order dated 7<sup>th</sup> December, 2023, injuncting the defendants from using the impugned marks and trade dress, and filing of the present application , the products bearing the impugned marks and impugned trade dress were removed from the website ,



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[www.dhanalakshmiagency.in](http://www.dhanalakshmiagency.in), and the website started offering other products as well, including, plaintiff's ORSL products.

5.4 A new disclaimer was added to the website claiming that the products are only sold in Vijayawada, Andhra Pradesh. However, despite the same, the terms and conditions on the website mentioned that they deliver pan India, which will also include Delhi. The policy available on the website also mentioned that *"all disputes will be subject to the exclusive jurisdiction of the courts situated within New Delhi and the user hereby will have to comply with the jurisdiction of the courts of Delhi"*.

5.5 A recent check by the plaintiff has revealed that the website is no longer in existence and the domain name is available for sale. Therefore, it is clear that the cause of action has arisen in Delhi and the website has been changed and deactivated at the behest of defendant no. 1 after receipt of the summons in the present suit.

5.6 In reply to the averment of defendant no. 1 that defendant nos. 2-5 have been wrongly made parties to the suit as M/s Pure Tropic has nothing to do with the suit, the plaintiff submits that the products bearing the impugned marks and impugned trade dress clearly refer to M/s Pure Tropic as the manufacturer and therefore, defendant nos. 2 to 5, being the partners of M/s Pure Tropic, have been correctly impleaded as parties.

5.7 Thus, the plaintiff has prayed for dismissal of the present application with exemplary costs.

6. Having heard learned counsel for the parties and having perused the record, this Court notes that at the stage of dealing with an application under Order VII Rule 11 CPC, the Court is required to see only the averments, as made in the plaint. Thus, from bare perusal of averments made in the plaint,



it is evident that there is a clear cause of action against the defendant no.1 within the jurisdiction of this Court.

7. This Court takes note of the submission of the plaintiff in the plaint, wherein, it is stated that the defendants were found selling its impugned products under the impugned mark/impugned trade dress on a third party website, [www.dhanalakshmiagency.in](http://www.dhanalakshmiagency.in), which is an interactive website, which guides customers to place order for the impugned goods from all over the country, including Delhi. There is a clear averment in the plaint that the said website delivers goods of the defendants without restriction of territory, including Delhi. With regard to territorial jurisdiction, the following averments made in the plaint are material, which are reproduced as under:

“xxx xxx xxx

**45. Thereafter, very recently in September, 2023, the Plaintiff has found that the Defendants have commenced inviting enquiries, marketing and selling its products under the impugned marks/impugned trade dress on a third party website [www.dhanalakshmiagency.in](http://www.dhanalakshmiagency.in) which is an interactive website which guides customers to place order for the impugned goods from all over the country including Delhi and delivers goods without restriction of territory including Delhi. Interestingly, the said third party website only contains two products which are of the Defendants and it is apparent that the said domain only caters to the Defendants. The Plaintiff apprehends that the domain is being operated by the Defendants. The WHOIS report of the said domain does not provide the details of the registrant of the said domain and are protected by privacy. Relevant printouts of the WHOIS records of the said domain are being filed in these proceedings. The plaintiff reserves it's right to take action against the operator/owner of the website [www.dhanalakshmiagency.in](http://www.dhanalakshmiagency.in). The Plaintiff's counsels have also successfully placed an order for the products bearing the impugned marks /impugned trade dress from the above third party website and are yet to receive the impugned products. ....**

xxx xxx xxx”

