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

+ **CS(COMM) 401/2022**

ABROS SPORTS INTERNATIONAL PVT. LTD Plaintiff

Through: Mr. Ranjan Narula and Mr. Shashi
Pratap Ojha, Advocates.

versus

SURENDER KUMAR SINGHAL TRADING

AS SURENDERA POLYMERS & ANR

..... Defendants

Through: None.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

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02.06.2022

I.A. 9167/2022 (exemption)

1. Subject to the Plaintiff filing clearer copies of the documents, which it may seek to place reliance on, within four weeks from today, exemption is granted.

2. Application is allowed and disposed of.

I.A. 9168/2022 (seeking leave to file additional documents)

3. Present application has been preferred on behalf of the Plaintiff seeking leave to file additional documents under Order 11 Rule 1(4) CPC.

4. Plaintiff, if it wishes to file additional documents at a later stage, shall do so strictly as per the provisions of the Commercial Courts Act, 2015.

5. Application is allowed and disposed of.

I.A. 9169/2022 (Section 12(A) of the Commercial Courts Act, 2015 seeking exemption from pre-institution mediation)

6. For the reasons stated in the application, the requirement of pre-institution mediation is dispensed with.

7. Application is allowed and disposed of.



I.A. 9170/2022 (exemption from service to Defendants)

8. Since there is an urgency in the matter and the matter is being heard today, Plaintiff is exempted from serving advance notice on Defendants.

9. For the reasons stated in the application, the same is allowed and disposed of.

CS(COMM) 401/2022

1. Let plaint be registered as a suit.

2. Upon filing of process fee, issue summons to the Defendants, through all permissible modes, returnable before the Joint Registrar on 02.08.2022. Summons shall state that the written statement shall be filed by the Defendants within 30 days from the receipt of summons. Along with the written statement, Defendants shall also file an affidavit of admission/denial of the documents of the Plaintiff.

3. Replication be filed by the Plaintiff within 15 days of the receipt of the written statement. Along with the replication, an affidavit of admission/denial of documents filed by the Defendants, shall be filed by the Plaintiff.

4. If any of the parties wish to seek inspection of any documents, the same shall be sought and given within the timelines.

5. List before the Court on 01.10.2022.

I.A. 9166/2022 (under Order 39 Rules 1 and 2 CPC, by Plaintiff)


6. Present application has been preferred by the Plaintiff under Order 39 Rules 1 and 2 read with Section 151 of the Code of Civil Procedure, 1908 for grant of an *ex-parte ad-interim* injunction.

7. Issue notice to the Defendants through all prescribed modes, returnable on 01.10.2022.



8. It is averred that Plaintiff is a Company registered under the Companies Act, 2013 and has been in the business of manufacturing high quality footwear since its incorporation on 14.02.2020. Prior to incorporation of the Plaintiff, under the present name, business of the Plaintiff was carried out in the name of Narmada Polymers and thus, the Plaintiff carries with it years of experience as a leading manufacturer of shoes and soles.

9. It is further averred that Plaintiff, through its predecessor-in-interest, conceived and adopted the mark 'ABROS' in March 2017. The letter 'A' in the mark signifies the first letter of Anil Sharma who is the elder brother in the Sharma Family and 'BROS' signifies 'Brothers'. Hence, Plaintiff's device



mark/ logo , has been coined and conceived to represent the letter 'A' in an aero dynamic style to distinguish Plaintiff's goods and services from others.



10. It is stated that Plaintiff's brand ABROS is a brand made and developed in India, laced with the latest technologies and innovations to set its goods apart in the footwear market. By providing world class products at an affordable price and being marketed and developed for people of all ages, Plaintiff aims to deliver not only just products but the pieces of art that are technologically and aesthetically strong.

11. It is further averred that Plaintiff is also the registered proprietor of the trademark ABROS, its logos and variants in Classes 25, 28 and 35 in India, details whereof are mentioned in the plaint. The registrations are valid and subsisting.



