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

% **Date of Decision: 18th September, 2024**

+ CS(COMM) 803/2024, I.A. 39736/2024, I.A. 39737/2024, I.A. 39738/2024, I.A. 39739/2024, I.A. 39740/2024 & I.A. 39741/2024

MODERN MOLD PLAST PVT. LTD. & ANR.Plaintiffs

Through: Mr. Rishi Bansal, Mr. Arpit Singh
and Mr. Mankaran Singh, Advs.
M: 8527779509
Email:
unitedmark@unitedandunited.com

versus

FLIPKART INTERNET PT. LTD. & ORS.Defendants

Through: Mr. Sidharth Chopra, Ms. Shilpa
Gupta, Ms. Surabhi Pande, Mr.
Naman Tandon and Mr. Raghav
Goyal, Advs. for D-1.
M: 9205464387
Email:
raghav@saikrishnaassociates.com

CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA

MINI PUSHKARNA, J (ORAL)

CS(COMM) 803/2024

1. The present suit has been filed under Section 134 of the Trade Marks Act, 1999 and Sections 51 and 55 of the Copyrights Act, 1957 for permanent and mandatory injunction restraining passing off of trademark, infringement of copyright, delivery up, damages, rendition of accounts, etc.
2. As per the case canvassed on behalf of the plaintiffs, the plaintiffs are



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carrying on their business for the goods under their trademarks/labels



“MAHARAJA”,

and other MAHARAJA formative



trademarks, including, but not limited to,

(MODERN



MAHARAJA),

(MUKUT MAHARAJA),



(METRO MAHARAJA) and “OMAHARAJA”.

3. It is further submitted that with respect to the rights of the plaintiffs in their art works in the said trademarks/ label, the plaintiffs’ original artistic work has become distinctive, therefore, the plaintiffs are further protected under the Copyrights Act, 1957, as well.

4. It is submitted that plaintiffs in 2009, honestly and bonafidely adopted



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the said trademarks/labels “MAHARAJA”, and other MAHARAJA formative trademarks, including, but not limited to,



(MODERN MAHARAJA),



(MUKUT MAHARAJA),

(METRO MAHARAJA)

and the trademark “OMAHARAJA”.

5. The plaintiffs in order to fortify its rights in the said trademarks/labels under the statute, have filed various trademark applications, details of which, are as follows:

Mark/ Class	Application No./ Status	Applicant	User Claimed	Date of Application	Disclaimer
OMAHARAJA (Wordmark) (Class 20)	4315829 (Registered)	Plaintiff No. 2	Proposed to be used	09.10.2019	This is subject to association with registered/pending registration no. 4197904, 2872185, 4197905, 4197906
 Maharaja (Wordmark) (Class 20)	2872185 (Pending)	Plaintiff No. 1	01.01.2009	30.12.2014	NA



(Class 20)					
 (Class 20)	4197904 (Pending)	Plaintiff No. 1	01.01.2009	05.06.2019	NA
 (Class 20)	4197905 (Pending)	Plaintiff No. 1	01.01.2009	05.06.2019	NA
 (Class 20)	4197906 (Pending)	Plaintiff No. 1	01.01.2009	05.06.2019	NA

6. It is submitted that these applications of the plaintiffs have not attained registrations, owing to third party filing opposition proceedings, against the same.

7. It is submitted that plaintiffs are carrying on their business activities under the said trademarks/labels on the internet through its own interactive website, i.e., <https://maharajamoldedfurniture.com>, as well as through other websites, including, Amazon, Flipkart, etc.

8. It is submitted that defendant no.1, i.e., Flipkart Internet Pvt. Ltd., is one of the largest e-commerce platforms, operating in the country. It is submitted that the plaintiffs have many listings on the site of the defendant no.1, i.e., Flipkart. However, on account of the latching-on feature of Flipkart, other sellers have also latched-on to the listing of the plaintiffs.

