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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(COMM) 768/2024 & I.A. Nos. 38737/2024, 38738/2024 &
38739/2024

**GUJARAT CO-OPERATIVE MILK MARKETING FEDERATION
LTD & ANR.Plaintiffs**

Through: Mr. Abhishek Singh with Mr. Elvin
Joshy, Mr. J. Amal Anand,
Ms. Alisha Sharma and Mr. Shashwat
Tyagi, Advocates.
(M): 9910291290

versus

TERRE PRIMITIVE & ORS.Defendants
Through: None.

**CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA**

ORDER
09.09.2024

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I.A. 38739/2024 (Exemption from filing certified copies of documents)

1. The present is an application under Section 151 of the Code of Civil Procedure, 1908 ("CPC"), on behalf of the plaintiffs, seeking exemption from filing dim/illegible/certified/true typed copies of documents.
2. Exemption is granted, subject to all just exceptions.
3. Applicant shall file legible, clear, and translated copies of the documents, on which the plaintiffs may seek to place reliance, before the next date of hearing.
4. Accordingly, the present application is disposed of.



I.A. 38737/2024 (Exemption from instituting Pre-Institution Mediation)

5. The present is an application under Section 12A of the Commercial Courts Act, 2015, read with Section 151 of CPC, seeking exemption from undergoing Pre-Institution Mediation.

6. Having regard to the facts of the present case and in the light of the judgment of Supreme Court in the case of *Yamini Manohar Versus T.K.D. Keerthi, 2023 SCC OnLine SC 1382*, and Division Bench of this Court in *Chandra Kishore Chaurasia Versus RA Perfumery Works Private Ltd., 2022 SCC OnLine Del 3529*, exemption from attempting Pre-Institution Mediation, is granted.

7. Accordingly, the application stands disposed of.

CS(COMM) 768/2024

8. Learned counsel appearing for the plaintiffs has handed over a document showing proof of service to all the defendants, including defendant no. 1.

9. None appears for the defendants despite advance service.

10. Let the plaint be registered as suit.

11. Upon filing of the process fee, issue summons to the defendants by all permissible modes. Summons shall state that the written statement be filed by the defendants within thirty days from the date of receipt of summons. Along with the written statement, the defendants shall also file affidavit of admission/denial of the plaintiffs' documents, without which, the written statement shall not be taken on record.

12. Liberty is given to the plaintiffs to file replication within thirty days from the date of receipt of the written statement. Further, along with the replication, if any, filed by the plaintiffs, an affidavit of admission/denial of



documents of the defendants, be filed by the plaintiffs, without which, the replication shall not be taken on record. If any of the parties wish to seek inspection of the documents, the same shall be sought and given within the timelines.

13. List before the Joint Registrar (Judicial) for marking of exhibits, on 23rd October, 2024.

14. List before the Court on 07th January, 2025.

I.A. No. 38738/2024 (Application under Order XXXIX Rules 1 and 2 CPC)

15. The present suit has been filed for permanent and mandatory injunction, passing off, damages and rendition of accounts.

16. Learned counsel appearing for the plaintiffs submits that plaintiff no.2 being the registered proprietor of 'AMUL' trademarks, has licensed to plaintiff no.1, vide the Trademark License Agreement dated 15th January, 2001, the right to use the 'AMUL' trade marks for milk and milk products and other foods and beverages. Accordingly, plaintiff no. 1 has been marketing various products including milk and milk products using the well-known trade mark 'AMUL' throughout the country and abroad.

17. It is submitted that the instant suit is primarily directed against defendant no.1, a company incorporated under the laws of Italy and is engaged in the business of selling, marketing, promoting and advertising its cookies and chocolate covered biscuits under the impugned marks



/ 'Amuleti', which marks are identical and deceptively similar to the plaintiffs' well-known mark 'Amul'. As per the information available on the website of defendant no.1 at URL:



<https://www.terreprimitive.it> , the said defendant is using impugned marks on its various products.

