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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ **CS(COMM) 221/2024, I.A. 5805/2024, I.A. 5806/2024**

**ITC LIMITED** ..... Plaintiff  
Through: Ms. Mamta Rani Jha, Adv.

versus

**PELICAN TOBACCO CO LTD & ORS.** ..... Defendants  
Through: None

**CORAM:**  
**HON'BLE MR. JUSTICE ANISH DAYAL**

**ORDER**

% **13.03.2024**

**I.A. 5808/2024 (Exemption from pre-institution mediation)**

1. Having regard to the facts of the present case and in light of the judgement of Division Bench of this Court in **Chandra Kishore Chaurasia v. R.A. Perfumery Works Private Ltd.**, FAO (COMM) 128/2021, exemption from attempting pre-institution mediation is allowed. Accordingly, the application stands disposed of.

**I.A. 5809/2024 (Exemption from advance service to the defendants)**

1. Since there is an urgency in the matter and the same is being heard today, plaintiff is exempted from serving advance notice on the defendants herein.  
2. For the reasons stated in the application, the same is allowed and disposed of.

**I.A. 5807/2024 (Seeking leave to file Additional Documents)**

1. The present application has been filed on behalf of plaintiff under Order



XI Rule 1(4) of Code of Civil Procedure, 1908 as applicable to commercial suits under the Commercial Courts Act, 2015 seeking to place on record additional documents.

2.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, 2015 and the Delhi High Court (Original Side) Rules, 2018.

3. Accordingly, the present application is disposed of.

**CS (COMM) 221/2024**

1. Let the plaint be registered as a suit.
2. Upon filing of process fee, issue summons to defendants by all permissible modes. Summons shall state that written statements be filed by defendants within 30 days from the date of receipt of summons. Along with the written Statements, defendants shall also file affidavits of admission/denial of the documents of plaintiff, without which the written statement shall not be taken on record. Liberty is given to plaintiff to file a replication within 30 days of the receipt of the written statements. Along with the replication, if any, filed by the plaintiff, affidavits of admission/denial of documents filed by 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.
3. List before Joint Registrar for marking of exhibits on 16<sup>th</sup> May, 2024.
4. It is made clear that any party unjustifiably denying documents would be liable to be burdened with costs.

**I.A. 5805/2024 (Application Under Order XXXIX Rules 1 & 2 CPC)**



1. This application has been filed under Order XXXIX Rules 1 & 2 of CPC as part of the accompanying suit filed by plaintiff seeking permanent injunction restraining infringement of trade mark, copyright, and passing off of plaintiff's registered trademark 'GOLD FLAKE' ("plaintiff's mark") and



the 'roundel devices associated with "GOLD FLAKE"



and ("GOLD FLAKE roundel devices")

2. The grievance against defendants is that they are allegedly manufacturing and distributing cigarettes using the marks 'GOLD FIGHTER' & 'GOLD



FLAME' ("impugned marks") and labels



("impugned labels").

3. Since the goods are identical and there is deceptive similarity between the marks as claimed by Mr. Mukul Rohatgi, Senior Counsel for plaintiff, the relief of *ex parte ad interim injunction* is sought in the following context.

4. Plaintiff claims to be one of India's foremost private sector companies with a market capitalization of about Rs.4,76,614 crores as on 31<sup>st</sup> March, 2023 and is rated among India's top 6 Most Valuable Companies. Plaintiff claims to have acquired immense reputation in relation to high quality cigarettes and tobacco products marketed under well-known trademarks, including 'GOLD FLAKE'.


5. Plaintiff claims to be the proprietor of the trademark 'GOLD FLAKE',



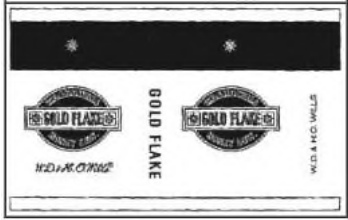




which has been in use for more than 100 years. Senior Counsel for plaintiff points out to various other orders passed by this Court injuncting infringing products, which are extracted below:

- a. In CS(COMM) 124/2024 — ITC Limited vs Gold Step Tobacco Pvt. Ltd & Ors. -vide order dated 08.02.2024 - GOLD FLAKE vs GOLD STEP
- b. In CS(COMM) 60/2024 - ITC Limited vs DAV Industries Llp - vide order dated 22.01.2024 - GOLD FLAKE vs GOLD FROST/GOLD FUN
- c. In CS(COMM) 146/2023 - ITC Limited vs GoldStep Tobacco Pvt. Ltd & Ors. - vide order dated 14.03.2023 — GOLD FLAKE vs GOLD VIMAL
- d. In CS(COMM) 331/2022 - ITC Limited vs Golden Tobie Tobacco Pvt. Ltd & Ors. - vide order dated 19.05.2022 - GOLD FLAKE vs GOLD MAGIC/GOLD TOUCH/ GOLD STRIKE. The said interim order was confirmed vide order dated 27.02.2024.

