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

% *Date of decision: 15th April, 2025*

I.A. 13241/2023
IN
\+ CS(COMM) 487/2023

FDC LIMITED .....Plaintiff
Through: Mr. Prithvi Singh, Advocate.

versus

PALSONS DERMA PRIVATE LIMITED .....Defendant
Through: Mr. Mohan Vidhani, Mr. Saurabh Kumar, Ms. Mokshita Gautam, Ms. Nidhi Pandey and Ms. Urvashi Arora, Advocates.

CORAM:
HON'BLE MR. JUSTICE AMIT BANSAL

AMIT BANSAL, J. (Oral)

1. Since 14th April 2025 was declared a Court holiday, the matters listed on 14th April 2025 are being taken up today, *i.e.* 15th April 2025.

I.A. 13241/2023 *(under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908)*

2. This application has been filed on behalf of the plaintiff under the provisions of Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908 seeking an *ad interim* injunction against the defendant.

3. Summons in the present suit and notice in the application for interim injunction were issued and accepted on behalf the defendant in Court on 21st July 2023.

4. Pleadings in the suit stand completed. Written submissions have been filed on behalf of the parties and submissions were heard on behalf of counsel for the parties on 17th February 2025 and 26th March 2025.

CASE SET UP IN THE PLAINT

5. The case set up by the plaintiff in the plaint is as under:

5.1. The plaintiff, incorporated in 1940, started its operations with marketing vitamins and a range of prescription formulations. The plaintiff has a distinct presence in numerous therapeutic segments including dermatological formulations under various trade marks including the mark KROMALITE.

5.2. The plaintiff trades in over 300 products in India and exports several of them to over 50 countries. The plaintiff's annual revenue in 2022-23 in India was Rs. 1,777.03 crores.

5.3. The plaintiff adopted the mark KROMALITE in December 2014. The plaintiff is the owner and proprietor of the mark KROMALITE and uses the same in relation to skin brightening creams. The plaintiff's products under the mark KROMALITE were commercially launched in April 2016 and have been continuously and openly available in the market since then.

5.4. The mark KROMALITE is a coined term neither having any dictionary meaning nor used in the pharmaceutical industry/ medical literature.

5.5. The plaintiff's extensive distribution network ensures that its products under the mark KROMALITE are widely available across India including at leading e-commerce pharmacy stores such as PharmEasy, 1mg, Apollo Pharmacy, NetMeds, etc. Further, all online references to the term KROMALITE relate to the plaintiff and no one else.

5.6. The plaintiff has done substantial business in relation to its products under the mark KROMALITE. The plaintiff's audited sales figures since the financial year 2016-17 to 2022-23 are given as under:

Financial Year	Net Sales (in Rs.)
2016-17	1,74,64,579/-
2017-18	1,57,91,416/-
2018-19	1,39,40,462/-
2019-20	1,39,92,513/-
2020-21	1,12,03,855/-
2021-22	98,39,585/-
2022-23	1,18,60,165/-

5.7. As a result of the tremendous sales and advertisement and promotional activities undertaken by the plaintiff, the mark KROMALITE is associated by the members of public and trade including dermatologists, chemists, etc. with the plaintiff alone.

5.8. The plaintiff has registered the mark KROMALITE in class 5 on 23rd December 2014 with respect to *'medicinal, pharmaceutical and veterinary preparations'*. The plaintiff has also filed a trade mark application on 13th March 2023 bearing no. 5845334 for the mark KROMALITE in class 3 in relation to *'cosmetic products, toiletries, skincare preparations, body cleaning and beauty care preparations'* with a user claim since 25th April 2016. The aforesaid application is currently pending registration.

5.9. In January 2023, the plaintiff came across the defendant's registrations for the mark CHROMALITE (hereinafter 'impugned mark'), with effect from

26th December 2016 on a *'proposed to be used'* basis, in classes 3 and 5 and its products under the impugned mark on e-commerce platforms.

