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

+ **CS(COMM) 25/2023**

**SWISS BIKE VERTRIEBS GMBH
SUBSIDIARY OF ACCELL GROUP**

..... Plaintiff

Through: Mr. Jayant Mehta, Sr. Advocate
with Ms. Manisha Singh, Mr. Abhai Pandey,
Mr. Varun Sharma, Mr. Aditya Goel, Mr.
Gautam Kumar, Ms. Swati Mittal, Ms.
Priyanka Anand, Ms. Shivani Singh and Mr.
P.D.V. Srikar, Advs.

versus

RELIANCE BRANDS LIMITED (RBL) Defendant

Through: Mr. Ajay Sahni, Mr. Ankit
Sahni, Mr. Chirag Ahluwalia and Mr.
Aashish Arora, Advs.

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

ORDER

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19.01.2023

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1. Mr. Ajay Sahni, learned Counsel for the defendant, raised a preliminary objection to the maintainability of this suit. He points out that there is a discrepancy between the date which figures on the concluding page of the plaint and the date on which the statement of truth purports to have been signed and verified. The Statement of Truth, and the accompanying affidavit, have been verified on 25th October 2022, whereas the date figuring on the last page of the plaint is 19th December 2022. According to Mr. Sahani, this by itself is a fatal infirmity, rendering the suit incompetent.

2. Mr. Jayant Mehta, learned Senior Counsel, on instructions,

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submits that the argument is misconceived. He submits that the plaint was ready for filing on or before 25th October 2022, but only came to be filed on 19th December 2022 or thereabouts. Thus, the date of 19th December 2022, figuring at the foot of the plaint, he submits, is the date of presentation of the plaint in the Court and not the date when the plaint was ready and verified.

3. Given the explanation, I am not inclined to treat the objection of Mr. Sahani as fatally imperilling the suit at this stage. However, the plaintiff is directed to file an affidavit setting out its stand in that regard before the next date of hearing with an advance copy to learned Counsel for the defendant.

4. Proceeding, now, to the merits of the plaint, the plaintiff alleges infringement, by the defendant, of various registered marks of the plaintiff, which contain the “RALEIGH” appellation. The list of marks of the plaintiff registered in India is thus provided in para 17 of the plaint:

Trade Mark, Application Number & Date	Class & Goods' specification	Status
 Trademark Application no. 1285 dated June 22, 1942	Class : 12 Goods: BICYCLES, MOTOR BICYCLES AND TRICYCLES	Registered
 Trademark Application no. 92083 dated February 02, 1944	Class: 12 Goods: BICYCLES, TRICYCLES, THEIR PARTS AND ACCESSORIES NOT INCLUDED IN OTHER CLASSES	Registered
RELEIGH	Class: 12	Registered



Trademark Application no. 143830 dated June 01, 1950 claiming use since January 1, 1939	Goods: BICYCLES, THEIR PARTS AND ACCESSORIES INCLUDED IN CLASS 12.	
 Trademark application No. 147188 dated February 1, 1951	Class: 12 Goods: Parts of Bicycles, Motor Bicycles and Tricycles.	Registered
THE RALEIGH (DEVICE) Trademark Application no. 391077 dated November 30, 1951	Class: 12 Goods: BICYCLES, MOTOR-BICYCLES AND PARTS OF ALL SUCH GOODS, BABY CARRIAGES, PERAMBULATORS, SIDECARS, TRAILERS, INVALID CARRIAGES, CYCLE CARS AND TRI-CARS	Registered
RALEIGH Trademark application no. 1380126 dated August 10, 2005	Class: 28 Goods: SPORTING APPARATUS AND EQUIPMENT, FITNESS AND EXERCISE APPARATUS AND EQUIPMENT, PARTS AND FITTINGS FOR ALL THE AFORESAID GOODS INCLUDED IN CLASS 28	Registered

5. The plaintiff's grievance is that the defendant is using the mark "RALLEYZ", which is phonetically as well as otherwise similar to the mark "RALEIGH" of the plaintiff and is being used for identical goods, i.e. bicycles, their spare parts and accessories. The



plaintiff submits that he has the benefit both of prior user as well as prior registration and is, therefore, entitled to exclusivity in respect of the mark “RALEIGH”, so as to disentitle any other person from using the said mark or any mark which is confusingly or deceptively similar thereto, on any goods. Emphasising these submissions, Mr. Jayant Mehta, learned Senior Counsel for the plaintiff, also seeks to point out that the trade dress adopted by the defendant for the cycles manufactured and sold under the impugned “RALLEYZ” mark is too close to the trade dress of the plaintiff for comfort. To illustrate this submission, he points out that the defendant’s “RALLEYZ” mark, is, like the plaintiff’s “RALEIGH” mark, depicted on the crossbar of the cycle, for which purpose the following comparative photographic depiction is found in para 25 of the plaint. Mr. Mehta also seeks to point out that the defendant has also included a circular representation of the Union Jack, i.e. the national flag of the United Kingdom, just above ‘RALLEYZ’ on the cross-bar of the cycle, just as the plaintiff has.

