



\$~44

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

+ **CS(COMM) 988/2025**

COLGATE PALMOLIVE CO

.....Plaintiff

Through: Ms. Swathi Sukumar, Senior Advocate with Mr. Rishabh Gupta, Mr. Arpit Singh and Ms. Shruti Manchanda, Advocates.

Versus

JOHN DOE & ORS.

.....Defendants

Through:

**CORAM:
HON'BLE MR. JUSTICE TEJAS KARIA**

% **ORDER**
17.09.2025

I.A. No. 23049/2025 (Exemption from pre-institution Mediation)

1. This is an Application filed by the Plaintiff 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. 23047/2025 (Exemption from filing certified and clear of documents)

4. Exemption is allowed, subject to all just exceptions.

5. The Application stands disposed of.

I.A. No. 23051/2025 (Extension of time to file Court Fees)

6. The present Application has been filed by the Plaintiff under Section 149 read with Section 151 of the Code of Civil Procedure, 1908 (“CPC”), seeking exemption from payment of Court Fees at the time of the filing of the Suit.

7. Considering the submissions made in the present Application, time of two weeks is granted to deposit the Court Fees.

8. The Application stands disposed of.

I.A. No. 23050/2025 (for exemption from giving written notice to the government authorities, i.e., D-3 and D-4)

9. This is an Application filed by the Plaintiff under Section 80 read with Section 151 of the CPC seeking exemption from serving prior notice under Section 80 of the CPC to Defendant No. 3, i.e., the Office of Custom House, Mundra Port and SEZ and Defendant No. 4, i.e., the Office of the Central Board of Indirect Taxes & Customs, Department of Revenue.

10. For the reasons stated in the Application, the same is allowed and exemption is granted, subject to all just exceptions.

11. The Application stands disposed of.



I.A. No. 23048/2025 (Exemption from advance service to the Defendant Nos. 1 & 2)

12. This is an Application filed by the Plaintiff under Section 151 of the CPC, seeking exemption from advance service to Defendant Nos. 1 and 2.

13. Ms. Swathi Sukumar, learned Senior Counsel for the Plaintiff, submitted that there is a real and imminent likelihood that Defendant Nos. 1 and 2 may take immediate steps to dispose of, conceal or suppress its infringing business operations and digital footprints.

14. In view of the above, the exemption from advance service to Defendant Nos. 1 and 2 is granted.

15. The Application is disposed of.

IA No. 23046/2025 (O-XI R-1(4) of the Code of Civil Procedure, 1908)

16. The present Application has been filed on behalf of the Plaintiff 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.

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

18. Accordingly, the Application stands disposed of.

IA No. 23244/2025 (O-XI R-1(5) of the Code of Civil Procedure, 1908)

19. The present Application has been filed on behalf of the Plaintiff under Order XI Rule 1(5) and Order XI Rule 1(12) read with Section 151 of the CPC, seeking leave to place an additional document on record, containing a Comparison Chart of the Plaintiff's goods and impugned goods.



20. Keeping in view that the Summons are yet to be issued in the Suit, no prejudice will be caused to the Defendants if the said document is taken on record. Accordingly, the present Application is allowed, and subject to the right of the Defendants to admit/deny the document, the document is taken on record.

21. The Application stands disposed of.

I.A. No. 23245/2025 (leave to place redacted version of the sighting report on record)

22. The present Application has been filed on behalf of the Plaintiff under Rule 19(ii) and (iii) of the Delhi High Court Intellectual Property Rights Division Rules, 2022 read with Section 151 of the CPC, seeking leave to place on record the redacted version of the Sighting Report, as attached to the present Application.

23. For the reasons stated in the Application, the redacted version of the Sighting Report is taken on record.

24. The Application stands disposed of.

CS (COMM) No. 988/2025

25. Let the Plaint be registered as a Suit.

26. Issue Summons. Let the Summons be served to the Defendants through all permissible modes upon filing of the Process Fee.

27. The Summons shall state that the Written Statement(s) shall be filed by the Defendants within 30 days from the date of the receipt of Summons. Along with the Written Statement(s), the Defendants shall also file Affidavit(s) of Admission / Denial of the documents of the Plaintiff, without



which the Written Statement(s) shall not be taken on record.

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

29. 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.