5.10. The plaintiff issued a cease-and-desist notice to the defendant on 13th January 2023. However, it did not receive any reply from the defendant. The plaintiff has also filed rectification applications against the defendant's registration for the impugned mark on 25th January 2023 before the Trade Marks Registry, Kolkata and the defendant has failed to file its counter statements within the statutory timeline.

5.11. Accordingly, the present suit was instituted by the plaintiff.

CASE SET UP IN THE WRITTEN STATEMENT

6. The case set up by the defendant in the written statement is as under:

6.1. The defendant, incorporated in 2008, is among the first few upcoming pharmaceutical companies in India that have launched their skincare line with absolute dermatologically tested products. The defendant adopted the mark FAIRLITE in 2010 and launched products thereunder in 2014.

6.2. The defendant was unaware about the existence of the plaintiff's products under the mark KROMALITE and independently and honestly adopted the impugned mark in 2016 in relation to skin lightening creams from a GREEK word CHROMA which translates to 'colour' and LITE, shortened for 'lighten'.

6.3. The defendant launched its products under the impugned mark in September 2022 after huge pressure from the practitioners, sellers, dermatologists and consumers as there was a social uproar against the use of the word FAIR in the cosmetics industry. The defendant, on its social media profiles and all sale points, announced that it has switched from the mark FAIRLITE to the impugned mark in relation to the impugned products.

6.4. The defendant has five stock keeping units (SKUs) under the impugned mark which come under tube/ spray pump bottle/ serum bottle formats.

6.5. The defendant, owing to huge expenditure incurred in advertisement and promotion and voluminous sales, has high goodwill and reputation under the impugned mark and need not trade upon the goodwill and reputation of anyone else.

6.6. The defendant did not have any knowledge of the legal notice issued to it by the plaintiff until the present suit as the same was not sent to its official email address and thus the same could not be replied with. The email neolayrpro@palsonsderma.com, on which the plaintiff sent the legal notice to the defendant, is seldom used by the defendant.

SUBMISSIONS ON BEHALF OF THE PLAINTIFF

7. Mr. Prithvi Singh, counsel appearing on behalf of the plaintiff, has made the following submissions:

7.1. The plaintiff adopted the mark KROMALITE in December 2014 and commercially launched its products in April 2016. On the other hand, the defendant admittedly adopted the impugned mark in December 2016 and commenced using the same in September 2022. Therefore, the plaintiff is the prior adopter and user of the mark KROMALITE.

7.2. The defendant has dishonestly adopted the impugned mark, which is phonetically identical with and structurally and visually similar to the plaintiff's mark KROMALITE, and is using the same in relation to identical goods aimed at depigmentation and skin lightening.

7.3. Prior to using the impugned mark and packaging, the defendant was selling the impugned products under the mark FAIRLITE in brown packaging with FAIRLITE written in silver colour.

7.4. The defendant deliberately changed its mark from FAIRLITE to the impugned mark and adopted white and gold/ orange packaging, which is similar to that of the plaintiff. This is liable to cause confusion among the consumers who are likely to believe that the defendant's products under the impugned mark originate from the plaintiff.

7.5. The defendant ought to have known about the plaintiff's products under the mark KROMALITE prior to launching its products under the impugned mark. Therefore, the defendant *mala fidely* adopted the impugned mark to ride over the goodwill and reputation of the plaintiff and its use of the impugned mark in relation to the impugned products amounts to infringement and passing off.

SUBMISSIONS ON BEHALF OF THE DEFENDANT

8. Mr. Mohan Vidhani, counsel appearing on behalf of the defendant, has made the following submissions:

8.1. The impugned mark is distinctive and dissimilar to the plaintiff's mark and the defendant's trade dress/ packaging has a distinct geometrical signature pattern (double helix) in a distinctive and distinguished colour scheme and is different from that of the plaintiff's products. Further, the impugned mark is always used by the defendant along with suffixes such as day cream, NITE cream, face wash, toner and serum.