12. It is further averred that Plaintiff's mark & logos are designed to have a unique aerodynamic representation of letter 'A'. Plaintiff's device

mark/logo  and  is stylized version of the letter 'A', denoting the first letter of the Plaintiff's popular brand ABROS. Plaintiff's

logos  and  on its footwear indicates the reliability of the said products, which are time tested and pass through numerous quality checks, before being sold to consumers.

13. It is further averred that Plaintiff's marks and logos are being used extensively on all its products since February 2020 and within a short span of about 2 years, Plaintiff has developed a niche reputation for quality products in the relevant market of footwear through its consistent sales and promotions. Plaintiff has achieved considerable sales for its products sold under the mark ABROS in only about two years since its inception and the net sales were to the tune of Rs. 216.45 Crores in the year 2021. Due to the maintenance of exacting and constant high standards of quality and effectiveness, Plaintiff's goods bearing the Plaintiff's marks & logos have the distinction of being recognized as one of the popular products in the market. Plaintiff has expended large sums of money on advertisements and sales promotions with expenditure in 2021 to the tune of Rs. 3.37 Crores.

14. It is further averred that Plaintiff is also promoting its ABROS branded products and selling its wide range of products through its website <http://staging.abrosshoes.com/>, which is an interactive website and accessible to the consumers in Delhi and Plaintiff's products can be viewed



and purchased by the consumers in Delhi. Plaintiff's website was created on 18.06.2020 and has been in use ever since. Plaintiff's Company has been extensively advertising its products through various print media including newspapers, magazines and trade journals, leaflets and other promotional literature, extensively distributed throughout the country, including Delhi.

15. It is further pleaded that Defendant No. 1 is carrying on its business under the name 'Surendera Polymers' and is engaged in the business of trading, marketing, selling and supplying of footwear and Defendant No.2 is an associated firm/sister concern of Defendant No. 1, who is also trading, marketing, selling and supplying the footwear including the infringing products on behalf of Defendant No. 1. In the third week of April, 2022 through its field sales force, Plaintiff came across the shoes of the Defendants being sold under the mark/brand "RADEON", using a device



mark/logo on the shoes, which is a replica and is identical/



deceptively similar to Plaintiff's device mark/ logo . Plaintiff's representative visited the store of Defendant No. 1 and obtained the impugned product. Defendant No. 1's product was examined and it was



found that Defendant No. 1 has copied Plaintiff's marks and




as well as the trade dress, get-up, layout and placement of the



distinctive features of Plaintiff's 'ABROS Ai 2 shoes' in entirety. A comparative representation is as under:-

Plaintiff's Products ABROS Ai 2 Shoes	Defendants' product being sold under the brand 'RADEON'
	
	
	



16. Pointing to the similarities in the competing marks, learned counsel for the Plaintiff submits that sale of the impugned product under the trade dress, get-up, layout and distinctive features identical to Plaintiff's 'ABROS Ai 2 shoes', by the Defendants is calculated to make undue profits by misrepresenting that Defendants are associated with the Plaintiff. Plaintiff's device mark/logo  and 'ABROS Ai 2 shoes' being distinctive, Defendants have no plausible explanation for using the same. Plaintiff is neither associated with the Defendants nor has the Plaintiff authorized them to use its brands and branding elements. It is submitted that in the judgment in ***RSPL Health Pvt Ltd vs M.D. Chemicals 243 (2017) DLT 270***, it was held that where the Court sees copying, dishonesty is to be presumed. In the present case, copying by the Defendants is evident from their dishonest adoption of identical device mark/logo and trade dress, get-up, layout etc. in respect of identical goods, i.e., shoes and is with an intent to ride on the reputation and goodwill of the Plaintiff.

