

IN THE COURT OF VINOD YADAV: DISTRICT JUDGE:
(COMMERCIAL COURT)-02: NORTH-WEST DISTRICT:
ROHINI DISTRICT COURTS: DELHI

CNR No.DLNW01-007727-2024

CS (Comm.) No.504/2024

IN THE MATTER OF:-

Meenu Agrawal,

Trading as: Vansh Trading

At: Shop No. 16, Nagar Palika Market,

General Ganj, Mathura, Uttar Pradesh -281001.

.....Plaintiff

Versus

1. Sanjay Kumar Agrawal,

At: 263, Narsivihar Sonkh Road, Mathura VTC PaliKhera,

P.O.- Maholi, Mathura, Uttar Pradesh- 281004.

.....Defendant No.1

2. Medivision Pharmacy

At: 122B F/F, Narsi Vihar Sonkh Road,

Palikhera, Mathura, Uttar Pradesh- 281001.

.....Defendant No.2

3. Ayurvedhan Research & Development,

At: Khasra No. 53, Hadbast No.313,

Garhi Kotaha, Raipur Rani, Panchkula, Haryana-134204.

.....Defendant No.3

4. IndiaMART InterMESH Ltd.

At: 1st Floor, 29-Daryaganj,

Netaji Subash Marg, Delhi -110002.

.....Defendant No.4

(a) Date of institution of suit	22.08.2024
(b) Date of filing of Application under Order VIII Rule 10 CPC r/w Order XIII-A CPC by the plaintiff	23.09.2025
(c) Date of filing of Application under Order XXXIX Rule 2A CPC by the plaintiff	28.03.2025
(d) Date of hearing arguments on both the aforesaid applications	19.03.2026
(e) Date of Judgment	19.03.2026

**SUIT UNDER SECTION 134 & 135 OF THE TRADEMARKS ACT,
1999 AND SECTION 51 & 55 OF COPYRIGHT ACT, 1957 FOR
PERMANENT INJUNCTION, RESTRAINING INFRINGEMENT OF
TRADEMARK; COPYRIGHT; PASSING OFF; DELIVERY UP;
RENDITION OF ACCOUNTS, ETC.**

19.03.2026

Present: Shri Anil Kumar Sahu and Shri Roshan Kumar,
Ld. Counsels for the plaintiff.
Ms.Anushka Sharma, Ld. Counsel for defendants
No.1, 2 and 3 (**defence of defendants No.1 & 2 lying
struck off vide order dated 18.07.2025**).
None for defendant No.4/IndiaMart InterMesh Ltd.

ORDER

1. At the outset, learned counsel for the plaintiff does not wish to prosecute this case against defendant No.4/M/s IndiaMart InterMesh Limited on the ground that compliance Affidavit in terms of directions contained in interim order dated 22.08.2024 has been filed by it. On the oral prayer of learned counsel for the plaintiff, the **proceedings against defendant No.4 accordingly stand dropped.**

2. The pleadings on applications under Order VIII Rule 10 CPC r/w Order XIII-A CPC and Order XXXIX Rule 2A CPC, both filed by the plaintiff are complete.

3. On the last several dates of hearing, defendants No.1 to 3 had been directed to remain present in Court. They have neither appeared nor have they sought any exemption from personal appearance.

4. I have heard arguments on both the aforesaid applications.

5. The facts of the case in brief required for disposal of the aforesaid applications are that plaintiff is the proprietorship concern of Ms.Meenu Agrawal, who has been running the business under the name and style of **Vansh Trading @ Vansh Trading Co.**, having office at Shop No.16, Nagar Palika Market, General Ganj, Mathura, Uttar Pradesh -281001 and engaged in the trade and business of manufacturing, processing, distributing, selling, trading and dealing in Ayurvedic Medicines, Pharmaceutical Preparations and other allied and cognate goods.

6. (i) It has been stated that on 01.01.1963, plaintiff's predecessor namely Shri Bhajan Ashram Ayurvedic Rasayanshala, having office at Vrindaban, Mathura, Uttar Pradesh- 281121 had coined, adopted and conceived another trademark "**MAHILA KALP**" in relation to the goods of ayurvedic medicines and started doing business in the open market.

(ii) Thereafter, on 16.12.1983, the predecessor of the plaintiff firm had applied for registration of the trademark "**MAHILA KALP**" in **Class 05** in relation to Ayurvedic Medicines, claiming user since 01.01.1963 and the said application vide No.414558 got registered in the name of plaintiff's predecessor before the Trademark registry, New Delhi.

(iii) It has been contended that thereafter vide Transfer Deed dated 01.08.2016, the plaintiff's predecessor had transferred all the rights and title of the Brand name under the Trademark "**MAHILA KALP**" (Trademark application No.414558) along with "**JIVAN KALP**" (Trademark Application No. 414559) to Vansh Trading Co. for a consideration of Rs.5,000/-.

7. It has been further stated that on 01.08.2016, the plaintiff has adopted, coined and invented a new label under the

said trademark "MAHILA KALP/



” for its ayurvedic medicines, pharmaceutical preparations specially for women with unique artistic features, getup, colour scheme and combination, layout and trade dress in its good and business to look more impressive and modern in the market equipped with the same entrusted quality in relation to said goods and business.

8. It has been claimed that the plaintiff is the owner and proprietor of trade mark/label "MAHILA KALP /



” on account of its honest, *bonafide* and prior adoption and continuous and commercial use thereof as since the year 2016 plaintiff has been honestly & bonafidely, continuously & uninterruptedly, commercially, openly, exclusively using the said Trademark/Label in relation to its said goods and business and built up a valuable trade, goodwill and reputation there under and acquired proprietary rights therein. For ready reference, a representation of said trademark/Label is being

given hereunder:

MAHILA KALP
IRON CALCIUM SAFFRON

आयुर्वेदिक औषधि
महिला कल्प
लौह कैल्शियम केसर युक्त

स्वस्थ बनाये रंग निर्यारे

महिलाओं के लिए एक खास आयुर्वेदिक औषधि है जो उनकी विभिन्न परेशानियों में लाभ पहुंचाती है। महिलाओं के कमर पीड़ का दर्द, रक्त-पेशों की जलन, रक्त प्रदर, रक्त प्रदर, मासिक धर्म के समय पीड़ा होना, गर्भाशय की शिथिलता, रक्त की कमी, आलस, चिद-चिदासन व भ्रम कम लगना आदि में लाभदायक है एवं शरीर में नयी रफूर्ति एवं बल वृद्धि करके पूरे माह स्वस्थ बनाये रहती है।

Dose : 12 to 30 ml twice a day with water after meal

SHAKE WELL BEFORE USE

BATCH No.
PACKING DATE
M.R.P. ₹ 70.00
(Inclusive of all taxes)
Best before 36 months from pka.

Mkt. By:
VANSH TRADING COMPANY
Shop No. 18, Nagar Palika Market
General Ganj, Mathura-281001

200 ml.
महिलाओं के स्वास्थ्य एवं सौन्दर्य के लिए

50 ml Extra Free

AYURVEDIC MEDICINE
MAHILA KALP
IRON CALCIUM SAFFRON

NEW PACK

A TONIC FOR FEMALE HEALTH & HAPPINESS
400 ml+50 ml.

लौह कैल्शियम केसर युक्त
स्वस्थ बनाये रंग निर्यारे

महिलाओं के लिए एक खास आयुर्वेदिक औषधि है जो उनकी विभिन्न परेशानियों में लाभ पहुंचाती है। महिलाओं के कमर पीड़ का दर्द, रक्त-पेशों की जलन, रक्त प्रदर, रक्त प्रदर, मासिक धर्म के समय पीड़ा होना, गर्भाशय की शिथिलता, रक्त की कमी, आलस, चिद-चिदासन व भ्रम कम लगना आदि में लाभदायक है एवं शरीर में नयी रफूर्ति एवं बल वृद्धि करके पूरे माह स्वस्थ बनाये रहती है।

Dose : 12 to 30 ml twice a day with water after meal

SHAKE WELL BEFORE USE


Mfg. Lic. No. : 601 ISM (Hr.)
Batch No. : 2314
Mfg. Date : 04/2024
Exp. Date : 03/2027
M.R.P. : 230.00

Mkt. By:
VANSH TRADING
Shop No. 18, Nagar Palika Market
General Ganj, Mathura-281001
Customer Care : +91-7300840217



9. It has been next contended that in order to secure the statutory right in the said Trademark/Label/trade dress, the plaintiff and its predecessors had also applied for the Trademark registrations pertaining to its said Trade Mark/Label “MAHILA

KALP/  ”, the details whereof are provided hereunder:

Trademark/label	Class	Application No.	User Claimed	Status	Date of Application	Valid Upto	Disclaimer
MAHILA KALP/ 	5	3342986	01/08/2016	REGISTERED	23/08 / 2016	23/08/2026	N/A
MAHILA KALP	5	414558	01/01/1963	REGISTERED	16/12 / 1983	16/12/1990	Registration of this trademark shall give no right to the

							<i>exclusive use of the words "MAHILA" and "KALP" separately except as substantially shown in the representation of the mark on form TM-1</i>
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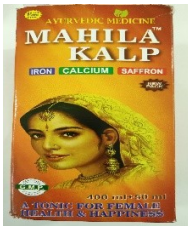
10. (i) It has been next averred that with the advent of e-commerce and increasing popularity of the internet and digitization, plaintiff has also been displaying, advertising, soliciting and selling its said product under the trademark/Label “**MAHILA KALP**” on various leading e-commerce interactive websites i.e., www.indiamart.com, www.meesho.com, which can be accessed and operated all over the territory of India, including North-West District, New Delhi. The screen-shots of said e-commerce websites have been provided in paragraph No.12 of the plaint.

