

IN THE COURT OF VINOD YADAV:
DISTRICT JUDGE (COMMERCIAL COURT)-02:
NORTH-WEST DISTRICT: ROHINI COURTS: NEW DELHI

CNR No.DLNW010116212022
Civil Suit (Comm.) No.903/2022
In the matter of:

PUMA SE
PUMA WAY 1,
HERZOGENAURACH, 91074 GERMANY
THROUGH ITS AUTHORIZED REPRESENTATIVE
MR. ROHIT BISHT
PUMA STORE
B1/32, MALL TVR
(OPP. SATYAVATI COLLEGE),
ASHOK VIHAR-2, NEW DELHI-110 052.

.....Plaintiff

(Through Shri Varun Khanna & Shri Gautam Bhasin, Advocates)

Versus

RAMESH COLLECTION,
40, 14 Shastri Nagar,
Pimpri Colony, Pimpri-Chinchwad,
Maharashtra-411017.

Also At:

931/1, Pimpri Kalewadi Bridge,
Near Lucky Bakery,
Near Balaji Lawn, In front of B.T Memorial School Kalewadi,
Pimpr-Chinchwad,
Maharashtra-411017.

Also At:

H-B/8/6, Pimpri Colony,
Near Railway Station Road,
Pune, Maharashtra-411017.

.....Defendant

(Ex-parte vide order dated 31.05.2023)

Date of Institution of Suit	:	25.11.2022
Date of transfer to this Court	:	31.05.2023
Date of hearing final arguments	:	09.10.2023
Date of judgment	:	09.10.2023

**SUIT FOR PERMANENT INJUNCTION RESTRAINING
INFRINGEMENT OF TRADEMARK(s), PASSING OFF,
DAMAGES, RENDITION OF ACCOUNTS, DELIVERY UP ETC.**

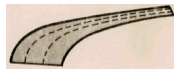
09.10.2023

EX-PARTE JUDGMENT:

1. This is a suit for permanent injunction, restraining infringement of trademark(s), passing off, damages, rendition of accounts, delivery up etc., filed by plaintiff against the defendant.

2. The facts of the case in brief, as set out in the plaint is that **PUMA** is a Germany based Multinational Corporation and plaintiff on its own and through its subsidiaries/affiliates world-wide is engaged in the business of manufacturing and marketing a wide range of products, *inter alia*, sports shoes, apparel and accessories of the highest quality under the trade mark/logo “PUMA”  and its products are available in more than 120 countries worldwide including India. The PUMA Group owns brands PUMA, COBRA GOLF, DOBOTEX and BRANDON. The said trade mark/logos PUMA was coined way back in 1948 by Rudolf Dassler and was officially registered on October 1, 1948 and since then they are using the same continuously, openly and without any interruption in respect of said goods throughout world.

3. The Trademarks “Puma and  logo, form Strip logo



and Jumping Cat Logo



and



” and its

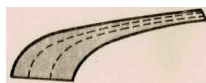
logos are registered under various classes of Trademarks Rules, 2002 in India, which are stated to be valid and subsisting till date. The details thereof have been mentioned in paragraph No.8 of the plaint. Further, it is claimed that the art works involved in the plaintiff’s said Trade Marks/logo/Label are original artistic works and the plaintiff is the owner and proprietor of the Copyright therein.

4. It is stated that on account of its good quality and standards of manufacturing and untiring efforts in advertising and marketing, the products of the plaintiff have acquired enviable reputation and goodwill across the world including India. Further, plaintiff spends huge amount of money in advertising and promotion of its products under the said Trade Marks/logos in India and around the world, due to which the products of plaintiff under the said trademarks/logos enjoy huge goodwill and reputation in business community and public in general in India and across the world. It is averred that plaintiff company has a huge turnover against sale of its products worldwide.

5. It is further stated that in view of the plaintiff's proprietary rights both under statutory and common law in its said trademarks, its goodwill & reputation, and its copyrights, it has the exclusive right to the use thereof and nobody can be permitted to use the same or any other deceptively similar trademark/label in any manner whatsoever in relation to any specification of goods without the leave and license of the plaintiff.