8.2. The defendant is the registered proprietor of the impugned mark in classes 3 and 5 respectively whereas the plaintiff has no registration for the mark KROMALITE in class 3. Therefore, a suit for infringement does not lie against the defendant.

8.3. The defendant's goods are sold in medical stores by chemists and on prescription. A chemist is a person skilled in the art and can easily distinguish

between the rival marks and hence unwary consumers with imperfect recollection are not likely to get confused or be deceived. Further, the defendant's products under the impugned mark are sold at a higher price therefore it cannot be said to be passing off its goods as those of the plaintiff.

8.4. The plaintiff's mark KROMALITE did not have any goodwill or reputation at the time when the defendant adopted the impugned mark. In fact, the plaintiff's sale of its products under the mark KROMALITE is limited to the city of Aurangabad, Maharashtra. On the other hand, the defendant has high goodwill and reputation under the impugned mark. Resultantly, members of the relevant trade channels and consumers associate the impugned mark with the defendant.

8.5. The plaintiff has indulged in forum shopping as neither the plaintiff nor the defendant resides within the territorial jurisdiction of this Court.

8.6. There are several CHROMA/ CHROMA-formative trade marks in the Register of Trade Marks in classes 3 and 5.

8.7. The plaintiff cannot claim to be unaware about the defendant's products under the impugned mark until January 2023 as the parties have common sale counters. Therefore, the present suit is suffering from delay, latches and acquiescence and is liable to be dismissed.

ANALYSIS AND FINDINGS

9. I have perused the material on record and heard the submissions made on behalf of the parties.

10. The present suit has been filed by the plaintiff seeking reliefs against the defendant for infringement as well as passing off. The defendant is the registered proprietor of the impugned mark in classes 3 and 5 and it is well settled that a suit for infringement does not lie against a registered proprietor.

However, a passing off action, within the meaning and scope of Section 27(2) of the Trade Marks Act, 1999 (hereinafter 'Act'), is maintainable despite registration(s) in favour of the defendant. A reference in this regard may be made to the judgment of the Supreme Court in ***S. Syed Mohideen* v. *P. Sulochana Bai***[1], wherein the Supreme Court has held that the rights of a prior user are superior to the rights of a subsequent user irrespective of trade mark registration(s) in favour of the subsequent user. The relevant observations of the Supreme Court in ***Syed Mohideen*** (supra) are set out below:

> *"**31. Secondly**, there are other additional reasonings as to why the passing off rights are considered to be superior than that of registration rights.*
>
> ***31.1. Traditionally, passing off in common law is considered to be a right for protection of goodwill in the business against misrepresentation caused in the course of trade and for prevention of resultant damage on account of the said misrepresentation. The three ingredients of passing off are goodwill, misrepresentation and damage.** These ingredients are considered to be classical trinity under the law of passing off as per the speech of Lord Oliver laid down in Reckitt & Colman Products Ltd. v. Borden Inc. [Reckitt & Colman Products Ltd. v. Borden Inc., (1990) 1 WLR 491 : (1990) 1 All ER 873 (HL)] which is more popularly known as "Jif Lemon" case wherein Lord Oliver reduced the five guidelines laid out by Lord Diplock in Erven Warnink Besloten Vennootschap v. J. Townend & Sons (Hull) Ltd. [Erven Warnink Besloten Vennootschap v. J. Townend & Sons (Hull) Ltd., 1979 AC 731 at p. 742 : (1979) 3 WLR 68 : (1979) 2 All ER 927 (HL)] ("the Advocaat case") to three elements: (1) goodwill owned by a trader, (2) misrepresentation, and (3) damage to goodwill. Thus, the passing off action is essentially an action in deceit where the common law rule is that no person is entitled to carry on his or her business on pretext that the said business is of that of another. This Court has given its imprimatur to the above principle in Laxmikant V. Patel v. Chetanbhai Shah [Laxmikant V. Patel v. Chetanbhai Shah, (2002) 3 SCC 65].*
>
> ***31.2. The applicability of the said principle can be seen as to which proprietor has generated the goodwill by way of use of the mark/name in the business. The use of the mark/carrying on business under the name confers the rights in favour of the person and generates goodwill in the***

