



\$~25

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ CS(OS) 872/2024, I.A. 43856/2024, I.A. 43857/2024, I.A.  
43858/2024, I.A. 43859/2024 & I.A. 43860/2024  
MARICO LIMITED .....Plaintiff

Through: Mr. Chander M. Lall, Sr. Advocate  
with Mr. Ankur Sangal, Ms. Pragya  
Mishra, Mr. Raghu Vinayak Sinha,  
Mr. Shaurya Pandey and Ms. Ananya  
Mehan, Advocates  
Mob: 7761895769  
Email:  
[shaurya.pandey@khaitanco.com](mailto:shaurya.pandey@khaitanco.com)

versus

ALPINO HEALTH FOODS PRIVATE LIMITED .....Defendant  
Through: None

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

**ORDER**  
**29.10.2024**

%

**I.A. 43859/2024 (Exemption from filing original and clear copies of documents)**

1. The present is an application under Section 151 of the Code of Civil Procedure, 1908 (“CPC”), on behalf of the plaintiff, seeking exemption from filing original/certified typed, translated and fair copies of the documents.
2. Exemption is granted, subject to all just exceptions.
3. Plaintiff shall file legible, clear, and translated copies of the documents, on which the plaintiff may seek to place reliance, before the next date of hearing.
4. Accordingly, the present application is disposed of.

CS(OS) 872/2024

Page 1 of 18



**I.A. 43857/2024 (Application seeking leave to file additional documents)**

5. This is an application under Order VII Rule 14 read with Section 151 CPC on behalf of the plaintiff, seeking to file additional documents.

6. Learned Senior Counsel appearing for the plaintiff has handed over additional documents on behalf of the plaintiff, which have already been filed today, with advance copy to the defendant.

7. List of additional documents, as filed by the plaintiff, are directed to be taken on record.

8. With the aforesaid directions, the present application is disposed of.

**I.A. 43860/2024 (Lengthy dates and synopsis)**

9. The present application has been filed under Section 151 of Code of Civil Procedure (“CPC”) seeking permission to file long and lengthy list of dates and synopsis.

10. Considering the submissions made in the present application, the present application is allowed and the same is disposed of.

**I.A. 43858/2024 (seeking enlargement of time for filing court fees)**

11. The present is an application under Section 149, read with Section 151 CPC, 1908, seeking enlargement of time for filing court fees.

12. Considering the submissions made before this Court, it is directed that the requisite court fees be deposited, within a period of ten working days from today.

13. With the aforesaid directions, the present application is disposed of.

**CS(OS) 872/2024**

14. Let the plaint be registered as suit.

15. Upon filing of the process fee, issue summons to the defendant by all permissible modes. Summons shall state that the written statement be filed by the defendant within thirty days from the date of receipt of summons.



Along with the written statement, the defendant shall also file affidavit of admission/denial of the plaintiff's documents, without which, the written statement shall not be taken on record.

16. Liberty is given to the plaintiff to file replication within thirty days from the date of receipt of the written statement. Further, along with the replication, if any, filed by the plaintiff, an affidavit of admission/denial of documents of the defendant, 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 the documents, the same shall be sought and given within the timelines.

17. List before the Joint Registrar (Judicial) for marking of exhibits, on 19<sup>th</sup> December, 2024.

18. List before the Court on 19<sup>th</sup> March, 2025.

**I.A. 43856/2024 (Under Order XXXIX Rules 1 and 2 CPC)**

19. The present suit has been filed for permanent injunction restraining the defendant from disparagement, unfair trade practice and damages, etc.

20. It is submitted that plaintiff is the market leader in the oats category in the country and currently has the market share of around 45% by value, for the period of October 2023 – September 2024 as per Kantar Worldpanel Division.

21. It is submitted that in the year 2010, the plaintiff, keeping in mind its philosophy of promoting healthy lifestyle by providing healthy food options to the public, launched 'Oats' under the mark "Saffola Oats". The plaintiff's "Saffola Oats" consists of 100% 'rolled oats' made from high quality natural wholegrain oats. Rolled oats are easy to cook owing to their thin flakes, and the starch present in such flakes can absorb water more quickly and thus decrease the cooking time. Over the years the packaging of the Plaintiff's



‘Rolled Oats’ has undergone changes. Below are the various packaging of plaintiff’s ‘Saffola Oats’:



22. It is submitted that in the years 2011, subsequent to the success of Plaintiff’s ‘Saffola Oats’, the Plaintiff launched masala oats, under ‘Saffola Masala Oats’, which is a quick cooking anytime snack. ‘Saffola Masala Oats’ essentially consists of regular rolled oats, spices and condiments and are sold in various flavours and variants. Over the years, the Plaintiff has introduced few other variants under ‘Saffola Oats’ namely ‘Nutty Chocolate’ and ‘Apple ‘N’ Almonds’.