6. (i) Defendant is stated to be engaged in the similar business as that of plaintiff, i.e manufacture and retail of apparels such as lower, t-shirts, jackets, and accessories and other related allied and cognate goods. It is further stated that defendant has dishonestly and malafidely adopted and commercially started using the Trade mark/label/colour

combination/trade dress "Puma and  logo, form Strip logo



and Jumping Cat Logo



and

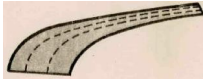


"etc., thereby creating

an impression of them being plaintiff's goods. It is further stated that defendant has also started doing its business through Godown/warehouses with no bill boards/names so as to slyly conduct business without any interventions.

(ii) It is further stated that defendant is also marketing and selling its goods through various social media platforms such as, <https://www.facebook.com/RameshCollection/>, <https://www.youtube.com/watch?v=xWs4Bja8GU>, <https://www.youtube.com/watch?v=fHxD-IQSuE4>, https://www.justdial.com/Pune/Ramesh-Collection-Pimpri-Colony/020PXX20-XX20-181203220541-X1J5_BZDET, <https://instagram.com/rameshcollectionpune?igshid=YmMyMTA2M2Y=>.

7. It is the case of plaintiff that during market survey in the first week of November' 2022 it came across impugned products/goods under

the impugned "Puma and  logo, form Strip logo  and Jumping Cat Logo , ,

, ,  and ,

Trade mark/label/colour combination/trade dress in the markets of New Delhi. It also came to their notice that defendant has been storing, distributing and selling lowers, shorts, T-shirts and other accessories in the area(s) of Ashok Vihar, Aman Vihar, Pitampura, Mangolpuri, Rani Bagh,

Rithala, Netaji Subhash Place, Sultanpuri, Udhyog Nagar etc., and carrying on its impugned activities in clandestine manner without issuing any formal bills and invoices against its sales. It is further alleged that defendant has dishonestly and malafidely adopted impugned trademarks/label/colour combination /trade dress/logos 'PUMA' which are visually, structurally identical and /or deceptively and confusingly similar to the registered trademarks of plaintiff 'PUMA' thereby causing confusion and deception amongst the unwary purchasing public and traders by making them believe that the origin of those goods is the plaintiff company. It has been averred that by doing so, the defendant is not only damaging the reputation and goodwill of the plaintiff company by passing off his substandard products as that of the plaintiff company but is also causing financial loss to the plaintiff company by reaping unfair advantage of the repute and distinctive character of the trademark of the plaintiff company.

8. Accordingly, the plaintiff has filed the instant suit against the defendant *inter-alia* praying for various reliefs, which have been set out in detail in paragraph No.42 of the plaint.

9. It is worthwhile to note that alongwith the plaint, the plaintiff also preferred application U/o XXXIX Rule 1 & 2 CPC, *inter alia* seeking ex-parte ad-interim injunction as well as another application U/o XXVI Rule 9 CPC for appointment of Local Commissioner in the matter. Vide order dated 29.11.2022, ex-parte ad-interim injunction in the matter was granted in favour of plaintiff and against the defendant by and even Local

Commissioner was also appointed for visiting the premises of defendant and carry out the commission in terms of the directions contained in the aforesaid order. The learned Local Commissioner accordingly visited the premises of defendant on 08.12.2022, executed the commission and thereafter filed his report.

10. As per the report of learned Local Commissioner, the attitude of the defendant was highly disrespectful towards the Court proceedings which were being conducted by him. The plaintiff had even placed on record compliance Affidavit U/o 39 Rule 3 CPC. This Court vide order dated 31.05.2023 observed that defendant had due knowledge of the present proceedings as on 08.12.2022, i.e date when the learned Local Commissioner visited the premises of defendant. The said fact is even otherwise apparent from the report of learned Local Commissioner, wherein he had categorically stated that he had supplied copy of order dated 29.11.2022 to the defendant. Even thereafter, the defendant neither appeared before this Court nor filed any written statement in the matter. Accordingly, vide order dated 31.05.2023, the right of the defendant to file written statement was closed and he was proceeded “**ex-parte**” and the matter was notified for ex-parte PE. Needless to say, the interim order dated 29.11.2022 was made absolute till disposal of the instant suit.

