

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-53/2023-DS-II

Dated 02.08.2024
09

To,

All Internet Service Licensee's

Subject: CS (COMM) 861 of 2023 - FABINDIA LIMITED VS. ASHOK KUMAR/JOHN DOE AND ORS Before Hon'ble Delhi High Court

Kindly find the enclosed Hon'ble Delhi High Court order dated **04.12.2023** and additional affidavits dated 09.07.2024 and 18.07.2024 on the subject matter.

2. Please refer to the **para 19(iii)** of the said court order regarding of blocking of **websites** enumerated in **para 4** of each additional affidavits.
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 websites, as above, for compliance of the said court order.



Director (DS-II)

Email: dirds2-dot@nic.in

Encl:A/A

Copy to:

- (i) Sh. V.Chinnasamy, Scientist E (chinnasamy.v@meity.gov.in), Electronics Niketan, Ministry of Electronics and Information Technology (MeitY) New Delhi for kind information and with request to take action as per **Annexure**.
- (ii) Harish Vaidyanathan Shankar (hvscgscdhc@gmail.com) Senior Penal Counsel for kind information

- (iii) Vandhana (dinesh.jain@fabindia.Net) Plaintiff Advocate for kind information.
 - a) Take action as per Annexure.
- (iv) IT wing of DoT for uploading on DoT websites please.

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

+ **CS(COMM) 861/2023**

FABINDIA LIMITED

..... Plaintiff

Through: Mr. Viraj Datar, Sr. Advocate
with Mr. Dipankar Vig, Mr. Pranay Sarkar,
Mr. Kunal Juneja, Ms. Ujjwala Gupta and
Mr. Saurav Joon, Advs.

versus

ASHOK KUMAR/JOHN DOE AND ORS. Defendants

Through: Mr. Harish Vaidyanathan
Shankar, CGSC with Mr. Srish Kumar
Mishra, Mr. Alexander Mathai Paikaday and
Mr. Krishnan V., Advs. for the Registrar of
Trade Marks for Defendants 4 and 5

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

ORDER

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04.12.2023

CS(COMM) 861/2023

1. I have heard Mr. Viraj Datar, learned Senior Counsel for the plaintiff and Mr. Krishnan V., learned Counsel, who appears on behalf of Mr. Harish Vaidyanathan Shankar for Defendants 4 and 5

2. The plaintiff is a renowned Indian retail company which specializes in production and sale of a wide range of handcrafted products. It has been using the mark "Fabindia" and is also the proprietor of over hundred registered trade marks including the following:



S. NO	PARTICULARS	TRADE MARK
1.	Wordmark: FABINDIA (DEVICE) Proprietor: FABINDIA LIMITED Application Number: 759211 Class / Classes: 25 Status: Registered	
2.	Wordmark: FABINDIA CELEBRATE INDIA Proprietor: FABINDIA OVERSEAS PRIVATE LIMITED Application Number: 2845335 Class / Classes: 25 Status: Registered	
3.	Wordmark: FABINDIA Proprietor: FABINDIA OVERSEAS PRIVATE LIMITED Application Number: 2845351 Class / Classes: 25 Status: Registered	
4.	Wordmark: FABINDIA Proprietor: FABINDIA OVERSEAS PRIVATE LIMITED Application Number: 2845356 Class / Classes: 35 Status: Registered	
5.	Wordmark: Fabindia Experience Centre Proprietor: FABINDIA OVERSEAS PRIVATE LIMITED Application Number: 3696348 Class / Classes: 35 Status: Registered	
6.	Wordmark: Fabindia Experience Centre celebrate INDIA Proprietor: FABINDIA OVERSEAS PRIVATE LIMITED	



	Application Number: 3696350 Class / Classes: 35 Status: Registered	
7.	Wordmark: FAB INDIGO Proprietor: FABINDIA OVERSEAS PVT. LTD. Application Number: 3325457 Class / Classes: 25 Status: Registered	
8.	Wordmark: FAB NATURALS Proprietor: FABINDIA LIMITED Application Number: 3325462 Class / Classes: 25 Status: Registered	

3. The plaintiff has a network of over “Fabindia” stores retailing its products across India, including 28 owned experience centers, 185 company-owned and company-operated stores and 96 franchisee-owned and franchisee-operated stores. These outlets house the company's product and service offerings under a single umbrella, providing customers with an experiential and comprehensive Fabindia retail experience.

