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

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Date of decision: 20th December, 2024+ **CS(COMM) 515/2024****KHADI & VILLAGE INDUSTRIES COMMISSION**PlaintiffThrough: **Ms. Diva Arora, Advocate.**

versus

MS. APARNA MALLICK AND ANR.DefendantsThrough: **Mr. Mrinal Ojha, Mr. Debarshi Dutta,
Mr. Rishabh Agarwal, Mr. Arjun
Mookerjee, Ms. Nikita Rathi,
Advocates for D-2.****CORAM:****HON'BLE MR. JUSTICE AMIT BANSAL****AMIT BANSAL, J. (Oral)**

1. The present suit has been filed seeking relief of permanent injunction restraining the defendants from infringing the trademark of the plaintiff, passing off their goods and services as that of the plaintiff and other ancillary reliefs.

PLEADINGS IN THE PLAINT

2. The plaintiff *i.e.*, 'KHADI & VILLAGE INDUSTRIES COMMISSION' is a statutory body established by an Act of Parliament, Khadi and Village Industries Commission Act of Government of India, with its head office located at Parle (West), Mumbai, Maharashtra.

3. The plaintiff is the registered proprietor of the wordmark 'KHADI'



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and devices ‘’, and ‘’ under Classes 25 and 35 which were adopted in the year 1956. The registrations can be seen below:

Trademark	Registration No.	Application Date	User Claim	Class(es)
KHADI	2851543	27/11/2014	25/09/1956	25
KHADI	2851552	27/11/2014	25/09/1956	35
	3864173	19/06/2018	25/09/1956	25
	3864180	19/06/2018	25/09/1956	35
	2854735	02/12/2014	31/05/2000	25
	2854742	02/12/2014	31/05/2000	35

All the above mentioned registrations are currently valid and subsisting. The copies of the legal proceeding certificates/ its status pages/ registration certificates have been filed in the present proceedings.

4. The plaintiff submits that their trademark ‘KHADI’ has been declared ‘well-known mark’ by this Court in *Khadi & Village Industries Commission v. Raman Gupta & Ors. [CS(COMM) 133/2022]* and the mark has been published in the list of ‘well-known marks’ in the Trade Marks Journal bearing number 2065 dated 15th August 2022.



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5. The plaintiff is engaged in the promotion and development of textiles, and that any person wanting to sell their product under “KHADI” marks has to obtain certification from the plaintiff in terms of Khadi and Village Industries Act, 1956, Village Industries Commissions Act, 2007 and Khadi Mark Regulations, 2013.

6. The plaintiff since its incorporation has been continuously using selling products under the ‘KHADI’ marks through retail outlets, exhibitions, websites and third-party e-commerce websites having an annual turnover of Rs. 1,34,629 crores in financial year 2023. The plaintiff has also spent Rs. 9.22 crores in the financial year 2023 towards advertisement and promotional activities for its ‘KHADI’ trademarks.

7. The plaintiff hosts its e-commerce website, www.ekhadiindia.com which redirects to <http://khadiindia.gov.in/>, cataloguing over 50,000 products ranging from cosmetics to food products, woollen products, hand wash, hand sanitizers etc.

8. It is submitted in the plaint that the plaintiff has a prominent presence on various social media platforms, such as Facebook, Twitter, YouTube,



Instagram, etc. all of which enjoy a wide followership with ‘’, as the source identifier. The details of the followers amassed by the plaintiff’s social media accounts are mentioned in paragraph 17 of the plaint.

9. In and around October 2023, the plaintiff came across the defendant no.1’s website www.khadisaree.com displaying the impugned marks

‘KHADISAREE’ / , offering clothing apparels such as saree,



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jewellery, cloth bags, etc. Upon the discovery of the website, the plaintiff was able to ascertain the name of the defendant no.1 (Ms. Aparna Mallick), who is the proprietor of the firm, M/s Exclusive Variety Design. The WhoIS record of the impugned domain and GST Records of M/s Exclusive Variety Design have been filed and confirm the same.

10. The defendant no.2 (GoDaddy.com LLC) is the domain name registrar of the impugned domain name www.khadisaree.com.

11. The plaintiff submits that upon further investigation, the plaintiff came across social media accounts bearing the impugned mark. Details of which are mentioned below:

S.No.	Social Media Platform	Impugned Username
1.	Instagram	Khadisaree @Khadisaree
2.	Facebook	Khadisaree
3.	Pinterest	Khadisaree

12. The plaintiff sent a legal notice dated 20th October, 2023 to the defendant no.1 *via* courier and email. As there was no response to the said legal notice, the plaintiff issued a reminder notice dated 13th February 2024 to the defendant no.1 and the same was also delivered. However, it elicited no response.

