

\$~19

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

+ CS(COMM) 566/2024 & I.A. Nos. 33082/2024, 33083/2024,
33084/2024, 33085/2024, 33086/2024, 33087/2024

ADITYA BIRLA FASHION AND RETAIL LIMITEDPlaintiff

Through: Mr. Ankur Sangal with Mr. Ankit
Arvind, Mr. Shashwat Rakshit and
Ms. Nidhi Pathak, Advocates.

versus

FRIENDS INC & ANR.Defendants

Through: None.

CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA

ORDER
12.07.2024

%

I.A. No. 33086/2024 (Exemption from filing original/certified copies of documents)

1. The present is an application under Section 151 of the Code of Civil Procedure, 1908 ("CPC") seeking an exemption from filing original/certified/typed/translated and fair copies of the documents.
2. Exemption is granted, subject to all just exceptions.
3. Applicant shall file legible, clear, and original copies of the documents on which the applicant may seek to place reliance, within four weeks from today or before the next date of hearing, whichever is earlier.
4. Accordingly, the present application is disposed of.

I.A. No. 33084/2024 (Application to file additional documents)

5. The present application has been filed on behalf of the plaintiff under Order XI Rule 1(4) of the CPC (as amended by the Commercial Courts, Commercial Division and Commercial Appellate Division) read with Section 151 CPC seeking liberty to file additional documents at the appropriate stage.

6. The plaintiff, if it wishes to file additional documents at a later stage, shall do so strictly as per the provisions of the Commercial Courts Act, 2015 and the Delhi High Court (Original Side) Rules, 2018.

7. Accordingly, the present application is disposed of.

I.A. No. 33083/2024 (Application for exemption from instituting Pre-litigation Mediation)

8. The present is an application under Section 12A of the Commercial Courts Act, 2015 read with Section 151 of the CPC for exemption from instituting Pre-litigation Mediation.

9. Having regard to the facts of the present case and in the light of the judgment of Supreme Court in the case of *Yamini Manohar Versus T.K.D. Keerthi*, 2023 SCC OnLine SC 1382, and Division Bench of this Court in *Chandra Kishore Chaurasia Versus RA Perfumery Works Private Ltd.*, 2022 SCC OnLine Del 3529, exemption from attempting Pre-litigation Mediation, is granted.

10. Accordingly, the application stands disposed of.

I.A. No. 33085/2024 (Application seeking enlargement of time for filing Court Fees)

11. The present is an application under Section 149 read with Section 151 CPC on behalf of the plaintiff seeking enlargement of time for filing Court Fees.

12. Considering the submissions made in the present application, time of two weeks is granted to file the Court Fees.

13. Application is disposed of.

CS (COMM) 566/2024

14. None appears for the defendants, despite advance service.

15. Let the plaint be registered as suit.

16. Upon filing of the process fee, issue summons to the defendants by all permissible modes. Summons shall state that the written statement be filed by the defendants 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.

17. 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.

18. List before the Joint Registrar (Judicial) for marking of exhibits on 07th August, 2024.

19. List before the Court on 05th September, 2024.

I.A. No. 33082/2024 (Application on behalf of the plaintiff under Order XXXIX Rules 1 and 2 read with Section 151 CPC seeking interim injunction)

20. The present suit has been filed for permanent injunction restraining

the infringement of Trademark, infringement of Copyright, passing off, unfair trade practice, declaration, rendition of accounts, damages, delivery up etc.

21. It is submitted that the present suit is being filed by the plaintiff, to restrain the defendants from putting signboard outside their shop with the the trademark “PETER ENGLAND” for the identical goods and services as that of the plaintiff, i.e., retail of apparels & accessories for men, women and kids.

22. Learned counsel appearing for the plaintiff submits that plaintiff is one of the top clothing brands and India's fastest growing premium fashion and a lifestyle company. The plaintiff brings to market a vast collection of products under the brand “PETER ENGLAND” and more than 200 other prestigious brands. It is submitted that “PETER ENGLAND” is one of the most loved apparel brand of India offering clothes and accessories of unmatched value.

23. The brand “PETER ENGLAND” was introduced in India in the year 1997 by plaintiff's predecessor-in-title. The brand was subsequently acquired by Plaintiff Group in the year 2000. “PETER ENGLAND” trade mark was assigned by an Assignment Deed dated 21st January, 2000 in favour of plaintiff.

