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

+ CS(COMM) 573/2021, I.A. 13911/2023, I.A. 22535/2023 &
I.A. 186/2024

RXPRISM HEALTH SYSTEMS PRIVATE LIMITED & ANR.

..... Plaintiffs

Through: Mr. Tanmay Mehta, Mr. Sanyam
Khetrapal, Ms. Prakriti Anand, &
Mr. Nitesh Goyal, Advocates.

versus

CANVA PTY LTD & ORS.

..... Defendants

Through: Mr. Saikrishna Rajagopal, Ms. Sneha
Jain, Mr. Victor Vaibhav Tandon &
Mr. Ayush Saxena, Advs.

CORAM:

HON'BLE MR. JUSTICE ANISH DAYAL

ORDER

% **24.04.2024**

I.A. 7946/2024 (under Order XXXIX Rule 2 A CPC)

1. This application has been filed by the plaintiffs alleging non-compliance of order dated 18th July, 2023 restraining the defendants. The relevant injunction was resident in para 92 of the said order which is extracted as under:

92. In view of the above discussion, the Defendant shall stand restrained from making available their Canva product with the '**Present and Record**' feature, which infringes the Plaintiff's suit patent being IN360726 or use any other feature that would result in infringement of the Plaintiff's patent IN360726.

2. Mr. Tanmay Mehta, counsel for plaintiffs, has pointed out to various instances which, according to him, exhibit non-compliance by defendant of the Court's order:

- a. While it is admitted by counsel for plaintiffs that the '**Present and Record**' feature is not available for download in India, he points out to various parts of the defendant's website to contend that this feature is available as part of CANVA's portfolio duly advertised and promoted on

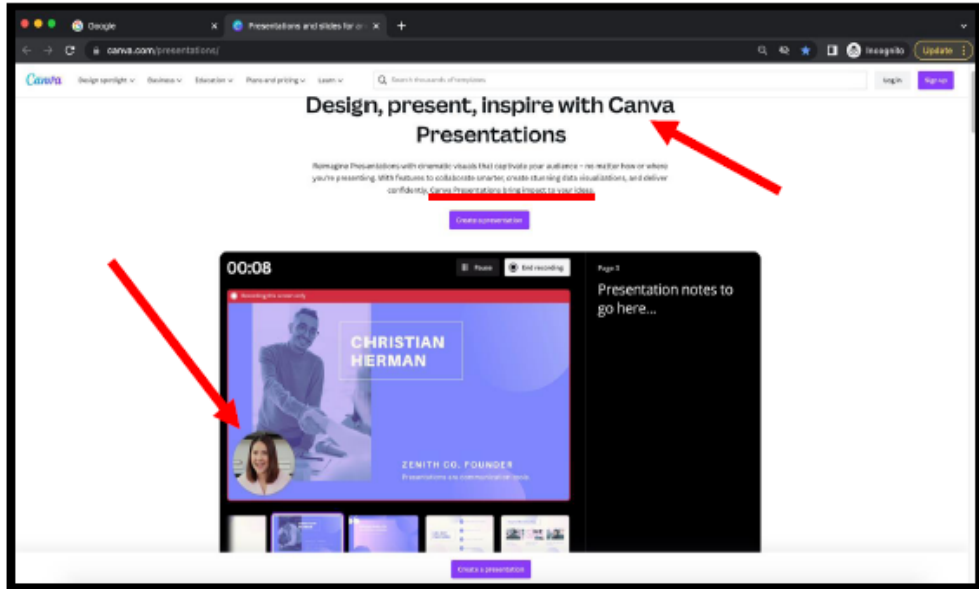


their website. For this, he has pointed out to the following screenshots:

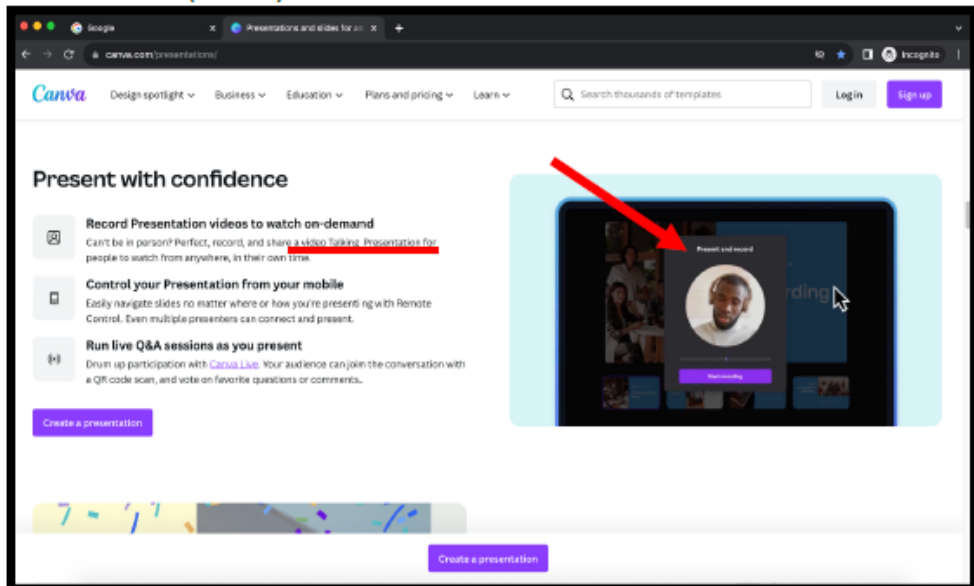
Screenshots taken on : 30th OCTOBER 2023

URL Details	Page content details
https://www.canva.com/presentations/	Offering to sell: Inducing users to start creating "presentation" with restrained Present & record feature

Below page has a long video(no voice), describing the entire process of using restrained product : creating slides and finally recording through present & record.



This segment in the page: offering and promoting restrained "Present & Record" feature as shown in the video(no voice) to "Present with confidence"



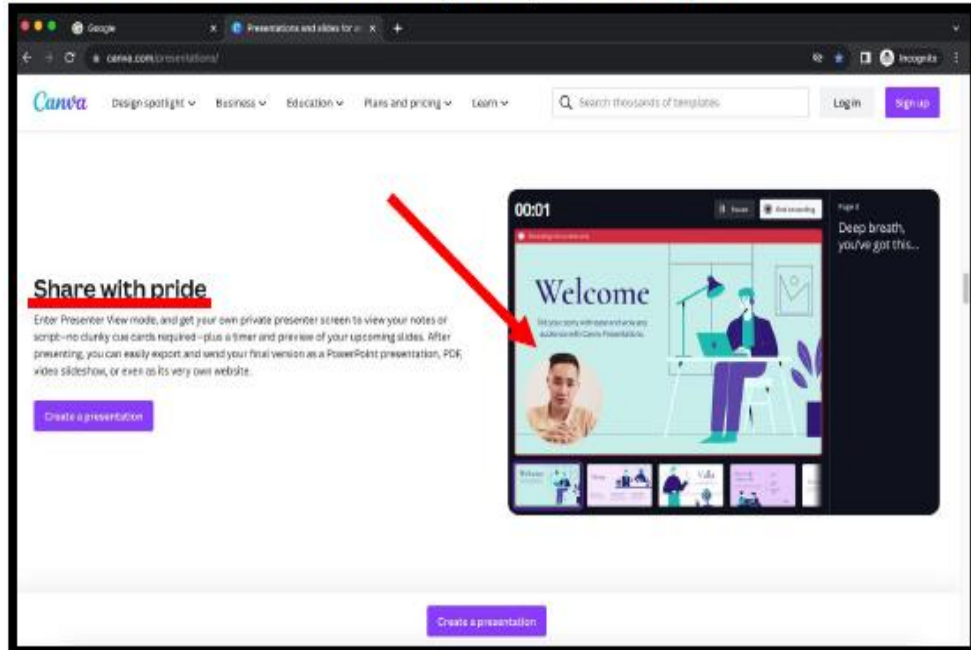
This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above.