(ii) It has been further stated that plaintiff has also been promoting its said distinctive Trademark/label through various means and modes, including through the visual, print, electronic media in leading Newspapers, various prominent national TV Channels, trade literature, magazines, word of mouth, over the internet etc.

11. It has been contended that plaintiff’s said goods and business are known, recognized, demanded, sold and traded with reference to its Trademark/Label which have become its **distinctive**

indicium and have acquired secondary significance. It is claimed that the plaintiff's said Trademark/Label has strong goodwill and reputation in India within the meaning of Section 29 (4) of the Trade Marks Act 1999.

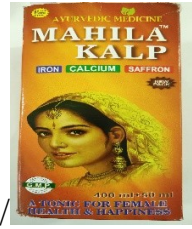
12. (i) Defendants No.1 to 3 are stated to be engaged in the business of all kinds of ayurvedic medicine(s), medicinal preparation and other allied and cognate goods. Defendant No.2/Medivision Pharmacy is stated to be engaged in the business of marketing, displaying and advertising of the impugned goods under the impugned Trademark/label “**MAHILA KALP/**



” all over the territory of India, while defendant No.3/Ayurvedhan Research & Development is stated to be the manufacturer of the impugned goods of ayurvedic medicine under impugned trademark/label “**MAHILA KALP**”.

(ii) Defendant No.4, which has been impleaded as a “**proforma party**” is stated to be India's leading an e-commerce cum interactive website portal that connects [B2B](#) marketplace, connecting buyers with suppliers and providing sales services *via* its web portal www.indiamart.com.

13. (i) It has been alleged that during the first week of August' 2024, plaintiff came across the impugned goods of the defendants No.1 to 3 bearing the falsified trademark/label/



packaging/trade dress “**MAHILA KALP/**”.

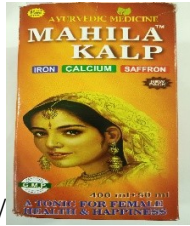
(ii) It has been further averred that plaintiff also conducted online investigation and it was revealed that defendants No.1 to 3 have been making clandestine and surreptitious sales and has been supplying, advertising, promoting its impugned trademark/label to the people at large in the markets of Delhi including North-West District areas i.e., Keshav Puram, Rani Bagh, Subhash Palace, Bharat Nagar, Ashok Vihar, Aman Vihar, Rohini, etc. besides other parts of the country. The Defendant No.2 has also been trading, displaying, advertising and marketing its impugned goods and business under the impugned trademark/label on the e-commerce cum interactive website of defendant No.4 through its impugned weblink/URL

https://dir.indiamart.com/search.mp?ss=mahila+kalp&v=4¤t_mcatid=181004&mcatid=&catid=&tags=stype:attr=1-br|qr_nm:gd|res: RC 4|com-cf:nl|ptrs:na|ktp:N0|mtp:S|qry_typ:P|lang:en|wc:2|flavl:4|cs:9 210 which can be accessed across the globe including

the market of Delhi including North-West district areas i.e., *Subhash Palace, Azadpur, MangolPuri, Begampur, Vijay Vihar, Aman Vihar, Raja Park, Bharat Nagar, Mayure Enclave, Sultan Puri, Keshavpuram*, etc. wherein customers can directly place their orders online with Defendant No.2 and other sellers and have their products delivered at the customers' desired location. Customers can also post their queries and inquiries regarding the products

and/or their price quotes with Defendant No.2 or other suppliers through Indiamart.

(iii) It has been further stated that defendants No.1 to 3 are not issuing any formal bills with respect their sales of counterfeit goods under the falsified trademark/label/packaging/trade dress



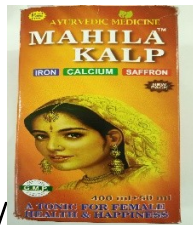
“MAHILA KALP/

14. It has been further stated that plaintiff recently came to know that defendant No.1 had applied for registration of the impugned Trademark “MAHILA KALP” (word mark) vide Application bearing No.6467737, dated 06.06.2024 in **Class 05** on “**proposed to be used basis**” for goods i.e., pharmaceutical product and medicinal preparations on all India basis and the same is stated to be pending adjudication before the Trademark Registry.

15. It has been averred that defendants No.1 to 3 are not the proprietor of the impugned Trademark/label and artistic feature/label/packaging/trade dress and by commercially using the same, they are not only damaging the reputation and goodwill of the plaintiff by passing off their substandard products as that of the plaintiff, but are also causing financial loss to the plaintiff by reaping unfair advantage of the repute and distinctive character of the trademark of the plaintiff.

16. As such, the instant suit was filed by the plaintiff with following prayers:

(a) A decree of permanent injunction, *inter alia* restraining defendants No.1 to 3 by themselves as also through their individual proprietors/partners, agents, representatives, manufacturer, distributors, assigns, heirs, successors, stockists and all others acting for and on their behalf from using, selling, soliciting, exporting, displaying, advertising or by any other mode or manner dealing in or using the impugned trade mark/label/trade dress “**MAHILA**



KALP/” or any other trade mark/label which may be identical with and/or deceptively similar to the plaintiff’s trademark/label/trade dress “**MAHILA KALP/**



” in relation to their impugned goods and business of all kinds of Ayurvedic medicine and medicinal preparation and other allied/cognate/related goods or from doing any other acts or deeds amounting to or likely to:

- i. Infringing the plaintiff’s registered Trademark/Label;
- ii. Passing off plaintiff’s Trademark/label/trade dress;
- iii. Infringing the plaintiff’s Copyright in the said

Trade Mark/label/trade dress/color combination by *inter-alia* using, publishing, reproducing and otherwise commercially and for the purposes of trade using the impugned identical with and deceptively similar impugned trade mark/label/trade-dress/colour-combination respectively for the purposes of its impugned goods and business as also passing off the plaintiff's common law rights therein.

iv. Diluting the plaintiff's goodwill and reputation to the said Trademark/Label;

(b) An order for delivery up of all the impugned finished and unfinished materials bearing the impugned and violative mark/label or any other word/mark which may be identical with or deceptively similar to the plaintiff's said trade mark/label including its blocks, labels, display boards, sign boards, trade literatures and goods etc. to the plaintiff on Superdari;

(c) An order for rendition of accounts of profits earned by the Defendant no. 1 to 3 by his impugned illegal trade activities;

(d) An order for compensatory, consequential and punitive damages on account of unlawful activities;

(e) An order directing defendant No.4 to permanently take down, suspend, remove, cancel or block/restrict access to the impugned weblink/URL

<https://dir.indiamart.com/search.mp?>

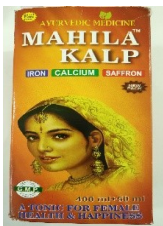
[ss=mahila+kalp&v=4¤t_mcatid=181004&mcid=&catid=](https://dir.indiamart.com/search.mp?ss=mahila+kalp&v=4¤t_mcatid=181004&mcid=&catid=)

[&tags=stype:attr=1-br|qr_n_m:gd|res:RC4|com-cf:nl|ptrs:na|ktp:N0|mtp:S|qry_typ:P|lang:en|wc:2|flavl:4|cs:9 210](#) displaying, advertising and marketing the impugned products bearing the impugned Trademark/label **MAHILA KALP** of the Defendant no.1 to 3; and

(f) Costs of the suit.

17. (i) It is worthwhile to note that alongwith the suit, plaintiff had also filed application U/o XXXIX Rule 1 & 2 CPC, *inter alia* seeking ex-parte ad-interim injunction against the defendants as well as application U/o XXVI Rule 9 CPC seeking appointment of Local Commissioner for seizure of impugned goods from the premises of defendants No.1 and 2.

(ii) Vide detailed order dated 22.08.2024, passed by this Court, both the aforesaid applications moved by the plaintiff were considered. Consequently, till further orders, defendants No.1 to 3 by himself as also through their individual proprietors/partners, agents, representatives, distributors, assigns, heirs, successors, stockists and all others acting for and on their behalf were restrained from using, selling, soliciting, exporting, displaying, advertising or by any other mode or manner dealing in or using the impugned trade mark/label/trade dress “**MAHILA KALP /**



” or any other trade mark/label which may be identical with and/or deceptively similar to the plaintiff’s trademark/label/trade dress “**MAHILA KALP/**



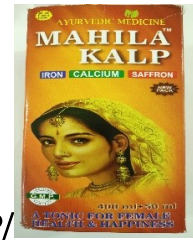
” in relation to their impugned goods and business of all kinds of ayurvedic medicine and medicinal preparation and other allied/cognate/related goods or from doing any other acts or deeds, thereby infringing plaintiff’s registered trademarks and passing off their products as that of plaintiff.

(iii) Even defendant No.4 till further orders was directed to temporarily take down, suspend, remove, cancel/block/restrict access to the impugned weblink/URL https://dir.indiamart.com/search.mp?ss=mahila+kalp&v=4¤t_mcatid=181004&mcetid=&catid=&tags=stype:attr=1-br|qr_nm:gd|res:RC4|com-cf:nl|ptrs:na|ktp:N0|mtp:S|qry_typ:P|lang:en|wc:2|flav_1:4|cs:9210, displaying, advertising and marketing the impugned products bearing the impugned Trademark/label **MAHILA KALP** of the defendants No.1 to 3, within 48 hours of the receipt of this order.

