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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CS(COMM) 576/2024

M/S S.K. EDUCATIONS PVT. LTD. Plaintiff

Through: Ms. Aarzoo Aneja, Advocate

Versus

DRONA SHIKSHAN SAMITI & ORS. Defendants

Through: None.

CORAM:

HON'BLE MR. JUSTICE SAURABH BANERJEE

ORDER

% **18.07.2024**

I.A.33398/2024 (*pre litigation mediation*)

1. The plaintiff seeks exemption from instituting pre-litigation mediation.

2. Considering the averments made in the present application wherein the plaintiff seeks urgent ad-interim relief and in view of ***Yamini Manohar vs. T.K.D. Krithi*** 2023 SCC OnLine 1382 and ***Chandra Kishore Chaurasia vs. R. A. Perfumery Works Private Limited***. 2022:DHC:4454-DB, the plaintiff is exempted from instituting pre-litigation mediation.

3. Accordingly, the present application is allowed and disposed of.

I.A. 33397/2024(*exemption*)

4. Exemption is allowed, subject to all just exceptions.

5. The application stands disposed of.

I.A. 33396/2024 (*additional documents*)

6. The plaintiff seeks leave to file additional documents.

7. The plaintiff will be at liberty to file additional documents at a later

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stage, *albeit*, strictly in accordance with law.

8. Accordingly, the present application is allowed and disposed of.

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9. By way of the present suit, plaintiff is seeking permanent injunction from infringement of trademarks and copyright, passing off, rendition of accounts and damages.

10. Let the plaint be registered as a suit.

11. Issue summons to the defendants through all permissible modes returnable before the Joint Registrar on 04.10.2024.

12. The summons shall state that the written statement(s) be filed by the defendants within a period of thirty days from the date of receipt of the summons. Written Statement(s) be filed by the defendants along with affidavit(s) of admission/ denial of documents of the plaintiff, without which the written statement(s) shall not be taken on record.

13. Replication(s) thereto, if any, be filed by the plaintiff within a period of fifteen days from the date of receipt of written statement(s) along with affidavit(s) of admission/ denial of documents of the plaintiff, without which the replication(s) shall not be taken on record.

14. In case any of the parties wish to seek inspection of any document(s), the same shall be sought and given within the requisite timelines in accordance with law.

15. List before the Joint Registrar for marking exhibits on documents on 04.10.2024. It is made clear that if any party unjustifiably denies any document(s), then it would be liable to be burdened with costs.

I.A. 33395/2024 (*stay*)

16. The plaintiff seeks an *ex-parte* ad interim injunction restraining the



defendants and all the persons associated with them from using the registered trademark of the plaintiff under Class 41 i.e. “BACHPAN” in any manner or form and delivery for the destruction of all goods, bags, labels, dies, stationary, books, uniforms, printed matter and advertisement material, board, etc. containing the plaintiff’s mark or deceptively similar marks.

17. The plaintiff is engaged in imparting and promoting educational services since 2004, and has established a chain of approximately 1000 schools in the territory of India by providing franchisees to intending parties desirous of setting up play schools under the brand name "BACHPAN" registered in the year 2003, in return of licensing fee/royalty payable to the plaintiff by the franchise schools towards use of plaintiff's registered mark, and goodwill. The plaintiff has a good market presence with a turnover of Rs.9,59,01,076.00, Rs.22,45,21,281/- and Rs.70,57,77,461/- in the last three financial years.