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

31. List before the learned Joint Registrar on 14.11.2025 for completion of service and pleadings.

I.A. 23045/2025 (U/O XXXIX Rule 1 & 2 of CPC)

32. Issue Notice. Let the Notice be served through all permissible modes upon filing of the Process Fees.

33. The present Suit has been filed by the Plaintiff, *inter alia*, seeking permanent injunction restraining infringement of the registered Trade Mark, Copyright, passing off and other ancillary reliefs.

34. Ms. Swathi Sukumar, learned Senior Counsel for the Plaintiff made the following submissions:

34.1 The Plaintiff is a company incorporated under the laws of Delaware, United States of America. It is a renowned company that deals mainly in products of oral and dental hygiene, including but not limited to toothpastes, toothbrushes, mouthwash etc. as also allied / cognate products such as



shaving creams, etc.

34.2 The Plaintiff company carries on an established business of manufacturing, distributing and selling a wide range of oral and dental care products under the Trade Marks, 'COLGATE', 'DOUBLE ACTION', 'COLGATE DOUBLE ACTION', 'COLGATE DUO ACTION',



'COLGATE TRIPLE ACTION', 'TRIPLE ACTION', and 'DUO ACTION', among others. For several decades, the Plaintiff has consistently and continuously marketed its oral / dental care products in a distinct packaging bearing a distinct 'Red-White' and 'Red-Blue' colour combinations ('**Plaintiff's Trade Dress**'). Due to its prolonged usage of the said colour combinations, they are identified as a trade dress for the Plaintiff's goods, due to which the Plaintiff makes substantial annual sales under the said trade dress. The pictures of Plaintiff's products under the Plaintiff's Trade Dress are attached below:





34.3 The Plaintiff has also spent huge sums of money on advertisement and publicity of its oral and dental care products under the Plaintiff's Trade Dress, in order to ensure that they are the leading products in the oral healthcare segment in India.

34.4 The Plaintiff had received credible information that huge quantity of 'DOCTOR GOOD' toothbrushes bearing a trade dress featuring a 'Red and Blue' colour combination ('**Impugned Trade Dress**') have been transported from Yiwu City in China to Ningbo Port in Container No. IAAU1891912, with boxes bearing Nos. 'ASB026' and 'ASB027', which were thereafter being shipped to India for final consumption / distribution / sale in India. The pictures of the infringing products bearing the Impugned Trade Dress are attached below:



34.5 Thereafter, the Plaintiff conducted investigation, whereupon it was confirmed that the said Container contains approximately 2,40,000 pieces of toothbrushes, which has arrived in the Mundra Port, Gujarat on 02.09.2025. As per the information available at '<https://enquiry.icegate.gov.in/enquiryatices/index.jsp>', which is a portal operated by Defendant No.4, the said Container containing the impugned goods is still lying in the Indian territory at the Mundra Port.

34.6 Although the Impugned Goods are meant to be transported to Africa, they would still fall within the meaning of the term 'import' under Section 29(6)(c) of the Trade Marks Act, 1999 and Section 51(b)(iv) of the Copyright Act, 1957.