13. Thereafter, to ascertain more details about the defendant no.1's products, the plaintiff placed an order for two products on 5th March, 2024 on the impugned website. The details and images of the received product(s) are reproduced below:-

i. Premium Black Colour Khadi Cotton Saree with Running



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Blouse piece :

<https://khadisaree.com/products/premium-blackcolour-khadi-cotton-saree-with-running-blousepiece?sku id=42530031>



14. Upon receipt, the plaintiff submitted the products to Northern India Textile Research Association (NITRA) for testing them to ascertain the genuineness thereof as well as the material/fabric. It was found that both products were 100% polyester fabric and that the defendant no.1 was misrepresenting the products as ‘Khadi Cotton Saree’ or ‘Khadi Saree’.

15. The plaintiff relies on the Section 2(d) of the Khadi and Village Industries Commission Act, 1956 which defines ‘*Khadi*’ as follows-

“(d) “khadi” means any cloth woven on handlooms in India from cotton, silk or woolen yarn handspun in India or from a mixture of any two or all of such yarns;”

16. It is stated in the plaint that in order to be listed as an authorised user of the ‘KHADI’ trademarks for purpose of sales and promotions of ‘KHADI’ certified textile products and services, each organisation has to apply for recognition through the Khadi Institutions Registration & Certification Sewa (KIRCS). Only those organisations, individuals or



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institutions who hold a valid certificate issued by the Commission under clause (k) of sub-section (2) of Section 15 of the Khadi and Village Industries Commission Act, 1956, read with sub-regulation (2) of Regulation 24 of Khadi and Village Industries Commission Regulations, 2007, can affix the 'KHADI' mark tag or label or both.

17. Accordingly, the plaintiff filed the present suit on 30th May, 2024 seeking to restrain the defendant no.1 from carrying on their infringing activities.

PROCEEDINGS IN THE SUIT

18. Summons in the present suit were issued on 31st May, 2024. The counsel for defendant no.2 accepted the notice on 31st May, 2024. Plaintiff served the complete copy of the paper-book of the plaint, the copy of the Order dated 31st May, 2024 and the copy of the summons upon the defendant no.1 *via* Email, WhatsApp and Registered A.D. It was first delivered to the defendant no.1 *via* Email and WhatsApp on 21st June, 2024 and subsequently *via* Registered A.D. on 6th July, 2024.

19. The plaintiff filed its affidavit of service dated 14th July, 2024.

20. It has been recorded in the Order dated 22nd July, 2024 that the defendant no.1 has been served successfully by Email, WhatsApp and Registered A.D.

21. On 13th August 2024, this Court granted an *ex-parte ad-interim* injunction against the defendant no.1 restraining the defendant no.1 from



using the mark "KHADI SAREE"/ " " or any other identical/ deceptively similar mark and the afore-noted domain name (www.khadisaree.com) which is deceptively or confusingly similar to



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plaintiff's 'KHADI' trademarks. Furthermore, defendant no.1 was directed to take down its accounts and pages on social media platforms i.e. Instagram Facebook and Pinterest, whose details are extracted hereinunder:

S.No.	Social Media Platform	Impugned Username
1.	Instagram	Khadisaree @Khadisaree
2.	Facebook	Khadisaree
3.	Pinterest	Khadisaree

22. Additionally, the defendant no.2 was directed to suspend and lock the impugned domain during the pendency of the suit and provide complete details of the registrant of the domain name.

23. The condonable period of 90 days for the defendant no.1 to file the Written Statement considering the date of service as 21st June, 2024, expired on 12th October, 2024.

24. The learned Joint Registrar has recorded in the Order dated 8th November, 2024 that the right to file a written statement for defendant no.2 stands closed pursuant to the summons being accepted on 31st May, 2024.

25. On 27th November 2024, the counsel appearing on behalf of the defendant no.2 submitted that the defendant no.2 had complied with the directions passed by this Court on 13th August, 2024.

26. The plaintiff now seeks a decree in terms of Order VIII Rule 10 of the Code of Civil Procedure, 1908 (CPC).

ANALYSIS AND FINDINGS

27. I have heard the counsel for the plaintiff and perused the material on



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record.

28. In *Satya Infrastructure Ltd. & Ors. v. Satya Infra & Estates Pvt. Ltd.*, 2013 (54) PTC 419 (Del) [CS(OS) 1213/2011, decided on 07.02.2013], a Co-ordinate Bench of this Court held as follows:

“4. The next question which arises is whether this Court should consider the application for interim relief and direct the plaintiffs to lead ex parte evidence. The counsel for the plaintiffs states that the plaintiffs are willing to give up the reliefs of delivery, of rendition of accounts and of recovery of damages, if the suit for the relief of injunction alone were to be heard today.

