

\$~10

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 11th November, 2022

+ **CS (COMM) 607/2022 & I.As.14189/2022, 17631/2022**

**HAMDARD NATIONAL FOUNDATION
 (INDIA) & ANR.**

..... Plaintiffs

Through: Mr. Shivndra Pratap Singh & Mr.
 Navdeep Suhag, Advocates (M-
 8826906894)

versus

AMAZON INDIA LIMITED & ANR.

..... Defendants

Through: Mr. Sidharth Chopra, Mr. Devrat
 Joshi, Mr. Vivek Ayyagri & Mr.
 Angad Makkar, Advocates for D-1
 (M-9897896284)

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

1. This hearing has been done through hybrid mode.
2. The present suit has been filed by Plaintiff No.1 - Hamdard National Foundation (India) and Plaintiff No.2 - Hamdard Dawakhana also trading as Hamdard Laboratories India against Defendant No.1 - Amazon Seller Services Pvt. Limited and Defendant No.2 - M/s. Golden Leaf, C/o Amazon Seller Services Pvt. Limited. The suit relates to the product and mark of the Plaintiffs 'ROOH AFZA'.
3. The case of the Plaintiffs is that Plaintiff Nos.1 & 2 are engaged in the business of manufacturing and selling various Unani and Ayurvedic medicines, oils, syrups and non-alcoholic beverages. The Hamdard Group of the Plaintiffs has a history which dates back to over 100 years when well-known Unani practitioner 'Hakeem Hafiz Abdul Majeed' set up a Unani clinic under the name 'Hamdard Dawakhana'. Over the years, the activities

of the Plaintiffs have expanded and they have been involved in research and development.

4. The Plaintiffs own rights in the marks 'HAMDARD' and 'ROOH AFZA' details of which are mentioned in paragraph no. 11 of the plaint. The mark 'ROOH AFZA' was adopted by the Plaintiffs in 1907 and the said product is a market leader in its segment. The mark 'ROOH AFZA' has been used by the Plaintiffs for a range of products including non-alcoholic sharbets and beverages, for which Plaintiff No.2 has obtained the assignment on 11th August, 1975 from Plaintiff No.1. The mark ROOH AFZA is registered in India and one of the registrations of the Plaintiffs dates back to 3rd August, 1942. Other trademarks have also been registered by the Plaintiffs for variants of 'ROOH AFZA', including the labels and flavour variants etc., The annual sales of the products under the mark 'ROOH AFZA' brand are over Rs.200 crores and a substantial amount has also been incurred by the Plaintiffs in the advertisement and promotion of the brand.

5. The grievance of the Plaintiffs in the present case is that Defendant No.1, runs the e-commerce website www.amazon.in. Defendant No.2, which claims to have the contact details - C/o Amazon Sellers Service Pvt. Ltd., 26/1, 10th Floor, Brigade World Trade Center, Dr. Rajkumar Road, Bengaluru- 560055 (Karnataka), is a seller on the www.amazon.in platform selling and offering for sale the product 'ROOH AFZA' (*hereinafter, 'impugned products'*). The said sellers were 'M/s Royal Sales' and 'M/s. Good Health Enterprises'. Upon these notices having been issued on 4th September, 2021 and 9th December, 2021, the said listings were removed from www.amazon.in platform. However, recently another listing by one

‘M/s. Golden Leaf’ was found by the Plaintiffs on the website of Defendant No.1 and upon clicking on ‘Golden Leaf’, the contact details were shown as ‘C/o Amazon Sellers Services Pvt. Ltd’. The Plaintiffs effected purchases of the said product on 6th December, 2021 and found to their utter shock and surprise that the said product was not manufactured by the Plaintiffs. Ld. counsel for the Plaintiffs submits that the said product is manufactured in Pakistan and also does not comply with the legal requirements of the Legal Metrology Act, 2009 (hereinafter referred as “*LMA*”), the Legal Metrology (Packaged Commodities) Rules, 2011, and the Food Safety and Standards Act, 2006 (hereinafter referred as ‘*FSSAI*’) which governs such products.

