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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 26th July, 2022

+ CS (COMM) 133/2022 & I.A.3299/2022

KHADI & VILLAGE INDUSTRIES COMMISSION..... Plaintiff

Through: Ms. Shwetasree Majumdar & Ms.
Diva Arora, Advocates (M-
9899881575)

versus

RAMAN GUPTA AND OTHERS..... Defendants

Through: None.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.

1. The present suit has been filed seeking permanent injunction restraining infringement of trademark, passing off, rendition of accounts, damages, delivery up, etc. The Plaintiff - Khadi & Village Industries Commission is a statutory body established by an Act of Parliament being 'Khadi and Village Industries Commission Act of 1956'. The Plaintiff claims to be the registered proprietor of the mark 'KHADI' and the variants of the same in several classes, in Hindi and English, both in artistic form, as also, in logo form, along with the 'Charkha Logos'. The said marks are set out below:

i) 'KHADI' (word)



ii) ' ' (Device)



iii) ‘ (Device)

Symbol of purity



iv) ‘ (Charkha Logo)

शुद्धता का प्रतीक



v) ‘ (Charkha Logo)

2. A perusal of the Plaint shows that the mark ‘KHADI’ is a registered trademark of the Plaintiff, along with logos and various device marks thereof, as depicted hereinabove. The trademark ‘KHADI’ is promoted by the Plaintiff through a statutory corporation, and in recent times, enormous emphasis has been given globally to promote ‘KHADI’ products. The Plaintiff’s ‘KHADI’ trademarks are also registered in various other jurisdictions/regions, including but not limited to United Kingdom, China, Australia, USA, New Zealand, Bhutan, Mexico, etc.

3. The Plaintiff hosts its website under the domain name ‘www.kviconline.gov.in’ which is registered since 1st July, 2010. The Plaintiffs have obtained further registrations for the domain names ‘www.Khadiindia.gov.in’ which redirects to ‘https://www.kviconline.gov.in/khadimask/’. Recently, on 31st December, 2021, the Plaintiff has also unveiled ‘www.ekhadiindia.com’ which sells

over 50,000 products of the more than 500 varieties ranging from food products, grocery products, oils, to *diyas*, woollen products, cosmetics, etc. Moreover, during the recent pandemic, the Plaintiff has also manufactured and sold various medical products, such as hand wash, hand sanitizers, etc. which are also being used extensively by the consumers.

4. The Plaintiff also promotes its products branded as 'KHADI' on several social media platforms, such as Facebook, Twitter, YouTube, Instagram, etc. all of which enjoy a wide followership. A mobile application by the name of 'KHADI INDIA' is also operated and made available on Google Play Store, by the Plaintiff and the same has been downloaded by more than 10,000 users. The said application helps customers, patrons, and members of trade in locating the nearest 'KHADI INDIA' store. The Plaintiff also closely works with various Ministries in order to promote 'KHADI' products and the 'KHADI' Industry in India and abroad. The mark 'KHADI' along with the 'Charkha logo' is also licensed out to several third-parties and the 'KHADI' products are sold on e-commerce platforms like 'Amazon' and 'Nykaa'.

5. As per the Plaint, the total exports value of the 'KHADI' products sold by the Plaintiff for the year 2016 was more than Rs.140 crores, and the same for the year 2019-20 is stated to be Rs.238 crores. For the financial year 2021, it is pleaded that the turnover of the Plaintiff is Rs.95,000/- crores. The evidence on record shows that due to various reasons including registrations, large varieties of goods and services, and a sales turnover of Rs.95,000/- crores, the mark 'KHADI' along with the 'Charkha logo' have become well-known and have, in fact, been protected in various proceedings such as ***'Khadi Village and Industries Commission v. Roopika Rastogi &***

Anr. [CS (COMM) 146/2021], and ‘Khadi and Village Industries Commission v. M/s. JBMR Enterprises [CS (COMM) 284/2021)].

6. The grievance of the Plaintiff, in the present case, is that the Defendants are using the trading style ‘KHADI BY HERITAGE’, the corporate name ‘KHADI BY HERITAGE’, as also, the mark ‘KHADI BY HERITAGE’, and the ‘Charkha Logo’ in various forms. The Defendants are also operating a website by the name ‘<https://khadi-by-heritage.business.site/>’, amongst others. As per the ‘Whois’ records placed on record by the Plaintiff, the Defendants’ website was registered on 1st December, 2020. On the said website, the Defendants use the ‘Charkha Logos’ and the trademark ‘KHADI BY HERITAGE’, and claim to be the “*manufacturers of Organic, Natural & Eco-Friendly Cosmetic and allied Products under the name and brand of KHADI BY HERITAGE*”. The Defendants, through their website, promote and sell various products, especially products for use in the healthcare sector such as PPE Kits, hand sanitizers, and fireballs. Thus, it is the case of the Plaintiff that the use of the trademark ‘KHADI’ in this manner, especially in relation to medical products raises enormous concerns in respect of the quality of these products apart from constituting violation of various statutory and common law rights of the Plaintiff.

