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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ CS(COMM) 12/2022

NEW BALANCE ATHLETICS INC ..... Plaintiff  
Through Mr. Dushyant K. Mahant, Mr.  
Urfee Roomi, Mr. Parth Agrawal and Mr.  
Alvin Antony, Advs.

versus

NBSTORESININDIA.IN & ORS. .... Defendants  
Through

**CORAM:**  
**HON'BLE MR. JUSTICE C. HARI SHANKAR**

**ORDER**

% **07.01.2022**  
(Video-Conferencing)

**I.A. 266/2022 (Section 151 CPC for exemption)**

1. This is an application for exemption from filing an apostilled Power of Attorney. For the reasons stated in the application and subject to the plaintiff filing a duly apostilled Power of Attorney, as expeditiously as possible given the present circumstances, exemption is granted for the present.

2. The application is disposed of.

**I.A. 267/2022 (Section 12A of Commercial Courts Act, 2015)**

3. For the reasons stated in the application, exemption from the requirement of pre-institution mediation is granted.

4. The application is allowed accordingly.

**I.A. 265/2022**

5. Subject to the plaintiff filing legible copies of any illegible and dim documents on which it may seek to place reliance within a period of four weeks from today, exemption is granted for the present.

6. The application is disposed of.





**I.A. 264/2022 [Order XI Rule 1(4)]**

7. Subject to the right of the defendants to admit or deny the same, the plaintiff may place additional documents on record within a period four weeks from today.

8. The application is disposed of accordingly.


**CS(COMM) 12/2022 & I.A. 263/2022 (Order XXXIX Rules 1 and 2 CPC)**

9. The plaintiff is the proprietor of a mark “NEW BALANCE”, used in connection with footwear or readymade clothing. The mark stands registered in favor of the plaintiff under Classes 18 and 25 of the Trademark Rules, 2017. A tabular depiction of the various registrations held by the plaintiff is provided in para 40 of the plaint, thus:

S.No.	Mark	Reg. No.	Class/es	Registration Date	Renewed Until
1.	NEW BALANCE	472336	25	May 18, 1987	May 18, 2028
2.	NEW BALANCE	525511	18	March 2, 1990	March 2, 2024
3.		472334	25	May 18, 1987	May 18, 2028
4.		525286	18	February 27, 1990	February 27, 2024
5.		706035	18	May 20, 1996	May 20, 2026
6.		1637760	25	January 3, 2008	January 3 2028

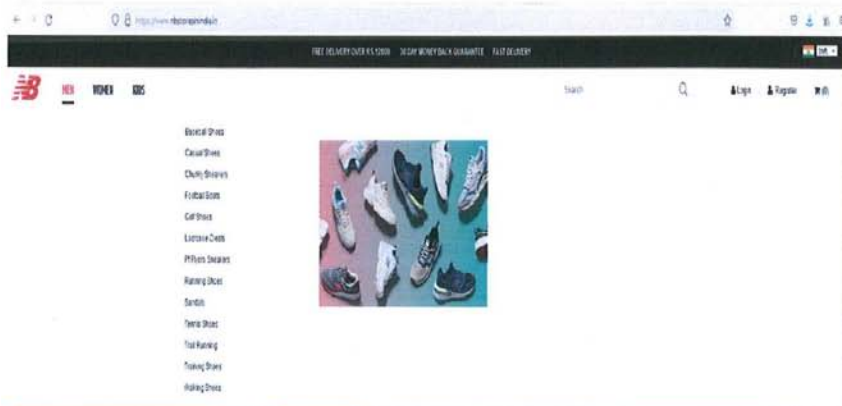
**10.** The plaintiff has also provided sales figures effected by the plaintiff under the aforesaid marks, which vouchsafe the reputation of the plaintiff and its market standing.