[1] (2016) 2 SCC 683

> ***market.*** *Accordingly, the latter user of the mark/name or in the business cannot misrepresent his business as that of business of the prior right holder.* ***That is the reason why essentially the prior user is considered to be superior than that of any other rights. Consequently, the examination of rights in common law which are based on goodwill, misrepresentation and damage are independent to that of registered rights. The mere fact that both prior user and subsequent user are registered proprietors are irrelevant for the purposes of examining who generated the goodwill first in the market and whether the latter user is causing misrepresentation in the course of trade and damaging the goodwill and reputation of the prior right holder/former user.*** *That is the additional reasoning that the statutory rights must pave the way for common law rights of passing off."*
>
> [Emphasis supplied]

11. The Supreme Court, in the aforesaid decision, affirmed that the remedy of passing off is broader in its ambit than infringement. The factors to be established to make out a case for passing off are three-fold, *i.e.*, goodwill and reputation attained by the plaintiff, misrepresentation by the defendant and the damage caused to the plaintiff's goodwill and reputation by the acts of the defendant. The fact that both the 'prior user' and the 'subsequent user' are registered proprietors of their respective trade marks shall be irrelevant while deciding a passing off suit.

12. The judgement in ***Syed Mohideen*** (supra) was also followed recently by the Division Bench of this court in ***Wipro Enterprises* v. *Himalaya Wellness***[2].

13. The plaintiff has been using the mark KROMALITE in relation to skin brightening creams since April 2016. This is evidenced by the plaintiff's invoices for its products under the mark KROMALITE *(pages 40-64 of the documents filed with the plaint)*. The plaintiff's user claim since April 2016 has also not been denied by the defendant *(refer paragraph no.6 at page 12*

[2] 2024 SCC OnLine Del 6859

of the written statement). On the other hand, the defendant admittedly launched the impugned products under the impugned mark in September 2022 *(refer paragraph no.12 at page 14 of the written statement)*. It is therefore undisputed that the plaintiff is the prior user of the mark KROMALITE in relation to its products.

14. The plaintiff has been continuously using the mark KROMALITE since April 2016 and made its products thereunder widely available across India including at leading e-commerce pharmacy stores. The plaintiff has also given its sales figures, supported by a CA Certificate, for the financial years 2016-17 to 2022-23, which show that the sales figures of the plaintiff under the mark KROMALITE are significant. By virtue of the aforesaid, in my *prima facie* view, the plaintiff has established its goodwill and reputation in the market under the mark KROMALITE.

15. Mr. Vidhani contends that the plaintiff did not have any goodwill or reputation in the mark KROMALITE at the time when the impugned mark was adopted by the defendant. However, it is trite law that goodwill and reputation need to be established prior to the date when the defendant started using the impugned mark and not when the same was adopted by it. By the time the defendant commenced use of the impugned mark in September 2022, the plaintiff's products under the mark KROMALITE had been in the market for over six years.

16. In ***Cadila Health Care* v. *Cadila Pharmaceuticals***[3], the Supreme Court laid down the following tests for determining deceptive similarity between the

[3] (2001) 5 SCC 73

competing marks. The relevant extract from the aforesaid judgment is set out below:

> *"35. Broadly stated, in an action for passing-off on the basis of unregistered trade mark generally for deciding the question of deceptive similarity the following factors are to be considered:*
>
> ***(a) The nature of the marks i.e. whether the marks are word marks or label marks or composite marks i.e. both words and label works.***
>
> ***(b) The degree of resemblance between the marks, phonetically similar and hence similar in idea.***
>
> *(c) The nature of the goods in respect of which they are used as trade marks.*
>
> ***(d) The similarity in the nature, character and performance of the goods of the rival traders.***
>
> ***(e) The class of purchasers who are likely to buy the goods bearing the marks they require, on their education and intelligence and a degree of care they are likely to exercise in purchasing and/or using the goods.***
>
> *(f) The mode of purchasing the goods or placing orders for the goods.*
>
> *(g) Any other surrounding circumstances which may be relevant in the extent of dissimilarity between the competing marks."*
>
> [Emphasis supplied]

