



2024:DHC:8520



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

% **Date of decision: 29th October, 2024**

+ **CS(COMM) 901/2023**

NEXXBASE MARKETING PVT. LTD.Plaintiff

Through: **Mr. Zeeshan Khan and Mr. Aman
Venugopal, Advocates.**

versus

PARMINDER SINGH (ALIAS P. SINGH)Defendant

Through: **None**

CORAM:

HON'BLE MR. JUSTICE AMIT BANSAL

AMIT BANSAL, J. (Oral)

1. The present suit has been filed seeking relief of permanent injunction restraining the defendant from infringing the trademark of the plaintiff, passing off their goods as that of the plaintiff and other ancillary reliefs.

PLEADINGS IN THE PLAINT

2. The Plaintiff, Nexxbase Marketing Pvt. Ltd. is a company incorporated in 2009 under the laws of India.

3. The plaintiff has been engaged in the business of manufacturing and selling smart phone covers, smart phone accessories, wearable digital electronic devices, smart watches, wired and wireless earphones, headsets and earbuds, smart eyewear, fitness bands, Bluetooth devices etc. under their home brand "NOISE/NOISE COLORFIT".

4. The plaintiff's reputation in the market can be seen from the sales figures of its products in the country, the details of which are given in



paragraph 7 of the plaint. The success of the plaintiff's products is further evidenced by the awards it has won, including the Forbes India Leadership award in 2023 and BusinessWorld India's Top D2C Brand award in 2023. According to the recent ranking of International Data Corporation's worldwide Quarterly Wearable Device Tracker, the Plaintiff has been ranked as the no.1 smartwatch brand in India in 2020, no.3 in Asia, 9th Globally and no.2 in the Truly wireless brand category. The products sold by the plaintiff under its 'NOISE' marks have developed a substantial reputation and valuable goodwill amongst the members of the trade and the public.

5. The Plaintiff is the registered proprietor of the following trademarks in India:

S. No.	Trademark	Number	Class	Date
1.	NOISE	2127533	25	8 th April, 2011
2.	GONNOISE.COM	3274898	35	3 rd June, 2016
3.	NOISE	3274899	14	3 rd June, 2016
4.	NOISE	4056592	9	14 th January, 2019
5.	NOISEFIT	5007726	41	17 th June, 2021
6.	NOISEFIT	5007727	42	17 th June, 2021
7.	NOISEFIT	5007728	44	17 th June, 2021
8.	NOISEFIT	5007729	45	17 th June, 2021
9.	NOISELAB	5415566	42	19 th April, 2022

The Certificates for use in Legal Proceedings are filed as documents no. 2 to 9 of the additional documents filed along with the plaint. All the aforesaid registrations remain valid and subsisting.



6. The Defendant filed a notice of opposition against the Plaintiff's trade mark application for the mark 'NOISE' bearing no.2792743 in class 9 claiming use since 1st January, 2011 for mobile phones and accessories, which is currently pending adjudication before the Trademarks Registry. However, the plaintiff submits that there is no use of the impugned 'NOISE' marks by the defendant.

7. The Defendant has also filed numerous trademark applications for the 'NOISE' and 'NOISE' formative marks which are identical and/or deceptively similar to the plaintiff's 'NOISE' marks, detailed in paragraph 21 of the Plaint. The same are set out below:

S. No.	Trademark	Registration/ Application no.	Class	Date of registration/ application	Current status
1.	NOISE	3760809	28	22nd February, 2018	Registered (rectification filed by the plaintiff)
2.	NOISE	4044084	9	2 nd January, 2019	Abandoned
3.	NOISE PLAY	3776100	9	13 th March, 2018	Opposed by the plaintiff
4.	NOISE COLORFIT	4194495	9	1 st June, 2019	Opposed by the plaintiff
5.	NOISE	3296409	14	28 th June, 2016	Opposed by the plaintiff



8. The defendant has also filed other oppositions against the trademark applications of the plaintiff for other noise formative marks, the details of which are given in paragraph 22 of the plaint and are being set out below:

S. No.	Trademark	Application no.	Class	Date of application	Current status
1.	Noise X1 Air	5051267	9	20 th July, 2021	Opposed by the Defendant
2.	Noise Shots	3934528	9	4 th September, 2018	Opposed by the Defendant
3.	NoiseFit	4148177	9	15 th April, 2019	Opposed by the Defendant
4.	Noise TuneSport	4259430	9	8 th August, 2019	Opposed by the Defendant
5.	NOISEFIT	5007725	35	17 th June, 2021	Opposed by the Defendant
6.	NOISEFIT	5007724	14	17 th June, 2021	Opposed by the Defendant

9. The defendant has also initiated rectification proceedings before the Trademarks Registry against the plaintiff's registration no.4056592 which is currently pending adjudication.



