



2025:DHC:705



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% ***Date of decision: 30th January, 2025***+ **CS(COMM) 26/2023 & I.A. 41666/2024****WILDCRAFT INDIA LIMITED**PlaintiffThrough: Mr. Pramod K. Singh and Ms. Aastha
Sharma, Advocates.

versus

AHMED ALIDefendant

Through: None.

CORAM:**HON'BLE MR. JUSTICE AMIT BANSAL****AMIT BANSAL, J. (Oral)****CS(COMM) 26/2023 and I.A. 41666/2024 (under Order XIII-A of the CPC seeking summary judgment)**

1. The present suit has been filed seeking relief of permanent injunction restraining the defendant from infringing the trademarks and copyright of the plaintiff and passing off of his goods as those of the plaintiff along with other ancillary reliefs.

PLEADINGS IN THE PLAINT

2. The plaintiff, Wildcraft India Limited, was incorporated in 1998 and was converted to a public company in 2022. The plaintiff is primarily engaged in the business of manufacturing, distribution and sale of sporting, outdoor and adventure equipment such as bags, footwear, ruck sacks, rain wear, apparels, face masks, gears, etc.

3. The plaintiff uses its logo “” and the marks ‘W95’, ‘HYPA’ and



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‘HYPASHIELD’ (hereinafter ‘plaintiff’s marks’), independently or with its house mark ‘WILDCRAFT’, on all its products and the same are popular and well-known not only in India but across the world.




4. The plaintiff carries out its business in India, including in Delhi, through its owned showrooms and franchise and advertises its products under the plaintiff’s marks in India and other parts of the world through print and digital media, social media, brochures and packaging of its goods.

5. The plaintiff is equipped with an extended geo footprint of 200+ exclusive brand stores across 60+ cities with 5000+ retail points-of-sale across India which includes over 1000 points-of-sale across departmental stores and hyper markets. The plaintiff has also been serving the armed forces, the paramilitary and police personnel through defence and police canteens across the country.

6. The plaintiff honestly adopted the plaintiff’s marks and has been continuously, extensively and uninterruptedly using the same since their inception.


7. The plaintiff is the proprietor of a huge portfolio of trademarks in India, an inclusive list of which has been provided in paragraph no.7 of the plaint.


For ease of reference, the same is set out below:

| Mark | Registration No. | Class | Status |
|---|-------------------------|-----------------|---------------|
|  | 4490427 | 10 | Registered |
|  | 4490426 | 9 | Registered |
|  | 2859433 | 18, 25, 23, 28, | Pending |



| | | | |
|------------|---------|--|------------|
| | | 11, 20, 22, 41, 24, 8, 14 | |
| W95 | 4494874 | 21 | Registered |
| W95 | 4494862 | 10 | Registered |
| HYP A | 3102279 | 8, 9, 11, 18, 20, 22, 23, 24, 25, 27, 28, 41 | Registered |
| HYPASHIELD | 4506149 | 10 | Registered |

8. The aforesaid trade mark registrations in favour of the plaintiff are valid and subsisting. The earliest trade mark application filed by the plaintiff for the mark '


9. In particular, the plaintiff's logo '

10. The plaintiff has acquired enormous goodwill and reputation in relation to its products under the plaintiff's marks and is a well-known name among its consumers. The net sales of the plaintiff for the financial year 2021-22 amounts to Rs. 403.24 crores and the plaintiff's advertisement and



promotional expenses for the financial year 2021-22 amounts to Rs. 27.42 crores and these figures have been substantiated by the plaintiff with a CA certificate.

11. The defendant is engaged in storing/ selling/ marketing/ distributing bags, trolley bags, duffle bags, masks, etc. (hereinafter 'impugned products')


bearing the marks ', 'HYPA', 'HYPASHIELD' and 'W95', independently or in a combined manner, and the same are visually and structurally identical/ deceptively similar to the plaintiff's marks.

12. The defendant carries on its business through various dealers as well as through e-commerce platforms including Flipkart, Amazon, Meesho and IndiaMart. The defendant's impugned products are bought by customers in Delhi, who have uploaded their product reviews on the aforesaid e-commerce platforms. The defendant also operates its Instagram page wherein he is selling the impugned products under the identical infringing marks.

13. Any use of the aforesaid infringing marks by the defendant, either independently or in a combined manner with other marks, in relation to the impugned products is causing confusion in the minds of the consumers and the public and amounts to infringement of trademarks and copyright as well as passing off of the impugned products as those of the plaintiff.