18. The list of registered trademarks of the plaintiff is enumerated below:-



S.	Trademark No.	Class	Particulars	Registered On	Status as on date of filing of this suit
1.	1201003	16	BACHPAN	23.05.2003	Registered. (As a Word Trademark)
2.	1250366	41		18.11.2003	Registered. (As a Device Trademark)
3.	1640000	41	BACHPAN	10.01.2008	Registered. (As a Word Trademark)
4.	1640001	16		10.01.2008	Registered (As a Device Trademark)



5.	2071574	20		21.12.2010	Registered (As a Device Trademark)
6.	2066641	41		10.12.2010	Registered (As a Device Trademark)
7.	4068765	9	 Kyunki bachpan sirf ek baar aata hai	28.01.2019	Registered (As a Device Trademark)
8.	4068766	16	 Kyunki bachpan sirf ek baar aata hai	28.01.2019	Registered (As a Device Trademark)
9.	4068767	35	 Kyunki bachpan sirf ek baar aata hai	28.01.2019	Registered (As a Device Trademark)



10.	4068768	41		28.01.2019	Registered (As a Device Trademark)
11.	4068769	42		28.01.2019	Registered (As a Device Trademark)
12.	4465780	18		06.03.2020	Registered (As a Device Trademark)
13.	5385161	99		26.03.2022	Registered (As shape of goods)

19. The plaintiff also has copyright works, which are enumerated below:-



S	Registration No.	Work	Title of the Work	Registered On
1	A-131878/ 2019	Artistic		15.11.2019
2	L-69916/ 2017	Literary/ Dramatic	1 ST SCHOOL OF YOUR CHILD BACHPAN A PLAY SCHOOL.	07.11.2017
3	A-99221/ 2013	Artistic		05.04.2013

20. The plaintiff vide a Franchise Agreement dated 03.12.2013 appointed the defendant no.3 as its Franchisee for a period of five years, which came to an end on 03.03.2018. Thus, the said defendant no.3 is a former Franchisee of the plaintiff. The defendant no.2 is a School in the name of “*DRONA BACHPAN PUBLIC SCHOOL/ DRONA PUBLIC SCHOOL, BILASPUR*” run by the defendant no.1 namely “*DRONA SHIKSHAN SAMITI*”, which is a registered society.

21. Before covid pandemic, the chairman of defendant no.1 Society applied for registration for “*DRONA BACHPAN PUBLIC SCHOOL*” for identical services in Class 41 on a “*proposed to be used*” basis and the petitioner has already filed an opposition thereto.

22. Thereafter, in September, 2022, the plaintiff found that defendant no.2 school was/ intending to use the plaintiff’s wordmark “BACHPAN”,



trademark “” and the registered copyright as enumerated above. The plaintiff had also sent a legal notice dated 08.09.2022 to defendant no.3, instead of replying thereto, the defendant no.3 continued using the plaintiff’s work mark, trademarks/ logo/ copyrights.

23. Presently also the said defendant no.2 is operational and the defendants are promoting and advertising the plaintiff’s wordmark, trademark, and the registered copyrights as below:-

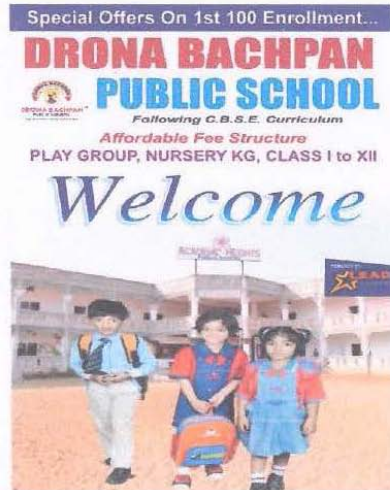




DEFENDANT'S UNAUTHORISED USE	PLAINTIFF'S TRADEMARK /COPYRIGHT
Defendants are using a mark identical to the Plaintiff's mark on its building. 	BACHPAN™  BACHPAN a play school



Defendants are selling identical bag to that of the Plaintiff without any right.