9. The present suit has been filed because the plaintiffs are, in particular, aggrieved by the fact that on account of this latching-on feature on the listing of the plaintiff by the defendant no.1/Flipkart, other sellers, who are not selling the genuine “MAHARAJA” products of the plaintiffs, have latched-on to the listings of the plaintiff. In particular, learned counsel



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appearing for the plaintiffs, submits that defendant nos. 2 and 3 herein, are selling products, which are not genuine products of the plaintiffs, however, they have latched-on to the listings of the plaintiffs.

10. It is submitted that defendant nos. 2 and 3 are sellers on the platform of defendant no. 1, i.e., www.flipkart.com, who tag themselves as alternative sellers of the goods of the plaintiffs, in the very own product listing/display of the plaintiffs on www.flipkart.com, where they sell their products at further discounts.

11. It is submitted that when the defendant nos. 2 and 3 sell their products, the invoices, which are issued by them, are in the name of the plaintiffs, as if the products sold by defendant nos. 2 and 3, are the products of the plaintiffs.

12. Attention of this Court has been drawn to the Tax Invoices issued by defendant no.2, wherein, the trademark of the plaintiffs, i.e., MAHARAJA, has been used in the invoice. The Tax Invoice issued by AKS TRADING, defendant no. 2, as given the document folder, is reproduced as under:

Tax Invoice Order Id: **00332145964096766300** Invoice No: **FAIPOE2500003853** GSTIN: **ZSDALFAB185C12F**
Order Date: **25-08-2024, 10:18 PM** Invoice Date: **29-08-2024, 09:09 AM** PAN: **DALFAB185E**

Sold By:
AKS TRADING,
30 Beerswilling Nagar, behind Sampige Hall police
station, BANGALORE - 560094
GSTIN: ZSDALFAB185C12F

Shipping ADDRESS:
Sumit Kumar,
86 Sukhdev Vihar, Mathura Road, New
Delhi,
New Delhi - 110025, IN-IN

Billing Address:
Sumit Kumar,
86 Sukhdev Vihar, Mathura Road, New Delhi,
New Delhi,
New Delhi - 110025, IN-IN

Product **Description** **Qty** **Gross Amount** **Discount** **Taxable Value** **IGST** **CESS** **Total**

MAHARAJA Galaxy for Home, Office (Comfortable Arms Rest Bearing Capacity up to 300 Kg Plastic Outdoor Chair Red Galaxy_Red-P92 PP (Polypropylene) 2 red metallic vq 10 day Replacement Guarantee ** ENH/Serial: 000	HSN: 83012000 IGST: 5.00% CESS: 0.00%	1	1939.00	-0.00	1846.67	92.33	0.00	1939.00
Shipping and Handling Charges		1	0.00	0	0.00	0.00	0.00	0.00
TOTAL QTY: 1								TOTAL PRICE: 1939.00 All values are in INR

Seller Registered Address: AKS TRADING,
AKS TRADING, SET MAIN SARANILINGAPPA NAGAR, BENGALURU - 560064
Declaration:
The goods sold are intended for end user consumption and not for resale.
FSSAI License Number: null

** Conditions Apply. Please refer to the product page for more details
B. & D.B.

Ordered Through
Flipkart

AKS TRADING
Authorized
Signature



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13. Similarly, the Tax Invoice issued by Ns Marketing, defendant no.3 also shows that while selling its products by latching-on to the listing of the plaintiffs, the invoice is issued by using the trademark “MAHARAJA”. Thus, it is the contention of the plaintiffs, that defendant no.3 is also selling its products, as if, the same originate from the plaintiffs. The Tax Invoice issued by Ns Marketing, i.e., defendant no. 3, as given in the document folder, is reproduced as under:

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Tax Invoice Order ID: **05332149810079071300** Invoice No: **FAC1HP2500003656** GSTIN: **29BFPM0291H**
Order Date: **25-08-2024, 10:08 PM** Invoice Date: **29-08-2024, 09:11 AM** PAN: **ETDPM291H**

Sold By: Ns Marketing, # 30 basavilipasanagar, behind sampangesh police station yelankota post bangalore 560064, BANGALORE - 560064, GST: **29BFPM0291H**

