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IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CS(COMM) 454/2023 & CAV 338/2023, I.A. 12308/2023, I.A. 12309/2023, I.A. 12310/2023, I.A. 12311/2023

LOTUS HERBALS PRIVATE LIMITED Plaintiff

Through: Mr. Mohan Vidhani, Mr. Rahul Vidhani, Mr. O.P.Bansal, Mr. D.K. Gupta, Mr. Ashish Singh, Mr. Abhishek Bansal and Ms. Elisha Sinha, Advs.

versus

DPKA UNIVERSAL CONSUMER VENTURES PRIVATE LIMITED & ORS. Defendants

Through: Mr. Dayan Krishnan, Sr. Adv. with Mr. Pravin Anand, Mr. Ameet Naik, Mr. Dhruv Anand, Ms. Madhu Gadodia, Ms. Udit Patro, Ms. Nimrat Singh, Mr. Sujoy Mukherji, Ms. Tarini Kulkarni and Ms. Sajeevi, Advs. for D-1 and 2

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

ORDER

12.07.2023

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I.A. 12309/2023 (under Order XI Rule 1(4) of the CPC)

1. This application seeks permission to file additional documents.
2. The plaintiff is permitted to place additional documents on record in accordance with Order XI Rule 1(4) of the Code of Civil Procedure, 1908 (CPC) as amended by the Commercial Courts Act within 30 days from today.
3. The application stands disposed of accordingly.



I.A. 12310/2023 (under Section 12A of the Commercial Courts Act, 2015)

4. In view of the judgment of the Division Bench of this Court in *Chandra Kishore Chaurasia v. R.A. Perfumery Works Pvt Ltd*¹, exemption is granted from the requirement of pre-institution mediation under Section 12A of the Commercial Courts Act, 2015.

5. The application stands allowed accordingly.

I.A. 12311/2023 (under Section 151 of CPC)

6. Subject to the plaintiff filing legible copies of any dim or illegible documents on which it may seek to place reliance within four weeks from today, exemption is granted for the present.

7. The application is disposed of.




CAV 338/2023

8. Since the Defendants 1 and 2 are represented by learned Counsel, the caveat stands discharged.








CS(COMM) 454/2023

9. The plaintiff claims to have been manufacturing and marketing cosmetics products under its trade mark/trade name “LOTUS” since 1993. It claims to be making and selling over 1000 skin, beauty and hair care products under the house mark/trade mark “LOTUS”. The plaintiff is also the proprietor of a large number of registered trade marks, all of which include “LOTUS”, which are enlisted in para 13 of the plaint and some of which are as under:


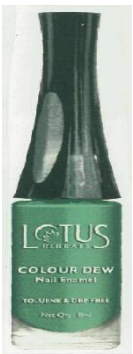





| S. No. | Trade Mark | Date of Filing | Class |
|--------|---|------------------|-------|
| 1 |  | 2 August 1996 | 5 |
| 2 |  | 2 August 1996 | 3 |
| 3 | LOTUS | 2 August 2002 | 3 |
| 4 | LOTUS | 2 August 2002 | 5 |
| 5 |  | 29 December 2003 | 42 |
| 6 | LOTUS HERBALS PROFESSIONAL | 21 February 2006 | 5 |
| 7 | LOTUS HERBALS PROFESSIONAL | 21 February 2006 | 3 |
| 8 | LOTUS HERBALS PROFESSIONAL SALON | 21 February 2006 | 42 |
| 9 | LOTUS SALON DE BEAUTE | 21 February 2006 | 42 |
| 10 | LOTUS SALON | 21 February 2006 | 42 |
| 11 | LOTUS BEAUTY PARLOUR | 21 February 2006 | 42 |
| 12 | LOTUS HERBALS BEAUTY SALON | 21 February 2006 | 42 |
| 13 | LOTUS BEAUTY ACADEMY | 21 February 2006 | 42 |
| 14 | LOTUS SPA | 3 April 2006 | 42 |
| 15 | LOTUS SPA | 3 April 2006 | 41 |