"BACHPAN"

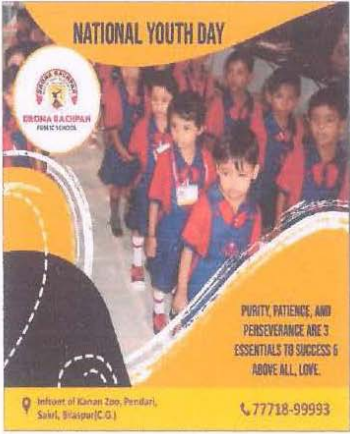


"BACHPAN"



BACHPAN



	“BACHPAN” BACHPAN  BACHPAN a play school
Defendants are selling identical uniform to that of the Plaintiff without any right. 	“BACHPAN” BACHPAN  BACHPAN a play school

24. Learned counsel for the plaintiff submits that the plaintiff’s aforesaid trademarks/ logo/ copyrights are prominently and constantly displayed on all the uniforms, books, stationery, manuals, and other goods of the plaintiff and its authorised franchise holders and the said marks are also used and prominently displayed on all the posters, invites, cards as well as social media posts published by the plaintiff.

25. This Court has heard the learned counsel for the plaintiff and perused



the documents on record.

26. What emerges is that the plaintiff is not only the prior adopter of the trademarks/ logo/ copyrights involved but the prior user thereof as well and the prior registrant thereof also. Being a registered owner thereof, it is trite that the plaintiff is the only source and only proprietor thereof. Therefore, under such circumstances, the plaintiff has a superior and the sole right in and to trademarks/ logo/ copyrights involved.

27. Despite being fully aware of the above as also that the Franchise Agreement with the defendant no.3 has already expired in 03.03.2018, the defendants continued to use the registered trademarks/ logo/ copyrights of the plaintiff without any authority, permission or cause till date. Such adoption and use of the registered trademarks/ logo/ copyrights of the plaintiff by the defendants being unauthorised, is violative of the statutory rights and common law rights of the plaintiff.

28. In view thereof, the defendants cannot be allowed to either adopt or continue using the registered trademarks/ logo/ copyrights of the plaintiff. The adoption and usage by the defendants is a dishonest one. As such, the adoption and use by the defendants can only be with a view to cause confusion, deception and to misrepresent to the general public at large to show/ portray that they are a part of or are somehow connected with the plaintiff. The defendants are only trying to cash on the plaintiff's goodwill and reputation. Therefore, the defendants are guilty of *prima-facie* infringing the registered trademarks/ logo/ copyrights of the plaintiff and further, the use thereof by the defendants is the course of the regular dealing is also an act of passing off.

29. In view of the aforesaid, the plaintiff has been able to make out a



prima facie case for the grant of an *ex parte ad interim* injunction in its favour and against the defendants. Since the *balance of convenience* lies in favour of the plaintiff and against the defendants, the defendants should be restrained by way of an *ex parte ad interim* injunction. If the defendants are allowed to continue on, as is where is basis, there is likelihood of the plaintiff suffering *irreparable harm, loss and injury*.

30. Considering the aforesaid cumulatively, even though the plaintiff has approached this Court now, after having come to know of the defendant no.2 school in September, 2022 and sent a legal notice to defendant no.3, the plaintiff has been able to make out a case for grant of an *ex-parte ad interim* injunction in its favour and against the defendants. Since the acts of infringement and passing off by the defendants are a continuous cause of action as held by the Hon'ble Supreme Court in ***Bengal Waterproof Ltd. vs Bombay Waterproof Mfg. Co. (1997) 1 SCC 99.***

31. In view thereof, till the next date of hearing, the defendants, their directors, managers, officers, proprietors, partners, agents are restrained from using the trademarks/ logo/ copyrights of the plaintiff enumerated in para(s) 18 and 19 hereinabove, in any form or manner whatsoever.

32. Upon the plaintiff taking requisite steps, issue notice to the defendants by all permissible modes returnable before the Joint Registrar on 04.10.2024.

33. Reply, if any, be filed within a period of thirty days. Replication, if any, be filed within fifteen days thereafter.

34. List before the Court on 09.12.2024.

SAURABH BANERJEE, J

JULY 18, 2024/akr

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