24. It is submitted that plaintiff is the registered proprietor of the trade mark “PETER ENGLAND” in different classes. The first registration of the plaintiff for the trade mark “PETER ENGLAND” dates back to the year 1995. The details of the relevant trade mark registrations given in the plaint, are as follows:-

S. No.	Trade Mark	Reg. No.	Class	Date of Reg.
1.	PETER ENGLAND	665416	25	12/05/1995
2.	 MAKING <i>good things</i> HAPPEN	2009650	25	16/08/2010

3.		2011608	25	20/08/2010
4.	Peter England Cordjeans	2225838	25	27/10/2011
5.	PETER ENGLAND TROUSER WORLD	4995757	25	06/06/2021
6.		2007184	35	10/08/2010

25. It is submitted that all the aforementioned registrations of the plaintiff are legal, valid and subsisting in India. Besides the aforesaid registrations in India, the plaintiff has got the trade mark registered in all major countries of

the world and across the countries. It is submitted that apart from the aforesaid trade mark use, the plaintiff is also using *inter alia* “PETER ENGLAND” trade mark in an artistic manner in relation to the said goods and business and the art work involved in the said trade mark/ label is an original artistic work, as below:-



26. It is submitted that the plaintiff has secured copyright registrations in artistic works for



and its variants. The plaintiff is the owner of Registered Works bearing registration nos. A-69196/2005, A-112666/2014 and A-68774/2005 for



and its variants.

27. Learned counsel appearing for the plaintiff submits that in and around December, 2023, the plaintiff came across the store of the defendants in Khanpur, Delhi, wherein, the trade mark “PETER ENGLAND” and artistic work





was being used on the sign board outside the store of the defendants. It is submitted that the defendants are also running the business of retail of apparels.

28. It is submitted that plaintiff was shocked to see the dishonest use of the sign board with plaintiff's trade mark/ artistic work



without authorisation from the plaintiff. It is submitted that the defendants are using the said unauthorised sign boards right next to the plaintiff's authorised and exclusive franchise "PETER ENGLAND" store.

29. Attention of this Court has been drawn to the photograph showing the authorised shop of the plaintiff, and the shop of the defendants, showing the unauthorized display of the board of "PETER ENGLAND". The said photograph, showing the comparison, is reproduced as below:-



30. It is submitted that the defendants have deliberately put up the infringing sign boards in front of its store, to confuse the consumers and mislead them into visiting the defendants' store, believing the same to be the authorised and authentic store of the plaintiff. Thus, it is submitted that the defendants are using the impugned sign boards in order to create association with the plaintiff's brand/trade mark "PETER ENGLAND" and ride upon the goodwill and reputation of the plaintiff.

31. Attention of this Court has also been drawn to the invoice issued by the defendants, with the mark, "PETER ENGLAND", which is reproduced as below-

PAYMENT VOUCHER / TAX INVOICE

GSTIN - 07AADFF0104D1ZB		Book No.			
D-8/3 Krishna Park, Khanpur Main Devli Road, New Delhi-110062 Phone : 8800744478-79					
Voucher No.: 674	Date: 8-3-24				
Ph. _____	To _____				
S.No.	PARTICULARS	SIZE	QTY.	RATE	AMOUNT
①	8904241984292 SOCKS		1		129
<input type="checkbox"/> Cash <input type="checkbox"/> Card <input type="checkbox"/> Other					
Total Amount (in Words)					129
Total					129
Terms & Conditions : (1) Goods once sold cannot be exchanged or returned. (2) Interest @2% month will be charged if payment is not received within 30 days of issue of Bill (3) All disputes subject to Delhi Jurisdiction Only. E. & O.E.					Discount Taxable Amount Add CGST@... 1 Add SGST@... G. Total 129
For Friends Inc. Auth. Signatory					

32. Thus, learned counsel appearing for the plaintiff submits that the

plaintiff has no objection to the defendants selling the original branded shirts of the plaintiff. The plaintiff has only objection to the display of the board with the mark “PETER ENGLAND” outside the shop of the defendants and use of the mark “PETER ENGLAND” in the invoice, or any other business paper, of the defendants.

33. Considering the aforesaid, plaintiff has made a *prima facie* case in its favour. This Court is of the view that balance of convenience is in favour of the plaintiff and against the defendants. In case, interim order is not granted in favour of the plaintiff, then the plaintiff is likely to suffer irreparable damage.

34. Accordingly, it is directed that the defendants are restrained from putting the sign board with the mark “PETER ENGLAND” outside their shop. Further, the defendants are also restrained from using any invoice/business paper, with the mark “PETER ENGLAND”.

35. Issue notice to the defendant by all permissible modes, upon filing of process fees, returnable on the next date of hearing.

36. Reply, if any, be filed within a period of four weeks from the date of service.

37. Rejoinder thereto, if any, be filed within a period of two weeks, thereafter.

38. Compliance of Order XXXIX Rule 3 CPC, be done within a period of ten days, from today.

39. List on 05th September, 2024.

I.A. No. 33087/2024 (Application for appointment of Local Commissioner)

40. Learned counsel appearing for the plaintiff submits that in view of the

order passed today, he is not pressing the present application for the time being.

MINI PUSHKARNA, J

JULY 12, 2024

c