17. The mark/logo of the Plaintiff acts as source identifier of Plaintiff's products and thus, the purchasing public and the members of the trade are likely to assume that Defendants are somehow related to the Plaintiff or have been authorized and licensed by the Plaintiff to use the same and this would inevitably lead to confusion and deception amongst the public and members of trade.

18. Having heard learned counsel for the Plaintiff, this Court is of the view that Plaintiff has made out a *prima facie* case for grant of an *ex parte ad-interim* injunction. Balance of convenience lies in favour of the Plaintiff and it is likely to suffer irreparable harm in case the injunction, as prayed for, is not granted.



19. Accordingly, Defendants, their proprietor or partners, servants, agents, affiliates, associates, stockiest, distributors, as the case may be, are restrained from trading, wholesaling, supplying, marketing, selling in any manner including online sale or through e-commerce portals, footwear under



the impugned device mark/logo or any other device mark/logo which are identical and deceptively similar to the Plaintiff's device



mark/logo which may amount to infringement of the Plaintiff's registered trademarks. They are further restrained from copying/imitating the unique trade dress, get up and layout and placement of distinctive features of Plaintiffs 'ABROS Ai 2 shoes' as, aforesaid, which may amount to passing off their goods as that of the Plaintiff, till the next date of hearing.

20. Plaintiff shall comply with the provisions of Order 39 Rule 3 CPC within one week from the date of execution of the commission.

I.A. 9171/2022 (under Order 26 Rule 9 CPC)

10. Present application has been preferred by the Plaintiff under Order 26 Rule 9 read with Section 151 CPC, seeking appointment of a Local Commissioner.

11. Upon hearing, the application is allowed.

12. Accordingly, Mr. Chandra Shekhar, Advocate (Mobile No. 9650073888) is appointed as a Local Commissioner, who shall visit the premises of Defendant No.2 at the following address:-

“Swastik Polymers,
H. No.44/25/2, Swaran Park, Mundka,
New Delhi-110041”



13. Local Commissioner shall visit the aforesaid premises, search and take into custody the shoes manufactured and sold under the impugned mark, whether in finished/unfinished condition and make an inventory of the same.
14. Local Commissioner along with the Representative of the Plaintiff and/or its counsel shall be permitted to enter the premises of Defendant No.2, as aforementioned.
15. Local Commissioner shall seize the infringing products and hand over the same to the Defendant No.2 on *superdari*, upon Defendant No.2 furnishing an undertaking that it shall produce the goods, so seized, before the Court, as and when further directions are issued in this regard.
16. Local Commissioner shall make copies and sign books of accounts including ledgers, cash books, bill books, etc. discovered from the premises of the Defendant No.2.
17. Local Commissioner shall be permitted to take photographs/videos of the execution of the Commission. He shall also be entitled to seek police assistance or protection of the Local Police Station, if so required, for the purpose of execution of the order of this Court. The SHO of the concerned Police Station is directed to provide necessary assistance to the Local Commissioner, if sought for.
18. In case the premises as aforementioned are found locked, the Local Commissioner is at liberty to break open the locks.
19. Plaintiff shall serve a copy of this order upon the Defendants along with paper book of the suit at the time of execution of the proceedings.
20. Fee of the Local Commissioner is fixed at Rs.1,00,000/- in addition to travel and other miscellaneous out-of-pocket expenses for the execution of



the Commission. Fees of the Local Commissioner shall be paid in advance by the Plaintiff.

21. Report of the Local Commissioner shall be filed within two weeks of the execution of the Commission.

22. Plaintiff shall inform the Registry about the execution of the proceedings by the Local Commissioner and only thereafter Registry shall issue summons of the suit to the Defendants.

23. This order shall not be uploaded on the website of this Court till execution of the Commission by the Local Commissioner.

24. Application is disposed of.

25. Copy of this order be given to learned counsel for the Plaintiff *dasti* under the signatures of the Court Master.

JYOTI SINGH, J

JUNE 02, 2022/sn