Shipping ADDRESS: Sumit Kumar, 56 Sakshidhar Vihar, Mathura Road, New Delhi, new delhi, New Delhi - 110025, IN-IN

Billing Address: Sumit Kumar, 56 Sakshidhar Vihar, Mathura Road, New Delhi, new delhi, New Delhi - 110025, IN-IN

Product	Description	Qty	Gross Amount	Discount	Taxable Value	IGST	CESS	Total
MAHARAJA Wave Stylish Heavy Duty (Stackable Armless) for Garden and cafe/terrace Plastic Plastic Cafe/terrace Chair (Black Wave Black-PC2 PP (Polypropylene) 2 black web chair d 10 day Replacement Guarantee ** INCLUDES: 00	IGST: 43222296 IGST: 5.90% CESS: 0.00%	1	2199.00	-0.00	1094.29	104.71	0.00	2199.00
Shipping and Handling Charges		1	0.00	0	0.00	0.00	0.00	0.00
TOTAL QTY: 1						TOTAL PRICE: 2199.00 All values are in INR		

Seller Registered Address: Ns Marketing, #30 basavilipasanagar, behind sampangesh police station yelankota post bangalore 560064, BANGALORE - 560064.
Declaration: The goods sold are intended for end user consumption and not for resale.
GSTIN: 29BFPM0291H

** Conditions Apply. Please refer to the product page for more details E. & D.R.

Ordered Through
Flipkart

Ns Marketing
Authorized
Signature

14. This Court records the statement of the learned counsel appearing for the plaintiffs that defendant nos. 2 and 3, do not have a separate listing on Flipkart, but have latched on to the listing of the plaintiffs. Considering the submission made before this Court, this Court is of the view that the sale of the products by defendant nos. 2 and 3, to pass off their products, as those



emanating from the plaintiffs, cannot be allowed.

15. Attention of this Court has been drawn to the listing of the plaintiffs, wherein, in the name of the seller, AKS TRADING, i.e., defendant no.2, is being reflected.

16. Printouts of the plaintiffs' listing as occurring on the Flipkart, are reproduced as under:

The screenshot shows a Flipkart product page for a set of four plastic outdoor chairs. The product is titled 'MAHARAJA Wicker Style Heavy Duty | Stacker | Armless | for Garden and commercial Plastic Outdoor Chair (Ergo, Set of 4, Free-assembly)'. The price is listed as ₹3,639. The page includes a 'PRINTOUT OF PLAINTIFFS LISTINGS SHOWING DEFENDANT NO.2 AS PRIMARY SELLERS' header. The product details section mentions '4.38 Ratings & 37 Reviews' and 'Set of 4'. The 'Available offers' section lists several discounts, including a 'Special Offer: Free 10% off on orders above ₹10,000' and a 'Bank Offer: 10% off on Flipkart Axis Bank Credit Card'. The 'Delivery' section shows 'Delivering by 26 Sep, Sunday / Fast'. The 'Color' section shows a selection of colors. The 'Highlights' section lists features like 'Easy assembly', 'Free delivery', and '100% genuine'. The 'Specifications' section is partially visible at the bottom.



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The screenshot displays the Flipkart website interface. At the top, there is a navigation bar with the Flipkart logo, a search bar, and links for 'Login', 'Become a Seller', and 'Cart' (showing 277 items). Below the navigation bar, there are category links: Electronics, TVs & Appliances, Men, Women, Baby & Kids, Home & Furniture, Sports, Books & More, Flights, Offer Zone, and Grocery.