7. The present matter was effectively heard for the first time on 4th March, 2022, on which date this Court was of the *prima facie* opinion that the use of the word ‘KHADI’ which is a registered trademark, especially for medical products such as PPE kits, hand sanitizers and fireballs, without any quality control and supervision, is not only violative of the rights of the Plaintiff, but is also of concern considering the interests of the general

public. Moreover, the use of the mark 'KHADI BY HERITAGE' along with the 'Charkha logo' on the website could also lead the consumers to believe that the Defendants are related or associated with, or sponsored by the Plaintiff. The use of the word 'KHADI' as a mark or as logo/device, as also, as the trading style and corporate name is illegal and unlawful. In the background of these facts, an *ex parte ad interim* injunction was granted by this Court, vide order dated 4th March, 2022, in the following terms:

"23. Accordingly, the Defendants, their partners, directors, distributors and all the others acting on their behalf are restrained from manufacturing, selling, offering for sale any products including the PPE kits, masks, hand sanitizers, fireballs or any other products bearing the trademark 'KHADI BY HERITAGE' or any of the artistic works/wordmarks/logos used by the Plaintiff.

24. The Defendants are also restrained from using the trade mark KHADI either on a stand-alone basis or in a logo form, the CHARKHA logo with the mark KHADI as also the domain names and the corresponding websites <https://khadi-by-heritage.business.site/>, www.KhadiByHeritage.com and www.KhadiByHeritage.org. Registrars of these domain names upon the receipt of this order shall suspend the use of the domain names. Status quo shall be maintained and no third-party interest shall be created in the said domain names till further orders. The Defendants are also restrained from even using the trading style of 'Khadi by Heritage' for the partnership firm and the company which is incorporated by the name 'Khadi by Heritage Pvt. Ltd'."

8. Summons were issued to the Defendants and some of the Defendants remained unserved. Finally, vide order dated 20th May, 2022, it was recorded as under:

“2. Defendant No.1 to 4 are stated to have been served on email address- khadibyheritage@gmail.com, however, none appears for the Defendants.

3. It is submitted by the Id. Counsel that the previous order dated 5th May, 2022 of the Joint Registrar wrongly records that the Defendant No.5 has not been served. In fact, the said Defendant is stated to have already been served.

4. Let the Registry issue court notice to the Defendant Nos.1 to 4 as final opportunity at email address- khadibyheritage@gmail.com and place a report by the next date of hearing.”

9. The Registry has reported that service has been effected yet again, in terms of the order dated 20th May, 2022, on the e-mail addresses of the Defendants. However, none appears for the Defendants even today.

10. This Court has heard Id. Counsel for the Plaintiff and perused the record. A perusal of the record shows that the Defendants are using the mark ‘KHADI’ in respect of masks, PPE kits, hand sanitizer, and fireballs, etc. A perusal of the photographs placed on record would show the use of the ‘Charkha Logo’ and the mark ‘KHADI BY HERITAGE’ in respect of PPE kits and hand sanitizers offered for sale by the Defendants. Some of the said images from the Defendants’ websites are set out below:

Khadi by Heritage hand sanitizers 50ml (FLIP CAP)



Khadi by Heritage hand sanitizers 100ml (FLIP CAP)



Khadi by Heritage hand sanitizers 500ml (FLIP CAP)



Khadi by Heritage hand sanitizers 500ml (WITH PUMP)



11. A perusal of the online listings of the Defendants on the 'IndiaMart' website also shows that the Defendants are using the mark 'KHADI BY

HERITAGE' both on their products, as also, as a part of their trading style. The said images are set out below:

2/24/22, 12:21 PM Non Woven Disposable PPE Kit Manufacturer from New Delhi 38

indiamart All India Enter product / service to search Search Get Best Price

Khadi By Heritage Private Limited
New Delhi, Delhi | GST 07AAICK1010B1ZC | Verified Supplier | 3.45 ★★★★★ View Mobile Number

Home Business Segments About Us Contact Us Send Email

Business Segments

- Non Woven Disposable PPE Kit
Non Woven Disposable PPE Kit
- Hand Sanitizers
8 products available
- Antibacterial Hand Wash Gel
1 product available
- Macsun Fire Safety Ball Extinguisher
1 product available
- Industrial Chemicals
1 product available
- Isopropyl
1 product available
- Isopropyl Alcohol
1 product available
- Butyl Acetate
1 product available
- +View All

Non Woven Disposable PPE Kit
Manufacturer of a wide range of products which include Non Woven Disposable PPE Kit.