18. It is submitted that defendant no. 1's products bearing the impugned marks are being sold, advertised, marketed and promoted through the website of defendant no.1 available at URL: <https://www.terreprimitive.it> and also through social media platforms of defendant no.3, which websites and online platforms are interactive websites and are accessible within the jurisdiction of this Court. In this manner, the defendant no.1 is targeting and promoting its products to the consumers who reside within the jurisdiction of this Court.

19. It is further submitted that a side by side comparison of the defendant no. 1's impugned marks and the plaintiffs' mark 'Amul' shows that the said marks are structurally and visually similar and is, therefore, bound to cause confusion in the minds of the unwary and gullible public. The defendant no. 1's impugned mark 'Amuleti' wholly encompasses and retains the plaintiffs' mark 'Amul' and has added the suffix 'eti' to the said impugned marks. Further, the aspect of confusion being caused to a consumer of average intelligence and imperfect recollection is fortified by the fact that plaintiffs have numerous registrations in Class 30 in various permutation and combinations, are also involved in the business of marketing, promoting, selling and advertising various confectionary items, including, but not limited to chocolates. A comparison of the two marks as given in the plaint, is reproduced hereunder:



PLAINTIFFS' TRADEMARK	AMUL	DEFENDANT NO.1'S MARK 'AMULETI'
LETTER BY LETTER COMPARISON OF THE MARKS		

20. It is submitted that defendant no. 1 has adopted a similar font as that of the plaintiffs' mark for its impugned marks. Needless to say, the same is done to resemble the plaintiffs' well-known mark as closely as possible. It is submitted that the blatant imitation and adoption of the plaintiffs' mark by defendant no. 1 cannot be ruled out as a mere coincidence. The plaintiffs have been using the trademark 'AMUL' for its products since the year 1958. As per the WhoIs information available online, it is learnt that the defendant no.1's website <https://www.terreprimitive.it/> was created in January 2020. It is, thus, verily believed that the defendant no. 1 has been using the said mark only since July, 2020.



21. It is submitted that plaintiffs' mark 'AMUL' is India's largest food brand and is also an indigenous brand which has been recognized as a well-known trademark by the Ld. Intellectual Property Appellate Board ("IPAB") vide its letter bearing No.CG/TMR/Well-known trademarks/2015/147 dated 29th May, 2015, and is listed as a well-known trademark in the list maintained by the Trade Marks Registry, India.

22. It is further submitted that the actions of defendant no. 1 make it unambiguously clear and evident that the present case is a brazen case of 'Passing Off', wherein, defendant no. 1 is misleading the general public to believe that the goods being sold by it emanates from the plaintiffs or is associated with the plaintiffs.

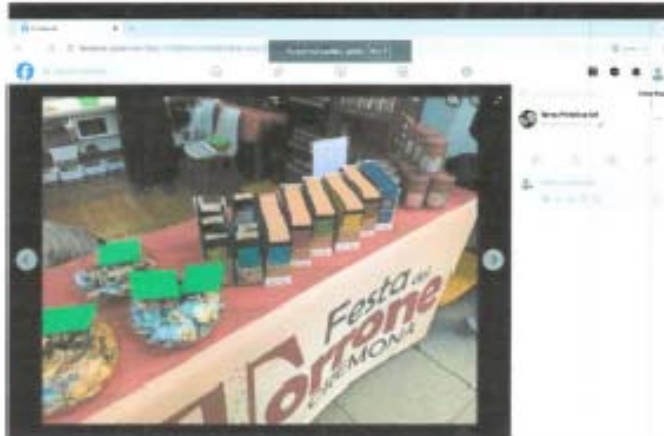
23. It is submitted that in addition to its own website, i.e., www.terreprimitive.it, the defendant no. 1 is promoting, marketing, and selling its products under the impugned marks on its accounts maintained with the social media platforms 'Facebook' and 'Instagram', which platforms are owned and operated by defendant no. 3. Defendant no. 3 has, thus, also been arrayed as a necessary and proper party to the present proceedings by the plaintiff. The screenshots of the posts published by defendant no. 1 on the social media platform 'Facebook' and 'Instagram', as given in the plaint, are reproduced as under:-