23. It is submitted that the Plaintiff's 'Saffola Oats' brand has received huge success, as it has provided the consumers with a healthy option for breakfast, which is easy to make, effective and enjoyable. The Plaintiff's 'Saffola Oats' has become the preferred choice of oats for consumers in the country and its name has become synonymous with oats of excellent and impeccable quality.

24. It is submitted that in light of the aforementioned market share as well as sales figures of the Plaintiff's oats, any campaign being run against oats as a food product, will directly impact the trade of the Plaintiff and will cause irreparable harm and injury to the Plaintiff, and will tantamount to disparagement of Plaintiff's oats under the brand "Saffola". Further, any disparagement and denigration of oats will cause widespread panic and alarm in the minds of the consumers who consume oats, due to them being a healthy foods option.

25. It is submitted that rolled oats are essentially 'oat flakes' and one of the most popular breakfast cereals in India and across the globe. Their ease



of preparation and rich nutritional profile, including dietary fibre, protein, and iron, make them a healthy and convenient food choice. Rolled oats are natural wholegrains derived from hulled oats (*Avena Sativa*) that undergo a simple flattening process using rotating rollers.



26. It is submitted that due to their delicate flake-like structure, rolled oats are susceptible to some degree of breakage and crushing during transportation and storage. This natural process results in fine cream colored particles within the packaging, which are simply smaller pieces of the original oat flakes. It's important to emphasize that these fine particles are a natural part of the product, and not an indication of any adulteration, as sought to have been conveyed by the Defendant, through its advertisement campaign.

27. It is submitted that breakage is a common occurrence in various other natural grains and grain-based products. Whole wheat grain, rice grain, lentils, poha (flattened rice), wheat flakes, and corn flakes all experience some degree of breakage, leading to fine particles or grain residue settling at the bottom of their packages. This is a natural characteristic of these products.

28. It is submitted that Defendant is manufacturing a proprietary ready to



eat food product, which is marketed by the Defendant as a breakfast cereal. The Defendant in a desperate attempt to pitch and establish its product against the regular rolled oats, which are most commonly consumed for breakfast, is running a brazen and bizarre advertisement campaign against the entire oats category by defaming and disparaging the natural characteristic of oats to 'choona' (lime powder). Below are the various snip shots from Defendant's advertisement campaign, showing that the Defendant is incessantly targeting oats category.

**THE GREAT OATS SCAM 2006**

In the name of health, Indians have been fed **the same old boring oats** - By western brands again & again.

It started innocently enough. In 2006, when international brands saw the opportunity, they conspired to rise the health-conscious movement to make india believe that oats as a breakfast were the secret to health.

But they didn't tell us, that these oats were impossible to eat regularly because they were just bland—and

 **A Flavourless Punishment Disguised...!**

For years, millions of Indians were trapped in this scam, **pretending to enjoy their bowls of powdery, tasteless oats every morning**. Because after all, we were told it was "good for us." So, we ate it.

No matter how much we wanted to admit that these rolled oats were lifeless, boring, and impossible to finish full pack.

It just ends up holding extra space in our kitchen for years that We just have to wait for it to expire so we can finally throw it away.

And because of that, we end up blaming ourselves for not being able to have it consistently and depress ourselves with all the guilt.

29. It is submitted that one of the advertisement by the defendant calls rolled oats lifeless, boring and impossible to finish.

30. It is submitted that the Plaintiff is filing the present suit to stop the Defendant's highly disparaging and denigrating advertising campaign



against regular rolled oats (“oats”) as a category of food, under which the Plaintiff’s Oats under the brand “Saffola” is the market leader.

31. It is submitted that the campaign's advertisements employs a variety of highly brazen and egregious terms and metaphors to call out and compare oats to 'powder oats'/'choona' and to convey that they are unsafe for human consumption.

32. It is submitted that the defendant is creating a dangerous and misleading association, implying that oats are a construction material rather than a food product. This comparison is further amplified by outrageous claims that oats are used for "house construction, plastering of walls, plastering of fractured legs, and filling up wall cracks," which are absurd, false and misleading.

