

BY EMAIL & DoT website

**Government of India  
Ministry of Communications  
Department of Telecommunications  
Sanchar Bhawan, 20, Ashoka Road, New Delhi - 110 001  
(Data Services Cell)**

No. 813-07/LM-16/2023-DS-II

Dated: 03.05.2023

To,

All Internet Service Licensee's

**Subject: CS (COMM) No. 222/2023 titled as Suparshva Swabs India Vs. Tulip Hygiene & Ors. in the court of Sh. Rajeev Bansal, DJ (COMM) Digital -04, South District, Saket Courts, New Delhi**

Kindly find the enclosed Hon'ble Saket court order dated **28.04.2023** on the subject matter.

2. Please refer to the **para 17.3** of the said court order in respect of blocking of **one (01) website** enumerated in the aforesaid para.
3. Accordingly, in view of the above, all the Internet Service licensees are hereby instructed to take immediate necessary action for blocking of the said website, as above, for compliance of the said court order.

Handwritten signature and date: 03.05.23

**Director (DS-II)**  
**Tel: 011-2303 6860**  
**Email: dirds2-dot@nic.in**

Encl:A/A

**Copy to:**

- (i) V.Chinnasamy, Scientist E (chinnasamy.v@meity.gov.in), Electronics Niketan, Ministry of Electronics and Information Technology (MeitY) New Delhi for kind information and necessary action.
- (ii) K.G Bansal, (legal@unitedworld.co.in) counsel for the plaintiff for kind information.
- (iii) IT wing of DoT for uploading on DoT websites please.

राजीव बंसल  
RAJEEV BANSAL  
जिला न्यायाधीश (वाणिज्यिक) डिजिटल-04, साकेत  
District Judge (Commercial)-04, South  
कक्ष संख्या-29, दूसरा तल  
Room No. 29, 2nd Floor  
New Building, Block-2  
साकेत कोर्ट परिसर, नई दिल्ली  
Saket Court Complex, New Delhi

IN THE COURT OF DISTRICT JUDGE  
(COMMERCIAL COURT) (DIGITAL-04),  
SOUTH, SAKET COURTS, NEW DELHI

Presiding Officer: Sh. RAJEEV BANSAL  
CS (Comm) No. 222/2023

In the matter of:

Supershva Swabs India

.....Plaintiff.

Vs.

Tulip Hygiene & Ors.

.....Defendants.

ORDER

Present: Sh. Vaibhav Jairath, learned counsel for plaintiff.

1. The present suit has been filed under Section 134 and 135 of Trade Marks Act, 1999 for permanent injunction restraining infringement, passing off, damages, delivery up and rendition of accounts etc. regarding infringement and passing off of the plaintiff's trade mark/trade name TULIPS and their website [www.tulipshygiene.com](http://www.tulipshygiene.com) by defendant by using the trade name TULIP and website [www.tuliphigiene.com](http://www.tuliphigiene.com). In other words the difference is that of usage of word 's' after the word tulip in as much as the plaintiff uses the word 'TULIPS' whereas the defendant is using the word 'TULIP'.

2.

Mark of the plaintiff

2.1

The case of the plaintiff, as set out in the plaint in a nutshell, is that plaintiff is a partnership firm consisting of four partners namely Smt. Trilok Sundari Jain, Sh. Rajeev Jain, Sh. Ajay Jain and Sh.

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Saket Court Complex, New Delhi

Rahul Jain and that the plaint has been filed by Sh. Rahul Jain who is also the authorized signatory of the plaintiff partnership firm, which was initially constituted vide Deed of Partnership dated 28.01.1999 by Sh. Brij Mohan Lal Jain with his three sons namely Sh. Ajay Jain, Sh. Rajeev Jain and Sh. Rahul Jain. It is stated that Sh. Brij Mohan Lal Jain expired on 19.11.2015 and the partnership was reconstituted and continued by the Plaintiff partnership firm with all its assets including trademarks, copyright and Intellectual Property Rights vide Deed of Partnership dated 20.11.2015 and Addendum dated 26.02.2016. It is stated that vide the said deed dt. 20.11.2015 and Addendum dt. 26.02.2016, Smt. Tirlok Sundri Jain w/o Shri Brij Mohan Lal was inducted as a partner.