5. I am of the opinion that no purpose will be served in such cases by directing the plaintiffs to lead ex parte evidence in the form of affidavit by way of examination-in chief and which invariably is a repetition of the contents of the plaint. The plaint otherwise, as per the amended CPC, besides being verified, is also supported by affidavits of the plaintiffs. I fail to fathom any reason for according any additional sanctity to the affidavit by way of examination-in-chief than to the affidavit in support of the plaint or to any exhibit marks being put on the documents which have been filed by the plaintiffs and are already on record. I have therefore heard the counsel for the plaintiffs on merits qua the relief of injunction.”

29. The plaint has been duly verified and is also supported by the affidavit of the plaintiff. In view of the fact that no written statement has been filed on behalf of the defendant no.1, all the averments made in the plaint have to be taken to be admitted. Further, since no affidavit of admission/denial has been filed on behalf of the defendant no.1 in respect of the documents filed with the plaint, in terms of Rule 3 of the Delhi High Court (Original Side) Rules 2018, the same are deemed to have been admitted. Therefore, in my opinion this suit does not merit trial and the suit is capable of being decreed in terms of Order VIII Rule 10 of CPC.

30. From the averments made in the plaint and the evidence on record, the



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plaintiff has been able to prove that they are the registered proprietors of the

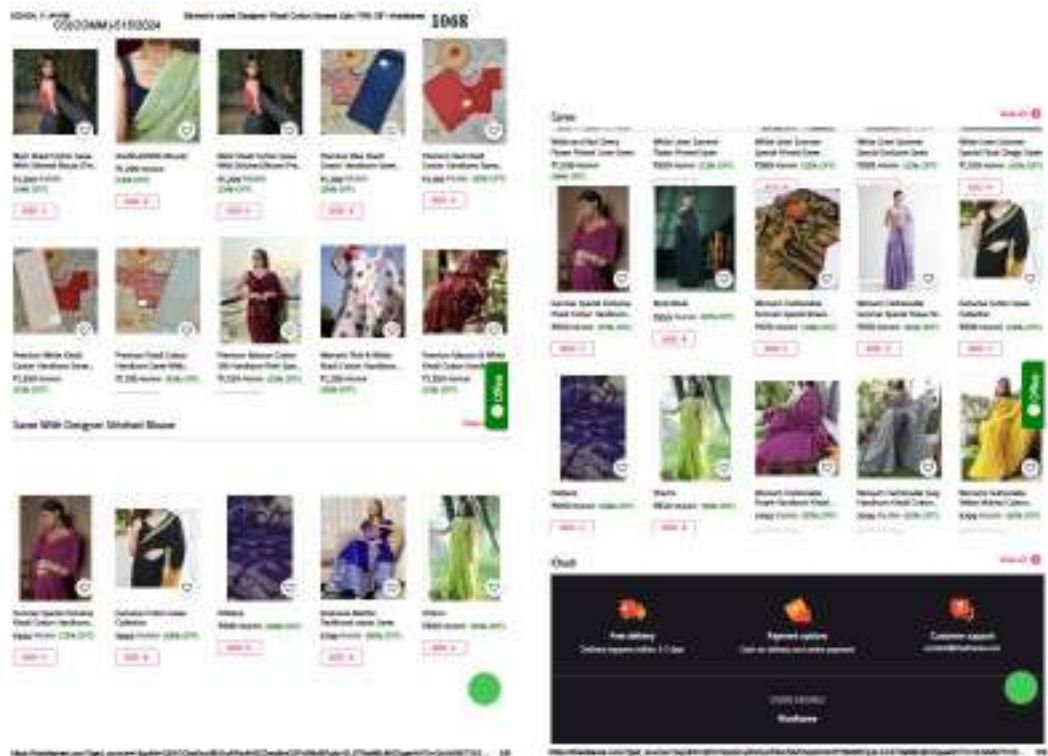
trademarks “KHADI”,



and



31. The plaintiff has placed on record the products delivered from the defendant no.1's impugned website and the screenshots of the listings to show that the defendant no.1 is indulging in infringement and passing off of the plaintiff's registered mark 'KHADI'. The screenshots of the relevant listings bearing the mark 'KHADI' are reproduced below:-



32. On a perusal of the products listed on the impugned domain name www.khadisaree.com bearing the name 'KHADI', the products delivered to the plaintiff and the social media platforms wholly incorporating the plaintiff's mark 'KHADI', it becomes evident that the defendant no.1 was merely using the domain name and the impugned marks to mislead the



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consumers as the delivered products and packaging did not bear the impugned marks or mention the impugned domain name.