4. Averting thus, the plaint also provides the figures of sales revenue earned by the plaintiff, both in the individual segments as well as overall revenue earned by the plaintiff, using the mark “Fabindia”, during the year 2022-2023 alone, on e-commerce platforms, is to the tune of ₹ 95 crores, the plaintiff’s earnings are ₹ 167 crores against sale of apparels, ₹ 1073.49 crores in the home and lifestyle segment, ₹ 25.48 crores by sale of accessories, ₹ 14.76 crores



in the personal care segment and ₹ 1280.74 crores in the food and beverages segments. The plaintiff claims to have expended considerable amounts towards advertisement and promotion of the “Fabindia” mark, the amount spent towards the said purposes in 2022-2023 itself totalling to ₹ 30.97 crores.

5. The plaintiff is aggrieved by the fact that several fake websites have, which claim to be authorized sellers/resellers of the plaintiff’s products invited customers to purchase the plaintiff’s products from their websites. The plaintiff claims to have received complaints regarding such unlawful activities. Inasmuch as the identities of the persons running the websites are unknown, the plaintiff has impleaded them under one heading “Ashok Kumar/John Doe, as Defendant 1. The said products stated to be sold across the Shopify and Pay – U websites, who have, therefore, been impleaded as Defendants 2 and 3. The most recent such fake website is stated to be <https://fabsinida.shop/?syclid=36439983-0773-4b9c-bc62-88695bfd482b>. Para 21 of the plaint provides the IDs of some other such fake websites, who are holding themselves out as authorized retailers of the plaintiff. These IDs are <https://fabindia.shop/>, <https://fabindia.club/>, <https://fabindia.live/>, <https://fabindia.fashion/>, <https://fabindia.design/>, <https://fabindia.store/>, <https://fabindia.xyz/> , <https://fabindia.xyz/policies/contact-information>, <https://fabsindia.co.in/>, <https://fabsinida.shop/?syclid=36439983-0773-4b9c-bc62-88695bfd482b> and <https://fabindya.com/>.

6. The plaintiff claims to have received, till date, 1114 complaints at its customer care hotline, regarding proliferation of such fake/rogue



websites, with the number increasing day-by-day.

7. In these circumstances, the plaintiff wrote to Defendants 2 and 3 on 9 June 2023 and 12 June 2023, calling on them to take down the offending websites, which were mimicking the plaintiff’s original “Fabindia” website. There has been little response to these requests, except that, on some occasions, Defendant 2 has taken down a few websites. It is asserted, even thereafter, websites on both the platforms of Defendants 2 and 3 continued to proliferate.