11. During the course of ex-parte evidence, plaintiff examined its A.R namely Shri Rohit Bisht as PW-1 in the matter, who in his evidence by way of affidavit **Ex.PW-1/A** has reiterated the averments made in the plaint and proved on record the following documents:

Sr. No.	Description of documents	Remarks
(i)	Copy of Power of Attorney, executed by plaintiff company in his favour	Mark PW1/1
(ii)	Copies of Legal Proceeding Certificates (from page Nos.124 to 138 of the paperbook)	Mark PW1/2
(iii)	True representation of defendant's goods/label	Mark PW1/3
(iv)	Defendant's google search page and link	Ex.PW1/4
(v)	Defendant's Youtube page link (from pages 169 to 173 of the paperbook)	Ex.PW1/5 (Colly)
(vi)	Defendant's GST portal page and link	Ex.PW1/6
(vii)	Affidavit U/o XI Rule 6 CPC r/w Section 65-A and 65-B of Indian Evidence Act	Ex.PW1/7
(viii)	True representation of trademark/label of goods of plaintiff	Mark PW1/8
(ix)	Report of Local Commissioner	Ex.PW1/9 (Colly)

12. Thereafter vide order dated 17.08.2023 ex-parte PE in the matter was closed.

13. (i) The learned counsel for the plaintiff while make reference to the report of learned Local Commissioner (**Ex.PW1/9**) has very vehemently argued that the act of defendant in adopting and using the identical/deceptively similar impugned mark and dealing in the goods which are identical to the goods of plaintiff amounts to infringement of the plaintiff's registered trademark, thereby diluting the same and also

tarnishing the reputation of plaintiff. He has further argued that the act of passing off of the products of plaintiff by the defendant clearly shows that the defendant is having the intent to trade upon the immense goodwill and reputation of the plaintiff and the usage of trademark(s) has had detrimental impact on the distinctive character of the trademark(s).

(ii) The learned counsel has further prayed for grant of punitive damages taking into account the malafide conduct of the defendant in using the impugned products. In support of his aforesaid contentions, he has relied upon the following judgments rendered by Hon'ble High Court of Delhi, viz.:

(a) Case reported as **"CS (Comm.) No.478/2019"**, titled as, **"SANDISK LLC V/s Amit & Ors."** (DOD: 01.03.2033);

(b) Case reported as, **"CS (Comm.) No.564/2020"**, titled as, **"Imagine Marketing Private Limited V/s M/s Green Aecessories Through Its Proprietor & Anr."**, (DOD: 21.03.2022);

(c) Case reported as, **"CS (Comm.) No.675/2019"**, titled as, **"Dhani Loans And Services Limited & Anr. V/s WWW.DhaniFinance.Com & Ors."**; (DOD: 12.10.2022);

(d) Case reported as, **"CS (Comm.) No.503/2016"**, titled as, **"Christian Louboutin Sas V/s Ashish Bansal & Anr."**; (DOD: 31.07.2018); and

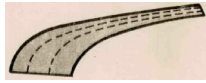
(e) Case reported as, **"CS (Comm.) No.479/2019"**, titled as, **"Starbucks Corporation V/s Teaquila A Fashion Cafe & Anr."**; (DOD: 06.05.2022).

14. Further, during the course of advancing final arguments, learned counsel for the plaintiff has prayed for **withdrawal of prayer (c) which is regarding rendition of accounts and prayer (f) of the prayer clause which is regarding disclosing the names of all other persons who are engaged in stocking and retail business of infringing goods bearing PUMA mark and its logo.** Separately, statement of learned counsel for the plaintiff to this effect was recorded on 15.09.2023.