I. Posts/Content published by Defendant No.1 on the social media platform 'Facebook'

a. URL:

<https://www.facebook.com/photo?fbid=122109044342104836&set=pcb.122109044444104836>



b. <https://www.facebook.com/photo?fbid=122109044258104836&set=pcb.122109044444104836>

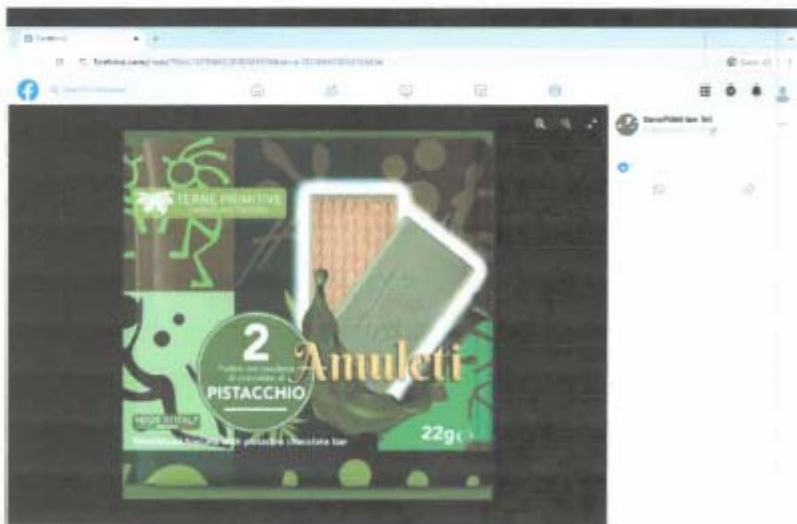


c. <https://www.facebook.com/photo?fbid=122109044300104836&set=pcb.122109044444104836>





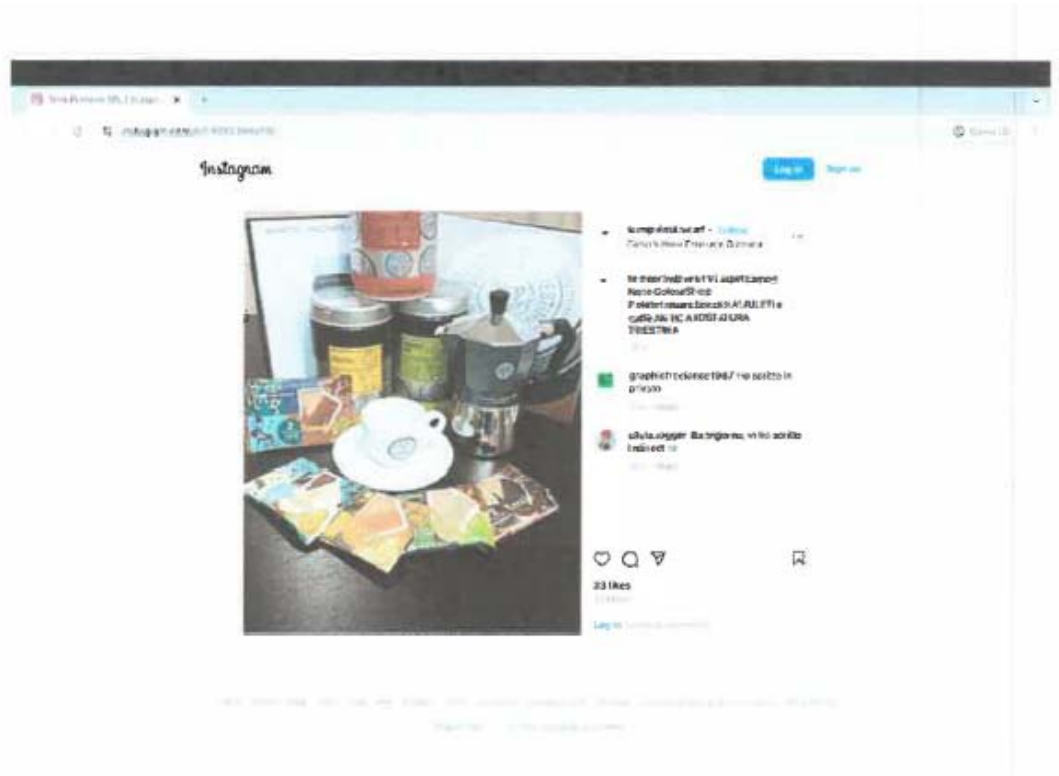
- d. <https://www.facebook.com/photo/?fbid=122108423030104836&set=a.122108423054104836>