The main section is titled 'All Sellers'. It lists four sellers with their respective product details and delivery information:

Seller	Price	Delivery	Buttons
Maharaja Ranshree Online (4.9★) - Selective same-day delivery - Cash On Delivery available - 10 Days Replacement Policy	₹2,048 (Review score: 4.9★) EMI From ₹419 - Get Extra ₹75 off (price inclusive of cashback/offer) 14 more offers	FREE Delivery by 21 Sep, Saturday	ADD TO CART BUY NOW
skinning (4.9★) - Cash On Delivery available - 10 Days Replacement Policy	₹2,029 (Review score: 4.9★) EMI From ₹419 - Get ₹300 off (price inclusive of discount) 14 more offers	FREE Delivery by 20 Sep, Sunday	ADD TO CART BUY NOW
Abhinav (4.9★) - Cash On Delivery available - 10 Days Replacement Policy	₹2,099 (Review score: 4.9★) EMI From ₹419 - Get Unlabeled Cashback on Flipkart Axis Bank Credit Card 13 more offers	FREE Delivery by 20 Sep, Monday	ADD TO CART BUY NOW
NS MARKETING (4.3★) - Cash On Delivery available - 10 Days Replacement Policy	₹4,000 (Review score: 4.3★) EMI From ₹419 - Get Unlabeled Cashback on Flipkart Axis Bank Credit Card 13 more offers	FREE Delivery by 30 Sep, Monday	ADD TO CART BUY NOW

The bottom section of the page contains a footer with various links and information:

- ABOUT**: Contact Us, About Us, Careers, Flipkart Service, Press, Corporate Information
- DEVELOPERS**: MySra, Design, Shop
- HELP**: Payments, Shipping, Cancellation & Return, FAQs, Recently Viewed
- COMPANY**: Car Cellular & Mobile, Sports & Out, Grocery, Beauty, Shoes, Games & Toys, Gift Cards
- FLIPKART**: Flipkart Terms of Private Label, Flipkart Express, Flipkart & One Click with Tech Village, Flipkart Big Billion Days, Flipkart Warehouse, Flipkart 100% Cash on Delivery, Flipkart 100% Cash on Delivery, Flipkart 100% Cash on Delivery
- FLIPKART EXPRESS**: Flipkart Express Private Label, Flipkart Express, Flipkart & One Click with Tech Village, Flipkart Big Billion Days, Flipkart Warehouse, Flipkart 100% Cash on Delivery, Flipkart 100% Cash on Delivery, Flipkart 100% Cash on Delivery

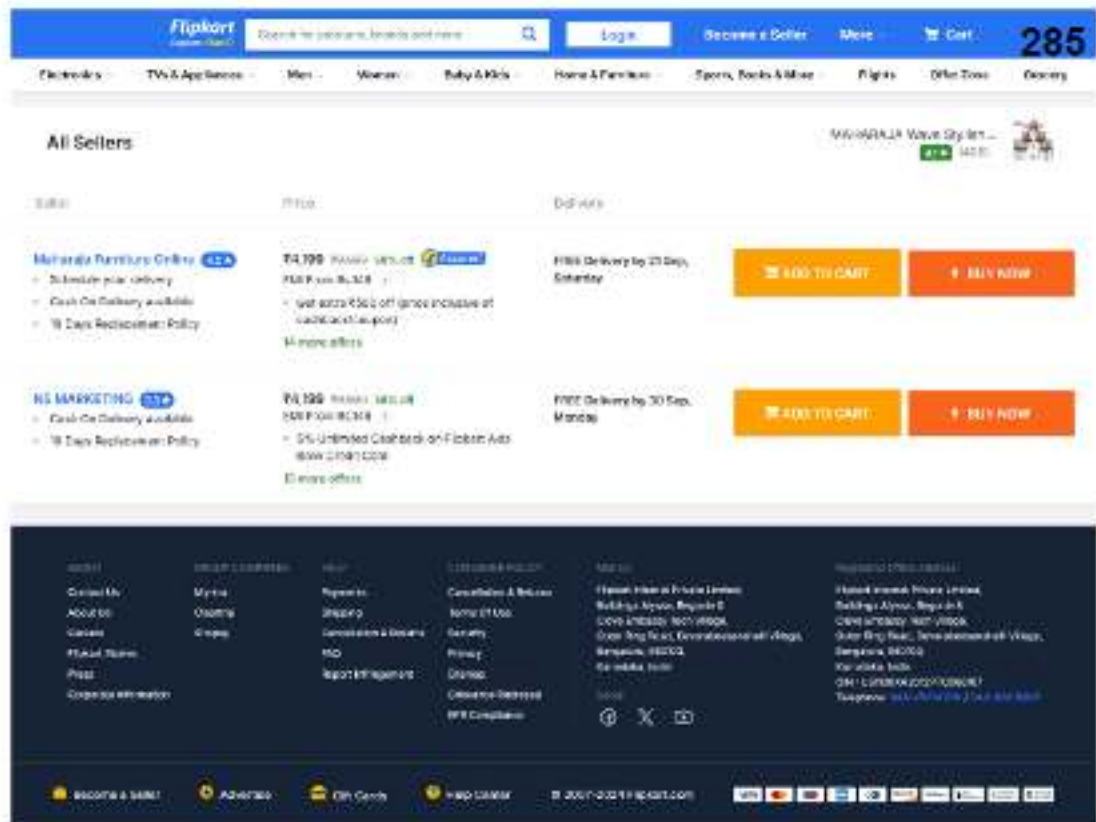
At the bottom, there are links for 'Become a Seller', 'Advertise', 'Gift Cards', and 'Help Center', along with the Flipkart logo and contact information.

