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

+ **CS(COMM) 556/2025**

**CAPITAL FOODS PRIVATE LIMITED** ..... Plaintiff

Through: Mr. Achuthan Sreekumar, Mr.  
Rohil Bansal, Mr. Swastik Bisarya,  
Advocates.

versus

**SANKALP RECREATION PRIVATE LIMITED & ANR.**

.....Defendants

Through: None.

**CORAM:**

**HON'BLE MR. JUSTICE SAURABH BANERJEE**

**ORDER**

**29.05.2025**

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**I.A. 13964/2025** (*Section 149 CPC*)

1. *Vide* the present application, plaintiff seeks time of thirty days for filing the requisite Court fee and one-time process fee.

2. For the reasons stated therein, the application is allowed and the plaintiff is granted two days to file the requisite Court fee and one-time process fee.

3. The application stands disposed of.

**I.A. 13963/2025** (*Exemption from pre-institution mediation*)

4. *Vide* the present application under *Section 12A* of the Commercial Courts Act, 2015, read with *Section 151* of the Code of Civil Procedure, 1908 (*CPC*), the plaintiff seeks exemption from pre-litigation mediation.

5. Considering the averments made in the present application, as also since the plaintiff is seeking an *ex-parte ad interim* injunction in an

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accompanying application and also in view of the judgment passed by the Hon'ble Supreme Court in *Yamini Manohar v. T.K.D. Krithi* 2024 (5) SCC 815, which has been followed by a Division Bench this Court in *Chandra Kishore Chaurasia v. R. A. Perfumery Works Private Limited* 2022:DHC:4454-DB, the plaintiff is exempted from instituting pre-litigation mediation.

6. Accordingly, the present application is allowed and disposed of.

**I.A. 13962/2025** (*Exemption*)

7. Allowed, subject to all just exceptions.

8. The application stands disposed of.

**I.A. 13961/2025** (*Additional Documents*)

9. *Vide* the present application filed under *Order XI Rule 1(4)* read with *Section 151* of the CPC, the plaintiff seeks leave of this Court to file additional documents.

10. The plaintiff will be at liberty to file additional documents at a later stage, *albeit*, after initiating appropriate steps, strictly as per the provisions of the Commercial Courts Act, 2015 read with *Section 151* of the CPC and the Delhi High Court (Original Side) Rules, 2018.

11. Accordingly, the present application stands disposed of.

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12. *Vide* the present plaint, the plaintiff seeks grants of a permanent injunction restraining infringement of registered trademark passing off, dilution and tarnishment of trademark, damages, rendition of accounts, delivery up, well known declaration etc. against defendants.

13. Let the plaint be registered as a suit.

14. Upon filing of the process fee, issue summons of the suit to the

defendants through all permissible modes returnable before the learned Joint Registrar on 02.09.2025.

15. The summons shall state that the written statement(s) be filed by the defendants within a period of *thirty days* from the date of the receipt of the summons. Written statement(s) be filed by the defendants along with affidavit(s) of admission/ denial of documents of the plaintiff, without which the written statement(s) shall not be taken on record.

16. Replication(s) thereto, if any, be filed by the plaintiff within a period of *fifteen days* from the date of receipt of written statement(s). The said replication(s), if any, shall be accompanied by with affidavit of admission/ denial of documents filed by the defendants, without which the replication(s) shall not be taken on record within the aforesaid period of *fifteen days*.

17. If any of the parties wish to seek inspection of any document(s), the same shall be sought and given within the requisite timelines.

18. List before the learned Joint Registrar for marking exhibits of documents on 02.09.2025. It is made clear that if any party unjustifiably denies any document(s), then such party would be liable to be burdened with costs.

**I.A. 13960/2025** (Stay)

19. The plaintiff, by way of the present application, seeks an *ad-interim injunction* restraining the defendants from using the marks “SCHEZWAN CHUTNEY”, “SCHEZUAN CHUTNEY” or any other identical/ deceptively similar mark thereby violating plaintiff’s registered trademark “SCHEZWAN CHUTNEY”.

20. As per pleading, the plaintiff/ Capital Foods Private Limited is a

company incorporated in the year 2003 and having its registered office at Villa Capital, Sadhana Compound, Near Oshiwara Bridge, S.V. Road, Jogeshwari (West), Mumbai, Maharashtra – 400102. The plaintiff is engaged in manufacturing, marketing and retailing of a wide variety of food products and services including sauces, dips, spreads, noodles, dressings, condiments, spices, sauce mixes, soups, pastes, ready-to-eat food products and other food preparations and related services for over two decades.

21. The plaintiff adopted the mark “SCHEZWAN CHUTNEY”, in the year 2012, which is a unique combination of two words “Schezwan” which refers to a spicy, oily, and peppery style of Chinese cooking and “Chutney” meaning a thick paste. The plaintiff uses the mark in relation to their sauce product. In fact, the plaintiff has secured registration of the trademark “SCHEZWAN CHUTNEY” under Class 30, vide Registration No.2431851 and is the registered proprietor thereof. In addition, the plaintiff is also the owner of the copyrights of the trade dress, the details of which are set out in paragraph 28 of the plaint.

