



\$~SB-31

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

+ CS(COMM) 643/2026

PIYUSH SAPRA & ANR.

.....Plaintiffs

Through: Mr. Samrat S. Kang & Mr. Amarjeet
Kumar, Advocates.

versus

FLIPKART INTERNET PRIVATE LIMITED &
ORS.

.....Defendants

Through: Mr. Nitin Sharma & Mr. Naman
Tandon, Advocates for Defendant
No.1.

CORAM:

HON'BLE MR. JUSTICE TEJAS KARIA

ORDER

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15.06.2026

I.A. 15711/2026 (Exemption from pre-institution Mediation)

1. This is an Application filed by the Plaintiffs seeking exemption from instituting pre-litigation Mediation under Section 12A of the Commercial Courts Act, 2015 (“CC Act”).
2. As the present matter contemplates urgent interim relief, in light of the judgment of the Supreme Court in *Yamini Manohar v. T.K.D. Krithi*, 2023 SCC OnLine SC 1382, exemption from the requirement of pre-institution Mediation is granted.
3. The Application stands disposed of.

I.A. 15712/2026 (Exemption from advance service to the Defendants)

4. This is an Application filed by the Plaintiffs under Section 151 of the Code of Civil Procedure, 1908 (“CPC”), seeking exemption from advance service to Defendant Nos. 2 to 13.

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5. Mr. Samrat S. Kang, learned Counsel for the Plaintiffs, submitted that there is a real and imminent likelihood that the Defendants may take immediate steps to dispose of, conceal or suppress its infringing business operations and digital footprints bearing the deceptively similar Trade Mark.

6. In view of the fact that the Plaintiffs have sought an urgent *ex-parte ad-interim* injunction, the exemption from advance service to Defendant Nos. 2 to 13 is granted.

7. The Application stands disposed of.

I.A. 15709/2026 (Extension of time for filing the Certificate under Section 63(4)(c) of the Bharatiya Sakshya Adhinyam, 2023)

8. The present Application is filed by the Plaintiffs under Section 151 of the CPC seeking exemption from filing the requisite Certificate under Section 63(4)(c) of the Bharatiya Sakshya Adhinyam, 2023.

9. The Plaintiffs shall file the relevant Certificate within a period of four weeks.

10. Accordingly, the Application is allowed in the aforesaid terms.

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11. Let the Plaint be registered as a Suit.

12. Issue Summons. The learned Counsel appearing on behalf of Defendant No. 1 accepts Summons. Let the Summons be served upon Defendant Nos. 2 to 12 through all permissible modes upon filing of the Process Fee.

13. The Summons shall state that the Written Statements shall be filed by Defendants within 30 days from the date of the receipt of Summons. Along with the Written Statements, Defendants shall also file an Affidavit of

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Admission / Denial of the documents of the Plaintiffs, without which the Written Statements shall not be taken on record.

14. Liberty is granted to the Plaintiffs to file Replication(s), if any, within 30 days from the receipt of the Written Statements. Along with the Replication(s) filed by the Plaintiffs, an Affidavit(s) of Admission / Denial of the documents of Defendants be filed by the Plaintiffs, without which the Replication(s) shall not be taken on record.

15. In case any Party is placing reliance on a document, which is not in their power and possession, its details and source shall be mentioned in the list of reliance, which shall also be filed with the pleadings.

16. If any of the Parties wish to seek inspection of any documents, the same shall be sought and given within the prescribed timelines.

17. List before the learned Joint Registrar on 22.07.2026 for completion of service and pleadings.

I.A. 15710/2026 (O-XI R-1(4) of the Code of Civil Procedure, 1908)

18. The present Application has been filed on behalf of the Plaintiffs under Order XI Rule 1(4) of the CPC as applicable to Commercial Suits under the CC Act seeking leave to place on record additional documents.

19. The Plaintiffs are permitted to file additional documents in accordance with the provisions of the CC Act and the Delhi High Court (Original Side) Rules, 2018.

20. Accordingly, the Application stands disposed of.

I.A. 15708/2026 (U/O XXXIX RULES 1 & 2 OF CPC)

21. The Plaintiffs have filed the present Suit for permanent injunction restraining passing off, copyright infringement, unfair competition, rendition of accounts, damages, delivery up and other ancillary reliefs.

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22. Issue Notice. The learned Counsel appearing on behalf of Defendant No. 1 accepts Notice. Let the Notice be served upon Defendant Nos. 2 to 12 through all permissible modes upon filing of the Process Fees.