 <p><b>Advertisement no. 18</b></p> <p>“iss cement mein jaan hai”</p>	 <p><b>Advertisement No.7</b></p> <p>“ye jo alishaan ghar hai, mere khoon, paseene aur oats ki kamai hai</p>
 <p><b>Advertisement No.7</b></p> <p>“Aur aaj main apne pairon pe khadi hu toh oats ki wajah se”</p>	 <p><b>Advertisement No. 10</b></p> <p>“We had to check twice: are people eating this stuff or using it to fill cracks in their walls and the idea of eating this in breakfast is stupid. It's like eating drywall”</p>





33. It is submitted that the Defendant falsely claims that oats are devoid of nutrition and lead to excessive muscle loss, even depicting individuals with frail bodies as a result of consuming oats. The message sought to be conveyed by the Defendant is blatantly false, as oats are known to be a rich source of protein, dietary fibre, iron and other minerals.



34. It is submitted that the Defendant goes so far as to call the consumption of oats for breakfast a 'scam'. The message sought to be conveyed by the Defendant is that various brands selling 'oats' are falsely making citizens/people believe that oats are secret to health. The Defendant is further calling oats as bland, impossible to be eaten on regular basis and a flavourless punishment disguised. This accusation is not only untrue but also seeks to undermine the trust consumers have in oats and the brands that offer them.



35. It is submitted that the Defendant employs a barrage of disparaging terms and metaphors to describe oats, comparing them to inedible and even poisonous substances like "cement, adhesive, washing powder, and insect and cockroach killer." and have further gone to the extent of comparing oats to ashes/‘asthiyaan’. This language is clearly intended to create a sense of immediate fear, disgust and repulsion towards oats.





36. It is submitted that it is evident from the above, the overall manner, intent and storyline of the Impugned Advertisements of the Defendant is to maliciously slander, denigrate, and disparage Oats and to spread misinformation and paranoia among the consumers about oats by saying that oats are bad, poisonous, unsuitable for human consumption, etc. The use of the Impugned Advertisements by the Defendant is wrongful, illegal, fraudulent, reckless and malicious. The Impugned Advertisements are having the effect of seriously debasing and tarnishing the entire class of oats of which the Plaintiff is the market leader by 45% value share.

37. It is submitted that being the market leader in the category of oats, and being aggrieved by the aforesaid, the Plaintiff is filing the present suit and seeking an injunction against the Defendant from publishing and communicating to the public the Impugned Advertisements.

38. It is submitted that while the Defendant's product is a proprietary breakfast cereal containing 61% rolled oats which are chocolate coated along with other ingredients, the same is sought to be marketed as superior to regular oats, which are 100% natural whole-grain flakes. This comparison is inherently misleading, as the Defendant's product relies heavily on rolled oats as its primary ingredient.

39. It is submitted that the Defendant appears to be deliberately concealing the presence of regular rolled oats in their product in their advertising communications. This omission appears to be an attempt to create a false impression in the minds of the consumer that the Defendant is selling some 'super oats' as claimed by the Defendant on its pack and enjoys superiority over traditional rolled oats. Whereas, the fact is that the Defendant's own product is largely dependent on traditional rolled oats.

40. It is submitted that recently in October 2024, the Plaintiff was



shocked to come across an advertisement campaign being run by the Defendant, wherein, the Defendant is blatantly and egregiously disparaging oats by calling them “choone wale oats” and telling the consumers that all oats are inedible and not fit for consumption. The said advertisement campaign comprises of social media advertisements on *inter alia* Instagram, Facebook, twitter, an audio-visual advertisement and a write up.

41. It is submitted that the Defendant through the Impugned Advertisements is conveying the following disparaging messages to the consumers against oats:

- a. Falsely equating oats with choona / powder oats.
- b. Misrepresenting the nutritional value of oats.
- c. Labelling oats as a scam.
- d. Using derogatory language and comparison.

42. It is submitted that the impugned advertisements being broadcast is derogatory and categorically disparages and denigrates Oats, of which the Plaintiff is the market leader. The manner, intent and storyline of the Impugned Advertisements, is to simply convey to the consumer that oats are bad and unsafe for human consumption. The manner and storyline of the Impugned Advertisement is to repeatedly convey to the consumer that oats are meant for purposes such as making a plaster, or for making cement or for making carrom board surfaces smooth, but oats are not meant for consumption.