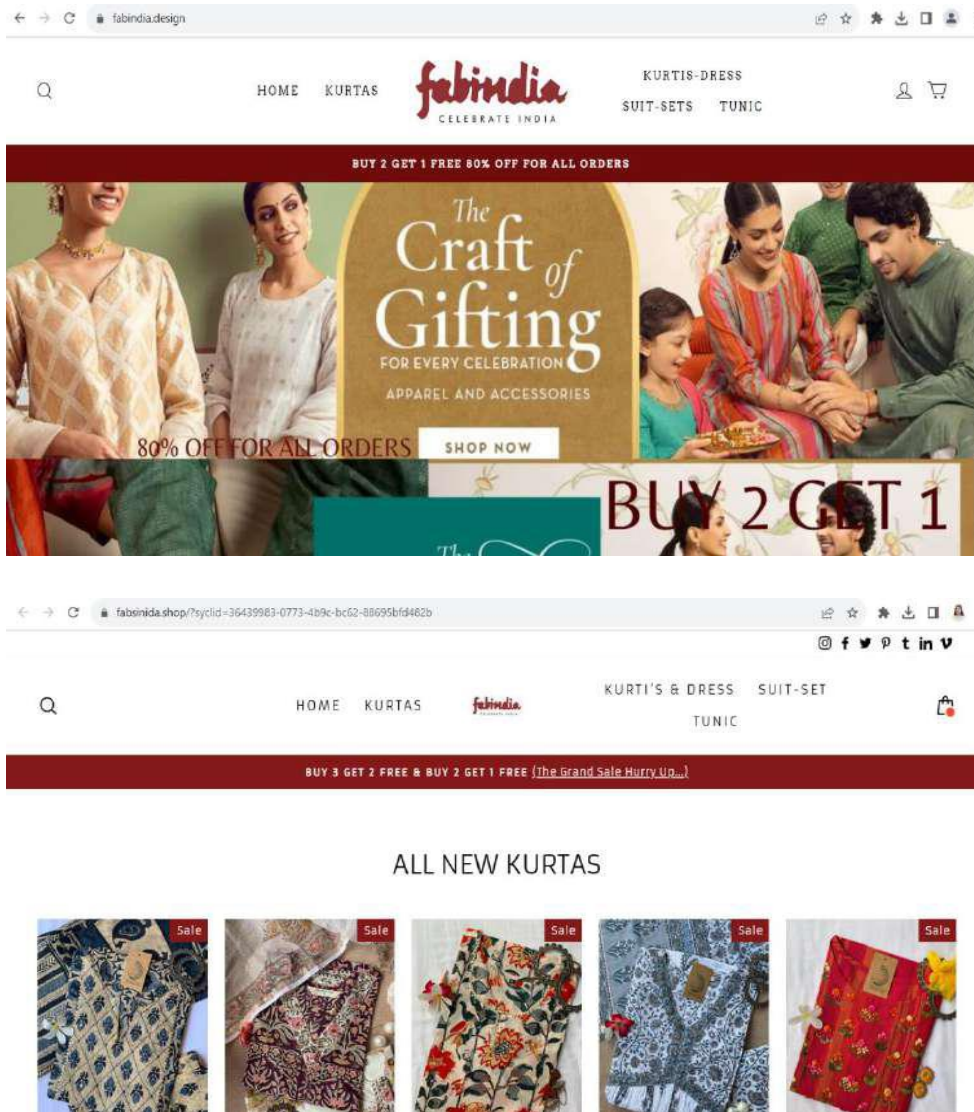
8. The plaintiff has provided screenshots of the websites of the defendants alongside the website of the plaintiff. A glance at the said screenshots reveals that the defendants are clearly imitating the look and feel of the plaintiff’s website. These screenshots may be reproduced thus:

“PICTURE A – ORIGINAL WEBSITE OF FAB INDIA





PICTURE B – THIRD PARTY MISUSING FAB INDIA'S PICTURE AND TRADE MARK



9. The plaint asserts that the plaintiff has not licensed or authorized any website except its own authorized website to use the mark “Fabindia” or any other identical mark.

10. It is in these circumstances that the plaintiff has approached this Court by means of the present suit, seeking a decree of permanent CS(COMM) 861/2023



injunction, restraining any website from using, in any manner whatsoever, the plaintiff's trade mark/trade name "Fabindia" or any variation thereof, in any manner whatsoever, either for providing retail services in the segments in which the plaintiff operates or in any other allied goods or services.

11. Additionally, the plaint seeks a decree of permanent injunction against Defendants 2 and 3 from allowing any third party to latch on to the plaintiff's listing or use the plaintiff's "Fabindia" mark. Direction has also been sought to Defendants 4 and 5 to ensure compliance of the aforesaid directions by calling upon various internet service providers to block access to the websites identified by the plaintiff in the present suit or any other website, which uses "Fabindia" mark and is notified by the plaintiff. Additionally, a direction has been sought to Defendant 6, NIXI to block access to any website using "Fabindia" mark, to which attention of Defendant 6 may be drawn by the plaintiff. The plaint also seeks damages, rendition of account, costs and other alike reliefs.

