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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of Decision: 3rd March, 2022
 + **CS (COMM) 135/2022**

DABUR INDIA LIMITED Plaintiff
 Through: Mr. Anirudh Bakhru, Mr. Prabhu
 Tandon, Ms. Kripa Pandit and Mr.
 Umang Tyagi, Advocates.
 (M:9818499323)

versus

ASHOK KUMAR AND ORS. Defendants
 Through: None.

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

I.A. 3424/2022 (for exemption)

1. This is an application seeking exemption from filing original and clear copies of documents. Recording the Plaintiff's undertaking that the inspection of original documents shall be given, if demanded, or that the original documents shall be filed prior to the stage of admission/denial, the exemption is allowed. I.A. is disposed of.

I.A. 3427/2022 (u/S 12A)

2. This is an application seeking exemption from instituting pre-litigation mediation. In view of the orders passed in **CS (COMM) 132/2022** titled ***Upgrad Education v. Intellipaat Software***, the application is allowed and disposed of.

I.As. 3425-26/2022 (exemption from advance service to the Defendants)

3. In view of the fact that the Plaintiff has sought *ex parte ad-interim* injunction, the exemption from advance service to the Defendants is granted.

4. Applications are disposed of.



CS (COMM) 135/2022

5. Let the plaint be registered as a suit.
6. Issue summons to the Defendants through all modes upon filing of Process Fee.
7. The summons to the Defendants shall indicate that a written statement to the plaint shall be positively filed within 30 days from date of receipt of summons. Along with the written statement, the Defendants shall also file an affidavit of admission/denial of the documents of the Plaintiff, without which the written statement shall not be taken on record.
8. Liberty is given to the Plaintiff to file a replication within 15 days of the receipt of the written statement(s). Along with the replication, if any, filed by the Plaintiff, an affidavit of admission/denial of documents of the Defendants, be filed by the Plaintiff, without which the replication shall not be taken on record. If any of the parties wish to seek inspection of any documents, the same shall be sought and given within the timelines.
9. List before the Joint Registrar for marking of exhibits on 18th May, 2022. It is made clear that any party unjustifiably denying documents would be liable to be burdened with costs.
10. List before Court on 25th April, 2022.

I.A.3423/2022 (u/O XXXIX Rules 1 & 2 CPC)

11. Issue notice. The Plaintiff – Dabur India Limited has filed the present suit seeking permanent injunction and damages in respect of infringement of its various intellectual properties, including the trademark ‘DABUR’, copyright in the labels and packaging of its various products, passing off and unfair competition.
12. The grievance in the present plaint is that there are various domain



names and websites, who have started using the mark ‘DABUR’ and depicting various products of ‘DABUR’. These websites are <https://www.daburdistributor.com>, <https://daburdistributorships.in>, etc. The said websites portray themselves to be the Plaintiff, and call for the franchisees and distributors to register themselves for being appointed as agents for selling DABUR products. On one of the websites, payment to the tune of Rs.25,000/- is also being sought from such franchisees and distributors for registering themselves, on <https://www.daburdistributor.com>.

13. Mr. Anirudh Bakhru, Id. Counsel appearing for the Plaintiff, submits that, today morning, it was found that another website by the domain name www.daburfranchisee.in has also started operating. He submits that the names of the parties, who have registered these domain names, are not clear as the Registrars i.e., Defendant Nos.4 & 5 have permitted the said registrants to avail of privacy protect services. Referring to the <https://www.whois.com> database for domain names, he submits that none of the details, including the telephone number or address of the said registrants is available. Thus, the Plaintiff has been constrained to file a John Doe action.

14. It is further submitted by Mr. Bakhru, Id. Counsel for the Plaintiff that since the names of the registrants and the persons who are operating the websites itself are not clear, directions may be passed against the various Internet Service Providers (*hereinafter*, “ISPs”), who are Defendant Nos.6 to 14, as also Defendant No.2- Department of Telecommunications, Ministry of Communications and IT and Defendant No.3- Ministry of Electronics and Information Technology to block the said websites.

15. Heard Id. Counsel for the Plaintiff.



16. The internet era has brought various challenges to IP owners and this case is a reflection of the same. The mark 'DABUR' is a well-known trademark in India, having been coined, way back in 1884. Thus, it is an Indian brand which is more than 150 years old and has become a household name. Over the years, the Plaintiff has been a leading manufacturer and seller of a large variety of products to the Indian public, ranging from pharmaceuticals, toiletries, food products and medicinal preparations. The products belonging to the Plaintiff are also exported abroad. The goodwill in the Plaintiff's mark and business is, thus, unquestionable.

17. Under these circumstances, the use of the aforementioned domain names and the hosting of websites using the same, in a manner so as to deceive the general public as also small businesses, who may be enticed into seeking franchisees and distributorships, using the mark/name DABUR, ought not to be permitted.

18. The legal rights of the Plaintiff are severely affected by the use of the mark 'DABUR', as also various logos of the various products and images thereof. Moreover, apart from the rights of the Plaintiff, which are being infringed, it would also not be in public interest to permit these domain names and websites to operate, so as to continue to deceive and cheat the general public in India and abroad.

19. During the hearing today, this Court has accessed the said websites, and finds that except for the designation '© 2020 Dabur Distributor', there are no other details provided on the website. In fact, when one clicks on the 'Contact Us' tab, in the website bearing the name www.daburdistributor.com, the registered office of the Plaintiff i.e., 8/3, Asaf Ali Road, New Delhi-110002 is reflected, and the business mail which



is used is of info@daburdistributor.com with toll free number as 983-181-0741.

