



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

% **Reserved on: 07<sup>th</sup> May, 2024**

**Pronounced on: 30<sup>th</sup> May, 2024**

+ **CS(COMM) 493/2021**

MARC SALON AND BEAUTY EQUIPMENTS PVT LTD

..... Plaintiff

Through: Mr. Jayant Kumar, Ms. Ruchi  
Singh and Mr. Sumit Verma,  
Adv.

versus

GM SALES

..... Defendant

Through: Mr. Arnav Goyal, Adv.

**CORAM:  
HON'BLE MR. JUSTICE ANISH DAYAL**

### **JUDGMENT**

**ANISH DAYAL, J.**

**I.A. 13157/2021 (application under Order XXXIX Rules 1 & 2, CPC) & I.A. 16893/2021 (application under Order XXXIX Rule 4, CPC)**

1. This judgment disposes of I.A. 13157/2021 under Order XXXIX Rule 4 of the Code of Civil Procedure, 1908 (“CPC”) filed by the defendant seeking vacation of interim injunction granted in favor of the plaintiff on 07<sup>th</sup> October, 2021, and application under Order XXXIX Rules 1 & 2 CPC in which the *ad interim* injunction as noted above was granted. The suit was filed by the plaintiff for permanent injunction alleging passing off, copyright infringement,



unfair competition, and unfair trade practices by defendant, seeking a restraint on defendant from manufacturing, offering, stocking, selling, promoting, distributing, directly or indirectly, “*salon furniture*” or any other similar good that are an imitation of the plaintiff’s products in their color scheme, pattern, shape, configuration as also from using the original pictures of the plaintiff’s products amounting to copyright infringement, and other attendant relief.

### **Factual Background**

2. Plaintiff claims to be dealing in *salon furniture*, that it manufactures in India, and sells a wide range of furniture which is required for salons, spas, and parlors. Plaintiff company was incorporated in October 2018 and claims to have an extensive production and distribution network across India, and enjoys market dominance internationally on this particular range of products. Their *salon furniture*, includes *inter alia*, salon chairs, barber chairs, multi-purpose chairs, styling chairs, hair-wash station, unisex styling chairs, nail art table, pedicure and manicure stations, salon beds, salon accessories like facial trolley, hair color trolley, multipurpose tools, beauty and styling equipment, as also spa furniture including spa bed, facial bed, spa trolley etc. (collectively referred to as “*salon furniture*”).

3. Plaintiff claims to have a network of more than 2000 professionals with manufacturing plants located at Manesar, selling domestically and exporting to other countries as well. The pictures and catalogues are hosted by the plaintiff on the website [www.salonfurniture.in](http://www.salonfurniture.in). The annual sales figures of the plaintiff from the year 2012 – 2020, as claimed in the plaint, are tabulated as under:



Year	Gross Sales in INR
2011-2012	4,46,12,300
2012-2013	6,01,09,534
2013-2014	7,86,03,912
2014-2015	9,16,77,029
2015-2016	11,17,21,786
2016-2017	13,52,16,432
2017-2018	18,02,48,414
2018-2019	23,16,71,918
2019-2020	27,99,75,888
2020-2021	16,73,64,900

4. The amount spent by the plaintiff on advertisement and promotion of its products for the year 2011 – 2020 is tabulated in the plaint as under:

Year	Amount spent on advertisement and promotion
2011-2012	8,56,509
2012-2013	26,03,607
2013-2014	38,32,380
2014-2015	43,85,190
2015-2016	55,30,471
2016-2017	63,92,938
2017-2018	58,81,867
2018-2019	85,45,092
2019-2020	92,51,736
2020-2021	53,80,369

5. The grievance was against the defendant, a proprietorship firm run by Mr. Goutam Acharya with address in Jaipur. It is claimed by the plaintiff that Mr. Acharya was associated with the plaintiff from the year 2007 to 2018 as an informal distributor of the plaintiff's products. Plaintiff claims to have an in-



house design and development team working towards creating customized *salon furniture*, and have invested significant time and resources in developing and designing the *salon furniture*. Plaintiff claims distinctiveness in these, due to their innovative design and quality. Plaintiff claims that due to the unique shape in respect of each of these *salon furniture* products, it would be defined as a trademark under Section 2(zb) read with Section 2(m) of the Trade Marks Act, 1999 (“**Trade Marks Act**”). A list of plaintiff’s trademarks, as claimed, are as under:

Chair Name	Trademark (Chair Shape)
Brilliant Chair	
Glitz Chair	
Angel Chair	
Lotto Chair	



Europa Chair	
Royal Chair	
Mica Chair	
John Chair	
Classic Chair	
Concept Deluxe	
ZS 5011 Angel	
ZS 5011 Square	
Signature	