12. Let the plaint be registered as a suit. Issue summons in the suit. Summons are accepted on behalf of Defendants 4 and 5 by Mr. Krishnan V., who appears on behalf of Mr. Harish Vaidyanathan Shankar.

13. Written statement, accompanied by affidavit of admission and denial of the documents filed by the plaintiff be filed within 30 days with advance copy to learned Counsel for the plaintiff who may file replication thereto, accompanied by affidavit of admission and denial



of the documents filed by the defendants within 30 days thereof.

14. List before the learned Joint Registrar (Judicial) for completion of the pleadings, admission and denial of documents and marking of exhibits on 6 February 2024, whereafter the matter would be placed before the Court for case management hearing and further proceedings.

I.A. 24111/2023(Order XXXIX Rules 1 and 2 of the CPC)

15. This is an application by the plaintiff under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908 (CPC) seeking interlocutory injunctive reliefs.

16. Issue notice, returnable before the Court on 6 March 2024. Notice is accepted on behalf of Defendants 4 and 5 by Mr. Krishnan V., who appears on behalf of Mr. Harish Vaidyanathan Shankar. Notice be also issued to the remaining defendants by all modes.

17. Reply be filed within four weeks with advance copy to learned Counsel for the plaintiff who may file rejoinder thereto, if any, within four weeks thereof.

18. Inasmuch as the present case involves fraud websites, which are fraudulently holding themselves out to be retailers/resellers of the plaintiff and are, on that basis, inviting consumers to purchase the plaintiff's products from the said websites, immediate interlocutory orders are justified. Prayer clause in this application reads thus:



“In light of the afore-mentioned facts and circumstances, the Plaintiff most respectfully prays that the Hon'ble Court may kindly be pleased to grant ex-parte ad-interim and/or interim injunction:

a. Restraining the Defendants, their partners, proprietors, officers, servants, employees and all others in capacity of principal or agent acting for and on their behalf, or anyone claiming through, by or under it and any other website identified by the Plaintiff to be infringing its trademark, copyright, any and all other exclusive rights, restraining them from in any manner whatsoever from infringing, latching, exhibiting, making available for viewing, leveraging, providing access and/or communicating to the public, through the internet, in any manner whatsoever, the Plaintiff's trade mark/ name "Fabindia", and its variations including but not limited to "Fabindia" either as a trademark, trade name, corporate name, domain name or in any manner whatsoever, in respect of same and similar good, amounting to unfair competition and commercial misappropriation of the Plaintiff's rights.

b. Restraining the Defendants, their directors, partners, proprietors, officers, servants, employees and all other in capacity of principal or agent acting for and, on their behalf, or anyone claiming through, by or under it, restraining them from impersonating the Plaintiff company, endeavouring to market identical or similar products, and from engaging in the sale or attempted sale of counterfeit or substandard products of the Plaintiff Company.

c. Restraining the Defendant No. 4 and 5, their directors, partners, proprietors, officers, servants, employees and all other in capacity of principal or agent acting for and on their behalf, or anyone claiming through, by or under it to ensure compliance of this order by calling upon the various internet service providers registered under it to block access to the various websites identified by the Plaintiff's in the instant suit other websites that may subsequently be notified by the Plaintiff's to be infringing its exclusive rights.

d. Restraining Unknown and Unidentified Defendants, and shutting down their illegal webpages, domains, websites etc, created to obtain illegal gains, monetary or otherwise, for infringing the Plaintiff's trademarks and by riding over the goodwill and reputation that the Plaintiff has attained/achieved over several years



of use, advertisement, promotion of its brand "Fabindia" in numerous jurisdictions around the world/globe including, India;

e. Pass any such other order(s) as this Hon'ble Court may deem fit and proper in the interest of justice and in favour of the Plaintiff Company and against the Defendants.”

19. Having heard Mr. Datar, learned Senior Counsel for the plaintiff and Mr. Krishnan V, learned Counsel for Defendants 4 and 5, the following interim orders are passed by this Court to remain in force till the next date of hearing.