17. At this stage, it is relevant to compare the competing marks and the trade dress of the competing products, which are reproduced as under:

Plaintiff's mark/ trade dress	**Defendant's mark/ trade dress**
KROMALITE	CHROMALITE
	

18. Plainly, the impugned mark CHROMALITE used by the defendant is phonetically identical and structurally similar to the plaintiff's mark KROMALITE. Only the letter 'K' has been replaced with the letters 'CH' in the impugned mark which, in fact, does not make any difference in the pronunciation of competing marks.

19. Mr. Vidhani submits that the impugned mark is always used by the defendant along with suffixes such as day cream, NITE cream, face wash, toner and serum. I do not find any merit in the aforesaid submission as these suffixes are descriptive in nature and would not render the impugned mark distinct and dissimilar to the plaintiff's mark KROMALITE. Pertinently, the defendant has also obtained registrations for the impugned mark without any of the aforesaid suffixes.

20. In view of the phonetic identity and structural similarity between the competing marks KROMALITE and CHROMALITE, the added geometrical element of double helix in the packaging of the impugned products is also irrelevant and does not distinguish the competing goods. Reference in this regard may be made to the judgment of the Supreme Court in ***Kaviraj Pandit Durga Dutt Sharma*** **v.** ***Navaratna Pharmaceutical Laboratories***[4], which was followed by me in ***Mayo Foundation for Medical Education & Research*** **v.** ***Bodhisatva Charitable Trust***[5] and ***Himalaya Wellness*** **v.** ***Wipro Enterprises***[6].

21. Both the plaintiff and the defendant use their respective marks in relation to cosmetic products. Even though the impugned products of the defendant include product SKUs such as facewash, toner and serums under

[4] 1964 SCC OnLine SC 14
[5] 2023 SCC OnLine Del 3241
[6] 2023 SCC Online Del 4035

tube/ spray pump bottle/ serum bottle formats as opposed to the plaintiff whose only product SKU comes in a tube format, all the competing products are targeted at skin brightening and depigmentation. Therefore, the competing products are identical and overlapping with each other. It is also admitted on behalf of the defendant that the parties have common sale counters making the trade channels of the parties also identical/ overlapping *(refer paragraph no.19 at page 23 of the written statement)*.

22. Mr. Vidhani further contends that the impugned products are sold only on prescription and by chemists, who can easily distinguish between the rival marks. Therefore, there is no likelihood of confusion among the average consumers having imperfect recollection.

23. I am unable to accept this submission made on behalf of the defendant as the impugned products are freely available on e-commerce platforms where a purchase can be made for the impugned products by any person without a prescription. This is evident from the sample purchase made by the plaintiff's representative for the impugned product on Flipkart.

24. Counsel for the defendant contends that the defendant was previously using the mark FAIRLITE and switched therefrom to the impugned mark. He further submits that the defendant's adoption of the impugned mark is *bona fide* as the defendant was not aware of the plaintiff's products under the mark KROMALITE and therefore an injunction against the defendant should not be granted.

