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

+ **CS (COMM) 664/2022**

U.S. GREEN BUILDING COUNCIL Plaintiff

Through: Ms. Anuradha Salhotra, Mr. Sumit
Wadhwa and Ms. Saugat Khurana,
Advocates. (M:9953106331)

versus

DEMING CERTIFICATION SERVICES PVT LTD..... Defendant

Through: None.

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

% **27.09.2022**

1. This hearing has been done through hybrid mode.

I.A. 15662/2022 (u/S 12A)

2. This is an application seeking exemption instituting pre-litigation mediation. In view of the orders passed in **CS (COMM) 132/2022** titled **Upgrad Education v. Intellipaat Software** and **CS (COMM) 582/2022** titled **Bolt Technology OU v. Ujoy Technology Private Limited & Anr.**, the present application is allowed and disposed of.

CS (COMM) 664/2022

3. Issue summons to the Defendant through all modes upon filing of Process Fee.

4. The summons to the Defendant shall indicate that a written statement to the Plaintiff shall be positively filed within 30 days from date of receipt of summons. Along with the written statement, the Defendant shall also file an affidavit of admission/denial of the documents of the Plaintiff, without



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which the written statement shall not be taken on record.

5. Liberty is given to the Plaintiff to file a replication within 15 days of the receipt of the written statement. Along with the replication, if any, filed by the Plaintiff, an affidavit of admission/denial of documents of the Defendant, be filed by the Plaintiff, without which the replication shall not be taken on record. If any of the parties wish to seek inspection of any documents, the same shall be sought and given within the timelines.

6. List before the Joint Registrar for marking of exhibits on 23th November, 2022. It is made clear that any party unjustifiably denying documents would be liable to be burdened with costs.

7. List before Court on 20th December, 2022.

I.A. 15660/2022 (u/O XXXIX Rules 1 & 2 CPC)

8. The present suit has been filed by the Plaintiff - U.S. Green Building Council seeking permanent injunction, restraining the infringement of trademarks, infringement of copyright, passing off, accounts of profits and other reliefs.

9. The Plaintiff claims to be a membership-based non-profit corporation, which was established in the year 1993 by Rick Fedrizzi and David Gottfried, with the objective of promoting sustainability in building design, construction and operation. The Plaintiff Organization is engaged in providing certifications for various buildings and structures to ensure their environment friendliness. The services provided by the Plaintiff include, *inter alia*, formulation of standards, best practices for environment design, construction and operation of buildings and real estate for the purposes of certification. The membership of the Plaintiff is open to all organizations, including government agencies, education institutions, manufacturers,



architectural firms, and engineering companies across the world. As per the Plaintiff, the Plaintiff currently has over 2718 organizational members. The members of the Plaintiff Organization also include the Indian Green Building Council (IGBC) which was formed in the year 2001 and is a part of the Confederation of Indian Industry (CII).

10. The Plaintiff is stated to have launched the Leadership in Energy and Environment Design (LEED) green building rating systems in the year 1998, and offers its services in 181 jurisdictions around the world, including India, through its website 'www.usgbs.org' which was created on 11th July, 1986, as also, 'www.usgbc.org/leed'. The Plaintiff was one of the eight national councils that founded the World Green Building Council (World GBC), which is an international organization that is made up of 70 country-specific green building organizations, including the Plaintiff as well as the official Indian Green Building Council. The Plaintiff has obtained various trademark registrations in India, in respect of services falling under Classes 41 & 42. The details of the said registered marks of the Plaintiff have been set out in the Plaintiff, and some of them are depicted below:



i. (Device)



ii.

(Device)



iii.

(Device)

11. The Defendant - Deming Certification Services Pvt. Ltd. is a Company incorporated on 30th March, 2012, and is trading as International Green Building Council. The grievance of the Plaintiff in the present case is that the Defendant has started using an identical mark being 'International Green Building Council', as also, an identical logo/device mark thereof. The Defendant is also using an identical abbreviation being 'IGBC' which is stated to be the abbreviation of the Plaintiff's member organization - Indian Green Building Council. The said abbreviation is also confusingly/deceptively similar to the Plaintiff's abbreviation being USGBC. A representation of the competing marks of the Plaintiff and the Defendant is set out below:



PLAINTIFF'S MARK	DEFENDANT'S MARK
	
	
	