6. Some of the plaintiff's registrations in the mark 'GOLD FLAKE' has been provided in a tabulated fashion, as extracted below:





S. No.	Application Date	Application No.	Trade Mark
1.	11-11-1942	7678	



2.	04-05-1979	348904	
3.	06-05-1997	755715	
4.	27-07-2004	1299540	
5.	14-08-2012	2379737	
6.	12-06-1981	377013	

7. Plaintiff also has copyright registrations in their favour, which are tabulated as under:



Application Date	Registration No.	Artistic Work
26.04.2010	A-124191/2018	
26.04.2010	A-124187/2018	
10.11.2020	A-95699/2013	
18.07.2011	A-99121/2013	

8. Plaintiff claims a total sale turnover of about Rs. 36,855 crores in 2022-23.

9. As per the investigation carried out by plaintiff, defendant nos. 1 and 2 have been found to be manufacturing and marketing products under the impugned marks 'GOLD FIGHTER' and 'GOLD FLAME' alleged to be deceptively similar to plaintiff's mark. The Defendant No. 3 situated at Uttam Nagar, Delhi is the supplier of the cigarettes under the impugned marks for Defendant Nos. 1 and 2.

10. Plaintiff's inquiries and online investigations revealed the following:



a. The Plaintiff came across the cigarettes under the impugned marks GOLD FIGHTER and GOLD FLAME on the online link [www.indiamart.com](http://www.indiamart.com).

b. Market survey led the Plaintiff to identify multiple shopkeepers and Defendant no. 3 who is the supplier, marketing the impugned products under the impugned marks GOLD FIGHTER and GOLD FLAME at Uttam Nagar, New Delhi.



c. The manufacturing activities were carried out from a factory located at the address in Kosi Kalan, Uttar Pradesh.

d. The extracts from the website of Ministry of Corporate Affairs revealed the registered office of the Defendant Nos. 1 and 2 at Rajendra Place, New Delhi.

11. Physical products have also been handed up in Court and it is *prima facie* apparent that there is deceptive similarity likely to cause confusion for an intended consumer.

12. The packs itself state that ‘GOLD FIGHTER’ and ‘GOLD FLAME’ are manufactured by Pelican Tobacco India Private Limited with address at D-19, UPSIDC Industrial Area, Kosi Kalan, Kosi Kotwan, Uttar Pradesh. Even the cigarettes itself also have the impugned marks imprinted on them.

14. The comparative table of plaintiff’s product and defendants’ infringing products, as provided by plaintiff, is extracted below:

COMPETING TRADE MARKS	
	



*This is a digitally signed order.*

*The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above.*

*The Order is downloaded from the DHC Server on 10/05/2025 at 10:23:00*





*This is a digitally signed order.*

*The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above.*

*The Order is downloaded from the DHC Server on 10/05/2025 at 10:23:00*



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The Order is downloaded from the DHC Server on 10/05/2025 at 10:23:00



15. In view of the above facts and circumstances, this Court is satisfied that plaintiff has made out a *prima facie* case for grant of an *ex parte ad interim* injunction till the next date of hearing. Balance of convenience lies in favour of plaintiff, and they are likely to suffer irreparable harm in case the injunction, as prayed for, is not granted.

16. Accordingly, till the next date of hearing, *ex parte ad interim* relief is granted in favour of plaintiff and against defendants, in the following terms:

- a) Defendants, by themselves or through directors/ partners/ proprietors as the case may be, group companies, associates, divisions, firms, assignees in business, licensees, franchisees, dealers, distributors, their principal officers, servants, distributors and agents, and all others acting for and on behalf of the Defendants, are restrained from manufacturing,



selling, offering for sale, advertising, directly or indirectly dealing in any cigarettes bearing the impugned marks 'GOLD FIGHTER' &

'GOLD FLAME' and impugned labels



and



and /or any other trade mark/trade dress and get up /packaging/logo as may be identical to and/or deceptively similar to the

Plaintiff's registered trade mark GOLD FLAKE /



and the

trade dress used by the plaintiff for the concerned product.

17. On steps being taken by plaintiff, issue notice to defendants through all permissible modes including speed post, courier and email. Affidavit of service, along with proof thereof, be placed on record before the next date of hearing.

18. Reply be filed within four weeks with advance copy to counsel for plaintiff, who may file rejoinder thereto, if any, before the next date of hearing.

19. Compliance of Order XXXIX Rule 3 of CPC be effected by 03<sup>rd</sup> April 2024.

20. List on 25<sup>th</sup> July, 2024.

**I.A. 5806/2024 (Application for appointment of Local Commissioner)**

1. Present application has been preferred by plaintiff seeking appointment of Local Commissioners under Order XXVI Rule 9 of CPC.