PROCEEDINGS IN THE SUIT

14. On 17th January, 2023, this Court granted an *ex-parte ad interim* injunction in favour of the plaintiff and against the defendant by way of which

he was restrained from using the marks ', 'W95', 'HYPA' and 'HYPASHIELD'. Summons in the suit was issued to the defendant by the same order.



15. As per the service report of the Registry, the defendant has been served with *dasti* summons on 28th November, 2023.

16. Despite service, neither the defendant entered appearance nor a written statement has been filed on his behalf. Accordingly, the defendant's right to file the written statement was closed *vide* order dated 9th May, 2024 and he was proceeded *ex-parte vide* order dated 12th July, 2024.

17. In view of the above, an application under Order XIII-A of the Code of Civil procedure, 1908 seeking a summary judgment has been filed on behalf of the plaintiff. Notice in this application was issued to the defendant on 22nd November, 2024. However, no reply to this application has been filed by the defendant.

ANALYSIS AND FINDINGS


18. I have heard the submissions of the counsel for the plaintiff and perused the material on record.


19. 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 behalf of the defendant, all the averments made in the plaint are deemed to have been 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, the same are deemed to have been admitted in terms of Rule 3 of the Delhi High Court (Original Side) Rules 2018.

20. Therefore, I am of the opinion that no purpose would be served by directing the plaintiff to lead *ex-parte* evidence by filing an affidavit of examination in chief and the plaintiff is entitled to a summary judgment.

21. 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 marks ‘’ in classes 9 and 10, ‘W95’ in classes 10 and 21, ‘HYPA’ in classes 8, 9, 18, 20, 22, 23, 24, 25, 27, 28 and 41 and ‘HYPASHIELD’ in class 10.

22. The plaintiff also owns copyright registration for the artistic work ‘’ bearing registration no. A-150959/2024.

23. A comparison between the plaintiff’s products bearing the plaintiff’s marks and the defendant’s impugned products under the infringing marks, provided in paragraph no.24 of the plaint, is set out below:

| PLAINTIFF’S PRODUCT | DEFENDANT’S PRODUCT |
|---|---|
|  |  |
|  |  |



24. A bare perusal of the competing products makes it apparent that the defendant has slavishly copied the plaintiff's registered and well-reputed trademarks '  ', 'W95', 'HYPA' and 'HYPASHIELD' in the impugned products which are identical with the plaintiff's products.

25. In view of the aforesaid, a clear case of infringement of plaintiff's registered trademarks is made out in favour of the plaintiff and against the defendant.

26. The plaintiff, through its annual turnover and promotional expenses, has also been able to establish that it has acquired immense goodwill and reputation among the members of trade and public. Therefore, the defendant has taken unfair advantage of the reputation and goodwill of the plaintiff's marks and have also deceived the unwary consumers of their association with the plaintiff by dishonestly adopting the plaintiff's marks without any plausible explanation. In view of the above, the plaintiff has also established a case of passing off.

27. At this stage, it may be relevant to note that despite service of summons on 17th January, 2025, the defendant did not appear before the Court. Further, neither a written statement nor any communication in respect of the plaintiff's



allegations has been placed on record on behalf of the defendant.

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

29. In *Su-Kam Power Systems Ltd. v. Kunwer Sachdev*, 2019 SCC OnLine Del 10764, this Court has observed as under:

“90. To reiterate, the intent behind incorporating the summary judgment procedure in the Commercial Court Act, 2015 is to ensure disposal of commercial disputes in a time-bound manner. In fact, the applicability of Order XIII A, CPC to commercial disputes, demonstrates that the trial is no longer the default procedure/norm.

91. Rule 3 of Order XIII A, CPC, as applicable to commercial disputes, empowers the Court to grant a summary judgement against the defendant where the Court considers that the defendant has no real prospects of successfully defending the claim and there is no other compelling reason why the claim should not be disposed of before recording of oral evidence. The expression “real” directs the Court to examine whether there is a “realistic” as opposed to “fanciful” prospects of success. This Court is of the view that the expression “no genuine issue requiring a trial” in Ontario Rules of Civil Procedure and “no other compelling reason.....for trial” in Commercial Courts Act can be read mutatis mutandis. Consequently, Order XIII A, CPC would be attracted if the Court, while hearing such an application, can make the necessary finding of fact, apply the law to the facts and the same is a proportionate, more expeditious and less expensive means of achieving a fair and just result.

92. Accordingly, unlike ordinary suits, Courts need not hold trial in commercial suits, even if there are disputed questions of fact as held by the Canadian Supreme Court in Robert Hryniak (supra), in the event, the Court comes to the conclusion that the defendant lacks a real prospect of successfully defending the claim.”