33. Furthermore, the test results issued by the Northern India Textile Research Association for the defendant no.1's delivered 'khadi' products, show that the products were made of 100% polyester content. Thus affirming the plaintiff's claims of misrepresentation of the products.

34. The plaintiff has also filed several documents in support of its contentions including but not limited to the Khadi and Village Industries Commission Act, 1956 in support of prior user claim. Additionally, the plaintiff relies on a notification from the Trademarks Registry dated 15th August 2022, declaring the plaintiff's mark 'KHADI' as well-known, thereby establishing its goodwill and reputation. The plaintiff has also provided multiple trademark registrations for its 'KHADI',



, and KHADI formative marks to support its claims of prior registration. Thus, the plaintiff has made out a clear case of infringement of trade mark as well as passing off.

35. The defendant has taken unfair advantage of the reputation and goodwill of the plaintiff's well-known trademark and has also deceived the unwary consumers of their association with the plaintiff by dishonestly adopting the plaintiff's registered marks without any plausible explanation. Therefore, the plaintiff has established a case of passing off as well.

36. At this stage, it may be relevant to note that the defendant no.1 did not appear before the Court, despite service of summons on 21st June, 2024.

37. Since the defendant no.1 failed to take any requisite steps to contest



the present suit, despite having suffered an *ad interim* injunction order, it is evident that they have no defence to put forth on merits.

RELIEF

38. A decree of permanent injunction is passed in favour of the Plaintiff and against the defendant no.1 in terms of prayer clauses 53(i) and (ii) of the plaint. The said clauses read as follows:

- i. *A decree of permanent injunction restraining the Defendant No. 1, its partners, directors, servants, representatives, agents, distributors and all others acting for and on their behalf from manufacturing, selling, offering for sale, marketing, advertising, directly or indirectly providing any kind of goods and/or services under the trademark and/ or trade name*



"KHADISAREE/ " and/or domain name or any mark/ trade name/ domain name that is identical or deceptively similar to the Plaintiff's registered KHADI trademarks, amounting to infringement of the Plaintiff's registered trademarks;

- ii. *A decree of permanent injunction restraining the Defendant No. 1, its partners, directors, servants, representatives, agents, distributors and all others acting for and on their behalf from manufacturing, selling, offering for sale, advertising, directly or indirectly providing any kind*



of goods and/or services under the trademark "KHADISAREE/ " and/or any other trademark/ trade name/ domain name that is identical or deceptively similar to the Plaintiff's KHADI trademark, in any manner as may amount to passing off of the Defendant No. 1's goods, services and business as those of the Plaintiff's;

39. In terms of prayer clause (iv) of the plaint, defendant no.2 is directed to transfer the impugned domain 'www.khadisaree.com' to the plaintiff, subject to the plaintiff paying the cost of transfer.

40. In terms of prayer clause (v) of the plaint, the defendant no.1 is directed to cancel their email addresses contact@khadisaree.com and khadisareeofficial@gmail.com.



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41. Insofar as the reliefs of damages and costs sought in prayer clauses 55(vi) and (viii) are concerned, reference may be made to the judgment in ***Hindustan Lever Ltd. v. Satish Kumar***, 2012 SCC OnLine Del 1378. The relevant observations are set out below:

“23. One of the reasons for granting relief of punitive damages is that despite of service of summons/notice, the defendant had chosen not to appear before the court. It shows that the defendant is aware of the illegal activities otherwise, he ought to have attended the proceedings and give justification for the said illegal acts. Since, the defendant has maintained silence, therefore, the guilt of the defendant speaks for itself and the court, under these circumstances, feels that in order to avoid future infringement, relief of punitive damages is to be granted in favour of the plaintiff.”

42. In light of the foregoing analysis, I am of the view that the defendant no.1's conduct not only warrants but also necessitates the imposition of both costs and aggravated damages. Thus, in addition to the decree passed above, taking into account the entire facts and circumstances presented in this case, the Court also awards damages and costs cumulatively amounting to INR 5,00,000/- in favour of the plaintiff and against the defendant no.1.

43. Counsel for the plaintiff does not press for the remaining reliefs.

44. Let the decree sheet be drawn up.

45. All pending applications stand disposed of.

AMIT BANSAL, J

DECEMBER 20, 2024

Corrected and uploaded on 3rd January, 2025

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