6. On 5th September, 2022, when the suit was listed before this Court, Mr. Siddharth Chopra, Id. Counsel appearing for Defendant No.1 had submitted that if the URLs of the infringing listings are furnished to him, the same shall be taken down. On the said date, complete papers were directed to be supplied to Id. Counsel for Defendant No.1. The Plaintiffs had also pointed out that three purchases were effected by them from three sellers through the Amazon platform and on all three occasions, the product was claimed to be manufactured by Hamdard Laboratories (Waqf), Pakistan from Karachi, Pakistan. Copies of the invoices of the said purchases were also directed to be supplied to Mr. Siddharth Chopra, Id. Counsel for Defendant No.1. The original bottle purchased from the Amazon was shown to the Court and accordingly the following directions were issued vide order dated 5th September 2022 :

“20. Ld. Counsel for the Plaintiffs has produced the ‘Hamdard ROOH AFZA’ product bottle which is stated to be purchased by them through www.amazon.in platform. A perusal of the physical

products shows that the same is shown to be manufactured by 'Hamdard Laboratory (Waqf), Karachi, Pakistan'. There are no other details of the manufacturer mentioned on the product apart from just the name of the manufacturer. No address, email address or telephone number of the manufacturer is available at the label of the product. The label on the bottle produced by the Plaintiffs is as under:



21. The manufacturing date on the product is shown as March, 2020 and the expiry date is March, 2022. The Plaintiffs' case is that this product also does not comply with the LMA and FSSAI regulations. It is also not clear as to how these products are being imported from Pakistan when clearly the Plaintiffs have statutory rights in the marks in India.

22. The Court has, during the course of hearing, also accessed the website www.amazon.in which reveals that there are various 'ROOH AFZA' products being offered for sale. However, on a cursory browsing the names of the sellers, their addresses/contact details are not clear.

23. Clearly, 'ROOH AFZA' is a product which has been consumed by the Indian public for over a century now. The same being a drink for human consumption, the quality standards have to comply with the applicable regulations prescribed by the FSSAI and LMA. It is surprising that an imported product is being sold on www.amazon.in platform without the complete details of the manufacturer being

disclosed. Moreover, when one clicks on the link 'Visit the Hamdard Store', which is provided next to the product listing of Defendant No.2, the consumer is taken to the webpage of 'Hamdard Laboratories India' on www.amazon.com, which is of the Plaintiffs. Thus, any consumer or user on the www.amazon.in platform is likely to confuse the 'ROOH AFZA' product originating from Hamdard Laboratories (Waqf), Pakistan as being connected or originating from the Plaintiffs. Until and unless the consumer actually receives the product, the consumer has no way of knowing as to whether the product being sold is that of the Plaintiffs or not. This can have an adverse impact on the consumers, inasmuch as the details of the sellers are not known. Since www.amazon.in claims to be an intermediary it has an obligation to disclose names of sellers, their contact details etc., on the product listings.

24. Under these circumstances, the Court is convinced that the Plaintiffs have made out a prima facie case for grant of an ad-interim injunction. The balance of convenience lies in the favour of the Plaintiffs and if an injunction is not granted at this stage, irreparable injury would be caused to the Plaintiffs. Mr. Siddharth Chopra, Id. counsel, wishes to seek instructions. However, considering the nature of the dispute, urgent interim injunction orders are required to be passed not only in order to recognize the Plaintiffs' rights but also to ensure that the products not meant for consumption in India are not sold on the www.amazon.in platform. Accordingly, the following directions are issued:

(1) The listings of infringing 'ROOH AFZA' products on the website www.amazon.in not originating from the Plaintiffs shall be removed within 48 hours. If the Plaintiffs have details of the said URLs, the same shall be submitted to Mr. Chopra Id. Counsel for

Amazon Sellers Service Pvt. Ltd.

(2) The said company shall also check up as to who are the sellers who are selling 'ROOH AFZA' products on its platform and if any of the said products are found not to be originating from the Plaintiffs, their listings shall be removed immediately.

(3) If any of the product listings show the products are manufactured or originating from the Plaintiffs, in such a situation, www.amazon.in shall give notice to the said seller to confirm that the same originate from the Plaintiffs and if so, such listings shall be retained.

(4) Since Amazon Sellers claims to be an intermediary under the Information Technology Act, 2000, it shall file an affidavit clarifying as to whether the details of the sellers, including the place of manufacturing of the products, the complete address of the sellers, and the contact details, including the telephone number, email address etc. are mentioned on the ROOH AFZA product listings, invoices, product labels etc. If the same are not available on the product listings, Amazon Sellers shall clarify as to in what manner consumers expected to obtain such details from www.amazon.in platform. The said affidavit shall be filed within four weeks.

