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

+ **CS(COMM) 394/2022**

VILLAIN LIFESTYLE PRIVATE LIMITED Plaintiff

Through: Mr. Aditya Gupta and Mr. Siddharth
Varshney, Advocates.

versus

MR. VIPUL DHANKHER Defendant

Through: Mr. Harish Kumar, Mr. Mukund
Yadav, Mr. Shivam Kumar and Mr.
Syed Daniyal Hussain, Advocates.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

% **12.02.2024**

I.A. 3257/2024 (u/Order VII Rule 11 r/w Section 151 of the Code of Civil Procedure, 1908)

1. By way of the instant application, Defendant contends that the present suit is not maintainable as the cause of action disclosed therein is not sufficient for this Court to assume jurisdiction and thus the plaint is liable to be rejected under Order VII Rule 11 read with Section 151 of the Code of Civil Procedure, 1908 (CPC).

2. The case as presented by Mr. Harish Kumar, counsel for Defendant, is summarised as follows:

2.1. The cause of action spelt out in the plaint pertains to the Defendant's filing of applications for trademark 'VILEN' in Classes No. 3, 5, 25 and 35, as well as their filing of oppositions/ rectifications against Plaintiff's trademark registrations. However, this in and of itself does not amount to a cause of action for which the suit can be maintained.



2.2. Moreover, the Defendant has not commenced with use of the mark ‘VILEN’ for any goods or services under the aforementioned classes, as also admitted by the Plaintiff in Paragraph No. 21(c) of the plaint. Thus, there is no *prima facie* evidence for grant of injunction and compensation as there is no cause of action for infringement of trademark under the aforementioned classes. Further, the Plaintiff is also not entitled to any damages or losses for this reason.

3. The Court has heard the counsel at length and perused the averments made in the application. At the outset, it is noted that the instant suit has been clearly framed as a *quia timet* action. Undoubtedly, the Plaintiff admits that the Defendant has not launched their products under the impugned trademark ‘VILEN’ in Classes No. 3, 5, 25 and 35. However, the basis for approaching the Court is the Plaintiff’s apprehension that the Defendant intends to commence use of the same in the near future, as evidenced by the fact that the Defendant has filed applications for registrations, rectifications and oppositions.

4. At the stage of considering an application under Order VII Rule 11 of the Code of Civil Procedure, 1908 [‘CPC’], the Court must discern, by a holistic reading of the plaint, whether there is any disclosure of cause of action. Whether the cause of action is sufficient and sustainable for the Plaintiff to be entitled to the reliefs sought is an entirely different aspect which would be the subject of examination at the appropriate stage. In the opinion of the Court, the cause of action has been sufficiently spelt out in light of averments made at Paragraphs No. 21, 22 and 23, which are extracted hereinbelow:



“21. Upon learning about the various filings made by the Defendant before the trademark Registry, the Plaintiff immediately conducted an online investigation, based on which the Plaintiff learnt that:

a. Defendant is a singer based out of Delhi and his stage name is 'VILEN' under which he releases music videos on the YouTube platform through his YouTube channel under the name DARKS MUSIC COMPANY. The Defendant released his first music video under the stage name 'VILEN' on YouTube on February 7, 2018 and his YouTube channel under the name 'Darks Music Company' has 19 videos as on May 27, 2022. Defendant has been operating a clothing brand under the mark ROSE BY

DARKS/  The mark ROSE BY DARKS/

 appears to have been adopted in the year 2020 and the Defendant appears to be selling clothing under the said trademark ROSE

BY DARKS/  on its website www.r.rosebvdarks.com. The Defendant also applied for registration of the same under application no.

4586367 for the mark  in class 25 as of July 28, 2020. The

Defendant has trademark application in Class 14 for .

b. In March-April 2022, the Defendant filed the trademark  in classes 3, 5, 25, and, 35 on a proposed to be used basis. A list of the Defendant's recent applications is provided below:

S. No.	Application No.	Trademark	Date of application	Class and Goods/ services
1.	5431698		April 30, 2022 [Proposed to be used basis]	3 (Non-medicated Cosmetics products; nonmedicated dentifrices; perfumery, essential oils; face wash)
2.	5431699		April 30, 2022 [Proposed to be used basis]	5 (Food supplements, dietary food supplements, vitamin)



			basis]	and mineral food supplements, health food supplements for persons with special dietary requirements.)
3.	5362260		March 9, 2022 [Proposed to be used basis]	25 (Clothing, footwear, headgear.)
4.	5431700		April 30, 2022 [Proposed to be used basis]	25 (Garments, apparels.)
5.	5431701		April 30, 2022 [Proposed to be used basis]	35 (Advertising, business management, wholesale and retail services in the field of garments, footwear, food supplements, cosmetic products, perfumes and face wash)

c. The Defendant has not commenced use of the mark  upon any goods/services in class 3, 5, 25 and 35, though the Defendant's recently filed applications, rectifications and oppositions signal a strong intent to commence in the very near future, use of the mark  VILEN /  upon goods and services in class 3, 5, 25 and 35.