2. In view of the facts and circumstances stated above, plaintiff has made out a case for appointment of Local Commissioners. Accordingly, the



following Local Commissioners are being appointed for the following premises:

Sr. No.	Details of LC	Premises of Defendants	Fees
1.	Musheer Zaidi, Advocate +91 9643767947 <a href="mailto:musheerzaidi.adv@gmail.com">musheerzaidi.adv@gmail.com</a> Ch. 611, Block III, Delhi High Court	Pelican Tobacco Co. Ltd. 902-903, Padma Tower-I, 5, Rajendra Place, New Delhi- 110008  Pelican Tobacco India Pvt. Ltd. 902-03, Padma Towers I, Rajendra Place, New Delhi- 110008	Rs. 1,00,000/-
2.	Deepika Kumari, Advocate +91 7042840681 <a href="mailto:deepikatiwary44@gmail.com">deepikatiwary44@gmail.com</a> Ch.123, Block I, Delhi High Court	Pelican Tobacco India Pvt. Ltd. D-19, UPSIDC Industrial Area, Kosi Kalan, Kosi Kotwan, Uttar Pradesh-281403	Rs. 1,50,000/-
3.	Sarthak Sharma, Advocate +91 8941894019 <a href="mailto:adv.sarthaksharma@gmail.com">adv.sarthaksharma@gmail.com</a> C-42, Gulmohar Park, New	Sushil Kumar Gupta, trading as M/s Sushil Enterprises, A-1/291-A, Hastal Road,	Rs. 1,00,000/-





	Delhi-110049.	Uttam Nagar, Delhi – 110059	
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3. The aforesaid LCs are appointed to execute their respective Commissions at the respective premises, to carry out the following mandate:

- a. Local Commissioner, along with plaintiff's counsel and a responsible representative of the plaintiff, shall visit the premises of defendants as noted above and ***seize, seal and make an inventory*** of defendant's goods bearing the impugned marks 'GOLD FIGHTER' and 'GOLD



FLAME' and the impugned labels, and



and roundel devices deceptively similar to plaintiff's mark 'GOLD FLAKE' and GOLD FLAKE roundel devices



and respectively, along with any promotional/advertising material and other cognate and allied goods bearing the aforesaid marks, labels, roundel device.

- b. Local Commissioner shall detail out the serial numbers of such products bearing plaintiff's trademarks. The said products shall, after seizure, be returned on ***superdari*** to the plaintiff's representative(s) (who shall file an affidavit detailing stocks/inventory taken on ***superdari***).
- c. Local Commissioner shall ***inspect the defendants' books of accounts***, including ledgers, stock registers, sale record, and take their



screenshots. Same ought to be done in presence of plaintiff's representative.

- d. Local Commissioner shall also ***retain one sample*** of the infringing products which may be provided to the plaintiff's representative.
- e. Execution of the commission shall be ***videographed*** at the expense of the plaintiff, so that the Court is satisfied that there has been no obstruction to execution of the commission. The videography shall be arranged by the plaintiff at the plaintiff's expense.
- f. To ensure unhindered and effective execution of this order, the Station House Officer (“**SHO**”) of the local police station within whose jurisdiction the premises of the defendants lie, is directed to render all necessary assistance and protection to the Local Commissioner, if and when sought. In the event, further assistance is required, Local Commissioner is at liberty to approach senior officials such as Senior Superintendent of Police, Mathura; Superintendent of Police, Mathura; Deputy Commissioner of Police, Daryaganj and Deputy Commissioner of Police, Dwarka.
- g. In the event the Local Commissioner is informed of any ***other proximate location/premises***, where the defendants carry out operations relating to the alleged infringement, the said premises may also be entered and directions as given in the paragraphs above regarding the execution of the Local Commission may be implemented there as well.
- h. In the event the Local Commissioner finds the premises of the defendant locked, they may be permitted to ***break open*** the locks for the purpose of execution. of the Commission, however, the same ought



to be done strictly in the presence of the local SHO and or duly designated Officer.

- i. The Local Commissioner, while executing the local commission shall ensure that there is ***no unnecessary disruption*** to the business of the defendants except for the purposes of the execution of the Commission. The Commission shall be executed in a peaceful manner and defendants along with its authorised representatives shall cooperate with the Local Commissioner.
  - j. The order passed today ***shall be communicated*** by the Local Commissioner to defendants. Copy of the order and complete paper book shall be served by the Local Commissioner upon the defendants at the time of execution of commission.
  - k. The fee for the Local Commissioners to carry out the Commission to be executed at premises of defendant in Delhi is fixed at Rs. 1,00,000/- each, and the fee for the Local Commissioner to carry out the Commission to be executed at premises of defendant in Kosi Kalan, Uttar Pradesh is fixed at 1,50,000/-.
  - l. Plaintiff shall also bear expenses for travel of Local Commissioners for their respective locations and other miscellaneous out-of-pocket expenses for the execution of the Commissions at the addresses mentioned above or any other address being found. Fees of the Local Commissioners shall be paid in advance by plaintiff.
  - m. Local Commissioners shall file their report within two weeks from date of execution of the Commission.
4. At the request of Senior Counsel for plaintiff three weeks-time is given for execution of the Commissions i.e. on or before 3rd April, 2024 between 09:00 hours to 18:00 hours IST.





5. Registry is directed to not upload a copy of this order and not issue summons till 3<sup>rd</sup> April, 2024, the date of execution.
6. In terms of the foregoing, the application stands disposed of.
7. *Dasti* under signature of Court Master.

**ANISH DAYAL, J**

**MARCH 13, 2024/sm/ig**