(i) The defendants, as well as all other acting on their behalf, are restrained from infringing, latching, exhibiting, making available for viewing, leveraging, providing access and/or communicating to the public through internet, in any manner whatsoever, the plaintiff's trade mark "Fabindia" and its variations, either as a trade mark or trade name or corporate name or domain name or in any manner whatsoever in respect of retail services or any other allied goods of services.

(ii) Defendants 4 and 5 are directed to call upon the various internet service providers registered under them to block access to the following websites identified by the plaintiff in paras 20 and 21 of the plaint and noted in para 5 (supra)

“<https://fabindia.shop/>,
<https://fabindia.club/>,
<https://fabindia.live/>,
<https://fabindia.fashion/>,
<https://fabindia.design/>,
<https://fabindia.store/>,



<https://fabindia.xyz/>,
<https://fabindia.xyz/policies/contact-information>,
<https://fabsindia.co.in/>,
<https://fabsinida.shop/?syclid=36439983-0773-4b9c-bc62-88695bfd482b> and <https://fabindya.com/>.”

(iii) In order to ensure that the plaintiff is not required to come again and again to the Court, this injunction shall extend to any other website/domain name using the mark “Fabindia” to which the plaintiff draws the attention of the defendants. In case, any such new infringing website comes up, the plaintiff shall file an additional affidavit before this Court drawing attention of the Court to the said website.

(iv) Defendants 9 and 10 are directed to disclose, forthwith, identities of the persons, who own/operate the websites noted in para 5 (supra). Upon such information being provided, the plaintiff shall forthwith implead the said persons by filing an amended memo of parties in that regard. If any such amended memo of parties is filed, summons in the suit and notice in the present application, in the aforesaid terms, shall be issued to such newly impleaded parties as well for due compliance in accordance with the order passed today.

(v) Defendant 6 is also directed to block access to the domain names/websites identified hereinbefore.

20. Compliance of Order XXXIX Rule 3 of the CPC be effected on the unserved defendants within a week from today.



I.A. 24112/2023 (Exemption)

21. Subject to the plaintiff filing legible copies of any dim or illegible documents within 30 days, exemption is granted for the present.

22. The application is disposed of.

I.A. 24113/2023 (Order XI Rule 1(4) of the CPC)

23. This application seeks permission to file additional documents. The plaintiff is permitted to place additional documents on record in accordance with Order XI Rule 1(4) of the Code of Civil Procedure, 1908 (CPC) as amended by the Commercial Courts Act within four weeks from today.

24. The application stands disposed of accordingly.

I.A. 24114/2023 (Exemption from advance service)

25. This is an application for exemption from advance service. The service stands exempted inasmuch as the identity of the persons pertaining to infringing websites are concerned, they are unknown. As such, there can be no service of advance notice on them.

26. The application is disposed of.

I.A. 24115/2023 (Section 12A of the Commercial Courts Act, 2015)



27. In view of the nature of the present dispute, there has not been pre-institution mediation, the application is disposed of accordingly.

C.HARI SHANKAR, J

DECEMBER 4, 2023

rb

Click here to check corrigendum, if any

**IN THE HIGH COURT OF DELHI AT NEW DELHI
(Ordinary Original Commercial Jurisdiction)**

Commercial Category Code: 50000

CS(COMM) NO. 861 OF 2023

IN THE MATTER OF:

Fabindia Limited

...Plaintiff

Versus

Ashok Kumar / John Doe & Ors.

...Defendants

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PLAINTIFF

THROUGH

MP LAW OFFICES

DIPANKAR VIG (D/1971/7) PRANAY SARKAR(D/2566/6)

KUNAL JUNEJA (D/1889/8) UJJWALA GUPTA (D/1531/21)

(ADVOCATES FOR THE PLAINTIFF)

1H, VANDHANA, 11, TOLSTOY MARG,

DATE:09.07.24

DELHI – 110001, PH: 91-11-47102250

PLACE: DELHI

MOB: + 91- 9999009825, 7248346388

Email id: Kunal.juneja@mplawoffices.in

ujjwala.gupta@mplawoffices.in

IN THE HIGH COURT OF DELHI AT NEW DELHI
(Ordinary Original Commercial Jurisdiction)
Commercial Category Code: 50000
CS(COMM) NO. 861 OF 2023

IN THE MATTER OF:

Fabindia Limited

...Plaintiff

Versus

Ashok Kumar / John Doe & Ors.