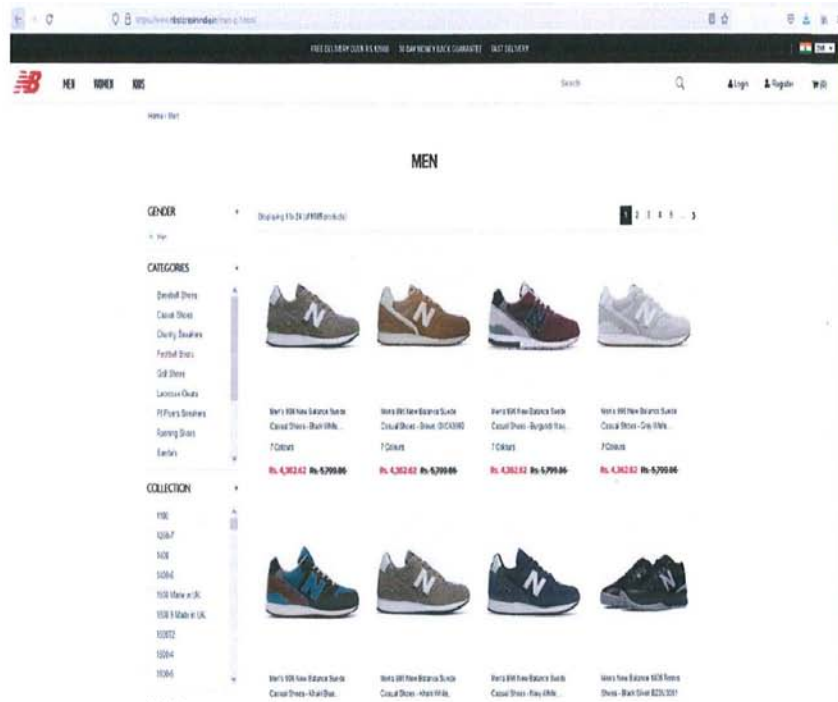
**11.** Given the nature of the present challenge, it is not necessary to refer any further to the averments in the plaint insofar as the plaintiff's reputation is concerned.

**12.** The plaintiff is aggrieved by the defendants, on its websites at [www.nbshoesindia.com](http://www.nbshoesindia.com) and [www.newbalanceindia.co.in](http://www.newbalanceindia.co.in), misrepresenting itself as being linked to the plaintiff, to the extent that the defendants are using the plaintiff's registered logo .

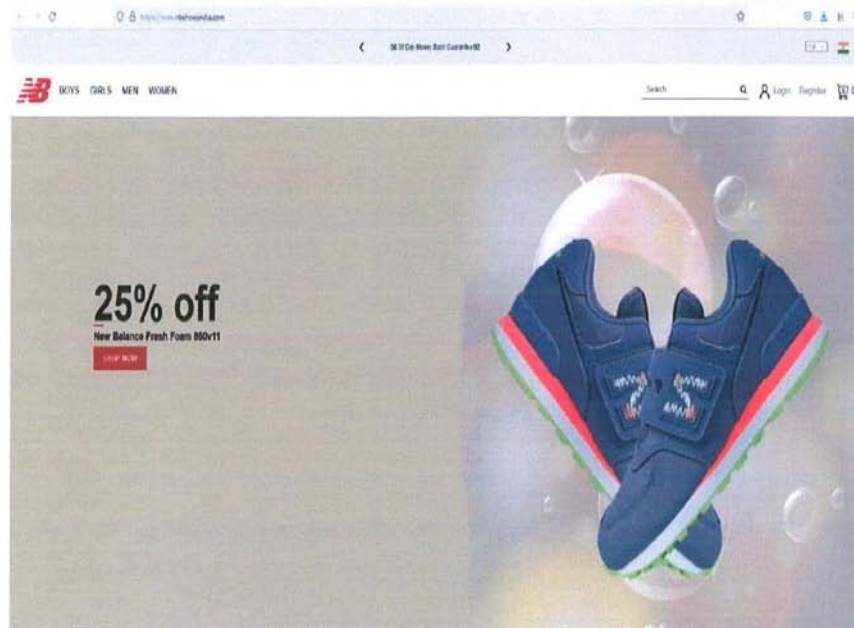
**13.** The plaintiff has placed on record screenshots of the websites of