43. It is submitted that the intent of the Defendant to disparage and denigrate all oats, is also evident from description given below the Impugned Advertisement on the Defendant’s YouTube channel. The said description is as follows:



*“Welcome to our eye-opening exposé on the oats industry! 🌱 In this video, we dive into the breakfast scam that’s been fooling consumers since 2006. When Western brands introduced instant and powdered oats, we were led to believe they were the new “healthy” choice. But what if we told you that what was once a hearty meal has turned into nothing but **dry dust and disappointment?** 🤔 Join us as we share the truth in a fun and quirky way, featuring Shilpa Shetty in a surprising new avatar! We’ll reveal why it’s time to ditch the powdered oats and embrace the real deal - Alpino Super oats”*

44. It is submitted that a bare perusal of the aforesaid social media advertisements clearly shows that the manner, intent and storyline of each of the Impugned Social Media Advertisements is to simply show oats in a negative light and nothing else. Further, the description for many of these advertisements is to double down on the fact that there is an oats scam and in the garb of doing so they merely call oats, ‘choone wale oats’, without any basis. All that the Impugned Social Media Advertisements are doing is mocking and disparaging all other oats, which have been repeatedly referred to as ‘choone wale oats’.

45. It is submitted that the manner and intent of the Impugned Advertisements of the Defendant is to drill into the consumer’s minds that regular oats are bad and unsafe for human consumption, and only the Defendant’s Alpino Oats, are consumable oats. The defendant through its advertisements, seeks to convey that oats may have many uses, but eating is not one of them, and that they are synonymous to choona, i.e., lime powder, which is often used as construction material and other non – edible purposes.

46. It is submitted that the Impugned Advertisements amounts to generic



disparagement due to the untruthful and negative statements made therein in relation to oats, in which category the Plaintiff's oats under the brand "Saffola" is the market leader. The Plaintiff enjoys a value share of 45% percent in the oats market and as such the harm caused by the Impugned Advertisements to the Plaintiff and its products under the category of oats will be the biggest.

47. It is submitted that the overall manner, intent and storyline of the Impugned Advertisements of the Defendant is to maliciously slander, denigrate, and disparage all oats, including those of the Plaintiff, with the intent to wrongfully capture market share by spreading misinformation and paranoia among the consumers. An advertiser is permitted to boast about the qualities of its own products and even puff up its own products, however, an advertiser is not permitted to say that any other product is bad and denigrate the same.

48. It is submitted that the Impugned Advertisements are not in the nature of a party exercising commercial speech to talk about the goods aspects or mere exaggerations of its products or simple truths to catch the eyes of the consumers. It is well settled that an advertiser must exercise caution in order to ensure that it does not ridicule or disrepute the other products. The Defendant through the Impugned Advertisements gives the impression that the Defendant is revealing some large truths about oats which the consumers have been scammed about. By doing so the Defendant is also creating an alarmist atmosphere so that the consumers are rushing to switch out their oats for the product of the Defendant. The Defendant's Impugned Advertisements give the consumers an impression as if they are being misinformed and cheated by the manufacturers of other oats brands. The entire premise of the Impugned Advertisements is to denigrate oats as a



category of food, which includes the Plaintiff's oats under the brand "Saffola".

49. It is submitted that the impugned advertisements is causing irreparable damage to the Plaintiff in its business in respect of oats and irretrievable and irreparable loss of reputation to the Plaintiff's said products. The loss and injury to the Plaintiff cannot be quantified in monetary terms. The Impugned Advertisements have the effect of seriously debasing and tarnishing the entire class of oats of which the Plaintiff is the market leader. The acts of the Defendant are a malicious attempt to erode the goodwill and reputation of oats. The use of the Impugned Advertisements by the Defendant is wrongful, illegal, fraudulent, reckless and malicious and results in tarnishing and disparaging all oats.

50. It is submitted that the Defendant's acts are resulting in dilution and degradation of the oats as a food category, of which the Plaintiff's oats under the brand "Saffola" are the market leaders. The reputation of oats, which is generally considered a healthy option, is being unfairly misused and exploited by the Defendant by showing that all oats are bad and inedible in comparison to the Defendant's product. Additionally, the appeal to the consuming public to not consume oats and only consume the Defendant's product is clearly contrary to honest trade and commercial practices. The aforesaid activities of the Defendant are causing irreparable harm and injury, which cannot be measured or compensated in monetary terms.

51. Learned Senior Counsel appearing for the plaintiff further submits that even though the various advertisements by the defendant do not specifically point out to the product of the plaintiff, however, the disparagement being generic in nature, the present suit on behalf of the plaintiff is maintainable.



52. He submits that generic disparagement of a rival product without specifically identifying the rival product is equally objectionable.