PLAINTIFF'S BICYCLE	DEFENDANT'S BICYCLE	SIMILARITIES
		The Defendant has placed infringing marks at the same places as that of the Plaintiff.



		Only top half of infringing mark is visible which confusingly resembles as top half of Plaintiffs trademark
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6. As such, he submits that there is every likelihood of a customer of average intelligence and imperfect recollection confusing the marks of the defendant and the plaintiff, especially as they are used for identical goods. He submits that the triple tests of similarity of marks, similarity of customer base and availability at the same outlets, also stands satisfied in the present case. In the circumstances, Mr. Mehta submits that the plaintiff would be entitled, as prayed in the suit, for a permanent injunction against the defendant using the impugned “RALLEYZ” marks on any items, particularly on bicycles, their spare parts, and allied goods as well as for an interlocutory injunction against such use pending further orders.

7. Mr. Sahani, learned Counsel for the defendant, draws attention, *per contra*, to a reply dated 10th January 2006 filed by the plaintiff before the Registrar of Trademarks, Chennai, in response to a First Examination Report (FER) dated 17th November 2005, of the Examiner while objecting to registration of the suit mark “RALEIGH”. He points out that one of the marks, which was cited by the Examiner as confusingly similar to the suit mark was “RALLIS”, registered by M/s Rallis India Pvt Ltd in respect of games, playthings, gymnastic and sporting articles, ornaments and decorations for Christmas trees. The plaintiff, in its reply dated 10th January 2006,



submitted that the plaintiff's mark "RALEIGH" was phonetically, visually and structurally different from the cited "RALLIS" mark and that, therefore, the objection was without substance. *Mutatis mutandis*, submits Mr. Sahani, this reasoning would apply to the plaintiff's "RALEIGH" mark *vis-à-vis* the impugned "RALLEYZ" mark of the defendant.

8. Mr. Mehta responds to this submission of Mr Sahani by pointing out that there can be no estoppel in such cases, as the principle of estoppel applies *inter partes*. He submits that the response dated 10th January 2006, filed by the plaintiff in response to the FER dated 17th November 2005, was answering objection, in the FER, on the basis of the prior "RALLIS" mark which, he points out, was registered in respect of items which had nothing to do with cycles. He submits that the answer given in that regard by the plaintiff could not, therefore, estop the plaintiff from pleading phonetic or other similarities in the present case between the plaintiff's "RALEIGH" and the defendant's "RALLEYZ" mark. He has relied, in this context, on the judgment of a coordinate Single Bench of this Court in ***Madan Lal Kapur v. Subhash Lal Kapur***¹, particularly on the following passage:

"22. To my mind, this is but another manifestation and expression of the rule that the principles of estoppel can apply only between parties to a document, as set down by another Division Bench in ***Mohd. Afzal and Others v. Ch. Din Mohammad and Others***². It would be of advantage to reproduce the following exposition of the Apex Court in ***Chhaganlal Keshavlal Mehta v. Patel Narandas Haribhai***³, pertaining to estoppel:-

"To bring the case within the scope of estoppel as defined in S. 115 of the Evidence Act: (1) there must be a representation by a person or his authorised agent to

¹ MANU/DE/0574/2003

² AIR (34)1947 Lah 117

³ (1982) 2 SCR 166

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another in any form-a declaration, act or omission; (2) the representation must have been of the existence of a fact and not of promises de futuro or intention which might or might not be enforceable in contract; (3) the representation must have been meant to be relied upon; (4) there must have been belief on the part of the other party in its truth; (5) there must have been action on the faith of that declaration, act or omission, that is to say, the declaration, act or omission must have actually caused another to act on the faith of it, and to alter his former position to his prejudice or detriment; (6) the misrepresentation or conduct or omission must have been the proximate cause of leading the other party to act to his prejudice; (7) the person claiming the benefit of an estoppel must show that he was not aware of the true state of things. If he was aware of the real state of affairs or had means of knowledge, there can be no estoppel; (8) Only the person to whom representation was made or for whom it was designed can avail himself of it. A person is entitled to plead estoppel in his own individual character and not as a representative of his assignee.” ”

9. Mr Mehta, therefore, presses for *ad interim* relief today itself, pending filing, by the defendant, of the response to the present application.