23. The learned Counsel for the Plaintiffs made the following submissions:

23.1. The Plaintiffs are the prior adopters, prior users and *bona fide* proprietors of the Mark ‘SHAPERMEN’ / ‘SHAPER MEN’ (“**Subject Marks**”) bearing application No. 7078218 in Class 25, filed on 23.06.2025 by Plaintiff No. 1, presently pending registration, under which Plaintiff No. 2 licensed by Plaintiff No. 1 markets and sells men’s shapewear and compression-garment brand since 20.06.2025.

23.2. Since their launch, the Subject Marks have come to be exclusively associated with the Plaintiffs in the minds of the consuming public. The Plaintiffs have achieved cumulative sales of Rs. 3,75,25,679.50/- in respect of products sold under the Subject Marks (“**Plaintiffs’ Products**”) against promotional expenditure of Rs. 1,66,08,114.13/-, and secured listings of the Plaintiffs’ Products across their Direct-to-Consumer (D2C) website www.shapermen.in, Flipkart, Amazon, Myntra and the quick-commerce platform Blinkit.

23.3. Defendant No. 1, is an e-commerce intermediary operating the marketplace www.flipkart.com. The e-commerce platform operated by Defendant No. 1 (“**Platform**”) provides a feature / functionality whereby, when a seller wishes to list a product for sale, the Platform displays existing ‘best-seller’ listings in the



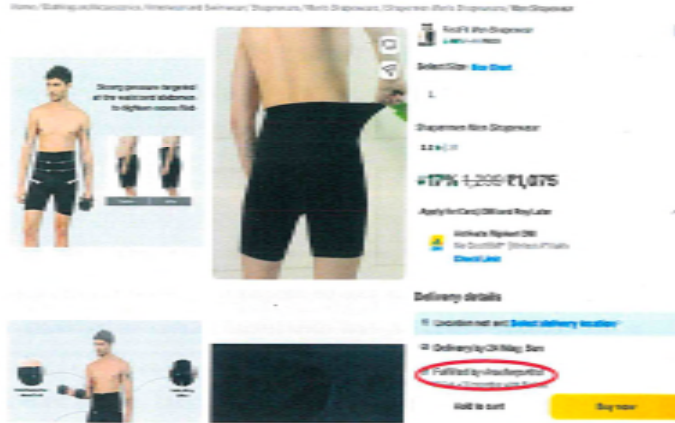
relevant product category and then allows and facilitates the new seller to ‘latch on’ to an existing product listing by adding itself as an additional / alternative seller for the same product. In this process, the images, product descriptions, trade mark / brand name, and the Flipkart Serial Number (“**FSN**”) of the original listing created by the legitimate brand owner are automatically adopted and associated with the new seller’s listing. This feature is commonly known as the ‘Latching On’ feature.

23.4. The ‘Latching On’ feature, while designed to streamline product listings and offer consumers multiple seller options for the same product, has become a tool for unscrupulous sellers to ride piggyback on the goodwill, reputation, and commercial success of legitimate brand owners. By latching on to a popular brand’s product listing, an unauthorized seller is able to appropriate and misuse the brand owner’s trade mark, product images, and product descriptions without authorization, offer their own cheap, counterfeit, and inferior quality products under the garb of the legitimate brand, benefit from the brand owner’s existing customer reviews, ratings, and search engine optimization; and divert sales and customers away from the legitimate brand owner by offering products at heavily discounted and artificially low prices.

23.5. Defendants Nos. 2 to 12 are third-party sellers who have, by exploiting the ‘Latching On’ feature on the Platform, surreptitiously inserted themselves as alternative sellers against the Plaintiffs’ original product listings and authorised Flipkart Serial Number. Defendant No. 13 is a ‘John Doe’ defendant.



- 23.6. Defendant Nos. 2 to 13 are using the Subject Marks on listings of their products on the Platform without any authorization and copying and reproducing the original and copyrighted product photoshoot images of the Plaintiffs' Products without permission, reproducing the Plaintiffs' Products original listing content including text and images in verbatim, misusing the Plaintiffs' FSN to piggyback on the listings of the Plaintiffs' Products and mislead customers into purchasing Defendant Nos. 2 to 13's products ("**Defendants' Products**"); and offering the Defendants' Products at heavily discounted and artificially low prices ranging from Rs. 90/- to Rs. 230/- against the Plaintiffs' MRP of Rs. 1,299/-, indicating that the Defendants' Products are cheap, counterfeit, and inferior quality imitations, and not the Plaintiffs' genuine products.
- 23.7. Screenshots of some of the listings identified in Paragraph No. 38 of the Complaint, evidencing the acts of unauthorised latching on to listings of the Plaintiffs' Products and Plaintiffs' FSN by Defendant Nos. 2 to 13 on the Platform ("**Impugned Listings**"), are reproduced below:



Slipstream Product of Plaintiff listed at Rs.1075 discounted price.