2.2 It is stated that the plaintiff is engaged in the business of manufacture and trade of cotton buds and cotton balls since the year 1999. It is stated that with the passage of time the plaintiff forayed into the manufacture and trade of Cotton buds, Ear buds/swabs, Viscose/cotton pads, Eye pads, breast pads, absorbent cotton, Cotton Rolls, Pleats & Goods made from cotton for preparation of cleansing, moisturizing, Aluminium Foils for wrapping and packaging cling films, Feedings Nipples & Bottles, Teether, Breasts Pumps, Pacifier (Baby Honey Nipples), Hair Brush & Combs, Tooth Brushes, all kinds of wooden, bamboo & plastic toothpicks, Skewers & Chopsticks and other allied and cognate goods and services been sold. It is stated that in the year 1999 the plaintiff honestly, bonafidely and in the course of trade adopted and conceived the trade mark 'tulips' and an artistic label as under:





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“TULIPS” / TULIPS / TULIPS

2.3 It is stated that the plaintiff's *TULIPS* and *TULIPS* formative trade mark/labels are duly registered under The Trade Marks Act and under The Copyright Act and details of all such registrations are mentioned in para 6 and 7 of the plaint. It is stated that in the year 2001 the plaintiff registered its domain name '*tulipshygiene.com*' and subsequently the Plaintiff also adopted the domain name '*tulipshygiene.store*'. It is stated that the plaintiff has been carrying on its business by itself and also through a wide network of its dealers, distributors and also through leading stores like Reliance Smart, Reliance Fresh, Jio Mart, Nykaa, Big Basket, Netmeds, D Mart, Big Bazar etc. It is further stated that the plaintiff's products are also widely available on various online platforms like [www.amazon.com](http://www.amazon.com), [www.flipkart.com](http://www.flipkart.com), [www.nykaa.com](http://www.nykaa.com), [www.bigbasket.com](http://www.bigbasket.com), [www.indiamart.com](http://www.indiamart.com) etc. It is also stated that the plaintiff has been exporting its goods under its said *TULIPS* trademark/label to more than 16 countries. It is stated that the plaintiff's trademark *TULIPS* has been endorsed by famous celebrities including Ms. Kareena Kapoor and Ms. Kiara Advani and Plaintiffs have spent considerable amount on advertisement of its products.


2.4 It is stated that the plaintiffs are using the domain name [www.tulipshygiene.com](http://www.tulipshygiene.com) and [www.tulipshygiene.store](http://www.tulipshygiene.store) in the course of its trade as its proprietor and the websites are interactive in nature.

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### 3. Defendant No. 1 and his Mark

3.1 It is stated that defendant no. 2 Sh. Salman Akbarally is the sole proprietor of defendant no. 1 firm Tulip Hygiene. It is stated that in the middle of February, 2023, the plaintiffs came to know that defendants no. 1 and 2 (hereinafter also referred to as defendants) are engaged in the manufacture, trade and retail of dustbins, soap dispensers, strip curtains, queue managers, shoe shine machines, AC refreshers and humidifiers, hand dryers, PVC strip curtains, sanitizer dispensers, insect killer machines, oil diffuser machines and related goods and offering services in connection therewith. It is stated that the defendants are using the following in relation to their goods:

- (a) The trademark 'Tulip Hygiene' / Tulip Hygiene .
- (b) The device of Tulip /  .
- (c) The trademark 'Tulip Hygiene with the device of Tulip' /



- (d) The Trade name "Tulip Hygiene".
- (e) The domain name <https://tuliphygiene.com> and email id [info@tuliphygiene.com](mailto:info@tuliphygiene.com)



3.2 It is stated that the defendants are not the proprietors of the impugned trade mark/trade name/domain name and have no right to use them in any manner in relation to their impugned goods and business