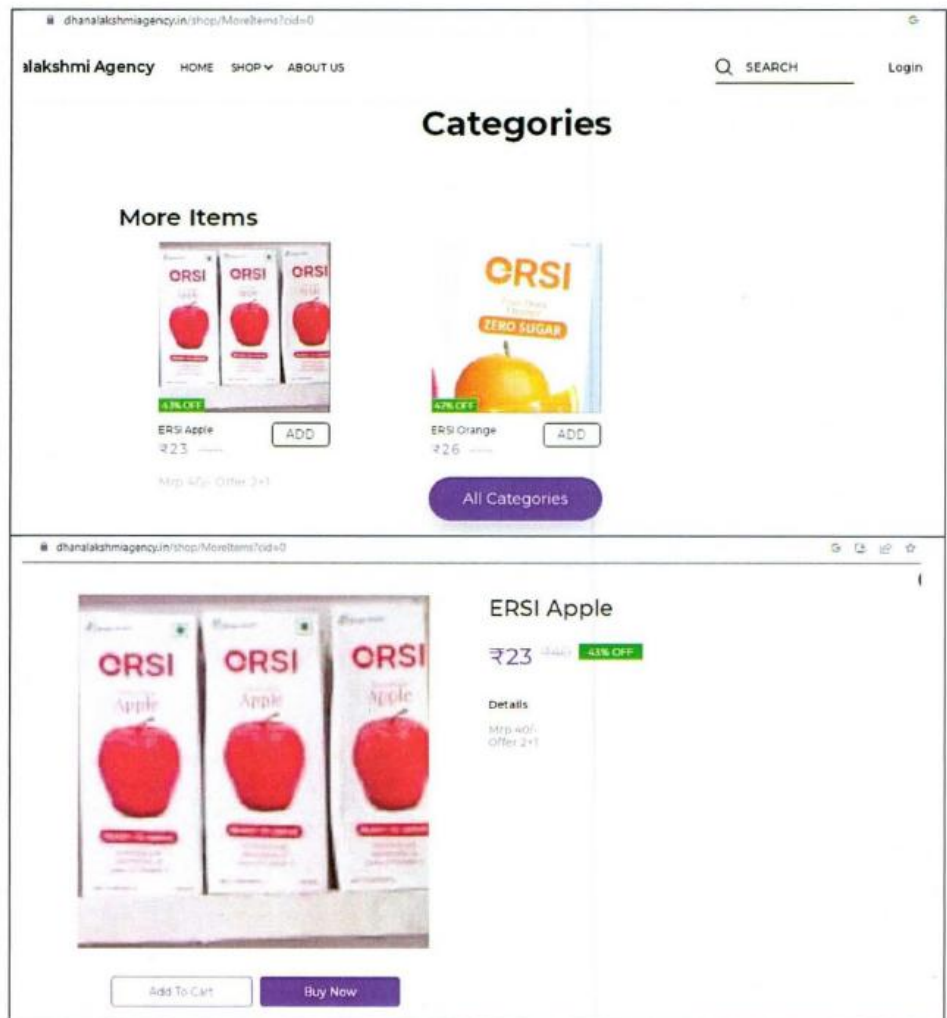
(Emphasis Supplied)



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8. The plaintiff's counsels are stated to have successfully placed an order for the impugned products, which are the subject matter of the present suit. The relevant screenshots from the website [www.dhanalakshmiagency.in](http://www.dhanalakshmiagency.in), showing the products of the defendants and the successful placing of order of the defendants' products on behalf of the plaintiff, as given in the plaint, are reproduced as under:





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The screenshot shows the product page for 'ERSI Orange' with a price of ₹26 and a 45% OFF tag. Below the product image is a 'Go to Cart' button. The checkout page displays the delivery address as 'Baksh Singh, 10011', the item 'ERSI Orange', and a 'Grand Total' of ₹691. A 'Place Order' button is visible at the bottom of the checkout section.

The screenshot shows the 'Thank you for your Order' confirmation page with a 'Pay Now' button and the order ID '5642903'. Below this, the 'My Orders' section shows a 'Pending' order with a 'View Order' button. The order details include 'ERSI Apple 4.22' and 'ERSI Orange 4.66'.



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9. This Court also notes the averment in the plaint, wherein, the plaintiff has reproduced the screenshots from the listing of defendant nos. 2 to 5 on IndiaMart, wherein, the said defendants are looking for “queries from foreign”. Though the product in question is not listed on IndiaMart, however, this Court notes the submissions made in the plaint that M/s Pure Topics, about which details have been given on IndiaMart, is the manufacturer of the product bearing the impugned mark and impugned trade dress, the subject matter of the present suit.