Location not set [Select delivery location](#)

Delivery by 24 May, Sun

Fulfilled by Arsellervpvtltd
3.5 ★ • 11 months with flipkart

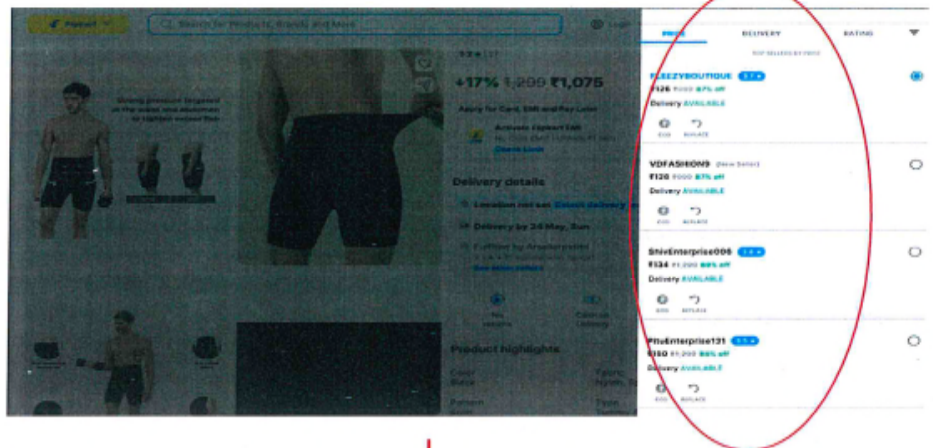
[See other sellers](#)

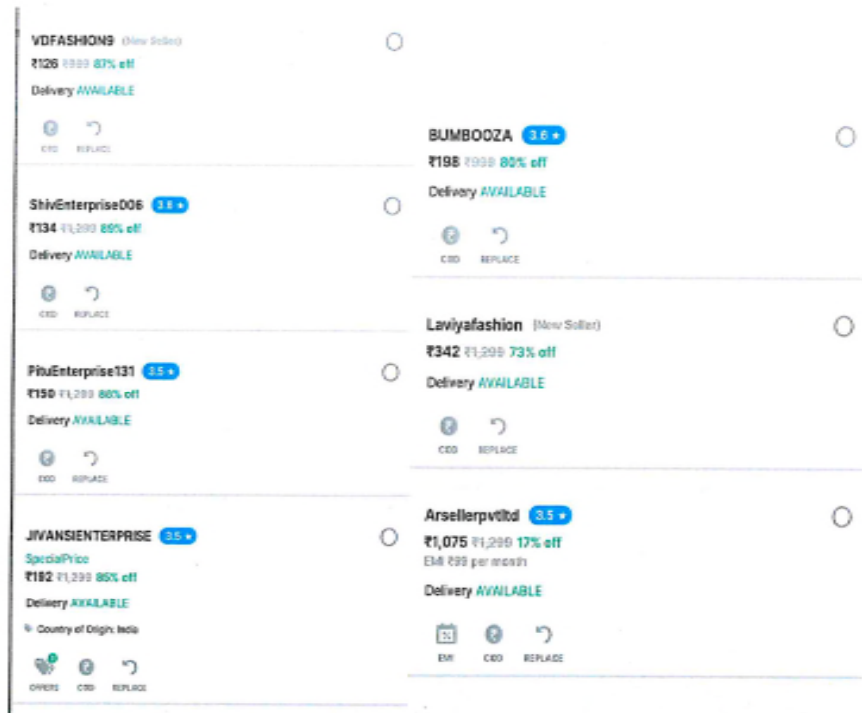
No returns

Cash on Delivery

24x7 Customer support

Options to see other sellers on same page





Details of other sellers

- 23.8. The Impugned Listings are calculated to deceive unwary consumers of average intelligence and imperfect recollection into mistaking the Defendants' Products for the Plaintiffs' Products.
- 23.9. The test-purchases conducted by Plaintiff No. 1 on 07.05.2026 also confirmed that the products delivered against the Impugned Listings carry no 'SHAPERMEN' branding, label, tag or insert whatsoever, the Subject Marks being deployed as bait.
- 23.10. On becoming aware of the Impugned Listings on 22.04.2026 through a customer-influencer of Plaintiff No. 1, the Plaintiffs also addressed three successive written complaints to Defendant No. 1's IP Grievance, Grievance-Officer, Customer-Service and Ethics cells on 23.04.2026, 24.04.2026 and 30.04.2026, calling for delisting of the Impugned Listings and enclosing the Trade Mark



Application Certificate, the Brand Authorisation Letter, the IDs of Impugned Listing and contemporaneous screenshots.