Glitz	
Kubic	
Lotto	
Lux	
ZS 5011 Osaka	
Pedicure Spa Roberto Without Massager	
Pedicure 367 Without Massager	
Roberto Sofa	
Comfort Sofa	



Pedicure Spa Monsoon Without Massager	
Uday Spa Bed	
Mangal Spa Bed	
Nandita Trolley	
Angad Spa Bed	
Tarang Wooden Trolley	
Neel Wooden Trolley	
Solo Chair	
Elegant Chair	
Tulip Chair	



Space Chair	
Comfort Stool	
Manicure Table	
Concept Chair	
Square Chair	
Solo Non Reclining Chair	
Kubic Chair	
Casio Chair	
Osaka Chair	





Leo	
Soul	
Grace	
Dar	
Royal	
Classic	
Tulip	
ZS 5011 Mica	
Amaze	



6. Plaintiff claims to have received numerous awards on account of its products, including the following:

S. No.	Award
a.	Indian Salon Awards 2013
b.	Beauty Salon Awards 2015
c.	iDiva Salon Awards 2016 – Most preferred Indian Equipment Brand
d.	iDiva Salon Awards 2017 – Most preferred Indian Equipment Brand
e.	Business Partnership Award by VLCC









7. Plaintiff has given illustrations of its prominent customers, which are as under:

S. No.	Customers
a.	VLCC healthcare Ltd.
b.	Jawed Habib Salons
c.	Loreal India
d.	Lakme Salons
e.	Studio 11
f.	Naturals
g.	Green Trends
h.	Looks Salon
i.	Geetanjali Salons
j.	Hairmaster Salon
k.	Head Master Salon
l.	Glam Studio
m.	Toni & Guy Salon

8. The defendant, however, registered a deceptively confusing domain name in 2018, i.e. [www.beautysalonfurniture.in](http://www.beautysalonfurniture.in) and was also hosting another website, [www.gmsales.in](http://www.gmsales.in).



9. Grievance by the plaintiff is regarding the slavish copying by the defendant of most of the *salon furniture* items, as well as pictures of the same from the plaintiff's website (*copied with some minor variations on the defendant's website*). A comparative table of the plaintiff's and defendant's products, which forms part of the plaint, is as under:

Defendant's Chairs	Plaintiff's Suit Trademarks
<p>Stella prime Salon Chair</p> 	 <p>Brilliant Chair</p>
<p>Milano prime Beauty Parlour Sa- lon Chair</p> 	 <p>Glitz Chair</p>
<p>Square salon chair</p> 	 <p>Angel Chair</p>
 <p>Riva salon chair</p>	 <p>Lotto Chair</p>



<p>Europa Beauty Parlour Chair</p> 	<p>Europa Chair</p> 
<p>Elite Salon Chair</p> 	<p>Royal Chair</p> 
<p>Denim Beauty Salon Chair</p> 	<p>Mica Chair</p> 
<p>John Salon Chair</p> 	<p>John Chair</p> 
<p>Innova Salon Chair</p> 	<p>Classic Chair</p> 
<p>Icon Deluxe Shampoo Chair Hair Wash Station</p> 	<p>Concept Deluxe</p> 
<p>Angel Backwash</p> 	<p>ZS 501 1 Angel</p> 
















<p>Oasis Shampoo Chair</p> 	 <p>ZS 5011 Square</p>
<p>Ambiance Backwash</p> 	 <p>Signature</p>
<p>Milano Prime Shampoo Chair</p>  <p>Hair Wash Station</p>	 <p>Glitz</p>
 <p>Cubic Backwash</p>	 <p>Kubic</p>
<p>Prime Flute Backwash</p> 	 <p>Lotto</p>
<p>Olimpia Backwash</p> 	 <p>Lux</p>
<p>Flute Backwash</p>	 <p>ZS 5011 Osaka</p>

















	
<p>Pedijet 367 Without Massager</p> 	<p>Pedicure Spa Roberto Without Massager</p> 
<p>Pedijet 367 Without Massager</p> 	<p>Pedicure 367 Without Massager</p> 
<p>Ambience Pedicure Sofa</p> 	<p>Roberto Sofa</p> 
<p>Comfort Pedicure Sofa</p> 	<p>Comfort Sofa</p> 
<p>Monalisa Pedicure Sofa</p> 	<p>Pedicure Spa Monsoon Without Massager</p> 
<p>Kaya Spa Massage Bed</p> 	<p>Uday Spa Bed</p> 