II. Posts/Content published by Defendant No.1 on the social media platform 'Instagram'

- a. URL: <https://www.instagram.com/p/C42Xz3wsyF0/>

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24. It is further submitted that plaintiff no. 2 has applied for and obtained registration of the trademark 'AMUL' and its variants in several classes including Classes 5, 29, 30, 31, 32, and 35 in India. The plaintiff no.2 is the proprietor of several trademarks containing the word 'AMUL' registered/applied for registration under the Trade Marks Act, 1999. The oldest registrations of the trademark 'AMUL' in Class 29 is under Application No. 185698 since 01st July, 1958 (published under Trade Mark Journal no. 260) and in Class 30 under no. 286348 since 01st March, 1973 (published in the Trade Mark Journal no. 599). The plaintiff no. 2 also has registered its prior used and reputed trademark 'AMUL', and its variants in various languages such as Gujarati, Hindi and English. The trademark 'AMUL' has been always represented and used by the plaintiffs since the year 1955 in a stylized logo, specially designed by them and said logo has



been registered under the Copyrights Act, 1957 under No. A- 2304/67. Some of the trademark registrations of the plaintiffs’ ‘AMUL’ trademarks, as given in the plaint, is reproduced as under:-

REGISTRATION NO. / APPLICATION NO.	CLASS	DATE OF APPLICATION	MARK	Trade Mark Type	STATUS
185698	29	July 01, 1958		Device	Registered
286348	30	March 1, 1973		Device	Registered
238404	29	October 24, 1996		Device	Registered
240394	29	February 06, 1967		Device	Registered
266844	29	September 10, 1970	AMUL	Device	Registered
282926	29	September 19, 1972		Device	Registered
464144	29	December 5, 1986		Device	Registered
464897	29	December 22, 1986		Device	Registered
469667	29	March 24, 1987		Device	Registered
517960	29	October 06, 1989		Device	Registered
818075	31	July 20, 1998		Device	Registered
521779	29	December 26, 1989		Word	Registered
525992	29	March 12, 1990		Word	Registered
525993	29	March 12, 1990		Word	Registered
525994	29	March 12, 1990		Word	Registered

25. It is submitted that plaintiff no. 1 has also been recognized as Asia’s largest dairy. Further the plaintiff no. 1 has been ranked 8th amongst the top dairy organizations of the world according to the survey conducted in the year 2020 by the International Farm Comparison Network (IFCN), a leading global dairy knowledge organization. The plaintiff no. 1 has been ranked 13th in a survey of Global Dairy Companies conducted in the year 2022 by Rabobank, a multinational banking and financial services company. Further, the plaintiffs’ brand ‘AMUL’ has been recognized as the strongest dairy brand in the world in a survey conducted in the year 2022 by Brand Finance, the world's leading brand valuation consultancy. The products under the registered, well-known, reputed, and prior used trademarks ‘AMUL’ and other variants have become very popular and have acquired excellent reputation throughout the territory of India, Asia and the world. The sales