d. The Defendant also has a registration for the trademark  and  in Class 41 for "music, entertainment video, songs, movies, film production and other than advertising films, screenplay writing" –

Violation of the Plaintiff's VILLAIN trademark by the Defendant



22. The Plaintiff has adopted and used the VILLAIN trademark and various VILLAIN formative marks in respect of its business continuously, widely and extensively and is today one of the foremost and widely recognized brands in relation to fragrances, apparel and accessories. The VILLAIN trademark enjoys tremendous goodwill and reputation which has been painstakingly built through the Plaintiff's efforts since the year 2019. The Plaintiff is the proprietor of valid and subsisting trademark registrations for the VILLAIN trademark in India since at least September 7, 2020. In particular, the Plaintiff holds registrations for the trademarks VILLAIN OUD, VILLAINLIFE, VILLAIN WORDMAKER in class 3, and for the trademark VILLAIN in class 35.

23. The Defendant appears to be an artist who intends to commence business in respect of goods and services identical to those of the Plaintiff

under the trademark VILEN/  which is visually and phonetically similar to the VILLAIN trademark. The Defendant has only been using the stage name VILEN in respect of his music videos and his rights in the said trademark are also limited to services such as "music, entertainment video, songs, movies, film production other than advertising films, screenplay writing". The Defendant launched his clothing brand in

the year 2020 under the trademark ROSE BY DARKS /  /

 and applied for registration of  under application no. 4586367 on July 28, 2020. It is important to recognize that the Defendant himself acknowledged that his stage name VILEN didn't carry any goodwill/ reputation in the context of goods and services beyond his music videos. On the contrary, it is clear that the Defendant treated DARKS as the umbrella brand under which he would launch his products such as his clothing line. The Defendant thus consciously chose to adopt a completely different mark for his clothing business, which made no reference to VILEN whatsoever. Hence, the proposed and imminent

launch of his business under the mark VILEN /  in respect of apparel, perfumes, dietary supplements and other similar goods is clearly malafide. This proposed and imminent use of the mark VILEN /

 in respect of apparel, perfumes and other similar goods is opportunistic and clearly with an intention to ride upon the Plaintiffs hard-earned goodwill and reputation in the VILLAIN trademark. Moreover, the trade channels and the demographic of potential consumers of the Defendant's goods and services and the Plaintiffs goods and



services under the VILLAIN trademark are the same.”

5. It is also pertinent to note that a Division Bench of this Court in ***M/s Maan Pharmaceuticals Ltd. v. M/s Mindwave Healthcare Pvt. Ltd.***¹ has held that at the time of deciding an application under Order VII Rule 11 of the CPC, the Court has to only consider the averments made in the plaint. The said judgment has also delved into the maintainability of a suit filed as a *quia timet* action and observed as under:

“29. *A suit on the basis of cause of action on a fear or apprehension is commonly known as quia timet suit, which are latin words and in legal terminology, defined as action by which a person is entitled to obtain an injunction and restrain a threatened act, which if done, would cause a substantial damage. The person, who is under a threat of infringement, is not remediless and as has been held by various courts, can maintain a suit for injunction. There is no doubt that such apprehension or threat has to be genuine, and not a figment of the plaintiff’s imagination.*”

6. Defendant’s action of filing of applications for registrations, rectifications and oppositions does indicate a strong intention to commence use of the impugned mark ‘VILEN’. In light of the above, the Court finds that the Plaintiff’s apprehension, a valid cause of action for filing the suit. Thus, the Court is not inclined to allow the instant application.

7. Dismissed.

I.A. 9127/2022 (u/Order XXXIX Rules 1 & 2 r/w Section 151 of CPC seeking an interim injunction against the Defendant)

8. Renotify on 15th May, 2024.

SANJEEV NARULA, J

FEBRUARY 12, 2024/as

¹ 2022:DHC:3604-DB; Judgment dated 12th September, 2022 in FAO (COMM) 78/2022.