25. It cannot be disputed that the defendant was reckless in launching the impugned products under the impugned mark as it did not carry out any due diligence prior to its adoption. The defendant was expected to search for conflicting marks on the Register of Trade Marks and should have done a

market survey before adopting and commencing use of the impugned mark. A simple due diligence exercise conducted by the defendant would have informed it about the existence of the plaintiff's products under the mark KROMALITE. Reference in this regard may be made to my judgement in ***Himalaya Wellness*** (supra), a case involving identical trade marks in respect of cosmetic products, wherein, under similar circumstances, I had made the following observations:

> *"66. It is intriguing for me as to why a reputed company such as the defendant company would launch its product, also pertaining to female reproductive hygiene, almost 22 years later, using the identical trade mark as that of the plaintiffs.* ***A simple due diligence exercise conducted on behalf of the defendant would have informed the defendant about the existence of the product of the plaintiffs with an identical trade mark. A google search or a Trade Mark Registry search across various classes would have brought to light the registered mark of the plaintiffs****.*
>
> *67. The reply of the defendant only indicates that the defendant conducted a search only in Class 3 and found that there was no other registered pending application in respect of mark "EVECARE".* ***It is not the case of the defendant that they conducted a trade the mark search and came across the registration of the plaintiffs under Class 5 and yet decided to adopt the identical trade mark in respect of their product, which was under Class 3****. Nor is it the case that took a legal opinion before adopting an identical trade mark.* ***The defendant company is not a small time operator. It is a company with ample resources and surely, resources.****"*
>
> [Emphasis supplied]

26. The judgement in ***Himalaya Wellness*** (supra) has been upheld by the Division Bench[7].

27. In any event, the defence of innocent adoption is an irrelevant consideration. Reference in this regard may be made to the decision in a passing off action in ***Laxmikant V. Patel*** **v.** ***Chetanbhai Shah***[8], wherein the Supreme Court made the following observations:

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[7] Wipro Enterprises v. Himalaya Wellness, 2024 SCC OnLine Del 6859
[8] (2002) 3 SCC 65

"8. ...An action for passing-off will then lie wherever the defendant company's name, or its intended name, is calculated to deceive, and so to divert business from the plaintiff, or to occasion a confusion between the two businesses. If this is not made out there is no case. The ground is not to be limited to the date of the proceedings; the court will have regard to the way in which the business may be carried on in the future, and to its not being carried on precisely as carried on at the date of the proceedings. ***Where there is probability of confusion in business, an injunction will be granted even though the defendants adopted the name innocently.***

*** ***

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10. A person may sell his goods or deliver his services such as in case of a profession under a trading name or style. With the lapse of time such business or services associated with a person acquire a reputation or goodwill which becomes a property which is protected by Courts. A competitor initiating sale of goods or services in the same name or by initiating that name results in injury to the business of one who has the property in that name. The law does not permit any one to carry on his business in such a way as would persuade the customers or clients in believing that the goods or services belonging to someone else are his or are associated therewith. ***It does not matter whether the latter person does so fraudulently or otherwise. The reasons are two. Firstly, honesty and fair play are, and ought to be, the basic policies in the world of business. Secondly, when a person adopts or intends to adopt a name in connection with his business or services which already belongs to someone else it results in confusion and has propensity of diverting the customers and clients of someone else to himself and thereby resulting in injury.****"*

[Emphasis supplied]

28. On behalf of the defendant, reliance has also been placed on various CHROMA/ CHROMA-formative marks in classes 3 and 5 pre-existing in the Register of Trade Marks. However, as rightly pointed out by counsel for the plaintiff, the defendant has failed to show any commercial use of these marks, especially in relation to identical/ similar goods, or that these marks have the same degree of similarity as the impugned mark. The plaintiff's mark KROMALITE is a coined term and deserves the highest degree of protection.

29. To conclude, in my *prima facie* view, the competing marks are phonetically identical and structurally similar and are used by the parties in

relation to identical goods having identical and overlapping trade channels, which is likely to cause confusion and deception among the consumers who are ordinary persons of average intelligence and imperfect recollection.

30. Factors such as the defendant's alleged goodwill and reputation under the impugned mark and higher pricing of the impugned products under the impugned mark as compared to those of the plaintiff under the mark KROMALITE are irrelevant in deciding the present application. Nevertheless, the defendant has failed to establish its alleged turnover under the impugned mark for the period between October 2022 and June 2023 by way of any documentary evidence. The CA Certificate filed on behalf of the defendant *vide* index dated 24th March 2025, which is yet to be taken on record, is irrelevant as the same is for the period subsequent to filing of the present suit.