10. The averments made in the plaint regarding M/s Pure Topics being the manufacturer of the product, subject matter of the present suit, and defendant nos. 2 to 5 being partners of M/s Pure Topics, is reproduced as under:

“xxx xxx xxx

34. *The Defendants in the instant suit are Mr. Abbireddi Satish Kumar trading as M/s Sree International India operating from the address mentioned in the cause title of the Plaint. **To the best of the Plaintiff’s information and findings based on the records of the Trade Marks Registry, the Defendant Nos. 2, 3, 4 and 5 are the partners M/s Pure Tropic, operating from the addresses mentioned in the cause title of the Plaint. To the best of the Plaintiff’s knowledge and findings, the Defendant No. 1 is the marketer of the product bearing the impugned marks/ impugned trade dress and has obtained registration No. 5323696***

**ERSI**

Fruit Drink

*dated 10.02.2022 for the impugned mark and has filed the Application bearing No. 5525855 dated 12.07.2022 for*

**ERSI**

Fruit Drink

*registration of the impugned mark , Application*



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No. 5695523 and 23.11.2022 for registration of the impugned mark



and Application No. 5695524 dated 23.11.2022 for



registration of the impugned mark , all being in Class 32 all on proposed to be used basis. **As per the findings of the Plaintiff and as per the details on the impugned products, M/s Pure Tropics, of which Defendant Nos. 2, 3, 4 and 5 are partners, is the manufacturer of the product bearing the impugned mark and impugned trade dress and operates the website [www.juscoco.com](http://www.juscoco.com).** The said Defendant Nos 2, 3, 4, 5 have also filed applications bearing Nos. 2623604 and 2799222 before the Trade Marks Registry wherein, the said Defendants are mentioned as partners of M/s Pure Tropic. It is submitted that the Defendants are involved in the business of inter alia energy and refreshment drinks under the impugned marks/trade dress.

xxx xxx xxx”

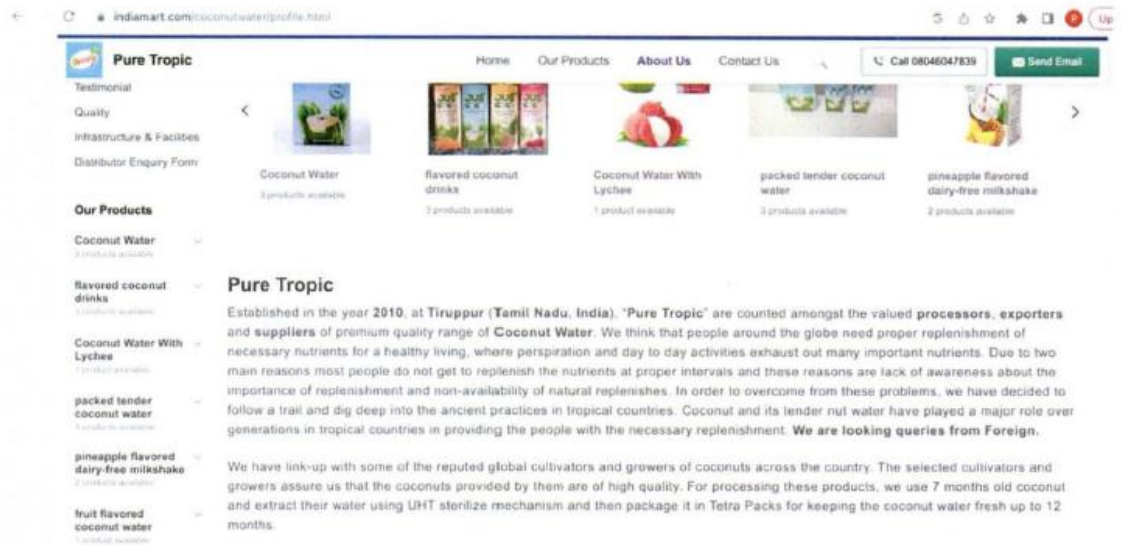
(Emphasis Supplied)



11. The averments made in the plaint regarding listing of products of M/s Pure Tropics on IndiaMart, wherein, it is looking for queries from foreign, is reproduced as under:

“xxx xxx xxx

**46. The Defendant Nos. 2-5 have also posted listings of its products on other third-party websites such as Indiamart wherein the said Defendants claim to be counted amongst the valued “exporters and suppliers of premium quality range of Coconut water” and that the said Defendants are “looking queries from Foreign”. The Defendant Nos. 2-5 claim to “have link-up with some of the reputed global cultivators and growers of coconuts across the country”. This makes it evident that the Defendant Nos. 2-5 supply products across the country as well as exports its products. Relevant screenshot of the listing of Defendant Nos. 2-5 on Indiamart is reproduced below:**



xxx xxx xxx”

(Emphasis Supplied)

12. As regards jurisdiction of this Court, the plaint categorically avers as under:

“xxx xxx xxx

**59. It is humbly submitted that this Hon’ble Court has territorial jurisdiction to try and entertain this present suit as the Defendants are**



carrying on business in Delhi by offering their products all over India, including Delhi as detailed above and cause of action has arisen has arisen in Delhi, within the jurisdiction of this Hon'ble Court as detailed above, the Defendants invite enquiries, advertise and sell its goods on the third party website which guides customers to place order for the impugned goods from Delhi and delivers goods without restriction of territory including to Delhi. Further, the Defendant Nos. 2-5 have claimed on its Indiamart page that it is counted amongst the valued "exporters and suppliers of premium quality range of Coconut water" and that the Defendant Nos. 2-5 are "looking queries from Foreign". The Defendant Nos. 2-5 claim to be "have link-up with some of the reputed global cultivators and growers of coconuts across the country". These make it evident that the Defendants carry on its business across the country including Delhi and also exports its products to other countries. The said Indiamart page is accessible by customers from all over the world including from Delhi. The Plaintiff further apprehends that the Defendants will further expand use of the impugned marks/impugned trade dress all across the country. There is an imminent threat that the Defendants will flood the markets of Delhi with the impugned products. Therefore, this Hon'ble Court has jurisdiction to entertain the present proceedings under Section 20 (c) of the Code of Civil Procedure, 1908.

xxx xxx xxx”

(Emphasis Supplied)

13. Perusal of the aforesaid averments made in the plaint and the screenshots attached therein, clearly show that the plaintiff placed order for the products of the defendants, which form subject matter of the suit, from Delhi and their order was duly placed.

14. The present suit deals with the issue of infringement and passing off of the goods of the plaintiff by the defendants. As regards infringement, Section 29 of the Trademarks Act categorically states that a registered trademark is infringed by a person who, not being a registered proprietor or a person using by way of permitted use, uses in the course of trade, a mark which is identical with or deceptively similar to the trademark in relation to



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goods or services, in respect of which the trademark is registered. Thus, the element of use of a mark is material in cases of infringement.

15. The use of a mark, has been defined in Section 2(2)(c) of the Trademarks Act, which has been construed as a reference to the use of the mark upon, or in any physical or in any other relation whatsoever, to such goods. Thus, offering the goods for sale or advertising the goods for sale, would be construed as use of the goods.

16. Considering the aforesaid, the averment of the defendants that this Court does not have territorial jurisdiction, has essentially to be rejected. The defendants have raised a plea that their products are not sold in Delhi. However, when the plaintiff has categorically averred, and shown that it has been able to successfully place order for the products of the defendants, subject matter of the suit, from within the territorial jurisdiction of this Court, even though the products may not have been delivered to the plaintiff, this Court would have territorial jurisdiction.