PROCEEDINGS IN THE SUIT

10. On 20th December 2023, this Court granted an *ex-parte ad-interim* injunction against the defendant and the defendant was restrained from manufacturing, selling or offering for sale any products under the mark 'NOISE', 'NOISE COLORFIT' or any other variants consisting of the plaintiff's mark 'NOISE'.

11. On 13th February, 2024, the learned Joint Registrar noted that the defendant was duly served. Despite this, none had appeared on behalf of the defendant.

12. The *ex-parte ad interim* injunction passed on 20th December, 2023 was made absolute vide order dated 17th May, 2024.

13. Via order dated 4th October, 2024 the right of the defendant to file written statement was closed since the maximum permissible period to file the written statement was over. Further, the defendant was proceeded against *ex-parte*.

14. The plaintiff now seeks a decree in terms of Order VIII Rule 10 of the Code of Civil Procedure, 1908 (CPC).

ANALYSIS AND FINDINGS

15. I have heard the submissions of Mr. Zeeshan Khan, learned counsel for the plaintiff and also perused the material on record.

16. In *Satya Infrastructure* (supra), a Co-ordinate Bench of this Court held as follows:-

“4. The next question which arises is whether this Court should consider the application for interim relief and direct the plaintiffs to lead ex parte evidence. The counsel for the plaintiffs states that the plaintiffs are willing to give up the reliefs of delivery, of rendition of accounts and of recovery of damages, if the suit for the relief of injunction alone were to be heard today.



5. I am of the opinion that no purpose will be served in such cases by directing the plaintiffs to lead ex parte evidence in the form of affidavit by way of examination-in chief and which invariably is a repetition of the contents of the plaint. The plaint otherwise, as per the amended CPC, besides being verified, is also supported by affidavits of the plaintiffs. I fail to fathom any reason for according any additional sanctity to the affidavit by way of examination-in-chief than to the affidavit in support of the plaint or to any exhibit marks being put on the documents which have been filed by the plaintiffs and are already on record. I have therefore heard the counsel for the plaintiffs on merits qua the relief of injunction.”

17. The plaint has been duly verified and is also supported by the affidavit of the plaintiff. In view of the fact that no written statement has been filed on behalf of the defendant, all the averments made in the plaint have to be taken to be admitted. Further, since no affidavit of admission/denial has been filed on behalf of the defendant in respect of the documents filed with the plaint, in terms of Rule 3 of the Delhi High Court (Original Side) Rules 2018, the same are deemed to have been admitted. Therefore, in my opinion this suit does not merit trial and the suit is capable of being decreed in terms of Order VIII Rule 10 of CPC.

18. From the averments made in the plaint and the evidence on record, the plaintiff has been able to prove that the plaintiff is the registered proprietor of the trademarks “NOISE”, “NOISE COLORFIT” and their formative marks.

19. The defendant is using marks which are virtually identical, and bears phonetic, structural and visual similarities to that of the plaintiff’s impugned mark, “NOISE”. Hence, the defendant has replicated the contents, colour scheme, and the ‘NOISE’ trademarks of the plaintiff.

20. Based on the discussion above, a clear case of infringement of



trademark is made out. The defendant has taken unfair advantage of the reputation and goodwill of the plaintiff's trademark and has also deceived the unwary consumers of their association with the plaintiff's by dishonestly adopting the plaintiff's registered marks without any plausible explanation. Therefore, the plaintiff has established a case of passing off as well.

21. At this stage, it may be relevant to note that the defendant did not appear before the Court, despite service of summons on 20th January, 2024. Further, no communication on behalf of the defendant has been placed on record in respect of the allegations of the plaintiff in this suit. Hence, the right to file written statement of the defendant was closed on 4th October, 2024.