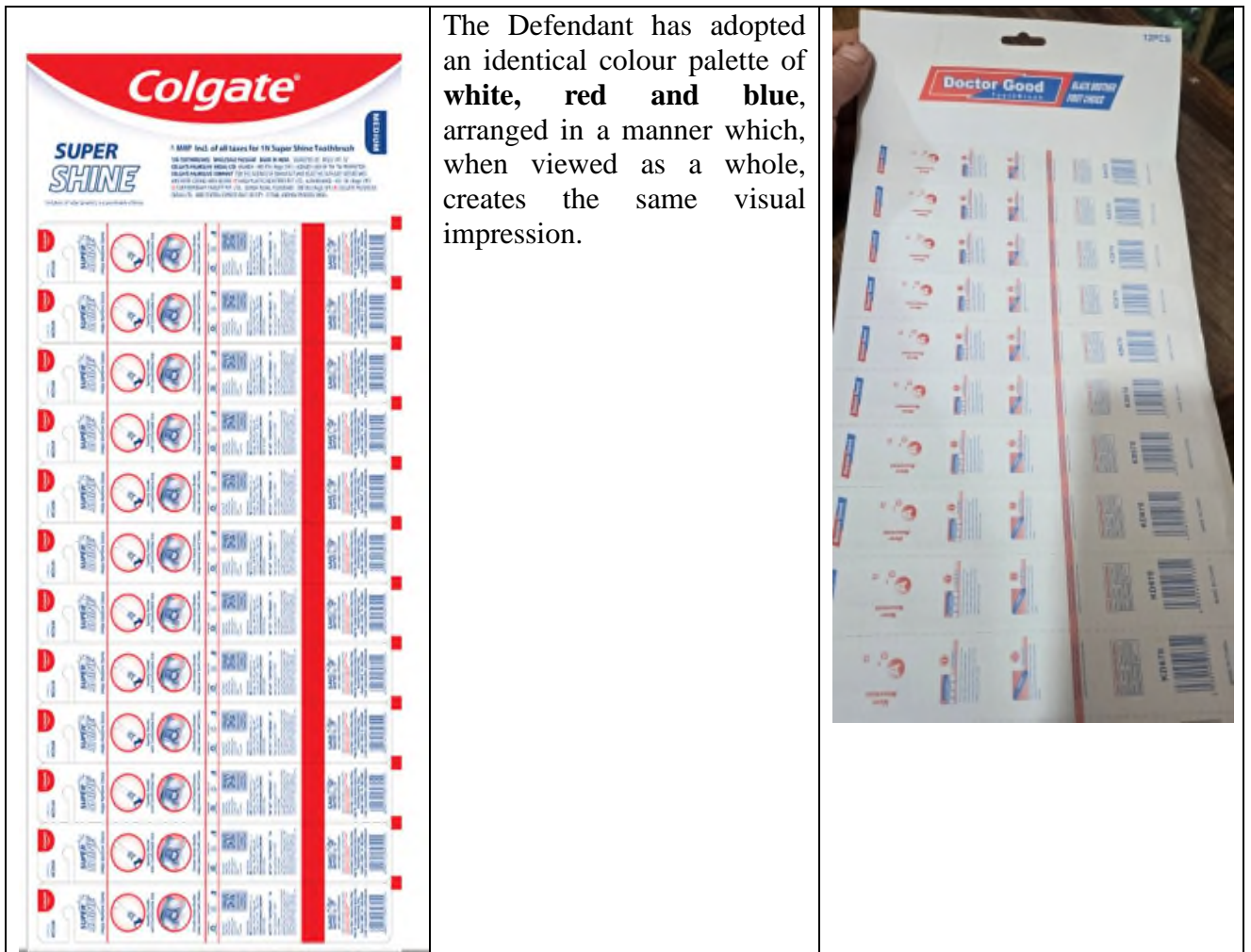
34.7 Defendant No.1 is the importer of the impugned goods bearing the Impugned Trade Dress and Defendant No.2 is the exporter of the said goods. Defendant No.3 is the Office of Custom House, Mundra Port and SEZ and Defendant No.4 is the Office of the Central Board of Indirect Taxed & Customs Department of Revenue, Ministry of Finance, Government of India.

34.8 A comparison of the Plaintiff's Trade Dress and the Impugned Trade



Dress is as under:

<u>PLAINTIFF'S TRADE DRESS</u>	<u>SIMILARITIES</u>	<u>IMPUGNED TRADE DRESS</u>
  	<p>Identical colour combination of red and blue (of which the Plaintiff is a registered proprietor), with identical placement: red on the left and blue on the right.</p> <p>Identical manner of displaying the brand name, i.e. on a background of red and blue with red on the left and blue on the right</p> <p>Identical placement of brand name on top of the handle of the brush at the left end.</p> <p>Identical placement of the sub-category of the toothbrush on the right side of the brush, like 'Super Flexi' of the Plaintiff and 'NEW SUPER' on the impugned trade dress</p> <p>Division of the background packaging of each toothbrush into two halves.</p> <p><u>Overall effect: colour combination, placement of elements and features is identical</u></p>	 



34.9 As per the procedure provided in Chapter 16 of the Customs Manual, 2025 (**‘Manual’**) issued by Defendant No. 4, which deals with the procedure for Detention and Release/Storage of Imported/Export Goods, in case goods are seized by the Customs department, the same may be stored at warehouses/bonded warehouses at the ports till the adjudication of the proceedings. The Manual further provides that in case the goods are stored for an extended period of time, the importer/exporter shall be liable to pay the appropriate warehousing/demurrage charges. The Plaintiff undertakes to bear any appropriate charges for warehousing/demurrage of the impugned



goods as long as necessary for the proper adjudication of the present Suit, including providing any relevant bonds or bank guarantees, as applicable.