Non Woven Disposable PPE Kit
Rs 299 / Piece [Get Latest Price](#)
Minimum Order Quantity: 50 Piece

Material	Non Woven
Disposability	Disposable
Size	Free Size
Products in the Kit	1 Coverall, 1 Pair of Gloves, 1 Pair of Shoes Cover, 1 Garbage Bag
Usage/Application	For Industrial Use
GSM	90 GSM

Price does not include GST 18%
[View Complete Details](#)

Interested in this product?
[Get Best Quote](#) Yes, I am

2/24/22, 12:21 PM Non Woven Disposable PPE Kit Manufacturer from New Delhi 36

indiamart All India Enter product / service to search Search Get Best Price

Khadi By Heritage Private Limited
New Delhi, Delhi | GST 07AAICK1010B1ZC | Verified Supplier | 3.45 ★★★★★ View Mobile Number

Home Business Segments About Us Contact Us Send Email

Business Segments

- Non Woven Disposable PPE Kit
Non Woven Disposable PPE Kit
- Hand Sanitizers
8 products available
- Antibacterial Hand Wash Gel
1 product available
- Macsun Fire Safety Ball Extinguisher
1 product available
- Industrial Chemicals
1 product available
- Isopropyl
1 product available
- Isopropyl Alcohol
1 product available
- Butyl Acetate
1 product available
- +View All

Non Woven Disposable PPE Kit
Manufacturer of a wide range of products which include Non Woven Disposable PPE Kit.

Non Woven Disposable PPE Kit
Rs 299 / Piece [Get Latest Price](#)
Minimum Order Quantity: 50 Piece

Material	Non Woven
Disposability	Disposable
Size	Free Size
Products in the Kit	1 Coverall, 1 Pair of Gloves, 1 Pair of Shoes Cover, 1 Garbage Bag
Usage/Application	For Industrial Use
GSM	90 GSM

Price does not include GST 18%
[View Complete Details](#)

Interested in this product?
[Get Best Quote](#) Yes, I am

12. The product images set out hereinabove leave no doubt in the mind of the Court that the 'Charkha Logo' and the word 'KHADI' are being misused

by the Defendants. This Court is of the opinion that the Plaintiff, being the registered owner of the trademark 'KHADI' and its variants, since the year 2014 with the user claim of 1956 in several classes in Hindi and English, is entitled to protection of the said mark. Even the 'Charkha Logo', depicted hereinabove, was adopted by the Plaintiff in the year 1956 and has been used extensively on the products and services provided by the Plaintiff. Further, the mark 'KHADI' has been protected repeatedly by this Court, as well as, in a number of INDRP and UDRP proceedings.

13. In light of the overall facts and circumstances of the present case, the sale of PPE kits, masks, hand sanitizers, fireballs, etc. by the Defendants, under the mark 'KHADI', 'KHADI INDIA' along with the 'Charkha Logo' would be a complete violation of the Plaintiff's rights in the same. Such use would also result in causing irreparable confusion to the consumers, who may believe the Defendants' products to be genuine. In fact, in the opinion of this Court, the use of the mark and name 'KHADI BY HERITAGE' seeks to evoke a connection with or affiliation to the Plaintiff, which is the exclusive owner and user of the mark 'KHADI'.

14. Following the rationale of the judgment of a Id. Single Judge of this Court in *Disney Enterprises Inc. & Anr. v. Balraj Muttneja & Ors.* [CS (OS) 3466/2012 decided on 20th February, 2014], no *ex parte* evidence would be required in this matter. The same has been reiterated by the Court in *S. Oliver Bernd Freier GMBH & CO. KG v. Jaikara Apparels and Ors.* [210 (2014) DLT 381], as also, in *United Coffee House v. Raghav Kalra and Ors.* [2013 (55) PTC 414 (Del)]. The relevant observations from the judgment in *Disney Enterprises Inc. (supra)*, are as under:

“3. Though the defendants entered appearance through their counsel on 01.02.2013 but remained unrepresented thereafter and failed to file a written statement as well. The defendants were thus directed to be proceeded ex-parte vide order dated 04.10.2013 and the plaintiffs permitted to file affidavits by way of ex-parte evidence.