15. I have heard arguments advanced at Bar by Shri Varun Khanna, Advocate and Shri Gautam Bhasin, Advocate, learned counsels for the plaintiff and perused the entire material on record.

16. From the material produced on record, specifically the proceedings of learned Local Commissioner conducted at the premises of defendant, it is clearly evident that despite being duly aware of the Court proceedings, it/defendant chose not to appear before this Court for the reasons best known to it. As such, this Court was left with no alternative, but to proceed it ex-parte vide order dated 31.05.2023..

17. Furthermore, from the perusal of the report of learned Local Commissioner (**Ex.PW1/9**) and the pleadings on record, it is clearly apparent that the defendant has dishonestly and malafidely adopted and commercially started using the Trade mark/label/colour combination/trade

dress “Puma and  logo, form Strip logo  and

Jumping Cat Logo , , ,



and



”etc., thereby creating an impression of

them being plaintiff’s goods and consequently amounting to infringement, passing off and violation of plaintiff’s registered trademark(s).

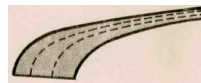
18. It is further clearly apparent that on account of the aforesaid act of defendant, plaintiff has also suffered immense loss to its goodwill and reputation and hence are entitled for grant of damages. The judgments in the cases of **SANDISK LLC** (supra), **Imagine Marketing Private Limited** (supra), **Dhani Loans** (supra), **Christian Loutoutin** (supra) and **Starbucks Corporation** (supra) are all regarding the quantum of damages in cases of infringement and the same applies on all fours in the present case. Furthermore, the Hon’ble High Court of Delhi in case reported as, “**2007 (34) PTC 201 Del**”, titled as, “**Indian Performing Right Society V/s Debashis Patnaik**” has been pleased to lay down that **in case the defendant is found guilty of infringement, then Court can grant notional damages to the plaintiff.**

19. From the unrebutted testimony of PW-1 in the matter and the documents proved by him on record, I am satisfied that the plaintiff has been able to make out a good case for passing of decree in its favour. Accordingly, suit of the plaintiff is decreed as under:

(i) A decree of permanent injunction is hereby passed in favour of plaintiff and against the defendant, thereby restraining the defendant by itself as also through its individual proprietor/partners agents, representatives, distributors, assigns, heirs, successors, stockiest(s) and all others acting for and on their behalf from manufacturing, marketing, using, selling, soliciting, importing, exporting, displaying, advertising or by audio, visual, print or on online platforms or through social medias or any other mode or manner dealing in or using the impugned trade mark/label/colour combination/trade dress or any other trade mark/label/colour combination/trade dress/colour combination which may identical with and/or deceptively similar to the plaintiff's said "Puma and

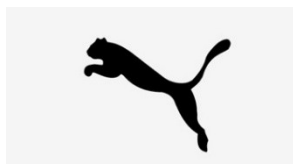


logo, form Strip logo



and Jumping Cat

Logo





”trade mark/label/colour combination/trade dress in relation to its impugned goods and business i.e. Apparels and Accessories and other related and allied and cognate goods from doing any other acts or deeds amounting to or likely to infringement of the plaintiff aforesaid said Trade Marks; Passing off and violation of the plaintiff aforesaid trademarks/logo.

(ii) A decree in the sum of Rs.3,00,000/- (Rupees Three Lakhs Only) on account of damages sustained by the plaintiff due to loss of sale, reputation and goodwill as well as dilution of plaintiff's trademark is passed in favour of plaintiff and against the defendant;

(iii) Plaintiff is also entitled to cost of the proceedings, which will include actual cost incurred by the plaintiff, cost incurred towards execution of Local Commission as also the counsel's fee which is quantified as Rs.22,000/-.

20. Decree Sheet be drawn accordingly.

21. File be consigned to Record Room after completion of necessary formalities.

Dictated & Announced in the
open Court on 09.10.2023

(Vinod Yadav)
District Judge (Commercial Court)-02
North-West/Rohini Courts