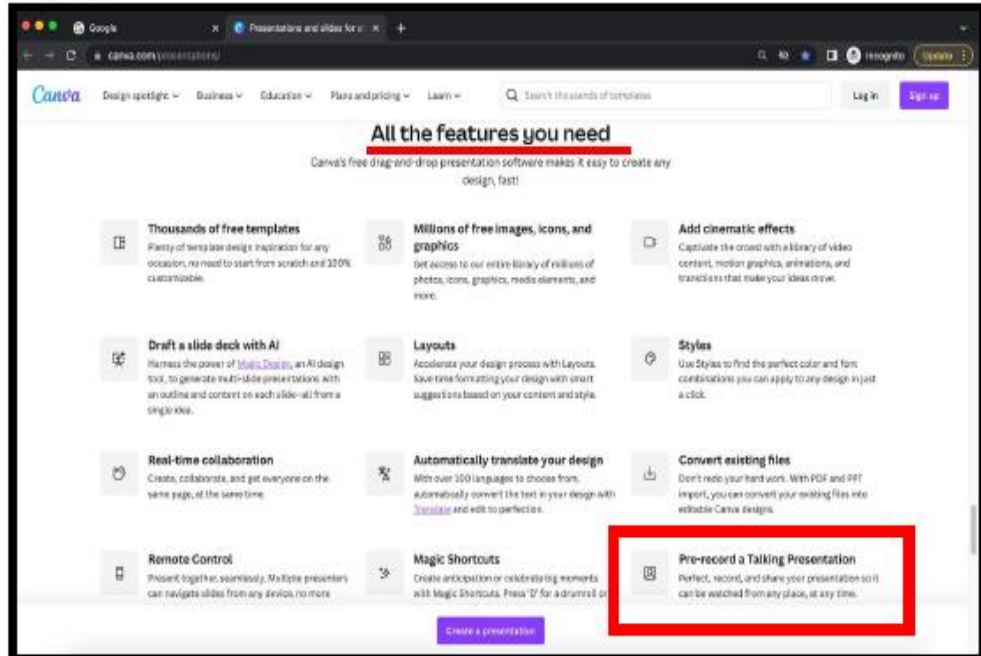
The Order is downloaded from the DHC Server on 01/05/2024 at 12:21:25



This segment in the page: offering and promoting restrained “Present & Record” feature and its user interface as shown in the video (no voice) to “Share with pride”



This segment in the page: offering and promoting restrained “Present & Record” (Talking presentation) feature as shown below as “All the features you need” is available in canva.com



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The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above.

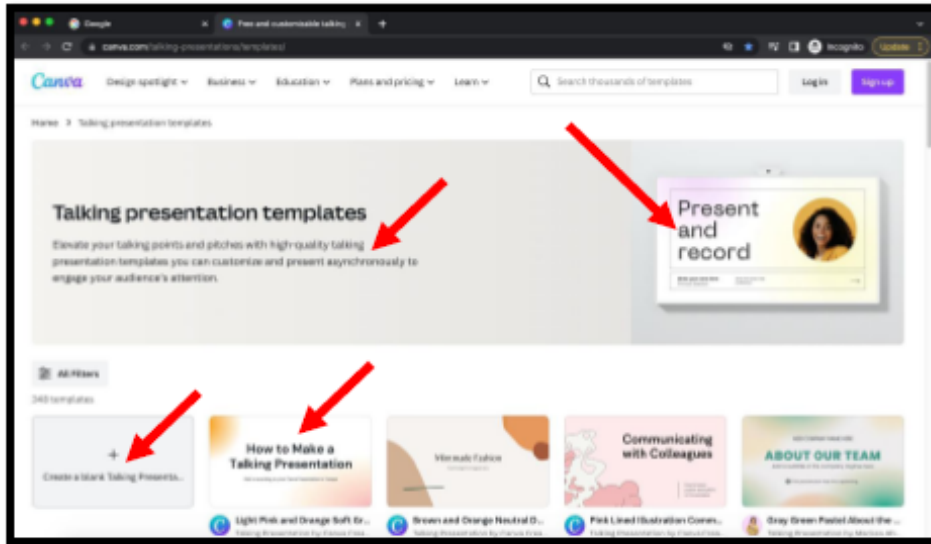
The Order is downloaded from the DHC Server on 01/05/2024 at 12:21:25



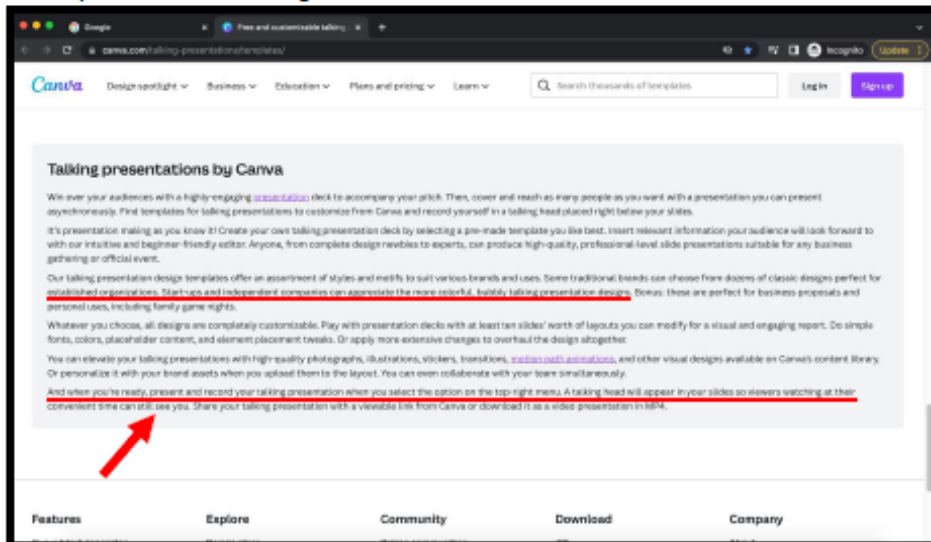
Screenshots taken on : 30th OCTOBER 2023