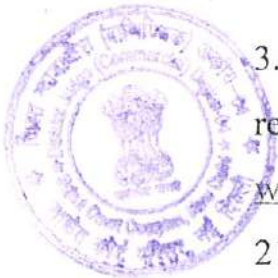


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without the leave, license and permission of the plaintiff. It is stated that the use of the impugned trade mark/trade name/domain name containing the word/mark TULIP HYGIENE and/or TULIP by the defendants is in violation of the statutory as well as common law rights of the plaintiff in relation to its said trade marks/label/domain names. It is stated that the defendants have been selling the impugned goods under the impugned trade mark/trade name/domain name dishonestly and fraudulently to take unfair advantage and to trade upon the established good will and reputation of the plaintiff. It is stated that the defendants are using the impugned trade mark/trade name/domain name with a view to deceive the public and to misrepresent them that they are associated with the plaintiff, due to which the plaintiff is suffering huge losses-both in terms of business and in terms of reputation.

3.3 It is stated that the defendants no. 1 and 2 have been selling their impugned goods on the e-commerce platform [www.indiamart.com](http://www.indiamart.com) as well as through their own website [www.tuliphygiene.com](http://www.tuliphygiene.com), which are interactive in nature, which can be accessed all over the country including the markets within the jurisdiction of this Court.

3.4 It is further stated that the plaintiff's inquiries in the e-records of the Registrar of Trade Marks on its official website [www.ipindia.nic.in](http://www.ipindia.nic.in) in respect of classes 03,05,06,07,10,11,16,17,20, 21 and 22 being the relevant classes pertaining to the Defendant No.1 and 2's impugned goods and business, revealed no filings either by Defendant No.1 or Defendant No.2 for their impugned trademark/



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trade name and domain name in these classes.

#### 4. Other Defendants

Plaintiff has impleaded defendant no. 3 Indiamart Intermesh Ltd. to take down the impugned products from its website [www.indiamart.com](http://www.indiamart.com). Defendant nos. 4 and 5 are Department of Telecommunication and Ministry of Electronics and Information Technology which are required to issue directions for disabling access of defendant no. 1's website in India. Defendant no. 6- Godaddy.com LLC, is the Registrar of Domain Name of defendant no. 1. Defendant no. 7 is parent organization for web hosting service provider to defendant no. 1.

5. Learned counsel for the plaintiff has placed reliance upon various similar orders passed by the coordinate benches, copies of which have been placed on record along with the plaint, whereby injunction orders were issued in favour of the plaintiff with respect to violation of statutory as well as common law rights comprising in the plaintiff with respect to their trade mark/trade name/domain names.

#### Application under Order 39 Rules 1 and 2 CPC

Ld. Counsel for the plaintiff argued that plaintiff is entitled to grant of *ex-parte* injunction on account of infringement of its trademark and passing off by defendant no. 1 as the latter is using the trade mark TULIP HYGIENE. He further submitted that in case *ex-parte* injunction is not granted restraining the Defendant No. 1 from using the

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trade mark /trade name TULIP, the plaintiff shall suffer irreparable loss and injury because defendant no. 1 is hosting a deceptively similar website [www.tuliphygiene.com](http://www.tuliphygiene.com) to that of the plaintiff [www.tulipshygiene.com](http://www.tulipshygiene.com) and using the word TULIP, thus causing substantial loss to the business of the plaintiff as well as to its goodwill and reputation. Similarly, directions have been prayed for defendant nos. 2 to 7 also for effective implementation of any orders for blocking the website of the defendant no. 1.

7. I have heard Ld. Counsel for the plaintiff and have perused the records of the case:

8. A query was raised during the course of arguments regarding the registration status of the plaintiff partnership firm. Ld. Counsel appearing for the plaintiff has stated that the bar u/s 69(2) of the Indian Partnership Act, 1932 does not apply to institution of a suit for permanent injunction to restrain the defendants from using the plaintiff's trade mark which is based on statutory rights and on common law principles of tort applicable to passing off actions. He placed reliance on the judgment of the Hon'ble Supreme Court in *Haldiram Bhujawala & Anr. Vs. Anand Kumar Deepak Kumar, 2000 (3) SCC page 250.*

9. In view of the clear enunciation of law on the aspect of no requirement of registration of a partnership firm for instituting an action based on statutory rights and common law principles, it is held that the bar imposed by Section 69(2) of The Indian Partnership Act does not

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apply in the present case.