17. Attention of this Court has also been drawn to another listing of the plaintiffs, wherein, NS Marketing, i.e., defendant no. 3, has been shown as the seller. The screenshots of the same, are reproduced, as under:





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18. The common law rights of the plaintiffs in the word mark MAHARAJA, have been recognized by Courts of Law. This Court notes that the plaintiffs, have filed a suit against a third party, being *CS (COMM) 144/2021*, which is pending in District Court, Saket, wherein, it has been alleged that the defendants therein, are guilty of passing off their goods, as those of the plaintiffs', under the deceptively similar trademark MAHARAJA/MAHARANA. Thus, the learned Trial Court restrained the defendants therein, from using the registered trademarks/labels by categorically holding that the plaintiffs herein were evidently the prior user of the mark MAHARAJA.

19. Against the restraint order, appeal bearing no. *FAO (COMM) 125/2023*, was filed before this Court, which came to be listed before a



Division Bench of this Court.

20. The Division Bench, by its judgment dated 31st May, 2024, passed in *FAO (COMM) 125/2023*, recognised the rights of the plaintiffs herein, as prior user of the mark “MAHARAJA”. The relevant paragraphs of the judgment dated 31st May, 2024, passed by the Division Bench, in the case of ***Rajendra Vardichand Jagetia & Anr. Versus Modern Mold Plast Pvt. Ltd., FAO (COMM) 125/2023***, are reproduced, as hereunder:

“xxx xxx xxx

2.2 The Respondent has been using the trademark ‘MAHARAJA’ in relation to goods under Class - 20 since the year 2009 and has obtained several registrations for the ‘MAHARAJA’ mark including ‘MAHARAJA’ (device); ‘MODERN MAHARAJA’ (device); ‘MUKUT MAHARAJA’ (device); ‘METRO MAHARAJA’ (device) and ‘OMAHARAJA’ (word). The Respondent has filed the Oppositions and Rectification petitions against the trademarks of the Appellants in 2019 and thereafter.

xxx xxx xxx

6.1 At the outset, it is apposite to reproduce the marks which form the subject matter of the dispute.

Appellants marks

Mark	Application No.	Class	Status	User Claimed	Date of Application
	3020819	20	Rectification filed	10.02.2015	30.07.2015
	3684831	20	Rectification filed	Proposed to be used	22.11.2017
	3598362	20	Opposed	01.04.2014	24.07.2017
	3598349	35	Opposed	01.04.2014	24.07.2017



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Respondent marks

Mark	Application No.	Class	Status	User Claimed	Date of Application
	2872185	20	Opposed	01.01.2009	30.12.2014
	4197904	20	Opposed	01.01.2009	05.06.2019
	4197905	20	Opposed	01.01.2009	05.06.2019
	4197906	20	Opposed	01.01.2009	05.06.2019
	4345880	35	Objected	01.01.2009	13.11.2019