30. The aforesaid principles are fully applicable in the facts and circumstances of the present case. As elaborated above, the defendant has no real prospect of successfully defending the claims in the present suit. Further, taking into account that the defendant has not set up any defence, there is no





compelling reason for the recording of oral evidence.

31. Therefore, this is a fit case where a summary judgment in terms of Order XIII-A of the Code of Civil Procedure, 1908 can be passed in favour of the plaintiff and against the defendant.


32. In view of the foregoing analysis, the present suit is decreed in terms of prayer clauses (a) to (d) of the plaint. The said clauses read as follows:


a. Grant an order for permanent/perpetual injunction thereby restraining the Defendant, its associates and agents, officers, employees, distributors, representatives, assigns and anyone associated with them from manufacturing, selling and offering for sale bags of any kind, masks and other products and accessories bearing the trademark and copyright vested

in “”, “HYPA”, “HYPASHIELD” and “W95” of the Plaintiff in any form and manner. The Defendant may be further restrained from manufacturing, selling and offering for sale bags of any kind, masks and other products and accessories bearing any mark deceptively and

confusingly similar to the trademark and copyright vested in “”, “HYPA”, “HYPASHIELD” and “W95” and/or any other registered trademark or copyright of the Plaintiff, thereby infringing Plaintiff’s registered trademarks and copyright.

b. Grant an order for permanent/perpetual injunction thereby restraining the Defendant, its associates and agents, officers, employees, distributors, representatives, assigns and anyone associated with them from manufacturing, selling and offering for sale bags of any kind, masks and other products and accessories bearing the trademark and copyright vested


in “”, “HYPA”, “HYPASHIELD” and “W95” of the Plaintiff in any form and manner. The Defendant may be further restrained from manufacturing, selling and offering for sale bags of any kind, masks and other products and accessories bearing any mark deceptively and

confusingly similar to the trademark and copyright vested in “”, “HYPA”, “HYPASHIELD” and “W95” and/or any other registered trademark or copyright of the Plaintiff, thereby passing off his goods and business as that of the goods and business of the Plaintiff.


c. Grant an order for permanent/perpetual injunction thereby restraining the Defendant, its associates and agents, officers, employees, distributors, representatives, assigns and anyone associated with them from displaying/selling any products bearing any trademark and copyright vested




in “”, “HYPA”, “HYPASHIELD” and “W95” and/or any other trademark or copyright of the Plaintiff on bags, masks and other products and accessories on any social media platform including Instagram, Facebook, Youtube or on e-commerce platforms such as www.flipkart.com, www.amazon.in, www.meesho.com, www.dealsmagnet.com and www.dealsmagnet.com and <https://www.indiamart.com/> in any form and manner and/or trademark or copyright identical and /or confusingly or

deceptively similar to the mark “”, “HYPA”, “HYPASHIELD” and “W95” and/or any other mark of the Plaintiff, thereby infringing the trademark, copyright of the Plaintiff and passing off his goods and business as that of the goods and business of the Plaintiff.

d. Grant an order for mandatory injunction thereby directing the Defendant, its associates and agents, officers, employees, distributors, representatives, assigns and anyone associated with them from removing the products displayed on the e-commerce websites such as www.flipkart.com, www.amazon.in, www.meesho.com, www.dealsmagnet.com and www.dealsmagnet.com and <https://www.indiamart.com/> and social media platforms including Instagram, Facebook, Youtube displaying/selling any

products bearing any trademark and copyright vested in “”, “HYPA”, “HYPASHIELD” and “W95” and/or any other trademark or copyright of the Plaintiff on bags, masks and other products and accessories in any form and manner and/or trademark or copyright identical and /or

confusingly or deceptively similar to the mark “”, “HYPA”, “HYPASHIELD” and “W95” and/or any other mark of the Plaintiff, thereby infringing the trademark, copyright of the Plaintiff and passing off his goods and business as that of the goods and business of the Plaintiff.

33. Insofar as the reliefs of damages and costs sought in prayer clauses (g) and (h) are 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,



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relief of punitive damages is to be granted in favour of the plaintiff.”

34. In light of the foregoing analysis, this 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 the decree passed in the terms already mentioned above and taking into account the entire facts and circumstances of this case, this Court also awards damages and costs amounting to Rs. 5,00,000/- in favour of the plaintiff and against the defendant.

35. Let the decree sheet be drawn up accordingly.

36. All pending applications stand disposed of.

AMIT BANSAL, J

JANUARY 30, 2025

Vivek/-