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10. Section 135 (2) of Trade Mark Act empowers the Court to grant *ex-parte* injunction in a suit for infringement or passing off.

11. In *Corn Products Refining Company v Shangrila Foods Products AIR 1960 SC 142*, the Hon'ble Supreme Court held that the question as to whether the two competing marks are similar or have the potential of causing confusion, the question is to be approached from the view point of a man of average intelligence with imperfect recollection.

12. A side by side comparison of the two marks is as under:-

Plaintiff's trademark and registered domain name	Defendant no. 1's infringing trade mark and domain name
"TULIPS" /  / 	Tulip Hygiene /  / 
<a href="http://www.tulipshygiene.com">www.tulipshygiene.com</a>	<a href="http://www.tuliphygiene.com">www.tuliphygiene.com</a>

13. A bare comparison of the representations of the registered trade mark/trade name and domain name of the plaintiff with that being used by the defendant no. 1, as shown in various paras of the plaint as also in the above table, clearly establish likelihood of deceptive and confusing similarity of the defendant's mark and domain name with that of the plaintiff and same can have the effect of causing confusion in the

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minds of innocent public. Certainly, the reputation and goodwill of the plaintiff will be adversely affected.

14. The plaint is supported by Statement of Truth signed by Sh. Rahul Jain, one of the partners of the plaintiff firm. The deceptive similarity of the trade mark used by the defendants as compared to the plaintiff's trade mark/trade name/domain name, has the potential of causing confusion and deception in the mind of innocent purchasers. Thus, the plaintiff has made out a good *prima facie* case for grant of *ex-parte* ad-interim injunction. The balance of convenience also tilts in favour of the plaintiff and against the defendant. Further, it is apparent that the plaintiff would suffer irreparable loss and injury in case the defendant is not restrained from using the trademarks/labels belonging to the plaintiff.

15. The Trademark Certificates of the Marks in question as also the Legal Proceedings Certificate have been placed on record by the plaintiff. Similarly, the Copyright Registration Certificates have also been placed on record. The details with regard to the volume of sales and the expenditure incurred in advertising the products of the plaintiff have also been placed on record.



16. Since the website of defendant no. 1 i.e. [www.tuliphygiene.com](http://www.tuliphygiene.com) can be accessed by any person within the jurisdiction of this Court, this Court has territorial jurisdiction. On a demurrer, this Court feels that the territorial jurisdiction vests in this Court.

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17. Consequently, till the next date of hearing, an *ad-interim ex-parte* injunction is granted in favour of the plaintiff and against the defendant no. 1 and 2.

17.1 Defendant no. 1 and 2, their partners or proprietors, officers, servants, employees, agents and all persons acting by, through or under them are restrained from using directly or indirectly the Impugned trade name/<sup>impugned Trade Mark</sup> TULIP and domain name www.tuliphygiene.com in any manner using any other mark identical/deceptively similar to the Plaintiff's 'TULIPS' brand name amounting to trademark infringement of the Plaintiff's registered Marks, its passing off in any manner whatsoever, and from directly or indirectly using, the domain name www.tuliphygiene.com till the next date of hearing.

RP  
28/04/2023

17.2 Defendant no. 3 Indiamart Intermesh Ltd. is directed to disable and take down the impugned goods under the impugned trade mark/trade name TULIP HYGIENE of defendant no. 1 from its digital platform www.indiamart.com.

17.3 Defendant nos. 4 (Department of Telecommunication) and 5 (Ministry of Electronics and Information Technology) are directed to take necessary steps by issuing a notification calling upon various Internet and Telecom Service Providers registered under it to block access to the Website www.tuliphygiene.com.