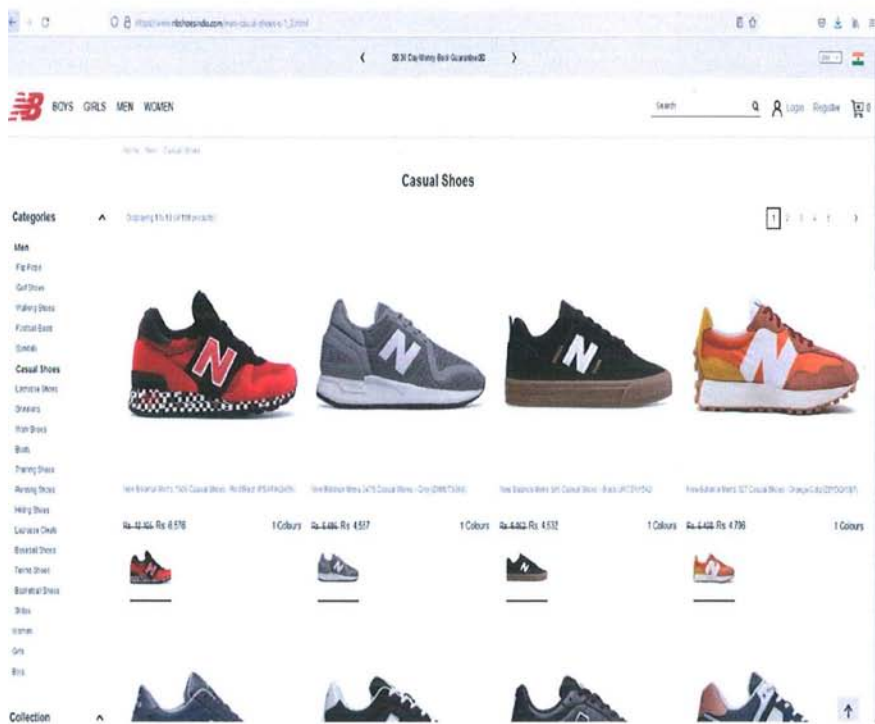
the Defendants 1 to 10, which appear thus:





[WWW.NBSHOESINDIA.COM](http://WWW.NBSHOESINDIA.COM) and [WWW.NB-INDIA.COM](http://WWW.NB-INDIA.COM)





NEWBALANCEINDIA.CO.IN



14. It is clear, from a glance at the aforesaid screenshots, that the defendants are using the plaintiff's logo with the clear intent of representing themselves as linked to the plaintiff.

15. The plaintiff has further submitted that the defendants are resorting to unlawful trade practices as when orders are placed on the defendants' websites, payments are exacted from the persons placing the orders but no goods are provided. The plaintiff claims to have itself suffered one such attempt.

**16.** *Prima facie*, a case of infringement of the plaintiff's registered mark and an attempt at misrepresenting the defendants as linked to the plaintiff with the intent of making undue profits and gains at the expense of the consumer public, exists.

**17.** As such, there is a clear case for grant an *ex parte ad interim* injunction.

**18.** The plaintiff has impleaded Defendants 1 to 10 being the websites with which the plaintiff is presently aggrieved. As there may be other such websites of which the plaintiff presently is unaware, they have been impleaded collectively as John Does as Defendant 18.

**19.** It is in these circumstances that the plaintiff has approached this Court with the present suit, seeking substantive reliefs against the defendants and other such infringers of plaintiff's mark.

**20.** Let the plaint be registered as a suit.

**21.** Issue summons in the suit to the defendants, returnable on 25<sup>th</sup> March, 2022 before the Joint Registrar for completion of pleadings, admission and denial of documents and marking of exhibits.