10. I may first address the submission of Mr. Mehta on the aspect of estoppel. The reliance, by Mr. Mehta, on ***Madan Lal Kapur***¹ is, in my view, *prima facie*, misconceived. The issue here is not one of estoppel. The plaintiff is pleading confusing phonetic similarity between the plaintiff's "RALEIGH" and the defendant's "RALLEYZ" marks. The issue to be addressed is whether, having acknowledged, albeit in proceedings vis-à-vis other parties and vis-à-vis other marks, that "RALEIGH" was *not* phonetically similar to "RALLIS", the plaintiff can maintain a *prima facie* case of deceptive similarity between "RALEIGH" and "RALLEYZ". Simply put, can the plaintiff be heard to urge that RALEIGH and RALLIS are not phonetically similar, whereas RALEIGH and RALLEYZ are?



11. As such, the aspect of phonetic visual and structural similarities between the plaintiff and the defendant marks become, to my mind, arguable, given the stand that the plaintiff took in its reply dated 10th January 2006 in response to the FER dated 17th November 2005 (*supra*).

12. Once that aspect is arguable, the Court would have to examine whether, merely because the defendant uses the impugned mark on the crossbar of the cycle and a representation of the Union Jack just above it, a case for injunction is made out.

13. The defendant also claims that the cycles bearing the impugned mark have been in the market since December 2021. As such, more than a year has passed since then and according to Mr. Sahani, sales worth more than ₹ 14 crores have already taken place.

14. In these circumstances, I am of the opinion that the defendant ought to be granted one opportunity to respond to this application seeking interlocutory injunction before the Court takes up the matter and passes any order thereon.

15. It would be apparent, even from the aforesaid recital, the Court has merely noted the submissions of the parties and has expressed the view that the issue is arguable. At this stage, I am not inclined to express any *prima facie* view on the dispute on one way or the other.

16. Having said that, the matter certainly requires consideration.

17. Accordingly, let the plaint be registered as a suit. Issue summons in the suit. Summons are accepted on behalf of the

defendant by Mr. Sahani.



18. Written statement, accompanied by affidavit of admission and denial of the documents filed by the plaintiff be filed within 30 days with advance copy to learned Counsel for the plaintiff who may file replication thereto, accompanied by affidavit of admission and denial of the documents filed by the defendant within 30 days thereof.

19. List before the learned Joint Registrar (Judicial) for completion of the pleadings including admission and denial of documents and marking of exhibits on 20th March 2023, whereafter the matter would be placed before the Court for case management hearing and further proceedings.

I.A. 827/2023 (Order XXXIX Rules 1 and 2 of the CPC)

20. This application seeks interlocutory relief. In view of the aforesaid discussion, issue notice on the application. Notice is accepted on behalf of the defendant by Mr. Sahani.

21. Reply, if any, be filed within two weeks, with advance copy to learned Counsel for the plaintiff who may file rejoinder thereto, within one week thereof.

22. List this application for hearing and disposal on 10th February 2023 before the Court.

23. It is made clear that no extension of time shall be granted either for filing reply or rejoinder.



24. Both sides are directed to place on record duly indexed compilations of any judicial authorities on which they may seek to place reliance with the relevant paragraph nos. indicated in the index accompanying the compilations after exchanging copies with each other, at least 48 hours in advance of the next date of hearing and additionally, email copy of the said compilation to the Court Master.

I.A. 828/2023 (Section 12A of the Commercial Courts Act, 2015)

25. In view of the judgment of the Division Bench of this Court in ***Chandra Kishore Chaurasia v. R.A. Perfumery Works Pvt Ltd***⁴, exemption is granted from the requirement of pre-institution mediation under Section 12A of the Commercial Courts Act, 2015.

26. The application stands allowed accordingly.

I.A. 829/2023 (Order XI Rule 1(4) of the CPC)

27. This application seeks permission to file additional documents. The plaintiff is permitted to place additional documents on record in accordance with Order XI Rule 1(4) of the Code of Civil Procedure, 1908 (CPC) as amended by the Commercial Courts Act within four weeks from today.

28. The application stands disposed of accordingly.

I.A. 830/2023 (Exemption)

29. Subject to the plaintiff filing legible copies of any dim or illegible documents within 30 days, exemption is granted for the

⁴ 2022 SCC OnLine Del 3529
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present.



30. The application is disposed of.

C.HARI SHANKAR, J

JANUARY 19, 2023

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