...Defendants

ADDITIONAL AFFIDAVIT ON BEHALF OF THE PLAINTIFF, IDENTIFYING AND BRINGING TO THIS HON'BLE COURT'S NOTICE TWO ROGUE WEBSITES BY THE NAME/DOMAIN NAME (1) FABINDIA.SERVICES AND (2) FABINDIA.ORG.IN WHICH ARE INFRINGING THE REGISTERED TRADE MARK, TRADE NAME, BUSINESS NAME OF THE PLAINTIFF.

I, Dinesh Kumar Jain, S/o, Shri Late Madan Lal Jain, R/o C-2621, Sushant Lok 1, Gurugram – 122002, Presently at New Delhi, duly designated as Legal Head – Fabindia, am the Authorised Representative of the Plaintiff Company and I hereby solemnly affirm and state as under:

1. I am the authorised representative of the Plaintiff Company and am well conversant with the facts and circumstances of the captioned case. As such, I am competent to swear and affirm the present affidavit.

2. I state that, the present affidavit is being preferred in accordance with the order dated 04.12.2023 passed by this Hon'ble Court, directing the Plaintiff to approach this Hon'ble Court and bring to its kind notice the details of the perpetrator(s), infringing upon the Intellectual Property of

the Plaintiff. Vide the said order, this Hon'ble Court further granted the Plaintiff the liberty to approach Defendant no. 4, 5, 6 and 7 and request them to block the arrayed perpetrator(s).

Para 19(iii) of the order is reproduced as hereinunder:

“In order to ensure that the plaintiff is not required to come again and again to the Court, this injunction shall extend to any other website/domain name using the mark “Fabindia” to which the plaintiff draws the attention of the defendants. In case, any such new infringing website comes up, the plaintiff shall file an additional affidavit before this Court drawing attention of the Court to the said website.”

[Emphasis Supplied]

3. I state that the Plaintiff company has identified two (2) rogue websites, one by the name of **'FABINDIA.SERVICES'** and second by the name of **'FABINDIA.ORG.IN'**, which are infringing upon the registered trade mark, trade name and business name of the Plaintiff, i.e., **“Fabindia”**. The said profiles are using the brand name of the Plaintiff company and are posing as the Plaintiff itself while dealing in similar products as that of the Plaintiff, i.e., Indian wear (Kurti, dupattas, co-ord sets etc).
4. The rogue websites are posing as the Plaintiff and are monetizing over the goodwill build by the Plaintiff overtime. Hence, the same deserves to be blocked.

Profile link of rogue websites are reproduced as hereinunder:

- <http://fabindia.services/>
- <https://fabindia.org.in/collections/suit-set?page=4>

5. I state that in accordance with the referred order and for Defendant no. 4, 5, 6 and 7 to take requisite steps to proceed with the blocking of the said websites, the Plaintiff company is filing the instant affidavit.
6. I, state that in accordance with the referred order and also in accordance with the principles of natural justice, the Plaintiff most humbly prays before this Hon'ble Court to take the present affidavit on record.
7. I state that grave prejudice will be caused to the Plaintiff company, if the present affidavit is not taken on record and Defendant no. 4 -7 do not take the necessary steps to stop the ongoing illegalities.
8. I affirm that the contents of the present affidavit are true and correct to my knowledge and nothing material has been concealed from this Hon'ble Court.
9. I affirm that I have read the contents of the present affidavit and have understood the same. I state that the present affidavit has been drafted by my counsel on my directions.

DEPONENT

VERIFICATION:

Verified at New Delhi on this 9th day of July, 2024. The contents of the above affidavit are true and correct to the best of my knowledge and nothing material has been concealed therefrom.

DEPONENT