22. In furtherance thereof, by virtue of extensive sales and promotion, the aforesaid marks and trade dress of the plaintiff have acquired a formidable reputation both nationally and internationally and the plaintiff has earned huge profits therefrom.

23. The defendant no.1/ Sankalp Recreation Private Limited, is company having its registered office at 1705, 17<sup>th</sup> Floor, Sankalp Square-III, Nr. Taj Skyline, Sindhubhavan Road, Shil, aj, Ahmedabad, Daskroi, Gujarat, India, 380058 and is involved in marketing and selling of the products as set out in paragraph no.33 of the plaint.

24. The defendant No.2/ Lucrative Impex Pvt. Ltd. is engaged in manufacturing the impugned products bearing the plaintiff's registered trademark "SCHEZWAN CHUTNEY" for defendant no.1 and is also selling their own products, as set out in paragraph no.34 of plaint, which bear a mark that is similar to plaintiff's registered trademark.

25. In and around December 2024, the plaintiff learnt through various sources that the defendant no.1 is manufacturing and selling the products bearing the mark "SCHEZWAN CHUTNEY". Therefore, in order to restrain defendant no.1 from using the impugned mark, the plaintiff sent a legal notice dated 05.12.2024 and a reminder notice dated 16.01.2025 to defendant no.1. However, the defendant no.1 failed to respond to the aforesaid legal notices and continued with their illegal and infringing activities.

26. Moreover, upon investigation, it was revealed that the impugned products of defendant no.1 were being manufactured by defendant no. 2. It was also discovered that defendant no.2 was selling its own separate products under the mark "SCHEZUAN CHUTNEY" which is deceptively similar to plaintiff's trademark "SCHEZWAN CHUTNEY". In this regard, the plaintiff sent a legal notice dated 25.11.2024 to defendant no.2, whereby the plaintiff called upon defendant no.2 to stop the unauthorized use of the impugned mark. In response thereto, the defendant no. 2 sent a reply dated 16.12.2024 refusing to give up the mark "SCHEZUAN CHUTNEY". In view of the aforesaid, the plaintiff was constrained to institute the captioned suit wherein the present application has been filed.

27. This Court has heard the submissions advanced by the learned counsel for the plaintiff and have also gone through the pleadings as also

perused the documents on record.

28. Based on what is before this Court, given hereinbelow is the comparative table of the competing marks of the parties:-

Plaintiff's Marks	Impugned Marks
SCHEZWAN CHUTNEY	SCHEZWAN CHUTNEY SCHEZUAN CHUTNEY

29. In view of the foregoing comparison, it is *prima facie* evident that the marks of the defendants are visually, phonetically and deceptively similar/ identical to the plaintiff's trademark "SCHEZWAN CHUTNEY". The defendants in the impugned marks have either wholly copied the plaintiff's mark or have just replaced the letter 'W' with 'U', which is hardly a change when viewed from the eyes of a consumers of average intelligence and imperfect recollection and the consumers are likely to associate the defendants' product with that of the plaintiff's. Furthermore, given that the defendants operate in the same line of business as the plaintiffs, they would have been aware of the plaintiffs' trademarks, considering its long-standing and continuous use. Under such circumstances, there exists no justifiable reason for the defendants to adopt impugned marks that are similar to those of plaintiff.

30. Relevantly, since the present dispute involves edible products, this Court is of the view that the threshold for establishing deceptive similarity is lower than that applied in other cases. In essence, any confusion between such products, if allowed to continue, can lead to disastrous consequences on human health. Therefore, the Court has to adopt a more cautious and stringent approach for judging the likelihood of confusion and to exercise greater care.

31. Considering the aforesaid facts and circumstances, the plaintiff is *prima facie* entitled for protection as sought by them against the defendants since the *balance of convenience* lies in their favour and they will incur *irreparable loss and injury* if an *ex parte ad interim injunction* is not granted in their favour.

32. Accordingly, till the next date of hearing, the defendants and all others acting for and on their behalf are restrained from directly or indirectly dealing in any products/ services bearing the mark “SCHEZWAN CHUTNEY”, “SCHEZUAN CHUTNEY” or any other mark identical/ deceptively similar to that of the plaintiff’s trademark “SCHEZWAN CHUTNEY” so as to not infringe the plaintiff’s intellectual property rights in any manner whatsoever.

33. Upon the plaintiff taking requisite steps, issue notice to defendants through all permissible modes returnable before the Court on 14.10.2025.

34. Reply(s), if any, be filed within *four weeks* from the date of service. Rejoinder thereto, if any, be filed within *two weeks* thereafter.

35. List before Court 14.10.2025.

**SAURABH BANERJEE, J**

**MAY 29, 2025**

**NA**