17. Holding that this Court would have territorial jurisdiction if the defendant is found to be offering their products for sale through web portal, this Court in the case of *Shakti Fashion and Another Versus Burberry Limited, 2022 SCC OnLine Del 1636*, has held as follows:

“xxx xxx xxx

**8. The case of the Defendants in the written statement was that they had not sold the products in Delhi and, therefore, the Court lacks territorial jurisdiction.** The Defendants claimed that no selling unit/production unit of the Defendants is working in Delhi. The Defendants also moved an application under Order VII Rule 11 CPC with the prayer to reject the plaint on the ground of territorial jurisdiction. The said application was rejected by the Commercial Court on the ground that the Court has territorial jurisdiction as the Defendants are offering their products for sale through web-portal as



also through dealers. It is also clear that the Defendants' are selling counterfeit goods in a clandestine manner. The finding of the Commercial Court is as under:

“7. Ld. Counsel for the plaintiff/non-applicant submitted that at the stage of application under order 7 rule 11 CPC court is required to consider only the averments of the plaint and the documents annexed with it at the time of institution of the suit on its face value. It was also submitted that at this stage court cannot consider the written statement or the documents filed by the defendants. **In the plaint, plaintiff has clearly alleged that defendants are procuring the orders from Delhi and offering to sell his goods through web-portal. It is also alleged in plaint that the defendants have met dealers in New Delhi for sale of their counterfeit goods.**

8. Though it has been stated in the plaint that plaintiff is selling its goods in a mall at New Delhi, the territorial jurisdiction of this court has been invoked mainly on the grounds of cause of action as per section 20 of the Code of Civil Procedure. **It is established principal of law that at this stage court is required to look into the averments of the plaint and documents filed by the plaintiff and cannot go into the written statement and the pleas raised by the defendant in its documents. In my opinion, plaintiff has sufficiently stated in the plaint that defendants are offering their goods for sale through a web-portal as well as through dealers. It is clearly stated that defendants are planning to sell counterfeit goods in the territorial jurisdiction of this court in a clandestine manner. At this stage, court cannot enter into the roving enquiry into the merits or demerits of the respective contentions based on disputed facts. Prima-facie, from the averments of the plaint and the documents filed on record by the plaintiff the cause of action has been established to be within the territorial jurisdiction of this court to entertain the suit.**”

xxx xxx xxx

**12. The Court has perused the pleadings and documents. The first and the foremost feature in this case is the website of IndiaMart where the Defendant No. 1's business is clearly advertised as 'Shakti Fashion, Bengaluru, Bommanahalli, Bengaluru, Karnataka'. Furthermore, IndiaMart clearly permits enquiries for the garments which are advertised on the said website. It is possible to obtain information about the said products, such as the price and details of garments, girls garments, ladies fashion garments and**



ladies woven garments. Defendant No. 1's listing also has the feature of 'get touch with us', 'about us', 'contact us', 'send e-mail', 'view mobile number', 'submit requirements', etc.

13. The Court notes that the Defendants challenge the said listing on the ground that the said listing has not been provided by them and that the IndiaMart website has automatically uploaded the said listing. This would be a question of fact which would require trial and evidence to be led. The ld. Counsel for the Petitioners does not dispute that the said listing does not belong to the said Defendant. Even if the Defendants' plea is accepted, the question as to how a name identical to the Defendant's, with the same address of Bommanahalli, Bengaluru appears on the IndiaMart website would also be a question of evidence. The Court cannot give an opinion at this stage.

xxx xxx xxx

17. In addition, the quantum of seizure which has been made in the seizure memo and the possibility of the Defendants clandestinely selling the products in Delhi, cannot be ruled out at this stage. In *RSPL Limited v. Mukesh Sharma 2016*, the ld. Division Bench of this Court has held that the question of jurisdiction in some cases could be a mixed question of facts and law, as explained below;

“8. For now, it is sufficient to record that admittedly the appellant/plaintiffs registered office is at Kanpur. The defendants also have their office at Bulandshahar, U.P. It is also averred in the plaint that the plaintiff has a corporate office in Delhi. The plaint also avers that since the respondents were conducting, soliciting rendering services under the impugned trade name-GHARI TRADEMARK COMPANY-within the jurisdiction of this Court, this Court would have the jurisdiction to entertain the suit.

9. The learned Single Judge, in our view, correctly focused on the issue of the location of the cause of action. But, in our view, the learned Single Judge erred in concluding that no part of the cause action had arisen in Delhi.