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17.4 Defendant No. 6 and 7 are directed to withdraw support and block/restrain the impugned website www.tuliphygiene.com of defendant no. 1 and 2 and its mirror/proxy sites carrying plaintiff's trade mark TULIPS.

18. The defendants shall be at liberty to apply for modification / variation of this ad-interim ex-parte injunction, in accordance with law.

19. Compliance of Order 39 Rule 3 CPC be done by the plaintiff within 10 days.

20. **Main Suit**

Issue summons for settlement of issues and notice of the applications, if any, to all the defendants through e-mail, Whats App as well as by ordinary process, registered AD-speed post and approved courier returnable on 07.07.2023, subject to filing of PF, RC/AD deposit of necessary charges within 07 working days directing the defendants to file their respective written statements / replies within statutory period with an advance copy to the opposite party.

**Announced in open Court  
on 26.04.2023**

*Rajeev Bansal*  
26/04/2023.

(RAJEEV BANSAL)  
District Judge  
(Commercial Court Digital-04)  
South/Saket/ND/26.04.2023  
जिला न्यायाधीश (व्यावसायिक) डिजिटल-04  
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CS (Comm) No. 222/2023  
Suparshva Swabs(I)  
vs.  
Tulip Hygiene & Ors.

File taken up today on an application filed U/s 151 and 152 CPC for modification of order dated 26.04.2023.

28.04.2023

Present : Sh. Nikhil Sonkar, Ld. Counsel for the Plaintiff.

It has been stated in the application that vide order dated 26.04.2023 this court passed an *ad-interim ex-parte* injunction against the Defendant. It is stated that in Para 17.1 of the order the Defendant No.1 & 2 have been restrained with respect to impugned trade name and domain name but accidentally the restraint with respect to the trademark Tulip has been omitted, probably due to a clerical error or mistake. By way of this application the said omission is sought to be corrected by addition of the words 'and/or impugned trademark' after the words 'impugned trade name'.

I have heard Ld. Counsel appearing for the plaintiff and have perused the records of the case.

The entire order dated 26.04.2023 talks about impugned trademark/trade name/domain name and the omission to mention the word 'impugned trademark' after the words 'impugned trade name' in para 17.1 is only clerical in nature, which is hereby corrected by making necessary additions by hand in the order dated 26.04.2023.

A corrected copy of order dated 26.04.2023 be issued alongwith a copy of this order.

Application stands disposed off.

Put up on the date already fixed i.e. 07.07.2023.



(RAJEEV BANSAL)

District Judge (Commercial Court) (Digital-04)  
/South/Saket/ND/28.04.2023

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Estd.:1954

# Delhi Registration Service

PATENT AND TRADE MARK ATTORNEYS

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29<sup>th</sup> April, 2023

## THROUGH REGD. POST/SPEED POST/EMAIL

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8046067776

....Defendant No. 1

**2. Mr. Salman Akbarally Merchant**

**Trading as Tulip Hygiene**

Unit 1B - 18, Phoenix Paragon Plaza,

Opposite Phoenix Market city Mall,

LBS Marg, Kurla Kamani Junction,

Kurla West, Maharashtra- 400070

Email: [info@tuliphygiene.com](mailto:info@tuliphygiene.com)

Contact No.- (+91) 9820907581 / 9324126845 / 8048372532 /

8046067776

.... Defendant No. 2



**3. INDIAMART INTERMESH LTD.**

1<sup>st</sup> Floor, 29-Daryaganj,  
Netaji Subhash Marg,  
Delhi, India – 110002 ; &

Also at:  
6<sup>th</sup> Floor, Tower 2,  
Assotech Business Cresterra,  
Plot No. 22, Sector 135,  
Noida-201305, Uttar Pradesh, India  
Email: [customercare@indiamart.com](mailto:customercare@indiamart.com)

....Defendant No. 3

**4. The Department of Telecommunication [DOT]**

Ministry of Communications,  
Government of India, Sanchar Bhawan 20,  
Ashoka Road, New Delhi-110001  
Email: [Adetds2-dot@gov.in](mailto:Adetds2-dot@gov.in)