(5) The ld. Counsel for Amazon Sellers shall provide the details of the sellers of all the 'ROOH AFZA' product listings on its website to the Plaintiffs, within one week, who may then take steps in accordance with law for impleadment etc., if so advised.

(6) The Plaintiffs are permitted to inform Amazon Sellers of any listings which they may

come across even in the future, in respect of 'ROOH AFZA' branded products which are not manufactured and sold by the Plaintiffs so that the same can be immediately removed from the website within 48 hours of the intimation. "

7. Pursuant to the aforementioned directions, today it is submitted by the Id. Counsel for the Plaintiffs that the details of the sellers on the Defendant No.1's platform who were selling the impugned products has been disclosed in the affidavits filed by Amazon. The details of the said sellers as disclosed in the said affidavits are as under:

S.No.	ASIN(s)	<i>Seller details as available with Defendant No.1</i>
1.	B07QPV5GTF	<u>Name:</u> Cougar International / Stay Home & Stay Safe <u>Email:</u> internatiolcougar@gmail.com <u>Address:</u> Shop No. 441 to 446, 2nd Lane, Crawford Market, M.J. Phule Market, Mumbai, Maharashtra – 400001, IN
		<u>Name:</u> Muhammad Yahya Biscuitwala / CHEF'S NEED <u>Email:</u> chefsneed@gmail.com <u>PhoneNumber:</u> 8898687408 <u>Address:</u> 20b Wadi Bunder Road, Husain Patel Marg, Mumbai, Maharashtra – 400010, IN
		<u>Name:</u> Good Health Enterprises <u>Address:</u> Plot No. 14/876 Lotus Colony, Govandi, Mumbai (West), Maharashtra, 400043, India
2.	B07RPYBJ2Q B07SKRLQGT	<u>Name:</u> UNIQUE ENTERPRISES <u>Email:</u> maxxgalleryunique@yahoo.com <u>Phone Number:</u> 9822685393 <u>Address:</u> Unique Enterprises, Shelar Farms, Old

		<i>Saikheda Road, Takali Gaon, Nashik Road, Near Veer Hanuman Mandir, Nashik, Maharashtra – 422011, IN</i>
		<i>Name: Abhishek Anand / Zaamoon Email: abhishek_anand007@yahoo.co.in Address: Zaamoon, NPK Club House, Neelpadamkunj Apartment, Vaishali, Sector 1, Ghaziabad, Uttar Pradesh – 201010, IN</i>

<i>Listing / URL</i>	<i>Particulars</i>	<i>Details as available with Defendant No.1</i>
<i>B07QPV5GTF</i>	<i>Name of the person who created the listing</i>	<i>Renu Mittal / Golden Leaf</i>
	<i>Address & contact details of such person</i>	<i>H. No. 217, Huda, Sector 6, Hansi, Haryana -125033 +919034684636 renumittalhns@gmail.com</i>

8. At this stage, Ld. counsel for the Plaintiffs submits that since all the details of the sellers have been received and all the infringing listings have been taken down, the reliefs sought in the present plaint stand satisfied.

9. Considering the submissions made and the facts recorded above, the suit shall stand decreed in terms of paragraph 38(a) of the Plaint against Defendant No.2 as also the sellers mentioned above. The relevant paragraph of the Plaint is as follows:

“38. In light of the aforesaid, it is humbly prayed that this Hon’ble court may be pleased to grant the following reliefs against Defendants:

an order for permanent injunction restraining the Defendants, their proprietors or partners or directors as the case may be, their principal officers, servants, agents and all others acting for and on behalf of the Defendants from using, selling and offering for sale the products under the mark ROOH AFZA which is identical to the registered trade mark ROOH AFZA of the Plaintiffs, in any manner and for any goods and services particularly for Syrups/Sherbets products, so as to cause confusion or deception leading to infringement thereof;

10. Insofar as Defendant No.1 is concerned, in case any other listings infringing the Plaintiffs' mark 'ROOHAFZA' are found by the Plaintiffs, the same shall be brought to the notice of the Defendant No.1 and the same shall be taken down in accordance with the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 as amended in 2022. Ld. Counsel for Defendant No.1 shall also be notified of the same in order to ensure compliance.
11. No further reliefs are pressed in the suit.
12. Decree sheet be drawn in the above terms.
13. All pending applications are disposed of.

PRATHIBA M. SINGH, J.

NOVEMBER 11, 2022/Rahul/KS