*4. The plaintiffs, despite having been granted sufficient time and several opportunities, have failed to get their affidavits for leading ex-parte evidence on record. **However, it is not deemed expedient to further await the same and allow this matter to languish, for the reason that I have in Indian Performing Rights Society Ltd. Vs. Gauhati Town Club MANU/DE/0582/2013 held that where the defendant is ex parte and the material before the Court is sufficient to allow the claim of the plaintiff, the time of the Court should not be wasted in directing ex parte evidence to be recorded and which mostly is nothing but a repetition of the contents of the plaint.**”*




15. Considering that the Defendants’ use of the mark ‘KHADI’ would be violative of the Plaintiff’s rights in the said mark, and that such use would also cause immense harm to the consumers in view of the nature of the products which are being sold by the Defendants, the present suit is liable to be decreed. Accordingly, a decree of permanent injunction is granted, in terms of the reliefs as sought in paragraph 51 (a) and (b) of the Plaint, restraining the Defendants, Defendants’ agent, representatives and distributors from manufacturing, selling, offering for sale any goods or services under the impugned mark and logo ‘KHADI BY HERITAGE’, the KBH logo, as also, any other marks/logos identical or deceptively similar to the Plaintiff’s mark ‘KHADI’ and the ‘Charkha logo’ in respect of any goods and services, without a license or consent from the Plaintiff.

16. Further, the Defendants have also registered several domain names containing the Plaintiff's mark 'KHADI'. As per the reliefs as sought in paragraph 51 (d) of the Plaint, the said domain names shall be transferred in favour of the Plaintiff. The said domain names as set out below:

- <https://khadi-by-heritage.business.site/>
- www.KhadiByHeritage.com
- www.KhadiByHeritage.org.

17. Ld. Counsel for the Plaintiff shall issue an intimation along the present order to the Domain Name Registrars. Upon such an intimation being issued by the Plaintiff, the concerned Domain Name Registrars shall transfer the said domain names to the Plaintiff, within one week.

18. The Defendants have filed Trademark Applications for the following marks and logos:

S. No.	Trademark Appl. No.	Date of Appl.	Mark	Class	Goods
1.	4447518	20 th February, 2020		3	Non-medicated cosmetics and toiletry preparations, etc.
2.	4590806	31 st July, 2020		5	Hand Sanitizer, Sanitizer
3.	4590805	31 st July, 2020		9	Fire Extinguisher Ball, Fire Extinguisher Bike and Other Safety Equipment

19. Some of the examination reports in respect of the Defendant's marks cite the Plaintiff's registrations. The Plaintiff has also opposed the Trademark Application No.4447518 of the Defendants for the mark depicted at Serial No.1 in the Table above, and the same is still pending. In view of the decree passed today, all the Defendant's trademarks mentioned above shall stand rejected by the Registrar of Trade Marks. Appropriate orders to this effect shall be updated on the portal by the office of the CGPDTM, within four weeks.

20. Considering that the products sold by the Defendants were PPE kits, hand sanitizers and fireballs, there is a reasonable expectation that the Defendants would have misused the mark 'KHADI' to promote these products through their websites and other online listings. Such misuse of the Plaintiff's mark 'KHADI' cannot be condoned by the Court, inasmuch as the mark and the name, as also, the logo, have been identically used by the Defendants. The use by the Defendants is deliberate, conscious and *mala fide* in nature. Accordingly, the present is a fit case for the award of damages and costs, in terms of the reliefs as sought in paragraph 51 (g) and (h) of the Plaint. Accordingly, damages to the tune of Rs.10 lakhs and costs of Rs.2 lakhs are awarded in favour of the Plaintiff.

21. The Defendants shall pay the costs and damages to the Plaintiff, within three months, failing which, the Plaintiff shall be permitted to seek execution of the decree or avail of its remedies, in accordance with law.

22. The present suit is decreed in the above terms. Decree sheet be drawn accordingly. All pending applications are also disposed of.

23. Copy of the present order be communicated to the CGPDTM, through

Mr. Harish Vaidyanathan Shankar, Id. CGSC.

PRATHIBA M. SINGH
JUDGE

JULY 26, 2022
Rahul/AD