.... Defendant No. 4

**5. Ministry of Electronic and Information Technology (MeitY)**

Through the division of Cyber Laws and E-Security  
Government of India, Electronics Niketan,  
6, CGO Complex, Lodhi Road, New Delhi-110003  
Email: [Webmaster.meity@gov.in](mailto:Webmaster.meity@gov.in)

.... Defendant No. 5

**6. GoDaddy.com LLC**

14455, North Hayden Road,  
Suite 219 Scottsdale,  
Arizona-85260, United States  
Email: [abuse@godaddy.com](mailto:abuse@godaddy.com) ; [trademarkclaims@godaddy.com](mailto:trademarkclaims@godaddy.com)

.... Defendant No. 6

**7. Endurance International Group (India) Pvt Ltd.**

Unit No. 501, 5<sup>th</sup> Floor,  
NESCO IT Park, Western Express Highway  
Goregaon (East)  
Mumbai- 400063  
Email: [abuse@hostgator.in](mailto:abuse@hostgator.in)

....Defendant No. 7



WITHOUT PREJUDICE

**Reg.: Suit bearing CS (Comm.) No. 222 of 2023 titled as Suparshva Swabs India Vs. Tulips Hygiene & Ors. pending before the Hon'ble Court of Sh. Rajeev Bansal, DJ(Comm.) Digital-04, South District, Saket Courts, New Delhi.**

Dear Sirs,

Please be informed that in the above-mentioned suit, vide *ex-parte ad interim* injunction order dated 26.04.2023, the Hon'ble Court has granted the order of injunction till the next date of hearing as under:

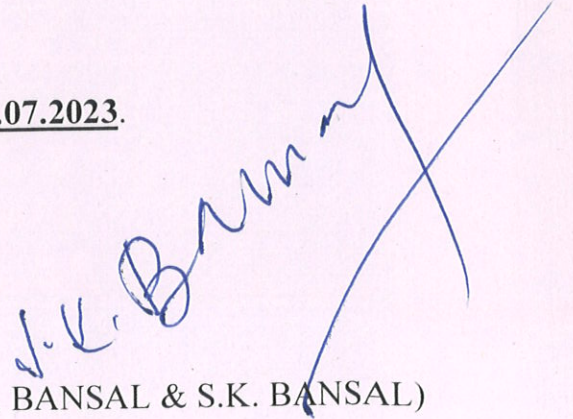
- a. Restraining Defendant No. 1 and Defendant No.2 from using directly or indirectly the impugned trade name / impugned trademark TULIP as well as the impugned domain name www.tuliphygiene.com in any manner and from using any other mark identical/deceptively similar to the Plaintiff's brand 'TULIPS' which amounts to infringement as well as passing off of Plaintiff's registered trademarks.
- b. Directing Defendant No. 3 (Indiamart) to disable and take down the impugned goods under the impugned trade mark / impugned trade name TULIP HYGIENE of Defendant No.1 and 2 (as mentioned in the plaint and above-mentioned Order).
- c. Directing Defendant No. 4 (Department of Telecommunications) and No. 5 (Ministry of Electronics and Information Technology) to take necessary steps by issuing a notification calling upon various Internet and Telecom Service Providers registered under it to block the access to the impugned website of Defendant No.1 and 2, i.e., www.tuliphygiene.com.
- d. Directing Defendant No. 6 (GoDaddy.com LLC) and No. 7 (Endurance International Group (India) Pvt. Ltd.) to withdraw support and block / restrain the impugned website www.tuliphygiene.com of Defendant No.1 and 2 and its mirror/proxy sites carrying the Plaintiff's trade mark TULIPS.

In compliance of the Order 39 Rule 3 of CPC, 1908, we are enclosing the complete set of the suit paper book consisting of Plaint, Applications with



supporting affidavits, List of Documents along with documents and interim order dated 26.04.2023.

Kindly note that the next date in the matter is 07.07.2023.



(K.G. BANSAL & S.K. BANSAL)  
ADVOCATES

CC: Plaintiff