20. Similarly in the case of www.daburdistributorships.in the copyright legend reads as ‘© 2021 Dabur Distributor’ which is identical to the previous website discussed above. Similar contact details are used in both websites. It is unclear whether the registrants of both the domain names are the same or not. There is however, no doubt that both the websites severely impinge upon the Plaintiff’s rights, due to illegal use of the name ‘DABUR’, product packaging, trade dress, logos, labels, etc. The attempt is to not merely infringe and pass off, but to indulge in complete impersonation of the Plaintiff itself.

21. This Court is convinced that the Plaintiff has made out a *prima facie* case for the grant of *ex-parte* injunction and the balance of convenience is in favour of the Plaintiff. Irreparable loss would be caused to the Plaintiff if an *ex-parte* injunction is not passed in favour of the Plaintiff. The loss to the public is also incalculable.

22. This Court has also perused the judgment of the Id. Single Judge of this Court in ***UTV Software Communication Ltd. and Ors. v. 1337X to and Ors., 2019 (78) PTC 375 (Del)***, wherein the Court has observed that the blocking of websites is a cumbersome exercise, and some policy ought to be framed in this regard. The relevant observations of the Court are as under:

“104. This Court is of the view that since website blocking is a cumbersome exercise and majority of the viewers / subscribers who access, view and download infringing content are youngsters who do not have knowledge that the said content is infringing and / or pirated, it directs the MEITY/DOT to explore the possibility of framing a



policy under which is a warning is issued to the viewers of the infringing content, if technologically feasible in the form of e-mails, or pop-ups or such other modes cautioning the viewers to cease viewing/downloading the infringing material. In the event the warning is not heeded to and the viewers /subscribers continue to view, access or download the infringing/pirated content, then a fine could be levied on the viewers/subscribers.”

23. In order to curb any malpractice or any monetary harm to the public as also to the franchisees and distributors who may pay monies to the websites, and to protect the Plaintiff's rights in various intellectual properties, which are being violated on the websites of the Defendants, this Court directs as under:

- (1) Defendant Nos.4 & 5 shall immediately block the domain names, as also the websites <https://www.daburdistributor.com>, <https://daburdistributorships.in>, and www.daburfranchisee.in. *Status quo* shall also be maintained in respect of the said domain names and the same shall be locked with immediate effect. The Defendants 4 & 5 are restrained from transferring the said domain names or creating any third-party interest on the same.
- (2) Defendant Nos.2 & 3 i.e., DoT and MEITY shall issue directions to all ISPs to block the said websites as also any other websites, except the Plaintiff's websites, bearing the mark 'DABUR'.
- (3) Defendant Nos.4 & 5 shall also disclose to Id. Counsel for the Plaintiff and file an affidavit before this Court as to the details



of the registrants or the persons who have registered the abovementioned domain names along with their complete contact details, postal address, email address, bank account details, and telephone numbers, etc. Let the said affidavit be filed within one week from the receipt of the copy of this order. Upon receipt of this order, Defendants 4 & 5 shall communicate immediately the order to the registrants of the infringing domain names.

- (4) The Registrants of the infringing domain names <https://www.daburdistributor.com>, <https://daburdistributorships.in>, and www.daburfranchisee.in shall cease all use of the domain names and pull down the websites hosted on the said domain names with immediate effect. The email addresses reflected on the said websites shall also be de-activated.
- (5) Defendant Nos.4 & 5 are also restrained from allowing any third-party, apart from the Plaintiff, from registering domain names using the mark/name 'DABUR'.
- (6) Defendant Nos.6 to 14 i.e., the Internet Service Providers shall give effect to this order immediately.
- (7) Upon the disclosure of the names of the registrants of the domain names, the Plaintiff is permitted to implead them as the Defendants in the present suit. In case the Plaintiff comes across any other domain names or websites with the mark 'DABUR', they are permitted to approach the Court with an application for appropriate relief, including seeking extension



of the present injunction to the said domain names or websites as well.

24. Summons and notice to the Defendant Nos.2 & 3 be served upon Mr. Harish Vaidyanathan, Id. CGSC for the Union of India, to seek instructions in respect of the policy, as per paragraph 104 of the judgment in *UTV Software Communication (supra)*.

25. Further, this Court notices that the practice of hiding or masking the details of the Registrants who hold domain names is increasingly resorted to by persons who register such domains which impinge upon owners of trademarks and names. Such Registrants seek to enjoy domain name registrations and host websites, in a concealed or a hidden manner, without disclosure of their identity. The domain names are used to the exclusion of the whole world including the trademark owner. Whenever any person or entity registers a mark, name, company, firm etc., the identity of such person is openly available. However, in the case of domain names, this is not so. It appears that disabling of privacy protect feature may be essential to ensure that the identity of the persons registering domain names is clearly visible on the <https://www.whois.com> database, as also other such databases. Accordingly, the Defendant Nos. 2 and 3 to also disclose their stand in respect of privacy protect features, provided by domain name Registrars to their Registrants. Let the affidavit on behalf of the Defendant Nos.2 & 3 be filed one week before the next date.

26. Compliance of Order XXXIX Rule 3 CPC be made within 48 hours.

27. Reply to the application be filed within four weeks from the service of the present order, along with the paper-book.



28. List the application before the Court on 25th April, 2022.
29. *Dasti*.

PRATHIBA M. SINGH
JUDGE

MARCH 03, 2022/dk/ad