53. Learned Senior Counsel for the plaintiff relies upon the judgment in the case of ***Karamchand Appliances Pvt. Ltd. Vs. Sh. Adhikari Brothers & Ors., 2005 SCC OnLine Del 1427*** in support of his submissions, and in particular, to Paragraph 29 of the said judgment, which reads as under:

“xxx xxx xxx

*29. There is merit even in the second limb of Mr. Jaitley's contention that what the advertisement denigrates and rubbishes is the very concept of a pluggy device like the one manufactured and marketed by the plaintiff. A disparagement even if generic would remain a disparagement and can be restrained at the instance of a party, who manufactures or trades in that class of goods regardless whether the technology used is modern or obsolete. The defendant is indeed entitled to boast that its product is the latest in the market and even the best but it cannot describe either the technology or the concept used by any other manufacturer or trader in the manufacture or sale of his products as obsolete or worthless. Comparative advertisement is permissible, so long as such comparison does not disparage or denigrate the trademark or the products of a competitor. Comparison of different features of two products showing the advantages, which one product enjoy over the other is also permissible provided such comparison stops short of discrediting or denigrating the other product. Viewed thus the defendant's commercial, which shows the model in the same taking out the pluggy device by describing it as 15 years old and obsolete method is a clear case of disparagement of devices like that of the plaintiffs that are based on that concept or technology and would therefore, be impermissible.*

xxx xxx xxx”

54. Learned Senior Counsel further relies upon the judgment in the case of ***Dabur India Limited Vs. Colgate Palmolive India Ltd., 2004 SCC OnLine Del 718***, and refers to the following paragraph:

“xxx xxx xxx

*19. I am further of the view that generic disparagement of a rival product without specifically identifying or pin pointing the rival product is equally objectionable. Clever advertising can indeed hit a rival product without specifically referring to it. No one can disparage a class or genre of a produce within which a complaining plaintiff falls and raise a defence that the plaintiff has not been specifically*





identified. In this context the plaintiff has rightly rejected the offer of the defendant to drop the container from its advertisement so as to avoid the averred identification of the plaintiff's product. I must also deal with a English judgment of Willes J relied upon by the counsel for the defendant (for which no citation is indicated), the entire reasoning of which reads as under :—

*“Willes, J. - The action cannot be maintained. Assuming the article to be libellous, it is not a libel on the plaintiff; it only reflects on a class of persons dealing in such objects; and it is immaterial in this view whether they are genuine or not. If a man wrote that all*



Page: 425

*lawyers were thieves, no particular lawyer could sue him unless there is something to point to the particular individual, which [350] there is not there. There is nothing to show that the article was inserted with any special reference to the plaintiff. It does not appear that the defendant knew of his existence.*

*But further, I am of opinion that this is no libel, for that it is protected by the privilege of fair discussion on a matter of public interest, it is not appearing that it was malicious.”*

*With the greatest respect to the reasons said to be contained in the above English judgment, I totally disagree with the view of Willes J. for the following reasons.*

*(a) It deals with libel and not a commercial advertisement.*

*(b) It contains no worthwhile reasons.*

*(c) English Judgments are not binding on me particularly when Dabur India's judgment (supra) of a learned Single Judge covers the issue.*

*(d) It proceeds on the footing that the defendant was not aware of the plaintiff's existence.*

*xxx xxx xxx”*

55. In view of the above circumstances, the plaintiff has demonstrated a prima facie case for grant of injunction and in case no *ex-parte ad-interim* injunction is granted, the plaintiff will suffer an irreparable loss. Further, the balance of convenience also lies in favour of the plaintiff and against the defendant.



56. Accordingly, till the next date of hearing, defendant, its directors, principals, proprietor, partners, officers, employees, agents, franchisees, licensees, representatives and assigns are restrained from publishing or otherwise sharing, forwarding, howsoever, communicating to the public., either through social media platforms, inter alia Instragram, Facebook, Twitter etc , or in any other manner, the Impugned Advertisements or any part thereof, or any other advertisement or communication of a similar nature, in any language or in any manner, disparaging “Oats” as a category of foods.

57. Issue notice to the defendants by all permissible modes upon filing of the Process Fee, returnable on the next date of hearing.

58. Let reply be filed within a period of four weeks.

59. Rejoinder thereto, if any, be filed within two weeks, thereafter.

60. Compliance of Order XXXIX Rule 3 CPC, be done, within a period of ten working days.

61. List before the Court on 19<sup>th</sup> March, 2025.

62. *Dasti* under signatures of the Court Master.

**MINI PUSHKARNA, J**

**OCTOBER 29, 2024/au**