(iv) Further, the application filed under Order XXVI Rule 9 CPC was disposed off with following directions:

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(i)The Local Commissioner shall make an inventory and take into custody all the impugned goods, including other incriminatory material like stationery, packing material, pouches, cartons, display boards, sign boards, advertising material, unfinished packed, unpacked impugned goods or any other documents, wrapper etc. bearing the impugned trade



mark/label/trade dress “**MAHILA KALP/**” or any other trade mark/label which may be identical with and/or deceptively similar to the plaintiff’s trademark/label/trade dress “**MAHILA**



KALP/” in relation to their impugned goods/services. However, he shall return the seized/infringed goods to the representative(s) of the plaintiff on superdari, after clicking photographs/video footage thereof and taking an undertaking from the representative of plaintiff that plaintiff will produce the goods so seized as and when called upon to do so by this Court.

(ii) The Local Commissioner shall also seize and sign all books of accounts, ledgers, and cash registers, stock registers, invoices, day book etc of defendant and seal them after signing them.

(iii) Local Commissioner shall visit other premises at the identification of the plaintiff where the alleged activities are being carried on by or on behalf of the defendants No.1 to 3 or where the impugned goods and/ or materials being the impugned trademark are expected to be found.

(iv)The concerned SP/Addl. DSP/SHO/Officer-In-Charge of the Police Station(s) having the local jurisdiction over the place where the premises of defendants No.1 and 2 is situated are directed to render all necessary assistance as well as security to the Local commissioner in carrying out the above directions. The learned counsel for the plaintiff as well as the representative of plaintiff are also

permitted to accompany the learned Local Commissioner while visiting the premises of defendants No.1 and 2 for execution of the commission.

(v) The Local Commissioner shall also take photographs of the premises of the defendants No.1 and 2 as aforesaid, as well as of the infringed material found at the site.

(vi) If on the date of visit, the premises are found locked, Local Commissioner shall break open the same in the presence of police officials of the concerned Police Station(s) after taking the photographs thereof and shall proceed to execute the commission after affixing the copy of summons and complete set of papers on the main gate of the premises and shall also maintain decency while breaking open the locks to recover the infringing material.

(vii) The fee of the Local Commissioner is tentatively fixed at **Rs.1,20,000/- (Rupees One Lakh Twenty Thousand Only)** apart from all other out-of-pocket expenses.

(viii) The Local Commissioner shall visit the premises of the defendants No.1 and 2 within 15 days from the date of receipt of this order by her and shall file the report before this Court within one week of the visit to the place thereafter.

XXXXX

18. After getting served, written statement was filed on behalf of defendants No.1 and 2 only, which was beyond the period of 120 days from the date of service. Accordingly, **vide order dated 18.07.2025, the defence of defendants No.1 to 3 was struck off.**

Application under Order XXXIX Rule 2A CPC:

19. By way of this application, plaintiff has sought initiation of contempt proceedings against defendant No.2/contemnor Shri Yogendra Agrawal. The relevant averments made in the application in this regard are as under:

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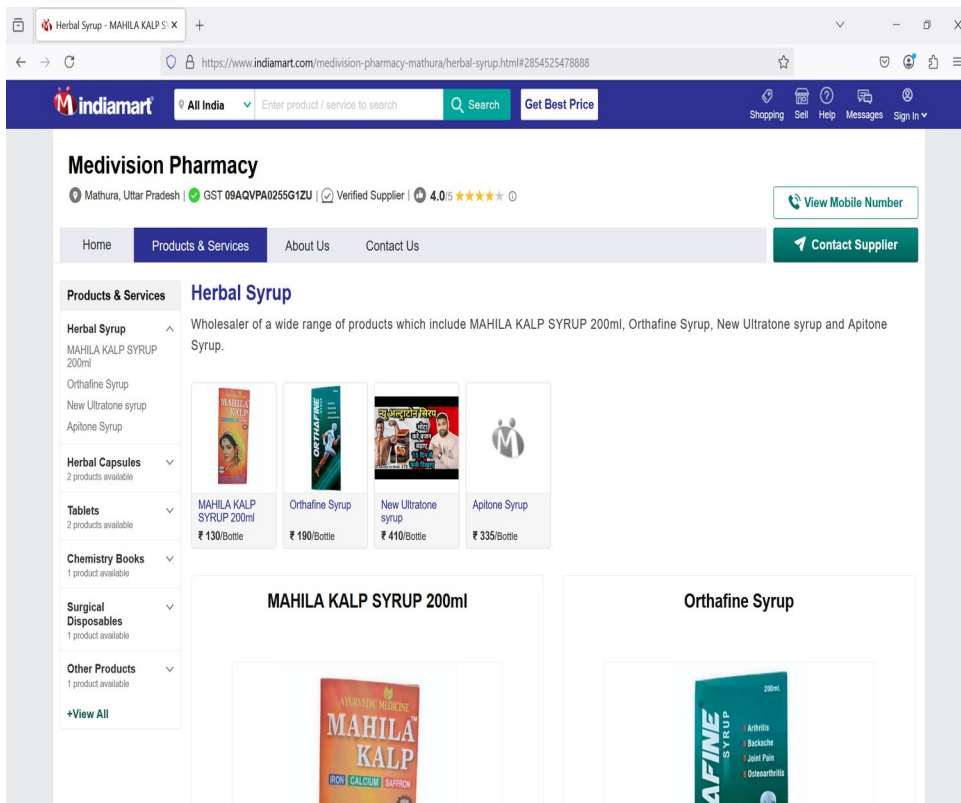
5. It is pertinent to mention that this Hon'ble court vide same order, also directed defendant no. 4 to temporarily take down, suspend, remove, cancel/block/restrict access to the impugned weblink/URL https://dir.indiamart.com/search.mp?ss=mahila+kalp&v=4¤t_mcatid=181004&mcatid=&catid=&tags=stype:attr=1-br|qr_nm:gd|res: RC 4|com-cf:nl|ptrs:na|ktp:N0|mtp:S|qry_tpy:P|lang:en|wc:2|flavl:4|cs:9210 wherein the impugned products bearing impugned Trademark/label **MAHILA KALP** of the defendants No. 1 to 3 are being advertising, displaying and marketing within 48 hours from the receipt of impugned order.

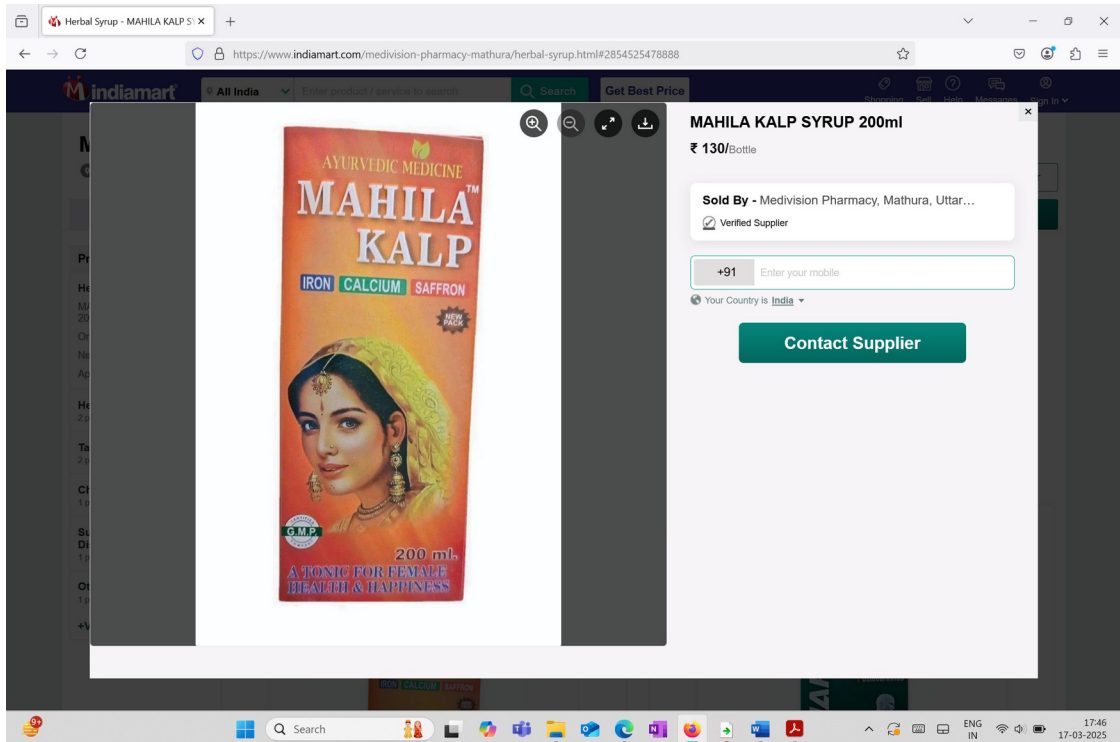
6. That it has again come to the knowledge of the Plaintiff that despite the clear and unequivocal directions of this Hon'ble Court of restraining the impugned activities, the Defendant no.2/Contemnor have acted in defiance of the injunction order by indulging in the impugned activities of selling, advertising and marketing of the impugned product under the infringing trademark/label "**MAHILA KALP**" through yet another weblink/URL <https://www.indiamart.com/medivision-pharmacy-mathura/herbal->

[syrup.html#2854525478888](https://www.indiamart.com/medivision-pharmacy-mathura/herbal-syrup.html#2854525478888) (herein referred to as the “new impugned weblink/URL”) over the platform of defendant no.4. This act of disobedience and wilful defaulting shows a blatant disregard for the orders of this Court.