URL Details	Page content details
https://www.canva.com/talking-presentations/templates/	Offering to sell & functional menus: Inducing users to start creating "Talking presentation" (Present & record) through Templates and instructions to search for restrained product. Half product becomes functional after clicking these options.

Below page describes and induces users to click & start using restrained product through templates and teasers.



Below segment in the page describes and induces the users to find "Present and Record" menu option to start recording.



According to him, these features are available on CANVA's website and will amount to an offer for sale and therefore, will be hit by Section 48(a) of the Patents Act, 1970 which is extracted as under:

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“48. Rights of patentees.—Subject to the other provisions contained in this Act and the conditions specified in Section 47, a patent granted under this Act shall confer upon the patentee—

(a) where the subject-matter of the patent is a product, the exclusive right to prevent third parties, who do not have his consent, from the act of making, using, offering for sale, selling or importing for those purposes that product in India;”

b. Counsel has adverted to exchange of e-mails between one decoy customer of plaintiff in the name of Mr. Vivek Dahiya and customer care of defendant. In this email, Mr. Dahiya writes to CANVA’s support team seeking to find out about accessing ‘***Present and Record***’ feature, to which the customer care states that they have disabled “downloading presentations” in Indian for the time being, temporarily. Thereafter, Mr. Dahiya further enquired whether this could be downloadable through VPN, to which the customer care effectively said that they don’t recommend VPN but Mr. Dahiya could try the same, however, certain functions of the CANVA feature would not function. Counsel has pointed out to this email exchange to show that defendant is inviting users in India to download this feature through VPN and therefore, in violation of orders of this Court.

3. Mr. Saikrishna Rajagopal, counsel for defendant, however points out that defendant is in full compliance of Court’s order, in that, *firstly*, they have disabled any download possibility from users in India of the feature; *secondly*, that they have introduced the blurb as part of their website which states that this feature is unavailable in India; *thirdly*, that the exhortations that VPN could be used to download the feature, is not under control of defendant as downloading through a VPN, in order to circumvent the regular networks, is a global



situation which is outside defendant's control; *fourthly*, that the site is a global site and therefore, the visibility of the '***Present and Record***' feature, promotion, and literature is unavoidable.

3. Having considered the respective submissions of the counsel for parties, this Court is of the opinion that it is an admitted position that the feature is not available for download for users in India. This, in itself, would amount to compliance of the Court's order. However, what needs to be considered is whether the defendant is inviting users in India to download the same through VPN.

4. Download through VPN is a technical possibility that any user on the net can use to circumvent the regular networks. It would, therefore, not be possible for the defendant to regulate the same.

5. It is, however, important that the defendant takes all steps to instruct their customer care that there should be no exhortation or persuasion or communication, in any manner, addressed to a user in India, which invites or even suggests that they can use VPN to download the '***Present and Record***' feature. It should be made clear by defendant that this feature is not available in India and no further questions need be addressed regarding its accessibility for a user in India.

6. Further, counsel for defendant shall take instructions on whether the global site that they seem to have, can be varied or modified in order that the '***Present and Record***' feature is not available/visible to users in India and at the very least, there should be more disclaimers visible on the site to state that the said feature is unavailable in India, apart from one isolated blurb.

7. Insofar as Mr. Mehta's submission that this is a global injunction and therefore has to operate globally is concerned, this Court does not find merit in this submission as patent jurisprudence is territorial in nature and this Court has not stated that this would be applicable globally.

8. Mr. Saikrishna Rajagopal, counsel for defendant, states that he would



seek such instructions and ensure that there is more meaningful compliance of the Court's order, in letter and spirit.

9. Re-notify on 30th August, 2024 for Mr. Saikrishna Rajagopal, Advocate to revert on these possibilities.

10. Order be uploaded on the website of this Court.

ANISH DAYAL, J

APRIL 24, 2024/sm

[Click here to check corrigendum, if any](#)