<p>Tarang Spa Massage Bed</p> 	 <p>Mangal Spa Bed</p>
<p>Decorite Wood Trolley</p> 	<p>Nandita Trolley</p> 
<p>Nakul Spa Massage Bed</p> 	<p>Angad Spa Bed</p> 
<p>Decorate Wood Trolley</p> 	<p>Tarang Wooden Trolley</p> 
<p>Decorate Wood Trolley</p> 	<p>Neel Wooden Trolley</p> 
<p>Solo Optima Beauty Parlour Chair</p> 	<p>Solo Chair</p> 
<p>Elegance Salon Chair</p> 	<p>Elegant Chair</p> 



<p>Milano Salon Chair</p> 	 <p>Tulip Chair</p>
<p>Star Space Salon Chair</p> 	<p>Space Chair</p> 
<p>Decorite Pedicure Wooden Stool</p> 	 <p>Comfort Stool</p>
<p>Decorite Manicure Stool</p> 	<p>Manicure Table</p> 
 <p>Icon Salon Chair</p>	<p>Concept Chair</p> 
<p>Oasis Salon Chair</p> 	<p>Square Chair</p> 
<p>Opera Beauty Parlour Chair</p> 	<p>Solo Non Reclining Chair</p> 

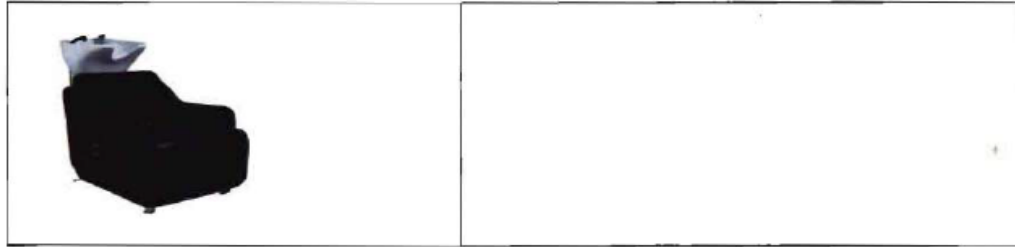




<p>Aqua Unisex Salon Chair</p> 	 <p>Kubic Chair</p>
<p>Lancer Deluxe Beauty Parlour Chair</p> 	 <p>Casio Chair</p>
<p>Flute Salon Chair</p> 	 <p>Osaka Chair</p>
<p>Cutting Straight Salon Chair</p> 	 <p>Leo</p>
<p>Orbit Backwash Chair</p> 	 <p>Soul</p>
<p>Gracia Backwash Chair</p> 	 <p>Grace</p>



<p>Infinity Backwash Chair</p> 	 <p>Dar</p>
<p>Elite Shampoo Chair</p> 	<p>Royal</p> 
<p>Innova Prime Shampoo Chair</p> 	<p>Classic</p> 
<p>Milano Shampoo Chair Hair</p> 	<p>Tulip</p> 
<p>Wash Station Denim Backwash Sham- poo Chair</p> 	<p>ZS 5011 Mica</p> 
<p>Amzika Backwash</p>	<p>Amaze</p> 

















**10.** Plaintiff claims copyright in the pictures, which are on its brochures and catalogues, under Section 13 read with Section 17 of the Copyright Act, 1957.

**11.** Plaintiff claims that the defendant has just changed the color scheme and copied all the furniture items, which is, *prima facie*, evident from the table reproduced as under:

















<b>S. NO.</b>	<b>Picture hosted by Defendant at <a href="http://www.beautysalonfurniture.in">www.beautysalonfurniture.in</a></b>	<b>Copyrighted Pictures of the Plaintiff and hosted at <a href="http://www.salonfurniture.in">www.salonfurniture.in</a></b>	<b>Remarks</b>
1.	Stella Prime Salon Chair 	Brilliant Chair 	Changed the colour of the original image.
2.	Milano Prime Salon Chair 	Glitz Chair 	Changed the colour of the original image.
3.	Angel Salon Chair 	Angel Chair 	Changed the colour of the original image.
4.	Riva Salon Chair 	Lotto Chair 	Changed the colour of the original image.
5.	Europia Styling Chair 	Europa Chair 	Changed the colour of the original image.