XXXXX

20. In support of the aforesaid contention, following screenshot from the site of IndiaMart has been furnished:





(The new impugned weblink/URL-
<https://www.indiamart.com/medivision-pharmacy-mathura/herbal-syrup.html#2854525478888>)

21. In reply filed to this application, the contemnor has pleaded complete ignorance and has denied his involvement and tried to pass on the buck upon the other defendants, who have not been impleaded as contemnors in this application.

22. A perusal of the screenshot from IndiaMart clearly and categorically reveals that the contemnor has tried to over reach the interim order dated 22.08.2024 by changing the URL from weblink/URL https://dir.indiamart.com/search.mp?ss=mahila+kalp&v=4¤t_mcatid

[=181004&mcatid=&catid=&tags=stype:attr=1-br|qr_nm:gd|res:RC_4|com-cf:nl|ptrs:na|ktp:N0|mtp:S|qry_typ:P|lang:en|wc:2|flavl:4|cs:9210](#) to [weblink/URL https://www.indiamart.com/medivision-pharmacy-mathura/herbal-syrup.html#2854525478888](#). This clearly amounts to overreaching the authority of this Court and as such amounts to committing criminal contempt of this Court.

23. The Hon'ble High Court of Bombay in case reported as, **“Notice of Motion No.1107 of 12019 in Comip Suit No.427/2017”**, titled as, **“Cargil India Private Limited V/s M.M Oil Enterprises” (DOD: 16.05.2019)**, has been pleased to observe as under:

XXXXX

31. This Court has repeatedly noted and also recorded in some of its orders that an unhealthy trend seems to have set in amongst a section of litigants, who often brazenly and with impunity flout provisions of law and / or orders passed by Courts. At such times, the Court cannot be a mute spectator, but needs to step in and be proactive in stopping this unhealthy trend, which would otherwise corrode the faith of the common man in the Judiciary, as a means of redressing his grievances.

32. The Defendant through his Advocate prayed for leniency. The Defendant has despite the Order of Injunction dated 12 th April, 2017, restraining him from manufacturing and selling the impugned goods, has brazenly breached the said Order as set out in paragraph 2.11, 2.12 & 2,13 hereinabove. The Proprietor of the Defendant

has also disposed of/ dealt with the impugned goods, which the Receiver had seized and sealed on 6th April, 2017 and had left the same with the Proprietor of the Defendant on an undertaking that he will keep the same in safe custody. The Proprietor of the Defendant at the initial stage went to the extent of making a false statement through his Advocate that the huge jars and pouches containing thousands of liters of edible oil have been eaten away by rats. Such a Defendant certainly cannot be shown any leniency in sentencing. The lenient sentence in this case would mean and send a message to society at large that the Court is itself not outraged by the flagrant disregard shown by the Proprietor of the Defendant and is adopting a 'forgive and forget' policy. In doing so, the Court would be doing grave injustice to the Plaintiff, who for no fault of their own, have been put through a long and protracted round of litigation. It would further indicate that litigants can disobey the orders of the Court with impunity and still be shown mercy and forgiveness by the Court. Such a trend, in my opinion, would destroy the very principle of deterrence, which punishments are intended to serve.

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24. Considering the law laid down in the aforesaid judgment, this Court is of the opinion that defendant No.2 has committed criminal contempt of this Court. The criminal contempt has been defined in the Contempt of Courts Act, 1971, Section 2(c), which is re-produced as under:

XXXXX

2. Definitions.—

.....

(c) “criminal contempt” means the publication (whether by words, spoken or written, or by signs, or by visible representations, or otherwise) of any matter or the doing of any other act whatsoever which—

(i) scandalises or tends to scandalise, or lowers or tends to lower the authority of, any court; or

(ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or

(iii) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner;

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25. (i) As such, a reference in the matter is liable to be made to Hon’ble High Court of Delhi under Section 10, 11 and 12 of The Contempt of Courts Act, 1971 read with Article 215 of the Constitution of India, as the action of alleged contemnor/defendant No.2 amounts to undermining the authority of the Court as well as interference with and obstruction in the administration of justice.

(ii) Accordingly, separately a reference U/s 10 of Contempt of Courts Act, 1971 r/w Article 215 of the Constitution of India against the alleged contemnor/defendant No.2 has been made to Hon’ble High Court of Delhi for taking appropriate action against him.

Application under Order VIII Rule 10 CPC:

26. The plaintiff thereafter instead of leading PE in the matter, preferred an application under Order VIII Rule 10 CPC r/w Order XIII-A CPC, *inter alia* praying for passing of summary judgment in the matter.

27. The scope of Order VIII Rule 10 CPC in commercial suits particularly under the New Commercial Courts, Commercial Division and Commercial Appellate Division of the High Court Act, 2015 has been examined by Hon'ble High Court of Delhi in case reported as, "235 (2016) DLT 354", titled as, "**Nirog Pharma Pvt. Ltd. V/s Umesh Gupta & Anr.**", whereby the Hon'ble High Court has been pleased to lay down as under:

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"11. Order VIII Rule 10 has been inserted by the legislature to expedite the process of justice. The courts can invoke its provisions to curb dilatory tactic, often resorted to by defendants, by not filing the written statement by pronouncing judgment against it. At the same time, the courts must be cautious and judge the contents of the plaint and documents on record as being of an unimpeachable character, not requiring any evidence to be led to prove its contents.

.....

28. The present suit is also a commercial suit within the definition of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 and it was the clear intention of the legislature that such cases should be decided expeditiously and should not be allowed to linger on. Accordingly, if the defendant fails to pursue his case or does so in a lackadaisical manner by not filing his written statement, the courts should invoke the provisions of Order VIII Rule 10 to decree such cases."

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28. (i) Further the power and authority of the Courts to straightway decree a suit on the basis of averments made in plaint in terms of Order VIII Rule 10 CPC, in the absence of a written statement filed by the defendant is well settled by the Hon'ble Supreme Court in case reported as, “(1999) 8 SCC 396”, titled as, “**Balraj Taneja V/s Sunil Madan**”.

(ii) Furthermore, the Hon'ble High Court of Delhi in case reported as, “**CS (Comm.) No.618/2019**”, titled as, “**Parsvnath Developers Limited V/s Vikram Khosla**” (DOD: 03.03.2021), has been pleased to lay down as under:

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9. Having heard the learned counsel for the plaintiff, it is noted that the defendant has not cared to appear before this Court and was proceeded ex-parte. The law with regard to Order VIII Rule 10 CPC is clear, which stipulates that where any party from whom a written statement is required under Rule 1 or Rule 9, fails to present the same within time permitted or fixed by the Court as the case may be, the Court shall pronounce judgment or make such orders in relation to the suit as it thinks fit and on the pronouncement of same, the decree sheet shall be drawn up. Accordingly, in view of the provisions of order VIII Rule 10 CPC, I proceed to decide the present suit. Further, I am in agreement with the judgments of the Coordinate Benches of this Court as relied upon by the plaintiff in paragraph 8 on the issue that in ex-parte matters no purpose would be served if evidence is directed to be led. There being no written statement filed, the averments in the Plaint being un rebutted, the same are deemed to be correct.

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(iii) Recently, the Hon'ble High Court of Delhi in case reported as, "**CS (Comm.) No.72/2022**", titled as, "**Kleenoil Filtration India Pvt. Ltd. V/s Udit Khatri & Ors.**" (DOO: 05.01.2023) has been pleased to clear the air regarding power and authority of Court to straightway decree the suit under Order VIII Rule 10 CPC.

29. Further, on the aspect of Order VIII Rule 10 CPC, I am also duly conscious of the observations made by Hon'ble Supreme Court of India in case reported as, "**Civil Appeal No.9695/2013**", titled as, "**Asma Lateef & Anr. V/s Shabbir Ahmad & Ors.**" (DOD: 12.01.2024), whereby the Hon'ble Apex Court has been pleased to categorically observe that a Court is not supposed to pass a mechanical judgment invoking Rule 10 of Order VIII CPC, merely on the basis of plaint, upon the failure of defendant to file a written statement. I am further conscious of the fact that a judgment, if pronounced by a Court under Rule 10 of Order VIII CPC, must satisfy the requirements of Rule 4(2) or Order XX CPC and thereby conform to its definition provided in Section 2(9) thereof.

30. Further in case reported as, "**CS (OS) No.559/2010**", titled as, "**Indian Performing Rights Society Limited V/s Gauhati Town Club**" (DOD: 30.01.2013), the Hon'ble High Court of Delhi has been pleased to observe **that where the defendant is "ex-parte" and the material before the Court is sufficient to allow the claim of the plaintiff, then 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.

31. In the realm of subjective analysis, Section 29 of the Trade Marks Act introduces three more concepts to guide in assessment viz. “**deceptively similar**”, “**likely to cause confusion**” and “**likely to have an association**”. The three concepts can be usefully synopsisized as under:

(i) **Deceptive similarity:** This entails an “*intent to deceive*”; requires that facts presented by parties be sifted to arrive at a conclusion that defendant adopted a very similar mark to deceive consumers; and is defined under Section 2(h) of the Act as “near resemblance likely to deceive or cause confusion”;

(ii) **Confusion:** ‘*Confusion*’ is a state of mind which obliterates the distinction of elements presented before a person.