31. Counsel for the defendant places reliance on the judgment passed by me in ***Vasundhra Jewellers* v. *Vasundhara Fashion Jewelry***[9]. In the said case, the defendant commenced using the impugned mark, which was her own name, in 2001 and the plaintiff therein could not establish its goodwill and reputation in the said year. Therefore, the aforesaid judgment does not apply to the facts and circumstances of the present case.

32. Reliance on behalf of the defendant has also been placed on ***FDC* v. *Faraway Foods***[10] wherein the competing marks were 'MUMMUM' and 'The MUMUM Co … very very very real'. A Coordinate Bench of this Court, in the aforesaid case, denied granting an interim injunction in favour of the plaintiff on the grounds that the competing marks are not deceptively similar

[9] 2023 SCC OnLine Del 4185
[10] 2021 SCC OnLine Del 1539

and that the target customers of the rival parties are different. These observations are not applicable to the facts and circumstances of the present suit, therefore, the aforesaid judgment relied upon by counsel for the defendant is also distinguishable.

33. Counsel for the defendant contends that the plaintiff does not have any goodwill or reputation under the mark KROMALITE. He places reliance on ***Ajanta Pharma* v. *Zuventus Healthcare***[11] in support of his contention wherein an interim injunction in favour of the plaintiff was denied. However, in the aforesaid case, the plaintiff was not doing any business in India and thus had no corresponding goodwill in India, which is not the case in the present suit.

34. Counsel for the defendant has also raised objections that the plaintiff has engaged in forum shopping and is guilty of delay and latches in instituting the present suit.

35. In my opinion, both these objections raised on behalf of the defendant are devoid of merits. The plaintiff's representative made a purchase for the impugned product under the impugned mark from Flipkart and the impugned product was delivered at the address of the plaintiff's representative in Delhi. Further, the impugned products continue to be listed on e-commerce platforms and are available for sale all across the country. Therefore, on a *prima facie* view, this court has the territorial jurisdiction to try and adjudicate the present suit.

36. The defendant admittedly launched its products under the impugned mark in September 2022. Soon thereafter, *i.e.* in January 2023, the plaintiff,

[11] 2020 SCC OnLine Del 2478

upon having knowledge about the impugned products under the impugned mark, issued a cease-and-desist notice to the defendant and filed rectification applications against the defendant's registrations for the impugned mark in classes 3 and 5. However, neither did the defendant reply to the aforesaid notice nor a counter statement was filed by it within the prescribed time. Thereafter, the present suit was instituted in July 2023. Therefore, the plaintiff also cannot be held guilty of delay and latches in instituting the present suit.

37. In view of the discussion above, a *prima facie* case of passing off is made out on behalf of the plaintiff in its favour. The balance of convenience is also in favour of the plaintiff and against the defendant inasmuch as the plaintiff has been using the mark KROMALITE since April 2016 whereas the defendant has admittedly launched its products under the impugned mark only in September 2022. The plaintiff shall continue to suffer irreparable loss, harm and injury if the defendant is permitted to carry on its business under the impugned mark.

38. Accordingly, I.A. 13241/2023 filed on behalf of the plaintiff is allowed and the defendant and all others acting in active concert with it are restrained from manufacturing, marketing, offering for sale, selling, advertising, directly or indirectly dealing in the impugned products or any other similar product under the mark CHROMALITE or any other mark identical with or deceptively similar to the plaintiff's mark KROMALITE in any manner whatsoever, till the final adjudication of the suit.

39. Needless to say, any observations made herein are only for the purpose of adjudication of the aforesaid application and would have no bearing on the final outcome of the present suit.

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40. List before the Joint Registrar on 16th May 2025 for admission and denial of documents.

AMIT BANSAL, J

APRIL 15, 2025
Vivek/-