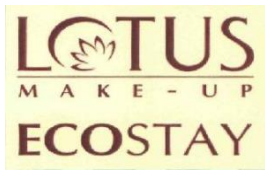




| | | | |
|----|---|---------------|----|
| 16 |  | 8 May 2006 | 3 |
| 17 |  | 8 May 2006 | 5 |
| 18 |  | 31 July 2006 | 41 |
| 19 | LOTUS | 31 July 2006 | 41 |
| 20 | LOTUS BEAUTY ACADEMY | 31 July 2006 | 41 |
| 21 |  | 31 July 2006 | 16 |
| 22 |  | 31 July 2006 | 35 |
| 23 | LOTUS SUNSAFE | 18 May 2010 | 5 |
| 24 | LOTUS GLOWHITE | 18 May 2010 | 3 |
| 25 | LOTUS HERBALS | 15 April 2011 | 44 |
| 26 |  | 26 April 2012 | 3 |
| 27 |  | 26 April 2012 | 44 |



| | | | |
|----|---|------------------|----|
| 28 |  | 26 April 2012 | 5 |
| 29 | Lotus Organics+ | 27 November 2013 | 3 |
| 30 | Lotus Organics+ | 27 November 2013 | 5 |
| 31 |  | 8 July 2014 | 35 |
| 32 |  | 8 July 2014 | 44 |
| 33 |  | 8 July 2014 | 35 |
| 34 |  | 8 July 2014 | 3 |
| 35 | LOTUS SAFE SUN | 15 July 2015 | 3 |
| 36 | LOTUS SAFE SUN | 15 July 2015 | 5 |
| 37 | LOTUS WHITE GLOW | 15 July 2015 | 5 |



| | | | |
|----|---|--------------|---|
| 38 | LOTUS ECOSTAY | 15 July 2015 | 3 |
| 39 | LOTUS ECOSTAY | 15 July 2015 | 5 |
| 40 | LOTUS COLORKICK | 15 July 2015 | 3 |
| 41 | LOTUS COLORKICK | 15 July 2015 | 5 |
| 42 | LOTUS YOUTHRX | 15 July 2015 | 5 |
| 43 | LOTUS PROFESSIONAL PHYTO RX | 15 July 2015 | 3 |
| 44 |  | 15 July 2015 | 3 |
| 45 |  | 15 July 2015 | 5 |
| 46 |  | 15 July 2015 | 3 |
| 47 |  | 15 July 2015 | 5 |

10. All these marks are stated to be valid and subsisting as on date.

11. The plaintiff is also the registered proprietor of copyright in the



mark **LOTUS**
HERBALS

vide Copyright Registration No. A-97661/2013.

12. By dint of continuous and extensive user, the plaintiff claims to have acquired enviable goodwill and reputation in its marks which, according to the assertions in the plaint, have become source identifiers of the plaintiff.

13. To vouchsafe its range and reputation, the plaintiff has provided, in para 19, the return from sale of goods bearing the “LOTUS” mark which, during the year 2021-22, is in the region of ₹ 529.19 crores and, during the year 2022-23, till now, is in the range of ₹ 694.84 crores.

14. The plaintiff has also provided, in para 20, the expenses incurred by it on advertisement, from 1998-99 onwards. In the year 2021-2022 alone, the plaintiff has incurred expenses of ₹ 103 crores in advertisements.

15. The plaintiff also owns and manages a website www.lotusherbals.com. The plaintiff has also provided other details, such as sponsorships, and other activities in which it engages, to highlight its reputation and reach.