XXX

17. XXX

It is important to note that merely quoting the words of a provision like the chanting of a mantra does not amount to stating material facts. As observed by the Supreme Court, material facts would include a positive statement of facts as



*also a positive averment of a negative fact, if necessary. It has further been elaborated that material facts are such 'preliminary' facts which must be proved at the trial by a party to establish the existence of a cause of action. It, therefore, follows that if a plaintiff were merely to state that a court has territorial jurisdiction to try and adjudicate a suit that would not be sufficient. The plaintiff would have to plead as a fact as to how the court would have territorial jurisdiction. But, at the same time, the plaintiff would not have to give details of that material fact or the evidence by which the material fact is to be proved."*

*18. In the present case, the said principle would be applicable inasmuch as the **IndiaMart listing and the clandestine sales as also the advertising of the products and business of the Defendants in Delhi would require evidence. Therefore, it cannot be held that the impugned order is incorrect at this stage.** Accordingly, the present revision petition is dismissed.*

*xxx xxx xxx"*

*(Emphasis Supplied)*

18. Jurisdiction of a court in a trademark action, could be invoked, where there is use in relation to goods, which includes advertising, promotion, publicity, etc. In this regard, it would be fruitful to refer to the judgment of this Court in the case of ***Burger King Corporation Versus Techchand Shewakramani and Others, 2018 SCC OnLine Del 10881***, wherein, it has been held as follows:

*"xxx xxx xxx*

*19. What constitutes cause of action in the context of a suit alleging violation of rights in a trade mark, would therefore be the question. In a case involving trade mark infringement, infringement happens when a person "uses in the course of trade" any mark without the owner's consent. **Thus, use of a mark is the cause of action in an infringement as also in a passing off action. If use takes place in a territory where the suit is filed, that court has the jurisdiction to entertain the suit. When there is use of a mark, there is a cause of action to sue, where the use takes place.** It is relevant to point out that "use" of a trade mark as per Section 2(2)(c) of the TM Act is as under:*



“(2) In this Act, unless the context otherwise requires, **any reference**—

\*\*\*

(c) **to the use of a mark**—

(i) **in relation to goods, shall be construed as a reference to the use of the mark upon, or in any physical or in any other relation whatsoever, to such goods;**

(ii) *in relation to services, shall be construed as a reference to the use of the mark as or as part of any statement about the availability, provision or performance of such services;”*

**20. This provision stipulates that use of a mark in relation to goods could be either in any physical or in any other relation whatsoever to such goods. In Kerly's Law of Trade Mark and Trade Names [ David Kitchen, David L. Lewelyn, James Mellor, Richard Meade and Thomas Moody Stewart, Kerly's Law of Trade Marks and Trade Names, pp. 354-356 (13th Edn., 2001)] “use” of a mark is meant to include the following:**

*“It has never been the law that the spurious mark should be actually affixed to the goods, provided it was so used in relation to them as to be calculated to lead to the belief that the goods were designated by the mark. This position is maintained under the 1994 Act which, in Sections 10(4) and (5), follows the permissive provisions of Article 5(3) of the TM Directive in identifying the various activities which constitute use of a sign for the purposes of the infringement provisions.*

*13.-33. It is an infringement to use an offending sign on business papers on in advertising: this has always been the law. **But with the wider definition of use including oral use of a trade mark it will now be an infringement to advertise using an offending mark by, for example, radio or through oral use of the mark by salesman.**”*

**21. Thus, jurisdiction of a court in a trade mark action, could be invoked where there is use upon or in relation to goods. The phrase “in relation to” has been interpreted to include advertising, promotion, publicity, etc. Thus, in addition to actual sale of goods and providing services, if a person advertises his or her business under the mark in a territory, promotes his or her business under the mark in a territory or for example invites franchisee queries from a particular territory, sources goods from a particular territory, manufactures goods in a**



**particular territory, assembles goods in a particular territory, undertakes printing of packaging in a particular territory, exports goods from a particular territory, it would constitute “use of a mark”.**

22. This scheme of the TM Act is amply clear from a reading of Sections 28 and 29 as also Section 56. Under Section 28, the rights conferred are the exclusive right to use of a mark. **Under Section 29, use of a mark could be any form of use, including—**

- as part of a trade name or a corporate name or name of a business concern [Section 29(5)];
- use by affixing it to products/services [Section 29(6)(b)];
- use by affixing it to packaging [Section 29(6)(b)];
- **use by offering goods/services for sale;**
- use for the purpose of import or export [Section 29(6)(c)];
- use on business papers [Section 29(6)(d)];
- use in comparative advertising which is detrimental to distinctive character or repute of the mark [Section 29(4)];
- use in advertising [Section 29(7)];
- Applying a mark in a territory for purposes of export of goods/services [Section 56(1)]; and
- Use by which a trade connection is created between the user and the proprietor [Section 56(2)].