6.	<p>Elite Salon Chair</p> 	<p>Royal Chair</p> 	<p>Changed the colour of the original image.</p>
7.	<p>Denim Salon Chair</p> 	<p>Mica Chair</p> 	<p>Changed the colour of the original image.</p>
8.	<p>John Salon Chair</p> 	<p>John Chair</p> 	<p>Changed the colour of the original image.</p>
9.	<p>Innova Salon Chair</p> 	<p>Classic Chair</p> 	<p>Changed the colour of the original image.</p>
10.	 <p>Solo Optima Salon Chair</p>	<p>Solo Chair</p> 	<p>Changed the colour of the original image.</p>
11.	<p>Elegance Salon Chair</p> 	<p>Elegant Chair</p> 	<p>Changed the colour of the original image.</p>
12.	<p>Milano Salon Chair</p> 	<p>Tulip Chair</p> 	<p>Changed the colour of the original image.</p>

















13.	Icon Salon Chair 	Concept Chair 	Changed the colour of the original image.
14.	Oasis Salon Chair 	Square Chair 	Changed the colour of the original image.
15.	Opera Styling Salon Chair 	Solo Non Reclining Chair 	Changed the colour of the original image.
16.	Aqua Salon Chair 	Kubic Chair 	Identical Image
17.	Flute Salon Chair 	Osaka Chair 	Identical Image
18.	Exotica Styling Salon Chair 	Mystic Chair 	Identical Image
19.	Evavo Salon Chair 	Eva Chair 	Changed the colour of the original image.



20.	Estilo Styling Salon Chair		Kitty Chair		Identical Image
21.	Fantasy Styling Salon Chair		Kira Chair		Identical Image
22.	Ambience Backwash		Signature		Changed the colour of the original image.
23.	Royal Tulip Shampoo Station		Glitz		Changed the colour of the original image.
24.	Celebrity Shampoo Station		Glamour		Changed the colour of the original image.
25.	Elite Shampoo Station		Royal		Changed the colour of the original image.
26.	Innova Shampoo Chair		Classic		Identical Image













27.	Flute Prime Shampoo Station 	Lotto 	Changed the colour of the original image.
28.	Elite Prime Shampoo Station 	Tulip 	Identical Image
29.	Flute Backwash 	ZS 5011 Osaka 	Changed the colour of the original image.
30.	Gracia Backwash Chair 	Grace 	Changed the colour of the original image.
31.	Infinity Backwash Chair 	Dar 	Changed the colour of the original image.
32.	Denim Backwash Shampoo Chair 	ZS 5011 Mica 	Changed the colour of the original image.
33.	Orbit Backwash Chair 	Soul 	Changed the colour of the original image.





34.	Angel Shampoo Station		Angel 5011		Changed the colour of the original image.
35.	Icon Shampoo Station		5011 Concept		Changed the colour of the original image.
36.	Oasis Shampoo Station		5011 Square		Changed the colour of the original image.
37.	Angel Deluxe Shampoo Station		Angel		Changed the colour of the original image.
38.	Royal Ambience Pedicure Spa Chair		Pedicure Spa Roberto Without Massager		Identical Image
39.	Monalisa Pedicure Spa Chair		Pedicure 367 Without Massager		Identical Image
40.	Ambiance Pedicure Sofa		Roberto Sofa		Changed the colour of the original image.



41.	Riva Pedicure Sofa 	Comfort Sofa 	Identical Image
42.	Royal Monalisa Pedicure Sofa 	Pedicure Spa Monsoon Without Massager 	Identical Image
43.	Pedicure Spa Jacuzzi Tub 1 	Coral Upgrade Pedijet 	Changed the colour of the original image.
44.	Pedicure Spa Jacuzzi Tub 3 	Roberto Pedijet 	Changed the colour of the original image.
45.	Manicure Table 	Manicure Table 	Identical Image

12. Accordingly, defendant has claimed that this amounts to passing off their goods as that of the plaintiff, by adopting a similar shape and design, and using the pictures created by the plaintiff, as also hosting the pictures on a website which was similar to that of the plaintiff.



13. On 07<sup>th</sup> October, 2021, these aspects were considered by the Court, and upon its *prima facie* satisfaction, an *ex parte ad interim* injunction was granted in favor of the plaintiff in the following terms:

*“24. Accordingly, till further orders, the defendant by itself or through all others acting for and on its behalf are restrained from manufacturing, offering for sale, selling, marketing, advertising, distributing, printing, supplying and dealing directly or indirectly dealing in, in any manner or imitating the trade dress, get up, lay out, colour scheme, pattern, shape, configuration and arrangement of features of plaintiffs products in an identical or deceptively and confusingly similar manner or in any other manner.”*

14. Local Commissioners were also appointed to visit two premises of the defendant. As per the Local Commissioner’s Report, the infringing articles were seized and handed over to the defendant on *superdari* on 16<sup>th</sup> October, 2021. A large number of products (*being 48 in number*) were seized.

15. While the injunction was subsisting, the defendant entered appearance and preferred I.A. No. 16893/2021 under Order XXXIX Rule 4 of CPC for vacation of injunction.

16. Parties had been referred to mediation by order dated 12<sup>th</sup> July, 2022, however, the mediation was reported as failed by mediation report dated 04<sup>th</sup> February, 2023.