22. Since the defendant has failed to take any requisite steps to contest the present suit, despite having suffered an *ad interim* injunction order, it is evident that the defendant has no defence to put forth on merits.

RELIEF

23. In view of the foregoing analysis, the suit is decreed in terms of prayer clauses 47(i), 47(ii), 47(iii), 47(iv) and 47(v) of the plaint. The said clauses read as follows:

“47. In these circumstances and in the larger interest of justice, it is most humbly prayed that this Hon'ble Court may be pleased to grant the following reliefs:

i. Pass a decree of permanent injunction against the Defendant, his partners, authorized representatives, successors, franchisees, licensees, distributors, assignees, agents, and anyone acting for and/ or on its behalf from selling, offering for sale, marketing, advertising, manufacturing, and directly or indirectly dealing in any goods/services bearing the Impugned NOISE Marks and/or any other mark similar to the Plaintiffs NOISE Marks as a trademark/part of a trademark, trade name/part of a trade name, corporate name/part of a corporate



name, domain name/part of a domain name and/or in any other manner whatsoever, which would amount to infringement of the Plaintiffs registered trademark;

ii. Pass a decree of permanent injunction against the Defendant, his partners, authorized representatives, successors, franchisees, licensees, distributors, assignees, agents, and anyone acting for and/ or on its behalf from selling, offering for sale, marketing, advertising, manufacturing, and directly or indirectly dealing in any goods/services bearing the Impugned NOISE Marks and/or any other mark similar to the Plaintiffs NOISE Marks as a trademark/part of a trademark, trade name/part of a trade name, corporate name/part of a corporate name, domain name/part of a domain name and/or in any other manner whatsoever, which would amount to passing off of the Plaintiffs trademark/products;

iii. Pass a decree of permanent injunction against the Defendant, his partners, authorized representatives, successors, franchisees, licensees, distributors, assignees, agents, and anyone acting for and/ or on its behalf from filing any application for registration of a mark similar to the Plaintiffs NOISE Marks as elaborated in paragraph No. 5 of the Complaint;

iv. The Defendant, his partners, authorized representatives, successors, franchisees, licensees, distributors, assignees, agents, and anyone acting for and/ or on his behalf be ordered by a decree of mandatory injunction to withdraw/cancel any/all the trademark application(s)/ registration(s), and/ or Copyright application filed by it for the Impugned Noise Mark and/or any other mark which is similar to the Plaintiffs NOISE Marks, including but not limited to Defendant's trade mark application/registration numbers 3760809, 4044084, 3776100, 4194495 and 3296409 and/or any other trademark which is identical/deceptively similar to the Plaintiffs prior registered NOISE Marks;

v. The Defendant be directed by a decree of mandatory injunction to deliver to the Plaintiff's attorneys or its representatives for destruction, any and/or all products, labels, stickers, moulds, signs, stationery, business cards, prints, packages, plates, dyes, wrappers, receptacles, materials, and advertisements, if any, in his possession or under his control, bearing the Impugned NOISE Marks and/or any other trademark that is identical or deceptively similar to or bearing



the Plaintiffs NOISE Marks”

24. Insofar as the relief of damages as sought in prayer clause 47(vi) is concerned, reference may be made to the judgment in ***Hindustan Lever Ltd. v. Satish Kumar***, 2012 SCC OnLine Del 1378. The relevant observations are set out below:

“23. One of the reasons for granting relief of punitive damages is that despite of service of summons/notice, the defendant had chosen not to appear before the court. It shows that the defendant is aware of the illegal activities otherwise, he ought to have attended the proceedings and give justification for the said illegal acts. Since, the defendant has maintained silence, therefore, the guilt of the defendant speaks for itself and the court, under these circumstances, feels that in order to avoid future infringement, relief of punitive damages is to be granted in favour of the plaintiff.”

25. In light of the foregoing analysis, the Court concludes that the defendant’s conduct not only warrants, but also necessitates the imposition of both costs and aggravated damages. Thus, in addition to decree passed in the terms already mentioned above, taking into account the entire facts and circumstances presented in this case, the Court also awards damages and costs amounting to INR 5,00,000/- in favour of the plaintiff and against the defendant.

26. Let the decree sheet be drawn up.

27. All pending applications stand disposed of.

AMIT BANSAL, J

OCTOBER 29, 2024