turnover of the products under plaintiffs' trademarks 'AMUL' and other variants have been in excess of ₹ 2,000 crores for every year, since 2001 and it has crossed ₹ 55,000 crores during the last financial year, which clearly speaks volumes about the vast reputation of the registered, well-known, reputed, and prior used trademarks 'AMUL' and other variants. The subject trademark along with the other variants have become such well-known brands, that the plaintiff no. 1 is best known as 'AMUL DAIRY/AMUL UNION' and the road near the office of the plaintiff no. 1 is known as 'AMUL DAIRY ROAD'.

26. It is submitted that besides India, the plaintiffs' products are present in several overseas markets under its trademark 'AMUL'. The reputation and goodwill of trademarks and companies are no longer territorial or confined to the national borders of any country. The plaintiffs' trademark 'AMUL' has transcended the physical boundaries of India. The advent of technology and the wide usage/coverage of the Internet, details of the plaintiffs' products under the trademark 'AMUL' and their launch are well within the knowledge of the general public in different corners of the world and across different jurisdictions abroad. As a result, thereof, the goodwill acquired by the plaintiff no. 1 as a renowned dairy organization is not necessarily limited to the country where the goods are freely available. The plaintiffs' products bearing the trademark 'AMUL' and its variants have acquired trans-border reputation.

27. It is further submitted that sometime in August 2024, the plaintiffs for the first time learnt about defendant no. 1 mischievously marketing, promoting and selling its confectionary products under impugned marks



Amuleti

/'Amuleti', which marks are identical and deceptively similar to the well-known and registered trademark 'Amul' of the plaintiffs.

28. It is submitted that defendant no. 1 herein is malafidely and dishonestly using an identical and deceptively similar trademark as that of the well-known and immensely popular trademark of the plaintiffs' i.e., 'AMUL' so that any ordinary consumer would be misled to believe that the defendant no.1's products are that of the plaintiffs or associated with or emanating from the plaintiffs. The obvious motive of the defendant no. 1 is to free ride on the exemplary goodwill and reputation of the plaintiffs.

29. It is further submitted that plaintiffs being the prior user and having exclusively and extensively used the well-known trademark 'AMUL' and having gained immense popularity and unbridled reputation on account of the use of the said Trademarks, are also entitled to protection against 'Passing Off'.

30. It is submitted that from the actions of defendant no.1 it is unambiguously evident that defendant no. 1 is passing off the plaintiffs' trademarks and goods by misrepresenting to the consumers that their products marketed and sold under impugned

Amuleti

marks /'Amuleti', originate from the plaintiffs. The said actions are causing continuous injury and damage to the plaintiffs and the goodwill of its trademarks. For the said acts of misrepresentation of



the source of origin of the products and the likely confusion among the consumers, the defendant no. 1 is liable for passing off.

31. It is further submitted that defendant no.1 has dishonestly adopted the plaintiffs' reputed and registered trademark with the intent of unduly and wrongfully benefitting from the trademark use and the goodwill associated with it, and their actions amount to misappropriation and undue enrichment. The deceitful use of the plaintiffs' trademarks by defendant no. 1 to mislead the consumers about their source of origin with a dishonest and malafide intent, amounts to intentional false representation.

32. It is further submitted that any person visiting the website/domain of defendant no. 1 <https://www.terreprimitive.it/> will be misled to believe that the goods being sold by defendant no. 1 under the impugned marks emanate from or are associated with the plaintiffs. The likelihood of consumers being confused/deceived by the use of impugned marks

‘Amuleti’, by defendant no. 1 is high, given the well-entrenched position of the plaintiffs' mark ‘Amul’ in the milk and milk products market, including confectionary items such as chocolates. Further, the use of an identical and deceptively similar trademark by the defendant no. 1 leads to dilution and tarnishing of the plaintiffs' mark as the plaintiffs' have no control over the quality of products offered by defendant no. 1. It is, thus, incumbent upon this Court to pass necessary injunctive orders restraining the defendant no. 1 from using the impugned marks



Amuleti

‘Amuleti’, or any other mark which is identical or deceptively similar to the plaintiffs’ well-known mark ‘Amul’.