**Submissions on behalf of the defendant**

17. Defendant’s counsel argued that the defendant has its own trademark “DECORITE”, while the plaintiff’s goods were being sold under the brand name “MARC”. He stated that these were common furniture items which are sold across the world and there was no uniqueness in the said designs. Besides there was no registration in their design, which the plaintiff was claiming, and the suit was merely for passing off. The plaintiff could not claim any goodwill or reputation in these designs. The counsel for defendant referred to the written statement, in particular at para 39, which extracted out various kinds of furniture available across the globe in the special category and how they were similar. A part of the said tabulation is reproduced as under:



Sr. No.	Plaintiff Claimed Design	Similar Product 1	Similar Product 2	Similar Product 3	Similar Product 4
1					
	Europa Chair	CATALOG - PDF Luxe Salon Resources Private Limited	Beauty N Beyond <a href="http://www.beautysalonequipments.com">www.beautysalonequipments.com</a>		
2					
		CATALOG - PDF Luxe Salon Resources Private Limited	Prime Beauty Concepts - Bengaluru <a href="http://www.primebeautyconcepts.in">www.primebeautyconcepts.in</a>	Beauty N Beyond <a href="http://www.beautysalonequipments.com">www.beautysalonequipments.com</a>	Sakhi Enterprises <a href="http://www.sakhisalonfurniture.com">www.sakhisalonfurniture.com</a>
	Royal Chair	 KPJ Associates Delhi <a href="http://www.indiamart.com/kpj-associates">www.indiamart.com/kpj-associates</a>			

3		 B.B.C. HDL 1496C.022		 Sakhi	
	Mica Chair	JACKO - 1962	Samrat Production	SAKHI BEAUTY CONCEPTS - Est. 2000	
4					
	John Chair	Prime Beauty Concepts - Bengaluru <a href="http://www.primebeautyconcepts.in">www.primebeautyconcepts.in</a>	IKONIC <a href="https://www.ikoneworld.com">https://www.ikoneworld.com</a>		
		 Salon Ambience Italy, founded in Reggio Emilia in 1989	 NINGBO BEIMENG FURNITURE (China) Est. 1997	 Design X Mfg. Inc. Est. 1987	 Catalog Beauty Centre



5	Classic chair	<a href="https://www.salona mbience.com">https://www.salona mbience.com</a>	<a href="http://beimeng.com">http://beimeng.com</a>	<a href="https://www.salonfur niture.com">https://www.salonfur niture.com</a>	Beauty Centre
			 RAMA-2018		
		CATALOG - PDF Luxe Salon Resources Private Limited	RAMA SALON FURNITURE <a href="https://www.rsfsalonfurnit ure.in/">https://www.rsfsalonfurnit ure.in/</a>		
6				 JACKO - 1962	
		Bury-Rite -Since 1936 <a href="http://www.buyritebeauty.co m">www.buyritebeauty.co m</a>	Chelsea Quilted Shampoo Unit in Black <a href="https://www.salonsmart. com">https://www.salonsmart. com</a>	JACKO	SAKHI BEAUTY CONCEPTS - Est. 2000 <a href="https://sakhibeautycon cepts.com">https://sakhibeautycon cepts.com</a>
		 LIMI			
		Beauty N Beyond	Sakhi Enterprises		

18. Various brochures were also referred to, including that of *Beimeng Furniture* to show that these were common furniture items, and there was nothing unusual and unique about the *salon furniture* sold by the plaintiff.

19. Counsel for the defendant further referred to an interview of Mr. Durgesh Sharma, Director of the plaintiff company, in a journal “StyleSpeak” (*The salon & spa journal*). One of the questions put to Mr. Sharma was “*how was the market for salon furniture?*” and “*what about imported furniture?*”. To this, Mr. Sharma replied that there were two main markets: Chinese and European, and although Chinese products were affordable, the product quality was very poor and additional servicing could not be provided. On the other hand, European products were similar to Indian products but the prices were way too



high and they are unable to provide services. He stated that entrepreneurs were expanding salon businesses, so it is not feasible for them to purchase products at such high prices. Defendant's counsel, relying on this interview, submitted that clearly the plaintiff was importing their products from elsewhere and there was no uniqueness in the design developed by them.

**20.** However, the plaintiff's counsel, at this juncture, adverted to the subsequent statement by Mr. Sharma, which is as follows: "*A new trend of customization of furniture as per the salon interior has been introduced in the market. The disadvantage of imported furniture would be that it cannot be customized as per the buyer's needs*". Referring to this, plaintiff's counsel stated that Mr. Sharma himself states very clearly that imported furniture was not feasible and practical, while customized Indian products were being preferred.