34.10 After removal of the impugned boxes from Container No. IAAU1891912, the Defendant No. 3 or the shipping line carrying the cargo may reseal the container with a customs bottle seal. Rule 4.2(v) of Chapter 11 of the Manual dealing with transshipment of goods provides that if the seal of a transshipment container is found to be tampered with, the customs can reseal the same with a customs seal after full inspection of the container. As the container will be de-sealed at the request of the Plaintiff, the Plaintiff undertakes to bear the relevant expense towards re-sealing of the container after removal of the boxes containing the impugned goods.

34.11 Additionally, Defendant No. 4, vide the Customs Notification No. 47 of 2007 dated 08.05.2007 titled as the Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007 (**'IPRE Rules'**), has provided for a mechanism for protection of the Intellectual Property Rights of right holders in cases of alleged violation of the same at the ports. Rule 5(b) of the IPRE Rules require the right holder, in this case - the Plaintiff, to execute an indemnity bond with the Commissioner of Customs indemnifying the Customs authorities against all liabilities and expenses on account of suspension of the release of goods. Rule 5(a) of the IPRE Rules requires the right holder to provide an undertaking to protect the importer, consigner and owner of the goods from all liabilities and to bear the costs towards destruction, demurrage and detention charges incurred. The Plaintiff is ready and willing to comply with the appropriate rules and provide the necessary undertaking and indemnities as contemplated under the IPRE Rules.

34.12 In view of the above, it is prayed that directions be issued to the



Customs Department, which may, with the aid and assistance of any other Governmental agency, give effect to an order of seizure of the goods contained in the boxes marked as 'ASB026' and 'ASB027' in Container no. IAAU1891912, lying currently at Mundra Port, during the pendency of the present Application.

35. Having considered the pleadings, documents and submissions, *prima facie* it is clear that the Impugned Trade Dress used on the infringing goods is deceptively similar to the Plaintiff's Trade Dress as the Impugned Trade Dress has adopted an identical colour combination as that of the Plaintiff's Trade Dress with identical placement of the colours on the packaging, i.e., red colour on the left and blue colour on the right, and the rear portion of the infringing products bearing the Impugned Trade Dress has an identical colour combination of white, red and blue, which is arranged in a manner that appears to be deceptively similar to the rear portion of the Plaintiff's products bearing the Plaintiff's Trade Dress. Further, the product category, the trade channel as also the consumer base is identical to that of the Plaintiff's products. Balance of convenience lies in favour of the Plaintiff and against Defendant Nos. 1 and 2.

36. The Plaintiff has garnered significant goodwill and reputation for its products under the Plaintiff's Trade Dress, such that it is associated with the Plaintiff by the members of the trade and public. Therefore, any adoption of an identical or deceptively similar Trade Dress is likely to cause dilution of the Plaintiff's goodwill and reputation.

37. However, at this stage, it is not possible to grant any interim injunction for restraining the Defendant Nos. 1 and 2 from using the Impugned Trade Dress without ascertaining the presence of the products



bearing the Impugned Trade Dress in the boxes marked as 'ASB026' and 'ASB027' in Container No. IAAU1891912.

38. Accordingly, it is directed that:

- i. Defendant No.3 shall open Container No. IAAU1891912 if it is lying at Mundra Port, and thereupon, seize the boxes marked as 'ASB026' and 'ASB027' in the said Container. Defendant No.3 shall open the boxes marked as 'ASB026' and 'ASB027' in the presence of two representatives of the Plaintiff, to examine if the goods are found to be bearing the Impugned Trade Dress, i.e.,



, or any other Trade Dress deceptively similar to the Plaintiff's Trade Dress. Defendant No.3 shall file a Report before this Court within two weeks of seizure of the boxes



marked as 'ASB026' and 'ASB027' in Container No. IAAU1891912, annexing the photographs, description, quantity, country of origin and other particulars as deemed relevant to the identity of the goods, in addition to the details of the exporter and consignee, in a sealed envelope. The boxes mentioned in the Report shall be detained / stored in Customs bonded warehouse until further orders.

- ii. The Plaintiff shall bear all the expenses / demurrage that will be incurred for opening / de-sealing / re-sealing the Container No. IAAU1891912, and subsequent opening / re-sealing and detention / storage of the boxes marked as 'ASB026' and 'ASB027' in Container No. IAAU1891912.

39. *Dasti* under the signature of the Courtmaster.

40. List before this Court on 28.10.2025 for further directions.

TEJAS KARIA, J

SEPTEMBER 17, 2025

ap