33. It is submitted that defendant no. 1’s use of plaintiffs’ reputed, registered and well-known trademarks creates confusion and deception in the minds of the purchasing consumers that the defendant no. 1 has a direct nexus or affiliation with the plaintiffs and that the business of the defendant no. 1 has been endorsed by or is associated with the plaintiffs. This dilution and passing off of the plaintiffs’ trademarks is causing grave injury to the trademark rights of the plaintiffs and resulting in immense loss and damage to the plaintiffs business. Further, all profits earned by the defendant no.1 in pursuance of their illegal activities lead to unjust enrichment of the defendant no.1 at the expense of the plaintiffs.

34. In the above said circumstances, the plaintiffs have demonstrated a *prima facie* case for grant of injunction and, in case, no *ex parte ad interim* injunction is granted, the plaintiffs will suffer an irreparable loss. Further balance of convenience also lies in favour of the plaintiffs, and against the defendants.

35. Accordingly, till the next date of hearing, the following directions are passed:-

(i) The defendant no. 1, their principal officers, family members, servants, agents, dealer, distributors, franchisees and anyone acting for and, on their behalf, are restrained from selling, marketing, advertising, promoting or in any other manner using or dealing with the impugned



Amuleti

marks **Amuleti** /'Amuleti', or any other marks or logos which are identical or deceptively similar to the plaintiffs' marks or logos, in the physical market, or social media or e-commerce platforms or any other online platforms.

(ii) Defendant no. 1 and its principal officers, family members, servants, agents, dealer, distributors, franchisees and anyone acting for and, on their behalf, are further restrained from selling, marketing, advertising, promoting or in any other manner using or dealing with the plaintiffs' 'AMUL' trademarks or any logos or any word, which is identical or deceptively similar to the plaintiffs registered trademarks.

(iii) Defendant no. 1 is directed to take down the listing of products

Amuleti

bearing the impugned marks **Amuleti** /'Amuleti', available at URL : <https://www.terreprimitive.it/cosa-facciamo/> .

(iv) Defendant no. 1 is directed to surrender to the plaintiffs, for destruction, all goods, advertisement materials, packing materials, cartons, wrappers, labels, which bear the impugned marks

Amuleti

Amuleti /'Amuleti', or any mark which is identical/deceptively similar to the plaintiffs' 'AMUL' trademarks.

(v) Defendant no. 3 is directed to block/suspend/delete the following URLs pertaining to its social media platform 'Facebook':-

- a. <https://www.facebook.com/photo?fbid=122109044342104836&set=pcb.122109044444104836>



- b. <https://www.facebook.com/photo?fbid=122109044258104836&set=pcb.122109044444104836>
- c. <https://www.facebook.com/photo?fbid=122109044300104836&set=pcb.122109044444104836>
- d. <https://www.facebook.com/photo?fbid=122108423030104836&set=a.122108423054104836>

(vi) Defendant no. 3 is directed to block/suspend/delete the following URL pertaining to its social media platform 'Instagram':
<https://www.instagram.com/p/C42Xz3wsyF0/>

36. Issue notice to the defendants by all permissible modes, upon filing of process fees, returnable on the next date of hearing.

37. Reply be filed within a period of four weeks, from the date of service.

38. Rejoinder thereto, if any, be filed within a period of two weeks, thereafter.

39. Compliance of Order XXXIX Rule 3 CPC, be done, within a period of one week, from today.

40. List before the Court on 07th January, 2025.

MINI PUSHKARNA, J

SEPTEMBER 9, 2024

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