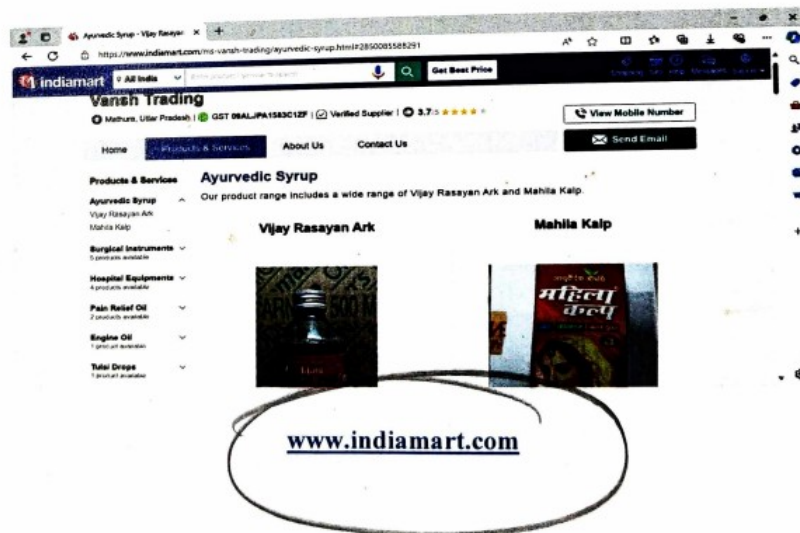
(iii) **Association:** ‘*Association*’ involves a mental connection between related ideas.

32. Now, coming back to the facts of instant case. The learned counsel for the plaintiff has taken me through the comparative analysis of the marks of both the parties, which is as under:

COMPARISON CHART OF TRADEMARK/LABEL OF THE PLAINTIFF VIZ-A-VIZ IMPUGNED TRADEMARK/LABEL OF THE DEFENDANT NO. 1 TO 3

PLAINTIFF'S TRADEMARK/LABEL "MAHILA KALP"	DEFENDANT'S IMPUGNED TRADEMARK/LABEL "MAHILA KALP"
 <p>AYURVEDIC MEDICINE MAHILA KALP IRON CALCIUM SAFFRON NEW PACK A TONIC FOR FEMALE HEALTH & HAPPINESS 400 ml+50 ml</p>	 <p>AYURVEDIC MEDICINE MAHILA KALP IRON CALCIUM SAFFRON 400 ml+50 ml A TONIC FOR FEMALE HEALTH & HAPPINESS</p>
 <p>महिला कल्प आयुर्वेदिक चिकित्सा महिलाओं के लिए एक शक्तिशाली आयुर्वेदिक औषधि है। इसका उपयोग महिलाओं में लक्षण पैदा करने के लिए किया जाता है। Dose: 12 to 30 ml twice a day with water after meal SHAKE WELL BEFORE USE Mfg. Lic. No.: 601 IGM (19-) Batch No.: 2314 Mfg. Date: 04/2024 Exp. Date: 03/2027 M.R.P. (Incl. of Taxes): ₹30.00 Mtd. By: VANSH TRADING Shop No. 16, Nagpur Police Market, General Camp, Nagpur-481001 Customer Care: +91-7300840517</p>	 <p>महिला कल्प आयुर्वेदिक चिकित्सा महिलाओं के लिए एक शक्तिशाली आयुर्वेदिक औषधि है। इसका उपयोग महिलाओं में लक्षण पैदा करने के लिए किया जाता है। Dose: 12 to 30 ml twice a day with water after meal SHAKE WELL BEFORE USE KEEP IN A COL DRY PLACE Mfg. Lic. No.: 997-ISM(HR) Batch No./ वनश ट्रेडिंग: 2603 M.R.P. (Incl. of Taxes): ₹30.00 (I.A.T.) (Incl. of Taxes) Exp. Date/ अवधि (वर्ष): 3 yrs. from the mfg. Mtd. By: Medivision Pharmacy 1230 F.P. Near Vihar, Baram Road, Pimpri, Maharashtra-411013 Customer Care: +91 202343337</p>

REPRESENTATION OF E-COMMERCE WEBSITES USED BY THE PLAINTIFF DISPLAYING, ADVERTISING AND SOLICITING/SELLING PLAINTIFF'S GOODS UNDER TRADEMARK/LABEL "MAHILA KALP"



which shows **clear imitation** of the registered trademark of plaintiff which is registered in the name of plaintiff since the year 2016 with the adoption thereof since the year 1963 by the Predecessor-In-Interest of the plaintiff. The comparison of both the marks show clear imitation, which includes words used therein, the colour combination etc., with the only differentiating fact to be that the product of the plaintiff mentions its tradename as M/s Vansh Trading; whereas, that of defendant as Medivision Pharmacy, i.e defendant No.2.

33. From the material produced on record, it is further evident that the defendants have **dishonestly adopted** the “MAHILA KALP”, which is identical to the trademark of plaintiff. On the aspect of “**dishonest adoption**”, the Hon’ble Superior Courts have been pleased to lay down as under.

(i) In case reported as, “**AIR 1985 Delhi 210**”, titled as, “**B.K Engineering Co. V/s Ubhi Enterprises & Ors.**” (DOD: **12.11.1984**), the Hon’ble High Court of Delhi has been pleased to lay down as under:

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(55) The mainstay of the defendants' case is that they are using their mother's name "B.K." to which they are entitled. I cannot accept this contention. Firstly it is not the defendants name. The name of the partner who appeared before the learned judge and made a statement is Man Mohan Singh. Even if a man uses his own name as to be likely to deceive and so to divert business from the plaintiffs to the defendants he will be restrained. Pears' soap is the stock example of this. A man name William Joban

Pears cannot set up a soap business and call his soap "Pears Soap" He is not entitled to abbreviate his own name so as to lead to deception. [Parker Knoll (supra) at p. 276 per Lord Denning]. Another example I gave in the course of arguments was of Haman soap. On the cake it is stamped "A Tata Product". Is it open to a rival trader to call his soap. "Tata Soap" simply because Tatas do not make "Tata Soap" as such by name ? The fundamental question is whether there is a likelihood of deception of the public by the use of a particular name. If there is likelihood the complainant can bring an action against the deceiver, the maker of the representation. As Lord Parker said that the case of action is complete with the representation. It is no longer true that the cause of action is complete only upon sale. It was true to say this in 1896 when Lord Halsbury decided the leading case of Reddaway v. Banham. It is true after 1915 when the leading cases of Parker-Knoll and Warnink were decided. The roots of passing off tort lay in deceit, yet the fraud was practiced not upon the plaintiff but upon the customers of the defendant who purchased the goods believing them to be of the plaintiff's manufacture.

(56) If there is a real prospect of injury to the plaintiff's goodwill he is entitled to injunction. Applying this principle it seems to me that "B.K." is the most valuable single asset of the plaintiffs. Prima facie they possess a substantial reputation in this. The adoption of "B.K.-81" by the defendants would lead persons to think that "B.K.-81" is the product of a business associate or an affiliate of B.K. Engineering Co. There is a real risk that a substantial number of

members among the public would in fact believe that there is a business connection between the plaintiffs and the defendants. The defendants cannot be allowed to cash in on the popularity of the plaintiffs' product in which they have built up a goodwill. If not prevented they will harm the plaintiffs' business. In my opinion there is sufficient material to support a claim for temporary injunction at this stage.

(57) In the end I return to the statement of the law quoted at the beginning of this judgment. Competition must remain free. it is true. This is the life blood of free enterprise system. Yet it is essential that "trading must not only be honest but must not even unintentionally be unfair" If it is shown that a product or a business of a trade has acquired a distinctive character the law will restrain a competitor from using that others name. A line must be drawn somewhere between honest and dishonest trading, between fair and unfair competition. In this case there can be no quarrel with "81". The real mischief is in the adoption of the name "B.K" which is associated with the plaintiffs' business, if not goods.

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(ii) In case reported as, **“CS (OS No.1471/2015”**, titled as, **“Kamal Kant And Company LLP V/s Raashee Fragrances India Pvt. Ltd.”** (DOD: 04.11.2015), the Hon’ble High Court of Delhi has been pleased to lay down as under:

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7. I would also like to note that the explanation given by the defendant of

adopting the word mark RAASHEE on account of the Managing Director of the defendant having seen it in the film 'What's Your Raashee' does not inspire the confidence in this Court. No doubt, the meaning of the word RAASHEE or Sun sign/zodiac has a different meaning than the word RAJSHREE in Hindi, however, the trade mark/word mark RAJSHREE and RAASHEE in usage are phonetically and visually similar and the trade mark/word mark of the defendant is deceptively similar and confusingly similar to the registered trade mark RAJSHREE of the plaintiff and thus mere difference in meanings of the two word marks will not take away the deceptive similarity especially because the products in question will not be purchased by relating the purchase to the meaning of the word marks/trade marks.

8. One is at this stage reminded of the observations of the Supreme Court in the case of Kaviraj Pandit Durga Dutt Sharma (supra) in para 28 of the judgment reproduced above, that, where the defendant's trade mark is so close either visually or phonetically or otherwise and the court reaches the conclusion that there is an imitation, no further evidence is required to establish that plaintiff's rights are violated. This judgment further goes on to observe that merely because the get-up, packing and other writing or marks on the goods or on the packets of the defendant show marked difference or indicate a trade origin different from that of the registered proprietor of the mark, such aspects would be immaterial in an action for infringement. As already stated above, since there is confusing similarity and deceptive similarity between the two

marks, even the tests with respect to passing off are satisfied by the plaintiff against the defendant in the facts of the present case.

.....