16. The plaintiff is aggrieved by the use, by the defendant, of the mark “LOTUS SPLASH”, in respect of a face cleanser/facewash manufactured and sold by it. It is asserted, in the plaint, that the use of the “LOTUS” as part of the mark of the defendant, copies the entire registered trade mark of the plaintiff and amounts, therefore, to *ex facie* infringement of the plaintiff’s registered marks. The plaintiff has



also placed on record screenshots of searches conducted on Google and other such websites to indicate that, if a search for the mark “LOTUS” is made, the plaintiff’s and the defendants’ product both show up, thereby enhancing the possibility of confusion in the minds of the customer.

17. It is in these circumstances that the plaintiff has filed the present suit before this Court seeking injunction against the defendants from using the mark “LOTUS” as any part of the marks under which it manufactures and sells its products.

18. I have heard Mr. Mohan Vidhani, learned Counsel for the plaintiff and Mr. Dayan Krishnan, learned Senior Counsel for Defendants 1 and 2, at some length.

19. Mr. Dayan Krishnan seeks to predicate his defence, to the case set up by the plaintiff in the plaint, on Sections 30(2)(a) and 35 of the Trade Marks Act, 1999. He has presented, before the court, a chart showing the various cosmetic products manufactured by the defendant. He submits that “LOTUS” is not the trade mark of the defendant, which is 82°E, and which figures at the lower edge of each of the defendant’s product bottles. He submits that, as a matter of practice, the defendant is highlighting, on the face of its packs, the main ingredients of each product, such as “Ashwagandha Bounce”, “Turmeric Shield”, “Licorice Beam”, “Gotu Kola Dew” and “Patchouli Glow”.

20. “LOTUS SPLASH” is only one such product, which is sold as “Lotus Splash” only because the main ingredient of the product happens to be Nelumbo Nucifera extract, Nelumbo Nucifera being,

CS(COMM) 454/2023



apparently, the botanical name for the lotus plant.

21. In view of the manner in which the defendants use the mark “LOTUS” in their product, Mr. Dayan Krishnan submits that the defendant is entitled to protection under Section 30(2)(a) and Section 35 of the Trade Marks Act, 1999. He cites, in this context, a recent decision of this Bench in *Zydus Wellness Products Limited v. Cipla Health Ltd*².

22. The defendant has, in my opinion, raised an arguable issue, which entitles them to file a reply before the case is taking up for hearing on the prayer for interlocutory relief.

23. As such, let the plaint be registered as a suit.

24. Issue summons in the suit.

25. Summons are accepted, on behalf of Defendants 1 and 2, by Mr. Pravin Anand.

26. Let summons issue to Defendant 3 by all modes.

27. Written statement, accompanied by affidavit of admission/denial of the documents filed by the plaintiff be filed within 30 days with advance copy to learned Counsel for the plaintiff who may file replication thereto, accompanied by affidavit of admission/denial of the documents filed by the defendant within 30 days thereof.

² 2023 SCC OnLine Del 3785
CS(COMM) 454/2023



28. List before the learned Joint Registrar (Judicial) for completion of pleadings, admission and denial of the documents and marking of exhibits on 13 September 2023, whereafter the matter would be placed before the Court for case management hearing and further proceedings.

I.A. 12308/2023 (under Order XXXIX Rules 1 and 2 of the CPC)

29. This is an application under Order XXXIX Rules 1 and 2 of the CPC seeking interlocutory injunctive reliefs.

30. For the reasons stated hereinabove, issue notice, returnable before the Court on 1 August 2023.

31. Notice is accepted, on behalf of Defendants 1 and 2, by Mr. Pravin Anand.

32. Let notice issue to Defendant 3 by all modes.

33. Reply to this application may be filed within 10 days with advance copy to learned Counsel for the plaintiff, who may file rejoinder thereto, if any, at least 24 hours before the next date of hearing.

34. It is made clear that no extension of time shall be granted for filing of reply/rejoinder and that this Court would take up the matter for decision on the present application on the next date of hearing.

C. HARI SHANKAR, J.

JULY 12, 2023/dsn