23.11. However, Defendant No. 1 failed and neglected to take any action in response to the said complaints thereby falling foul of its statutory due diligence obligations as an intermediary under Section 79 of the Information Technology Act, 2000 and becoming complicit in the ongoing passing off.

23.12. Therefore, the Plaintiffs have made out a *prima facie* case warranting the grant of an *ad-interim ex-parte* injunction. The balance of convenience lies in favour of the Plaintiffs and against the Defendants, and that the Plaintiffs would suffer grave and irreparable hardship if the prayed injunction is not granted, whereas no prejudice or inconvenience whatsoever shall be caused to the Defendants if such injunction is granted.

24. Having considered the submissions made by the learned Counsel for the Plaintiffs, a *prima facie* case of passing off is made out against Defendant Nos. 2 to 13. The material placed on record indicates that Defendant Nos. 2 to 13 have exploited the 'Latching On' feature on the Platform and inserted themselves as alternative sellers against listings of the Plaintiffs' Products. As a result, the Impugned Listings continue to display the Subject Marks, the photographs and listing content of the Plaintiffs' Products, thereby presenting Defendant Nos. 2 to 13s' offerings of the Defendants' Products under the same commercial presentation as that of the Plaintiffs' Products.

25. In these circumstances, there exists a real likelihood that an unwary consumer of average intelligence and imperfect recollection, encountering



the Impugned Listings, may be led to believe that the Defendants' Products originate from, are affiliated with, or are otherwise connected with the Plaintiffs' Products. The acts of Defendant Nos. 2 to 13, thus, appear *prima facie* calculated to ride upon the goodwill associated with the Subject Marks and is likely to cause confusion as to the origin of the products, thereby amounting to passing off.

26. Accordingly, till the next date of hearing, it is directed that:

- i. Defendants Nos. 2 to 13, their proprietors, partners, directors, agents, servants, representatives, distributors, dealers, licensees, franchisees, and all others acting for and on their behalf, are restrained from using, in any manner whatsoever on the e-commerce platform of Defendant No. 1, on any other e-commerce, quick-commerce or online platform, or in any physical channel of trade, the Subject Marks 'SHAPERMEN' / 'SHAPER MEN' or any other Mark deceptively or confusingly similar thereto, and from using the Plaintiffs' copyrighted product photographs, listing content of the Plaintiffs' Products, and from manufacturing, marketing, selling, distributing, offering for sale, advertising, exporting, importing or in any manner dealing in any products bearing the Subject Marks 'SHAPERMEN' / 'SHAPER MEN' or any deceptively similar mark, and from passing off the Defendant's Products as those of the Plaintiffs or as being in any manner associated, affiliated or connected with the Plaintiffs.
- ii. Defendant No. 1 shall forthwith delist, take down and disable access to the Impugned Listings identified in Paragraph No. 38 of the Plaint, on Defendant No. 1's platform, www.flipkart.com.



- iii. If the Plaintiffs discover any further infringing listings on Defendant No. 1's platform www.flipkart.com resulting from the unauthorised latching on by Defendant Nos. 2 to 13 or any other unidentified seller(s) to the listings of the Plaintiffs' Products, the Plaintiffs shall notify Defendant No. 1 of such infringing listings along with the relevant URLs and listing details. Upon receipt of such notification, Defendant No. 1 shall, within 72 hours, suspend, block, disable access to and delist the notified infringing listings from its platform. Defendant No. 1 shall further, within 7 days of such notification, disclose in a password-protected document or sealed envelope all available details of the concerned sellers, including their names, addresses, contact numbers, e-mail addresses, GST details, and details of sales and payments received by them in relation to such infringing listings from the date the infringing listings were activated on Defendant No. 1's platform www.flipkart.com.
27. Let the Reply to the present Application be filed within four weeks after service of Notice. Rejoinder thereto, if any, be filed before the next date of hearing.
28. The compliance of Order XXXIX Rule 3 of the CPC be done within two weeks.
29. List before the Roster Bench on 25.08.2026.

**TEJAS KARIA, J
(VACATION JUDGE)**

JUNE 15, 2026/HK