10(i). At the cost of repetition, this Court is not convinced of the bonafides of the defendant in adopting the mark RAASHEE which is visually similar when written in Hindi to the trade mark RAJSHREE of the plaintiff and also phonetically similar including for the reason that the Hindi alphabets JA and R are many a times while speaking the word mark RAJSHREE become silent alphabets. It bears note that after all, the defendant was going to sell the same products which the plaintiff was selling and that too in the same area of operation, and therefore, this Court does not find any credibility in the stand of the defendant that it searched the Registrar of Trade marks for finding out whether there were other trade marks identical or deceptively similar to the trade mark RAASHEE of the defendant. Surely the defendant and its Director or persons in charge of its management would have known that in the very market which they were going to sell its goods, there were already existing same products using the trade mark RAJSHREE having visual and phonetic similarity with the trade mark/word mark RAASHEE of the defendant.

(ii) I am also not impressed by the lack of bona fides on the part of the defendant inasmuch as defendant as of date is not manufacturing goods under the trade mark RAASHEE and possibly which is with from many years inasmuch as the written

statement is deliberately silent as to since when the defendant stopped manufacturing goods under the trade mark RAASHEE. Also at the commencement of the hearing, it was put to the counsel for the defendant that this Court need not pass a detailed judgment and for the present ex parte injunction order can be confirmed with liberty to the defendant to seek variation once the defendant shows to the Court that it has proved that it is again wanting to restart the business with the trade mark RAASHEE, but the counsel for the defendant after pass over and taking instructions from the defendant states that defendant has given him instructions to argue the matter. Obviously, the defendant wants to put pressure on the plaintiff and wanting to possibly take some illegal benefit because of the present court case.

11. No doubt, the tests of passing off/infringement are the same as held in the judgment of the Supreme Court in the case of Ruston & Hornsby Ltd. (supra), but the facts of the present case show that these tests of passing off which are laid down by the Supreme Court in the case of Cadila Health Care Ltd. (supra) are satisfied by the plaintiff that goods of the defendant if sold under the trade mark/word mark RAASHEE will result in passing off of the goods of the defendant as the goods of the plaintiff. Merely because the actual meaning of the word mark/trade mark of the defendant is different than the meaning of the trade mark/word mark of the plaintiff, will not mean that there will not be visual and phonetic similarity with respect to the impugned trade mark with the registered trade mark of the plaintiff as the subject

products are to be purchased with reference
to the trade marks and not the labels.

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(iii) Further, in case reported as, **“2004 SCC 90”**, titled as, **“Midas Hygiene Industries Pvt. Ltd. & Anr. V/s Sudhir Bhatia & Ors.” (DOD: 22.01.2004)**, on the aspect of **“dishonest adoption”** by defendant, the Hon’ble Supreme Court has been pleased to lay down as under:

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5. The law on the subject is well settled. In cases of infringement either of Trade Mark or of Copyright normally an injunction must follow. Mere delay in bringing action is not sufficient to defeat grant of injunction in such cases. The grant of injunction also becomes necessary if it prima facie appears that the adoption of the Mark was itself dishonest.

XXXXX

34. It is further evident from the material produced on record that defendants have unauthorizedly and deliberately reproduced plaintiff’s original artistic work comprised in the label and packaging of the product marketed under the trademark **“MAHILA KALP”**. The impugned label adopted by the defendant(s) is a slavish copy and colourable imitation of the plaintiff’s copyrighted work and is substantially similar in visual and overall appearance. On the aspect of overall similarity/appearance, the Hon’ble High Court of Delhi in case reported as, **“CS (OS) No.250/2010”**, titled as, **“Austin Nichols & Co. INC. & Anr. V/s Gwalior Distilleries Private Limited” (DOD: 18.08.2022)** has been pleased to lay down as under:

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38. In the present case, the goods of the plaintiffs and defendant are identical, that is whiskey. The mark of the defendant is deceptively similar to that of the plaintiffs. The test to be applied for judging the claim of infringement and passing off is of an unwary consumer with average intelligence and imperfect recollection. The same, following the judgments of the Supreme Court in **Corn Products Refining Co. v. Shangrila Food Products Ltd., (1960) 1 SCR 968** and **Cadila Health Care Ltd. v. Cadila Pharmaceuticals Ltd., (2001) 5 SCC 73**, has been reiterated by the judgment of a Co-ordinate Bench of this Court dated 26.07.2022 in **Mondelez India Foods Pvt. Ltd. and Anr. v. Neeraj Food Products, 2022 SCC OnLine Del 2199**, where it has been held as under:

“29. In two seminal judgements of the Supreme Court, the test of infringement and deceptive similarity of competing marks is well settled. The Supreme Court in **Corn Products Refining Co. v. Shangrila Food Products Ltd., (1960) 1 SCR 968**, has observed that the said question has to be approached from the point of view of a man of average intelligence and of imperfect recollection. It was observed that, to such a man, the overall structural and phonetic similarity and the similarity of the idea in the two marks is reasonably likely to cause a confusion between them. The relevant extracts from the judgment in **Corn Products (supra)** are set out below:

“18. We think that the view taken by Desai, J., is right. It is well

known that the question whether the two marks are likely to give rise to confusion or not is a question of first impression. It is for the court to decide that question. English cases proceeding on the English way of pronouncing an English word by Englishmen, which it may be stated is not always the same, may not be of much assistance in our country in deciding questions of phonetic similarity. It cannot be overlooked that the word is an English word which to the mass of the Indian people is a foreign word. It is well recognised that in deciding a question of similarity between two marks, the marks have to be considered as a whole. So considered, we are inclined to agree with Desai, J., that the marks with which this case is concerned are similar. Apart from the syllable "co" in the appellant's mark, the two marks are identical. That syllable is not in our opinion such as would enable the buyers in our country to distinguish the one mark from the other.

19. We also agree with Desai, J., that the idea of the two marks is the same. The marks convey the ideas of glucose and life giving properties of vitamins. The Aquamatic case (Harry Reynolds v. Laffeaty's Ld.) is a recent case where the test of the commonness of the idea between

two marks was applied in deciding the question of similarity between them. Again, in deciding the question of similarity between the two marks we have to approach it from the point of view of a man of average intelligence and of imperfect recollection. To such a man the overall structural and phonetic similarity and the similarity of the idea in the two marks is reasonably likely to cause a confusion between them.”

30. In **Parle Products (P) Ltd. v. J.P. & Co., Mysore [AIR 1972 SC 1359]**, it was held that the Court has to see similarities and not the dissimilarities. The relevant extracts of the said judgment, which has been followed in innumerable judgments subsequently, are set out hereinbelow:

“According to Kerly’s Law of Trade Marks and Trade Names (9th Edition Paragraph 838) “Two marks, when placed side by side, may exhibit many and various differences, yet the main idea left on the mind by both may be the same. A person acquainted with the one mark, and not having the two side by side for comparison, might well be deceived, if the goods were allowed to be impressed with the second mark, into a belief that he was dealing with goods which bore the same mark as that with which he was acquainted.”

It would be too much to expect that

persons dealing with trademarked goods, and relying, as they frequently do, upon marks, should be able to remember the exact details of the marks upon the goods with which they are in the habit of dealing. Marks are remembered rather by general impressions or by some significant detail than by any photographic recollection of the whole. Moreover, variations in detail might well be supposed by customers to have been made by the owners of the trade mark they are already acquainted with for reasons of their own. It is therefore clear that in order to come to the conclusion whether one mark is deceptively similar to another, the broad and essential features of the two are to be considered. They should not be placed side by side to find out if there are any differences in the design and if so, whether they are of such character as to prevent one design from being mistaken for the other. It would be enough if the impugned mark bears such an overall similarity to the registered mark as would be likely to mislead a person usually dealing with one to accept the other if offered to him.”

(Emphasis Supplied)

39. Applying the above test, it is seen that mere use of the word ‘CHAMP’ instead of ‘STAG’ is not sufficient to distinguish the two marks, especially when combined with the overall get up of the label. The goods are sold over the counter and an unwary consumer is likely to confuse one for the other.





40. The plaintiffs have also been able to establish a long, continuous use of its trade marks. As held herein above, the mark of the defendant is deceptively similar to that of the plaintiffs. In fact, it is clearly intended to deceive the unwary consumer. The defendant enjoys a comparatively high reputation amongst them. It further held that when a person uses another person's 'well-known trade mark', he tries to take advantage of the goodwill that such a 'well-known trade mark' enjoys. Such an act constitutes as unfair competition. It also causes dilution of a 'well-known trade mark' as it loses its ability to be unique and distinctively identified and distinguish as one source and consequent change in perception which reduces the market value or selling power of the product bearing the well-known trade marks, therefore, guilty of passing off its goods as that of the plaintiffs.

41. The use of the offending marks by the defendant shall also cause dilution of the marks of the plaintiffs. This Court, in Tata Sons Ltd. V. Manoj Dodia & Ors., CS(OS) 264 of 2008, held that a well-known trade mark is a mark which is widely known to the relevant general public and enjoys a comparatively high reputation amongst them. It further held that when a person uses another person's 'well-known trade mark', he tries to take advantage of the goodwill that such a 'well-known trade mark' enjoys. Such an act constitutes as unfair competition. It also causes dilution of a 'well-known trade mark' as it loses its ability to be unique and distinctively identified and distinguish as one source and consequent change in perception which

reduces the market value or selling power of the product bearing the well-known trade mark.