	4315829	20	Objected	Proposed to be used	09.10.2019
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xxx xxx xxx

7.1 The learned Commercial Court found that even prior to the commencement of the business by the Appellants, the reputation of the Respondent was established by showing sufficient sales. The Court also found that the Appellants had purchased the goods of the Respondent in the year 2017. Thus, the Respondent being a prior user coupled with the

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By: AMAN UNIYAL
Signing Date: 20.09.2024
22:07:21

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fact of adoption of identical and deceptively similar marks by the Appellants, would evidence a prima facie case of passing off. We find no infirmity with this finding of the learned Commercial Court.

xxx xxx xxx”

21. Thus, the common law rights of the plaintiffs in the word mark ‘MAHARAJA’, have been recognised, by this Court.

22. Accordingly, this Court is of the considered view that sale by defendant nos. 2 and 3, by latching-on to the listings of the plaintiffs, and selling their products, as emanating from the plaintiffs, cannot be allowed. The feature of latching-on cannot be used to either sell counterfeit products, or to mislead the gullible public into purchasing products, as emanating from a particular source, when they do not so originate from the said source.

23. Accordingly, in view of the above, this Court is of the view that defendant no.1, i.e., Flipkart, ought to extend its ‘brand gating’ feature, as per the Flipkart Policies, to the listings of the plaintiff.

24. Learned counsel appearing for the plaintiffs submits that he shall be satisfied in case the defendant no.1, i.e., Flipkart, extends the ‘brand gating’ feature, as per the Flipkart Policies, to its listings on the Flipkart, so that third parties do not sell any products, which do not emanate from the plaintiffs, and which amounts to latching on.

25. This Court notes that vide order dated 28th August, 2023 passed in CS (COMM) 709/2022, this Court had passed an order with respect to latching-on, in the following manner:

“xxx xxx xxx

13. Considering the stand of Flipkart today, the application for interim injunction is disposed of taking on record the statement on behalf of the Defendant No.1-Flipkart that it would not permit any latching-on of unauthorized sellers on the Plaintiff's listings. Whenever any seller



seeks to sell Plaintiff's products on Flipkart using the latching-on feature, Flipkart would examine the matter at its own level. If any ambiguity or doubt arises, it would be free to seek a confirmation from the plaintiff.

14. The above position shall enure in respect of all sellers who may seek to latch onto the plaintiff's listings. Thus, latching-on, insofar as the Plaintiff's products are concerned, would not be permitted by Flipkart on its platform by any sellers or resellers. If any latching-on is noticed by the Plaintiff, Flipkart shall be immediately notified. Upon receiving any notification, Flipkart shall take steps to disable the latching-on feature immediately.

xxx xxx xxx''

(Emphasis Supplied)

26. Accordingly, it is directed that the plaintiffs shall provide their Flipkart Serial Nos. (FSNs) to learned counsel appearing for defendant no.1, i.e., Flipkart. Upon receipt of the FSNs from the plaintiffs, the defendant no.1, i.e., Flipkart, would take steps to not permit any latching-on of unauthorized sellers on the plaintiffs' listings. Whenever any seller seeks to sell the plaintiffs' products on Flipkart using the latching-on feature, Flipkart would examine the matter, at its own level. If any ambiguity arises, it would be free to seek a confirmation from the plaintiffs, in case they want the said products to be sold.

27. It is further directed that the said position shall enure in respect of all the sellers, who may seek to latch on to the plaintiffs' listing. If any latching-on is noticed by the plaintiffs, Flipkart shall be immediately notified. Upon receiving any notification from the plaintiffs, Flipkart shall take steps to disable the latching-on feature, as expeditiously as possible.

28. Learned counsel appearing for the plaintiffs, expresses his satisfaction over the directions passed by this Court, and submits on instructions, that he does not press for any other relief in the present matter.



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29. Accordingly, in terms of the aforesaid, the present suit is disposed of, along with the pending applications.

MINI PUSHKARNA, J

SEPTEMBER 18, 2024/kr