**22.** Written statement, if any, be filed within a period of four weeks accompanied by an affidavit of admission and denial of the documents filed by the plaintiff with advance copy to learned Counsel for the plaintiff, who may file replication thereto, if any, within a period of



two weeks thereof accompanied by an affidavit of admission and denial of the documents filed by the defendants.

**23.** IA 263/2022 seeks interim reliefs. The prayer clause in this application reads as under:

“42. The Plaintiff, therefore, respectfully prays that the following reliefs be granted in its favour:

a) An order for interim injunction restraining Defendant Nos. 1 - 10 (and other such rogue websites/ domains/ entities which are discovered during the proceedings to have been engaging in or carrying out fraudulent activities by infringement of the Plaintiff's NEW BALANCE and NB trademarks), and all others acting through them and on their behalf from infringing the Plaintiff's registered NEW BALANCE and NB trademarks;

b) An order for interim injunction restraining Defendant Nos. 1 – 10 (and other such rogue websites/ domains/ entities which are discovered subsequently to have been engaging in or carrying out fraudulent activities by passing off as the Plaintiff), and all others acting through them and on their behalf from infringing on the copyright vested with the Plaintiff in the website located at [www .newbalancc.com](http://www.newbalancc.com);

c) An order for interim injunction restraining Defendant Nos. 1 – 10 (and other such rogue websites/ domains/ entities which are discovered subsequently to have been engaging in or carrying out fraudulent activities by passing off as the Plaintiff), and all others acting through them and on their behalf from passing off the Plaintiff's registered NEW BALANCE and NB trademarks;

d) An order directing the Defendant Nos. 11 - 14, their directors, partners, proprietors, officers, affiliates, 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, to suspend the

domain name registration of Defendants Nos. 1 - 10 as identified by the Plaintiff in the instant suit at Memo of Parties or such other domain names that may subsequently be notified by the Plaintiff to be of rogue websites which infringe its exclusive rights;

e) An order directing the Defendant Nos. 15 and 16 to issue a notification calling upon the various Internet Service Providers registered under it to block access to Defendant Nos. 1 - 10 or such other websites that may subsequently be notified by the Plaintiff as being rogue websites;

f) An order directing the Defendant No. 17 to cancel the domain registrations of Defendant Nos. 1 - 10 or such other relevant websites that may subsequently be notified by the Plaintiff as being rogue websites;

g) Any other orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case."

**24.** In view of the aforesaid facts and circumstances, the following order is passed by way of *ad interim* relief:

(i) Defendants 1 to 10 as well as any other entity acting through them or on their behalf are restrained from using the registered "NEW BALANCE" and "NB" trademarks of the plaintiff in any manner, whatsoever including by reflecting the said marks on their websites at any point or position.

(ii) The defendants are also restrained from operating through websites which are deceptively similar to that of the plaintiff and, thereby violating the copyright held by the plaintiff in its

websites.

(iii) Defendants 11 to 14 are directed forthwith to suspend and render inoperative, till further orders, the domain name registrations held by Defendants 1 to 10.

(iv) Defendants 15 and 16 are directed to issue a notification calling on all Internet Service Providers registered under them to render inaccessible, within the territory of India, access to Defendants 1 to 10.

(v) The plaintiff is also given liberty to approach this Court, should any other such infringing website come to its notice, for similar interim reliefs.

(vi) This order shall remain in force till the next date of hearing.

**25.** As this order has been passed *ex parte*, the plaintiff would comply with the requirement of Order XXXIX Rule 3 of the Code of Civil Procedure, 1908 by email within two weeks from today.

**26.** Issue notice to the defendants, returnable 4<sup>th</sup> April, 2022 before the Court.

**27.** Response to this application, if any, be filed within a period of four weeks from today with advance copy to learned Counsel for the

plaintiff, who may file rejoinder thereto, if any, before the next date of hearing.

**JANUARY 7, 2022**

*r.bararia*

**C. HARI SHANKAR, J**