**23. Thus, when Section 20 CPC provides that a suit could be filed in any place where the cause of action arises, in a suit involving rights in a trade mark, cause of action arises in each and every place where there is any form of use of the said mark. Principles which apply to infringement, actions to determine “use” would equally apply to passing off actions.**

**24. Applying the above test to the facts of the present case, the defendants have used the mark in the following manner:**

- (a) **by promoting the mark** Burger King **in Delhi;**
- (b) by entertaining franchisee queries from the territory of Delhi;
- (c) by seeking franchise requests through the website the Burger King in;
- (d) by openly and publicly expressing their intention to expand all across the country including Delhi; and
- (e) by allowing would be franchisees to apply through the website by filling a form.

xxx xxx xxx”

(Emphasis Supplied)



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19. Considering the averments made in the plaint, it is manifest that this Court has jurisdiction in the present matter. The plaintiff has made categorical averments in the plaint as regards placing an order for the products of the defendants in Delhi. Thus, when the website marketing the goods of the defendants is accessible from Delhi, though the said website may have stopped its operation subsequently, and products may not have been ultimately delivered in Delhi, the very fact that the said website could be accessed with the products of the defendants shown online, at the time of filing of the suit, this Court would have territorial jurisdiction. The same would constitute use in relation to goods, as the goods of the defendants were promoted and advertised through the third-party website, within the jurisdiction of this Court, at the time of filing of the suit.

20. At the time of considering an application under Order VII Rule 11 CPC, this Court is required to examine only the averments made in the plaint. If from plain reading of the plaint, it is manifest that *ex facie* there is cause of action in favour of the plaintiff and the averments show territorial jurisdiction, then an application under Order VII Rule 11, is necessarily to be rejected. Thus, the Division Bench of this Court in the case of *Sonal Kanodia Versus Ram Gupta and Another, 2023 SCC OnLine Del 1132*, while dealing with the issue of territorial jurisdiction, has held as follows:

“xxx xxx xxx

**6. Having heard learned counsel for the Appellant, this Court is of the view that it is settled law that an application under Order VII Rule(s) 10 and 11 CPC is to be decided on a demurrer accepting all statements made in the plaint to be true (See : Chandra Kishore Chaurasia v. RA Perfumery Works Pvt. Ltd., 2022 SCC OnLine Del 3529). At the stage of considering an application under Order VII Rule(s) 10 and 11 CPC, the Court is not required to examine the**



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**merits of the averments made and to evaluate whether the Plaintiff would be able to prove or establish the same. For the purpose of an application under Order VII Rule(s) 10 and 11 CPC, the averments made in the plaint are required to be considered as correct.**

**7. Consequently, this Court is of the view that if the statements made in the plaint are accepted to be correct, then the Court would have the jurisdiction to entertain the present suit. Accordingly, the present appeal being bereft of merit is dismissed.**

xxx xxx xxx”

(Emphasis Supplied)

21. It is clear from the averments made in the plaint that the cause of action has arisen in Delhi and therefore, this Court has jurisdiction to entertain the present suit proceedings.

22. By a bare perusal of the averments made in the plaint, it is clear that there is a clear cause of action, against *inter alia*, the defendant no.1. The said defendant has failed to establish any ground for rejection of plaint under Order VII Rule 11 CPC, whereas, on the contrary the plaintiff has raised triable issues before this Court.

23. Considering the detailed submission hereinabove, the present application is found devoid of any merits. The same is accordingly dismissed.

**(MINI PUSHKARNA)  
JUDGE**

**FEBRUARY 04<sup>th</sup>, 2025  
AU**