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35. The learned counsel for the plaintiff has also taken me through the Trade Mark Registration Certificate (**Page 119**)

फॉर्म आरजी - 2 Form RG - 2	 भारत सरकार Government of India व्यापार चिन्ह रजिस्ट्री Trade Marks Registry व्यापार चिन्ह अधिनियम, 1999 Trade Marks Act, 1999	 INTELLECTUAL PROPERTY INDIA Patents (Design) Trademarks Geographical Indications
	क्रमांक No. 1800562	
व्यापार चिन्ह के रजिस्ट्रेशन का प्रमाणपत्र, धारा 23 (2), नियम 56 (1) Certificate of Registration of Trade Mark, Section 23 (2), Rule 56 (1)		
व्यापार चिन्ह संख्या / Trade Mark No. 3342986	दिनांक / Date 23/08/2016	ज. संख्या / J. No. 1819
यह प्रमाणित किया जाता है कि जिस प्रकार चिन्ह की समाकृति इसके साथ संलग्न है, वह नाम से रजिस्ट्रीकृत हो चुका है। Certified that Trade Mark / a representation is annexed hereto, has been registered in the name(s) of:- SANJAY AGARWAL, 16 NAGAR PALKA MARKET GENERAL GANJ, MATHURA 281001 U.P., Trading as : VANSI TRADING CO., MANUFACTURING AND TRADING, (Single Firm)		
In Class 5	Under No. 3342986	as of the date 23 August 2016 in respect of
AYURVEDIC MEDICINES, PHARMACEUTICAL PREPARATIONS SPECIALLY FOR WOMEN.		
Trade Mark as annexed		
मेरे निर्देश पर आज के मास के वे दिन को इस पर मुद्रा लगायी गई Sealed at my direction, this 07 th day of March, 2018		
व्यापार चिन्ह रजिस्ट्री Trade Marks Registry MUMBAI		 व्यापार चिन्ह रजिस्ट्रार Registrar of Trademarks
<small>रजिस्ट्रेशन आदेश को जारी करने के 10 वर्षों के लिए है और तदोपरान्त यह 10 वर्षों की अवधि के लिए और प्रत्येक 10 वर्षों की अवधि के अवकाश पर जो नवीनीकृत किया जा सकता है। Registration is for 10 years from the date of application and may then be renewed for a period of 10 years and also at the expiration of each period of 10 years. यह प्रमाणपत्र किसी कार्यवाही में प्रयोग के लिए या विदेश में रजिस्ट्रेशन अधिनियम के अंतर्गत रजिस्ट्रेशन के लिए नहीं है। This certificate is not for use in legal proceedings or for obtaining Registration abroad. टिप्पणी - इस व्यापार चिन्ह के स्वामित्व में कोई परिवर्तन होने पर, या कारोबार के मुख्य स्थान के पते में या भारत में कारोबार के लिए पते में परिवर्तन होने पर रजिस्ट्रेशन के लिए आदेश तुरंत किया जाना चाहिए। Note: Upon any change of ownership of this Trademark, or change in address, of the principal place of business or address for service in India a request should AT ONCE be made to register the change.</small>		

as also the registered trade label of the plaintiff (**page 120**).



36. (i) The learned counsel for the plaintiff has also taken me through the **Application No.414558** for Word Mark per se “**MAHILAKALP**” with User Detail from 01.01.1963 (**page 124 of the documents filed by plaintiff**).

(ii) The learned counsel has further taken me through the Assignment/Transfer Deed, dated 01.08.2016 (**pages 126 and 127 of the documents filed by the plaintiff**), whereby the Predecessor-In-Interest Shri Bhajan Ashram Ayurvedic Rasayanshala, Vrindaban, Mathura, assigned the aforesaid registered trademark to the trade house of plaintiff.

37. The learned counsel for the plaintiff has also referred to the **Copyright Registration Certificate No.A-139075/2021** (**page No.146 of the documents filed by the plaintiff**).

38. The sales figures of the plaintiff are also on record.

39. The learned counsel for the plaintiff has also taken me through the report filed by learned Local Commissioner, whereby following infringed goods were seized by him from the defendants.

S.No.	Address of the premises	Quantities of goods seized by the Local Commissioner	Cost of the goods found at the premises of defendant(s)
1.	263, Narsivihar Sonkh Road, Mathura VTC Palikhera, PO Maholi, Mahura, Uttar Pradesh-281004.	3074 pieces (1. Mahila Kalp 450 ml MRP: Rs.230/- and quantity 948 pieces 2. Mahila Kalp 450 ml MRP: Rs.130/- and quantity 2126 pieces	Rs.4,94,420/-

40. The defendants cannot be allowed to **piggy bag** upon the reputation of plaintiff. The Hon'ble High Court of Delhi in a case involving somewhat similar facts, i.e in case reported as, "1992 SCC Online Del 122", titled as, "The Tata Iron & Steel Company Ltd. V/s Mahavir Steels & Ors." (DOD: 25.02.1992), has been pleased to hold as under:

XXXXX

14.An imitation remains an imitation whether it is done by one or by many. It acquires no legitimacy. A wrong is not righted by the following it musters. Infringement of trade mark by a trader cannot be justified on the ground that there are others like him who are doing the same. There is a growing tendency to copy the trade marks to

*cash upon some one else's business reputation
. The pirates of trade marks are like parasites
clinging to others for their growth. Imitators
of trade marks have the sole object of
diverting the business of others. This tendency
must be curbed in the interest of the trade and
the consumers.*

XXXXX

41. Further in case reported as, “**CS (Comm.) No.126/2022**”, titled as, “**M.L Brother LLP V/s Mahesh Kumar Bhuralal Tanna**” (DOD: 12.05.2022), the Hon’ble High Court of Delhi has been pleased to lay down that Local Commissioner’s report can be read in evidence in terms of Order XXVI Rule 10(2) CPC. For ready reference, the said observations are re-produced as under:

XXXXX

10. Order 26 Rule 10 (2) CPC stipulates that the report of the Commissioner and the evidence taken by the Commissioner shall be evidence in the suit and shall form part of the record. The said provision reads as under:

***10. Procedure of Commissioner.— (1)**
The Commissioner, after such local inspection as he deems necessary and after reducing to writing the evidence taken by him, shall return such evidence, together with his report in writing signed by him, to the Court.*

***(2) Report and depositions to be evidence in suit. Commissioner may be examined in person.—**The report of the Commissioner and the evidence taken by him (but not the evidence*

without the report) shall be evidence in the suit and shall form part of the record; but the Court or, with the permission of the Court, any of the parties to the suit may examine the Commissioner personally in open Court touching any of the matters referred to him or mentioned in his report, or as to his report, or as to the manner in which he has made the investigation.”

11. In Levi Strauss & Co. v. Rajesh Agarwal 2018 IAD (Delhi) 622, this Court examined the said provision and held that once the Commissioner has filed the evidence along with his report, it becomes evidence in the suit itself. Under Order 26 Rule 10(2) CPC it is not mandatory to examine the Commissioner to admit the report of the Commissioner as evidence in the suit. The relevant observations are as under:

8. The Local Commissioner is in fact a representative of the Court itself and it is for this reason that Order 26 Rule 10 (2) of CPC clearly provides that once the Commissioner has filed the evidence along with his report the same shall be treated as evidence in the suit and shall form part of the record.

xxx xxx xxxx

10. The rationale behind Order 26 Rule 10 (2) of CPC is clear i.e. the Commissioner is appointed as a representative of the Court and evidence collected by the Commissioner along with the report of the Commissioner would be

evidence in the suit, subject to any objection raised by any party. If any party has any objection to Commissioner's report or to the evidence, such party has an option to examine the Commissioner personally in open Court. Such examination is however, neither compulsory nor required especially in cases where the party does not challenge the report. In the present case, a perusal of the written statement filed by the Defendant clearly reveals that the Defendant does not challenge the Commissioner's report. Para of the written statement is set out below..."

12. *This position of law has been reiterated by this Court in **Vinod Goel v. Mahesh Yadav [RFA 598/2016 decided on 23rd May, 2018]** wherein the Court observed as under:*

*"7. It is the settled proposition in law that when a Commissioner is appointed, he acts as the officer of the Court and it is not necessary for the Commissioner to be examined. This is clearly laid down by the Supreme Court in **Misrilal Ramratan & Ors. Mansukhlal & Ors. v. A.S. Shaik Fathimal & Ors., 1995 Supp (4) SCC 600**, wherein the Court held as under:*

"It is now settled law that the report of the Commissioner is part of the record and that therefore the report cannot be overlooked or rejected on spacious plea of non-examination of the Commissioner as a witness since

it is part of the record of the case.”

*8. Even this Court, recently in **Levis Strauss v. Rajesh Agarwal [RFA 127/2007 decision dated 3rd January, 2018]**, held as under*

“11. The rationale behind Order 26 Rule 10 (2) of CPC is clear i.e. the Commissioner is appointed as a representative of the Court and evidence collected by the Commissioner alongwith the report of the Commissioner would be evidence in the suit, subject to any objection raised by any party. If any party has any objection to Commissioner’s report or to the evidence, such party has an option to examine the Commissioner personally in open Court. Such examination is however, neither compulsory nor required especially in cases where the party does not challenge the report.”

9. Mr. Prag Chawla clearly concedes that there may be no requirement to examine the Local Commissioner once the Commissioner is appointed by a Court.

10. Under these circumstances, since the Commissioner had visited the suit property and had submitted the report, it is deemed appropriate that the matter is remanded back to the Trial Court to decide the matter afresh after taking into consideration the report of the Local Commissioner, Mr. Y.D. Nagar dated 5th January, 2000 in Suit No.2198/1999.