12. Ms. Salhotra, Id. Counsel appearing for the Plaintiff submits that the Plaintiff and the Defendant are engaged in the identical business of providing green rating certifications to structures. She submits that the Defendant is not merely copying the name and the logo of the Plaintiff, but is also copying the content of the Plaintiff's website. Sometime in March, 2021, it came to the knowledge of the Plaintiff that the Defendant is operating a website '<https://internationalgbc.org/>' for providing services which are identical to that of the Plaintiff. The content on the said website of the Defendant was found to be a verbatim copy of the website of the Plaintiff. The infringing content and screenshots of the Defendant's website have been placed on record and reproduced below:



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Plaintiff's content as available on https://www.usgbc.org/help/why-leed	Defendant's content as available on https://internationalgbc.org/credentials/
LEED (Leadership in Energy and Environmental Design) is the most widely used green building rating system in the world. Available for virtually all building types , LEED provides a framework for healthy, highly efficient, and cost-saving green buildings. LEED certification is a globally recognized symbol of sustainability achievement and leadership.	International Green Building Council (IGBC) International GBC (IGBC, is the most widely used green building rating system in the world. Available for virtually all building , community and home project types, International GBC (IGBC provides a framework to create healthy, highly efficient and cost-saving green buildings. International GBC (IGBC) certification is a worldwide recognized symbol of sustainability development.



<https://www.usgbc.org/help/why-lead>





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13. On 9th July, 2021, the Plaintiff issued a cease and desist notice to the Defendant. A reminder to the said cease and desist notice was also issued on 5th August, 2021, However, the Defendant did not respond to the same. Hence, the present suit was filed seeking permanent injunction.

14. As per the Plaint, the Defendant has also applied for the registration of the said marks. The details of the Defendant's applications are set out below:

S. No.	Trademark	Application Number	Date of Application	User claimed	Class	Status
1.		4879685	February 25, 2021	Proposed to be Used	42	Opposed by the Plaintiff on July 06, 2021.
Services: Scientific and technological services and research and design relating thereto; industrial analysis research and rating services						
2.		4964897	May 05, 2021	Proposed to be Used	42	Opposed by the Plaintiff on September 21, 2021.
Services: Scientific and technological services and research and design relating thereto; industrial analysis research and rating services						

15. Heard Id. Counsel for the Plaintiff. A perusal of the documents on record shows that the Plaintiff has granted certifications to a large number of



well-known Indian organizations including the following.

- i. **CII-Sohrabji Godrej Green Business Centre**
- ii. **ITC Maurya Hotel**
- iii. **Gurgaon Development Centre - Wipro Ltd.**
- iv. **Suzlon One Earth**
- v. **Grundfos Pumps India Pvt. Ltd.**
- vi. **Infinity Benchmark**

16. A perusal of the website being “www.igbc.in” belonging to one of the members of the Plaintiff, which is a part of the Confederation of Indian Industry (CII) also clearly shows that the Plaintiff enjoys goodwill and reputation in India, which is liable to be protected. The two trademarks applications of the Defendant, set out hereinabove, have been opposed by the Plaintiff. However, the Defendant continues to use the infringing marks/names, which are almost identical to the Plaintiff’s name, as also, the name of Plaintiff’s member IGBC. The logos used by the Defendant, as also, the services provided by the Defendant are also identical. The dishonesty and *mala fides* of the Defendant is evident from the verbatim copying of the Plaintiff’s website as well.

17. Considering the fact that the legal notice was issued to the Defendant on 9th July, 2021, the Court had directed the Plaintiff to serve the Defendant’s counsel. Despite advance service to the Defendant’s counsel being effected on Mr. Dilip C. Saroj, through email, none has appeared for the Defendant.

18. Under such circumstances, this Court is of the opinion that the Plaintiff has made a *prima facie* case for the grant of an interim injunction in its favour. The balance of convenience lies in favour of the Plaintiff and



irreparable harm would be caused to the Plaintiff if the Defendant is not restrained. Accordingly, till the next date of hearing, the Defendant and all others acting for or on its behalf shall stand restrained from using the mark/name 'International Green Building Council' and/or 'IGBC', the domain name 'www.internationalgbc.org', as also, the infringing device marks/logos, or any other mark which is identical or deceptively/confusingly similar to the Plaintiff's marks. No further certifications shall be provided by the Defendant under the impugned name and marks. However, any certifications already provided by the Defendant will not be affected by the present order.

19. Compliance of Order XXXIX Rule 3 CPC be effected within one week.
20. Reply to the present application be filed within four weeks from the service of the present order along with a copy of the paper book.
21. List before the Court on 20th December, 2022.

PRATHIBA M. SINGH, J.

SEPTEMBER 27, 2022/dk/ad