**21.** By referring to the comparative chart, produced by the plaintiff, between the plaintiff's product and that of the defendant, counsel for the defendant stated that the colour of the furniture was dependent on what the interior designer/architect of the salon wanted for the client and, therefore, the change in color was not to somehow seek to distinguish itself from the plaintiff. These were independently procured designs which were customized as per the clients' requirements.

**22.** Further, a statement was made that they were not using the website [www.beautysalonfurniture.in](http://www.beautysalonfurniture.in), and were using [www.gmsales.com](http://www.gmsales.com) instead. However, subsequently, an application was moved by the plaintiff to place on



record documents to show that the website [www.beautysalonfurniture.in](http://www.beautysalonfurniture.in) was still active, to which counsel for the defendant stated, on fresh instructions, that it was (*this is recorded in the order of 14<sup>th</sup> May, 2024*).

**23.** Defendant's counsel further stated that they were buying furniture from third-party manufacturers who were taking inspiration from global products, and, therefore, the plaintiff could not be granted any relief, and the injunction ought to be vacated. It was also stated that the plaintiff had entered into a consent decree with '*Luxe Salon*' and '*Sakhi Enterprises*' and, therefore, were estopped from claiming any passing off by the defendant.

**Submissions on behalf of the plaintiff**

**24.** Besides asserting the averments made in the plaint, plaintiff's counsel highlighted that defendant had been associated with them as an informal distributor, and adverted to documents filed along with the plaint to substantiate the same. An email dated 26<sup>th</sup> November, 2016 was addressed from Mr. Rajeev Chaudhury (*of the plaintiff*) to Mr. Goutam Acharya (*of the defendant*), supplying a quotation for furniture. Another email of 20<sup>th</sup> January, 2017 was shown, as well as various invoices showing supply of *Marc Salon* equipment to *Raghunandan Furcos Pvt. Limited* at Jaipur, with whom the defendant used to work. These invoices are attached to emails addressed to Mr. Goutam Acharya, which are appended.

**25.** Plaintiff's counsel asserted that they are manufacturers and had themselves designed and developed unique *salon furniture*. The pictures of the products had been created by engaging professional agencies and had been





placed on the website and in their catalogues. The dishonest adoption by the defendant was obvious from the fact that they had created a similar domain name i.e. [www.beautysalonfurniture.in](http://www.beautysalonfurniture.in), taken the plaintiff's pictures, changed only the color scheme, and were effectively making a representation that they were selling 'Marc Salon' products.

**26.** As regards the issue of design, plaintiff's counsel stated that they were duly advertising their brand and design. Plaintiff's counsel adverted to some samples of the *StyleSpeak* magazine, which is an industry specific magazine, showing full-page advertisements which had pictures of their products. Sample of the same is reproduced as under:



Designed for  
**beauty**  
your style your price

- Salon Furniture
- Beauty Salon Equipments
- Slimming Machines
- Spa Furniture
- Accessories

**Marc**  
Slimming &  
Beauty Equipment

**Zenat Slimming Systems**  
Plot No. 86, Sector 5, IMT Manesar, Gurgaon-122050, Haryana (INDIA) Ph. : 0124-4304051 (M) 981004405 1  
E mail : support@salonfurniture.in, durgesh@zenatslimming.com • www.salonfurniture.in  
Exclusive Showroom in Bangalore at : Vaibhav Stores, 1091, F 3, OTC Road, Ph. : 080-41518183 E-mail : info@vaibhavstores.in  
Exclusive Showroom in Hyderabad at : K.S.Beauty Centre, P.G.Road, Secunderbad, Ph. : 8977428218, 9866124805

27. Plaintiff's counsel stated that if these designs were common, there was no reason for them to advertise these designs, they could have easily just advertised their tradename. In this regard, certain other advertisements were referred to, which are as under:





28. As regards the consent decree with a third party, he stated that it proves that they were enforcing their rights diligently. There was an interim injunction against Sakhi Enterprises by Rohini District Court, where both Looks Salon and Sakhi Enterprises gave an undertaking that they will not use the plaintiff's furniture. Plaintiff's counsel highlighted that the chart produced at para 35 of their plaint had not been denied by the defendant.

29. Reliance was placed on the decision in *Gorbatschow Wodka KG vs. John Distilleries Limited*, 2011 (47) PTC 100, where a Single Judge of the Bombay High Court, highlighting the importance of shape of the products sold by an entity, observed that the test would be whether the shape had been



adopted by the plaintiff capriciously, to give it an appearance of goods of the manufacturer. Reliance was also placed on the decision of the Bombay High Court in *M/s Kemp and Company & Ors. v. Prima Plastics Ltd.*, 2000 PTC 96, on the point that no one is prevented from copying and selling an article in the market provided he does not make a false representation suggesting that the article is of the plaintiff. Further, reliance was placed on the decision of a Single Judge of the Delhi High Court in *Eicher Goodearth Private Limited v. Krishna Mehta & Ors. of the High Court of Delhi*, 2015 (63) PTC 444, on copying of the design used by the plaintiff who was prior user of the same; as also on *KRBL Ltd. v. PK Overseas Pvt. Ltd. of the High Court of Delhi*, 2014 (58) PTC 521, where it was held that it's a settled legal position that for the purposes of copyright infringement, exact reproduction or copy is not necessary, but whether it is a substantial copy.