13. In view of Order 26 Rule 10(2) CPC

and the judgments discussed above, the settled legal position that emerges is that the report of the Local Commissioner can be treated as evidence in the suit where it is not challenged by any party. Accordingly, in the present case the report of the Local Commissioner and the contents therein can be relied upon by the Court as evidence as the same is unchallenged.

XXXXX

(underlining which is mine emphasized)

42. Further, on the settled position that Local Commissioner's report can be read in evidence, I also reminded of the following judgments:

- (a) Case reported as, "CS (Comm.) No.1203/2018", titled as, "AKTIEBOLAGET VOLVO & Ors. V/s Gyan Singh & Anr." (DOD: 25.04.2023);
- (b) Case reported as, "CS (Comm.) No.478/2019", titled as, "Sandisk LLC V/s Amit & Ors." (DOD: 01.03.2023);
- (c) Case reported as, "CS (Comm.) No.564/2020", titled as, "Imagine Marketing Private Ltd. V/s M/s Green Accessories Through Its Proprietor & Anr." (DOD: 21.03.2022);
- (d) Case reported as, "CS (Comm.) No.675/2019", titled as, "Dhani Loans And Services Limited & Anr. V/s WWW.Dhanifinance.Com & Ors." (DOD: 12.10.2022);
- (e) Case reported as, "CS (Comm.) No.929/2018", titled as, "Sanofi & Anr. V/s Faisal Mushtaq & Ors." (DOD: 16.11.2018);
- (f) Case reported as, "CS (Comm.) No.413/2021", titled as, "LT Foods Limited V/s Saraswati Trading Company" (DOD: 11.11.2022);

(g) Case reported as, “CS (Comm.) No.1219/2018”,
titled as, “**Shri Ved Prakash Garg Trading As M/s
Parul Food Products V/s M/s Gurudev
Industries**” (DOD: 20.12.2018) and;

(h) Case reported as, “CS (OS) No.3466/2012”, titled as,
“**Disney Enterprises Inc. & Anr. V/s Balraj Muttneja
& Ors.**” (DOD: 20.02.2014).

43. In case reported as, “**AKTIEBOLAGET VOLVO**”
(supra), the Hon’ble High Court of Delhi has been pleased to
observe as under:

XXXXX

*10. At the hearing on 19th April, 2023, the
counsels for the defendants on instructions
submitted that the defendants were agreeable to
a decree of permanent injunction being passed
against the defendants. Counsel for the
plaintiffs also pressed for costs and damages of
Rs.10,00,000/- to be apportioned between the
defendants.*

XXXXX

XXXXX

*17. I am of the opinion that no purpose
would be served by directing the plaintiffs to
lead evidence by filing examination-in-chief by
way of affidavit. The defendants have no
reasonable prospect of succeeding in the
present suit. Therefore, in my opinion, this is a
fit case where a Summary Judgment in terms
of Order XIII-A of the CPC, as applicable to
commercial disputes of a specified value, read
with Rule 27 of the IPD Rules, deserves to be
passed in favour of the plaintiffs and against
the defendants.*

XXXXX

44. The Hon' ble High Court, thereafter in paragraphs No.22 and 23 of the aforesaid judgment has been pleased to lay down as under:

XXXXX

22. Clearly, the customers are being misled by the defendants and the entire effort is deliberate and dishonest. This amounts to dilution of the reputation and goodwill of the plaintiffs' marks and causing loss to the plaintiffs in business and reputation. The members of the public are bound to confuse bicycles manufactured and sold by the defendants under the mark VOLVO as emanating from the plaintiffs. The defendants have been making unlawful gains at the expense of the plaintiffs. I am convinced that this is nota case of innocent adoption by the defendants. The Court cannot ignore such flagrant misuse of the plaintiffs' marks by the defendants. Even though the claim of the plaintiffs for damages, based on the recoveries made at the premises of the defendant no.2 and the invoices placed on record, is close to Rs.20,00,000/-, I deem it appropriate to award a sum of Rs.10,00,000/-towards damages and costs to the plaintiffs.

23. Taking into account that the defendants no. 3 and 4 are the manufacturers and suppliers of the aforesaid goods and the defendants no.1and 2 were selling the goods supplied by the defendants no.3 and 4, out of the aforesaid amount, the defendants no.3 and 4 shall be liable to pay Rs.6,50,000/- in favour of the plaintiffs and the defendants no.1 and 2 shall be liable to pay Rs.3,50,000/- in favour of the plaintiffs.

XXXXX

45. (i) After considering the facts and circumstances of the case in totality, it is evident that written statement filed by defendants No.1 and 2 had already been taken off the record and the defence of defendants is also lying struck off vide order dated 18.07.2025.

(ii) It is further worth noticing that even there is no **opposition on the part of defendants to the report of learned Local Commissioner**. Thus, no useful purpose would be served by allowing the proceedings to meander mindlessly in Court and to clog the justice delivery system. Therefore, in my opinion, present is a fit case where the Summary Judgment in terms of Order VIII Rule 10 CPC, as applicable to commercial disputes, deserves to be passed in favour of the plaintiff and against the defendant.

46. Considering the present case on the touchstone of the law laid down in the above referred judgments, I find that no useful purpose would be served, firstly by framing the issue with regard to grant of damages & cost and then asking the plaintiff to lead evidence in the matter. I am further of the considered opinion that there is no defence available on record on part of defendants which debars the plaintiff from claiming decree in the matter, as there is no real prospect of the defendant(s) successfully defending their claim.

47. As regards the damages claimed for by the plaintiff, it is noted that The Delhi High Court Intellectual Property Rights

Division Rules, 2022 provide guidance on the manner in which the damages could be calculated in such cases. Rule 20 of the IPD Rules, 2022 is set out below:

XXXXX

‘20. Damages/Account of profits: A party seeking damages/account of profits, shall give a reasonable estimate of the amounts claimed and the foundational facts/account statements in respect thereof along with any evidence, documentary and/or oral led by the parties to support such a claim. In addition, the Court shall consider the following factors while determining the quantum of damages:

(i) Lost profits suffered by the injured party;

(ii) Profits earned by the infringing party;

(iii) Quantum of income which the injured party may have earned through royalties/license fees, had the use of the subject IPR been duly authorized;

(iv) The duration of the infringement;

(v) Degree of intention/neglect underlying the infringement;

(vi) Conduct of the infringing party to mitigate the damages being incurred by the injured party; In the computation of damages, the Court may take the assistance of an expert as provided for under Rule 31 of these Rules.

XXXXX

48. Further, on the aspect of damages, in case reported as, “2019:DHC:2185”, tilted as, “**Koninlijke Philips and Ors. V/s Amazestore & Ors.**”, the Hon’ble High Court of Delhi has been pleased to lay down certain standards for grant of damages in following terms:

XXXXX

“41. Keeping in view the aforesaid, this Court is of the view that the rule of thumb that

*should be followed while granting damages
can be summarized in a chart as under:—*

#	Degree of malafide conduct	Proportionate award
(i)	First time innocent infringer	Injunction
(ii)	First-time knowing infringer	Injunction + partial costs
(iii)	Repeated knowing infringer which causes minor impact to the plaintiff	Injunction + costs + partial damages
(iv)	Repeated knowing infringer which causes major impact to the plaintiff	Injunction + costs+ compensatory damages
(v)	Infringement which was deliberate and calculated (gangster/scam/mafia) + wilful contempt of Court	Injunction + Costs + Aggravated damages (compensatory + additional damages)

42. It is clarified that the above chart is illustrative and is not to be read as a statutory provision. The Courts are free to deviate from the same for good reason.”

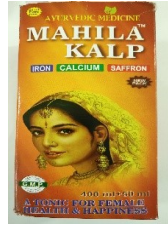
XXXXX

49. In my considered opinion, this is a fit case where it can be held that defendants have no defence and a summary judgment in terms of Order VIII Rule 10 CPC can be passed. I order accordingly.

50. Accordingly, suit of the plaintiff is decreed as under:

(i) A decree of permanent injunction is hereby passed in favour of plaintiff and against defendants No.1 to 3 and defendants No.1 to 3 by himself as also through their individual proprietors/partners, agents, representatives, distributors, assigns, heirs, successors, stockists and all others acting for and on their behalf are hereby restrained

from using, selling, soliciting, exporting, displaying, advertising or by any other mode or manner dealing in or using the impugned trade mark/label/trade dress “**MAHILA KALP**



KALP /” or any other trade mark/label which may be identical with and/or deceptively similar to the plaintiff’s trademark/label/trade dress “**MAHILA KALP/**



/” in relation to their impugned goods and business of all kinds of ayurvedic medicine and medicinal preparation and other allied/cognate/related goods or from doing any other acts or deeds, thereby infringing plaintiff’s registered trademarks and passing off their products as that of plaintiff.

(ii) A decree in the sum of Rs.3,00,000/- (Rupees Three Lakhs Only) on account of damages sustained by the plaintiff due to loss of sale, reputation and goodwill as well as dilution of plaintiff’s trademark is passed in favour of plaintiff and against defendants No.1 to 3 jointly and severally;

(iii) Plaintiff is also held entitled to cost of the proceedings, which will include actual cost incurred by the plaintiff, cost incurred towards execution of Local

Commission as also the counsel's fee which is quantified as
Rs.1,00,000/- (Rupees One Lakh Only).

51. Decree Sheet be prepared accordingly.
52. File be consigned to Record Room after completion of
necessary formalities.

Dictated & Announced in the
open Court on 19.03.2026

(Vinod Yadav)
District Judge (Commercial Court)-02
North-West/Rohini Courts