**Submissions in rejoinder by the defendant**

30. Counsel for the defendant argued that, as an informal distributor, defendant was associated with all players when he was in the market, and plaintiff had not been able to show that they had copied their *salon furniture* design from them. Further, there is no document to show that all of the 45 designs tabulated by the plaintiff were being used since 2014, and the advertisements appended were only of a few pictures. Regards the decision in *Gorbatschow Wodka KG (supra)*, defendant's counsel submitted that in the said decision it had been held that the concerned design was distinctive in nature, whereas there is no distinctiveness in the design of the plaintiff. He



stated that the grant of injunction would cause havoc in the market since products of this nature are usually quite similar.

### Analysis

**31.** Having perused the documents on record and post appreciation of the submissions of the counsel for the parties, this Court is of the opinion that the plaintiff is entitled to the injunction as sought and the defendant's plea for vacation of the said injunction is not sustainable, *inter alia*, for the following reasons:

**31.1** Section 2(zb) of the Trade Marks Act includes shape of goods as part of "trademark", capable of being represented graphically and capable of distinguishing goods of one person from that of the other. Shape is also included as part of the definition of "mark" in Section 2(m) of the Act. Both these provisions are extracted as under for ready reference:

***“Section 2(m): “mark” includes a device, brand, heading, label, ticket, name, signature, word, letter, numeral, shape of goods, packaging or combination of colors or any combination thereof;***

***Section 2(zb): “trade mark” means a mark capable of being represented graphically and which is capable of distinguishing the goods or services of one person from those of others and may include shape of goods, their packaging and combination of colors; and—***

*(i) in relation to Chapter XII (other than section 107), a registered trade mark or a mark used in relation to goods or services for the purpose of*



*indicating or so as to indicate a connection in the course of trade between the goods or services, as the case may be, and some person having the right as proprietor to use the mark; and*

*(ii) in relation to other provisions of this Act, a mark used or proposed to be used in relation to goods or services for the purpose of indicating or so to indicate a connection in the course of trade between the goods or services, as the case may be, and some person having the right, either as proprietor or by way of permitted user, to use the mark whether with or without any indication of the identity of that person, and includes a certification trade mark or collective mark;”*

**31.2** Plaintiff’s claim that they were specializing in customization of *salon furniture* and have developed these unique designs, is *prima facie* acceptable. This is on a conjoint reading of their advertisements in the industry magazines, where plaintiff has consistently sought to advertise their products’ shape and design in a prominent manner (*sample pictures have been extracted above in paras 26 and 27*). The *salon furniture* supplied by the plaintiff has also received extensive recognition, as evident from the various awards that it has received for their “*Beauty Equipment*”, listed in para 6 above. If, as per the defendant’s submissions, it was to be believed that plaintiff was indulging in selling mere copies of international products, or was otherwise merely trading an international product, there is no reason why industrial awards are conferred on plaintiff as recognition for their equipment.

**31.3** Moreover, the interview of Mr. Durgesh Sharma, to which defendant adverted, in fact seems to suggest that the company did not believe in Chinese



and European imports, but instead was customizing and creating furniture indigenously for domestic consumption. At best, it could be assumed, if one were to accept defendant's submissions, that inspiration for designing *salon furniture* by the plaintiff was taken from international brands. That is a matter of evidence and trial and at this *prima facie stage*, some scattered pieces of pictures, which the defendant has produced to show that some of the plaintiff's products seem similar to those sold abroad, cannot be determinative.

**31.4** This allegation by the defendant also has to be weighed in context of other surrounding circumstances, *inter alia*, the extensive reputation which the plaintiff claims, evident from their extensive promotions in industry magazines; profile of their company and various industry awards; absence of any other article or comment by any member of the industry or public that plaintiffs' furniture were indeed slavish copies of those manufacturers abroad. There is also no proceeding initiated by any design/mark owner of *salon furniture* alleging that the plaintiff's designs were indeed copied. In this context, it would be difficult to accept the defendant's submissions, of lack of uniqueness of plaintiff's *salon furniture*.

**31.5** Once it is *prima facie* accepted that the plaintiff's designs were indeed unique, they would be entitled to protection under the Trade Marks Act. In any event, the common law right that the plaintiff has against entities passing off their goods, as that of the plaintiff, would always remain. From the tabulations given in para 11 above, it is quite evident, at least *prima facie*, that the defendant substantially copied these designs being developed/sold by the





plaintiff, and had only sought to present them on their own website by changing its color or its name. For example, the *Brilliant Chair* of the plaintiff in a dark-brown colour presented on their website and brochure, is exactly the same as the chair sold by the defendant, though named *Stella Prime Salon Chair* in a lighter-brown colour. The same is with *Glitz Chair* of the plaintiff in a darker-red colour, which the defendant shows as *Milano Prime Beauty Parlor Salon Chair*, in a more vibrant red colour. Some of the pictures do not even have a different colour combination but seem like a slavish copy of what has been shown by the plaintiff on their website. There is no evidence placed on record by the defendant that they entered the industry prior to the plaintiff, and were in fact a prior user of such *salon furniture*.

**31.6** The adoption by the defendant of a deceptively similar domain name being [www.beautysalonfurniture.in](http://www.beautysalonfurniture.in) to that of the plaintiff's domain [www.salonfurniture.in](http://www.salonfurniture.in), *prima facie* shows dishonest intent to come closer to the plaintiff as much as possible and to cause confusion and association in the market. Despite the averment made by defendant's counsel during their submissions that they had stopped using the said website, it transpired that the site was still active and was recorded in the order dated 14<sup>th</sup> May, 2024.

**31.7** Prior association of the defendant as an informal distributor of the plaintiff also *prima facie* shows that the defendant was aware and fully in knowledge of the plaintiff's products, having traded in them independently or through other entities like *Raghunandan Furcos Pvt. Limited*. The commencement of defendant's own website subsequently points out to a strong



likelihood of the defendant having taken advantage of their market knowledge of the plaintiff's products and used them, slavishly as that of their own.

32. Defendant's submission that they had many designs on their website and only 45 had been shown by the plaintiff cannot come to their rescue. 45 designs which are being sold, promoted and represented in exactly the same manner as that of the plaintiff, are enough *prima facie* evidence of passing off the defendant's products as that of the plaintiff.

33. This Court's opinion is also informed by the decisions relied upon by the plaintiff, in particular, the decision in ***Gorbatschow Wodka KG*** (*supra*); the relevant paragraph thereof is produced hereunder:

*“22. The test is whether the shape that has been adopted by the plaintiff is one that is adopted capriciously, purely to give the article a distinctive appearance or characteristic of the goods of the manufacturer. If that be so, the manufacturer may be able to establish that he has a reputation and goodwill in the distinctive appearance of the article itself which would furnish a cause of action in passing off. In a judgment of the Division Bench of this Court in *Aktiebolage Volvo v. Volvo Steels Limited*, 1998 PTC (18) (DB) the Division Bench has laid a considerable amount of emphasis on the reason for the adoption of the mark. If the defendant has no plausible explanation, then that is certainly a circumstance which must weigh in the balance. In *R.R. Oomerbhoy Pvt. Ltd. v. Court Receiver*, 2003 (5) Mh.LJ. 372 : 2003 (27) PTC 580 (DB) (Bom) a Division Bench of this Court adverted to the fact that the shape of the container*



*and of the plastic bottle in which the defendant had sold its product, had a striking resemblance to those of the plaintiff. In a judgment of the Delhi High Court in Colgate Palmolive Company v. Anchor Health and Beauty Care Pvt. Ltd., 2005 (1) Mh.LJ. 613 : 2003 (27) PTC 478 a Learned Single Judge observed that “trade dress is the soul for identification” of goods to their source or origin and a customer forms an overall impression of the source of origin of the goods from a visual impression of the colour combination as well as from the shape of the container and packaging. A conscious imitation of the colour combination, get up or layout of the container would lead to the design of the defendant to cause confusion in the mind of the customer.”*

(emphasis added)

### **Conclusion**

**34.** Accordingly, the application under Order XXXIX Rule 4 of the Code of Civil Procedure, 1908, being I.A. No. 16893/2021, is dismissed and the order dated 7<sup>th</sup> October, 2021 granting an injunction in favor of the plaintiff in the application under Order XXXIX Rules 1 & 2 of the Code of Civil Procedure, 1908, being I.A. 13157/2021, is confirmed.

**35.** I.A. No. 16893/2021 and I.A. 13157/2021 are, accordingly, disposed of in the above terms.

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**1.** List before the Joint Registrar (*Judicial*) on 25<sup>th</sup> July, 2024.



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2. Judgment be uploaded on the website of this Court.

**(ANISH DAYAL)**  
**JUDGE**

**MAY 30, 2024/MK**