



2025:DHC:7140

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

+ CS(COMM) 605/2024 & I.A. Nos. 34116/2024, 34117/2024,
34118/2024, 34119/2024, 34120/2024 & 34121/2024

CONDOR FOOTWEAR (INDIA) LIMITED & ANR.....Plaintiffs

Through: Mr. Pravin Anand with Mr. Manish
Biala and Mr. Devesh Ratan,
Advocates.

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Email: manish@anandandanand.com

versus

NEXGEN FOOTWEAR PRIVATE LIMITED &
ORS.

.....Defendants

Through: None.

CORAM:

HON'BLE MS. JUSTICE MINI PUSHKARNA

ORDER

% **24.07.2024**

I.A. No. 34120/2024 (Exemption from filing certified copies)

1. The present is an application under Section 151 of the Code of Civil Procedure, 1908 ("CPC") seeking exemption from filing clear and certified copies, translated copies and originals of documents.
2. Exemption is granted, subject to all just exceptions.
3. Plaintiffs shall file clear and certified copies, translated copies and original of documents, on which the plaintiffs may seek to place reliance, before the next date of hearing.
4. Accordingly, the present application is disposed of.

I.A. No. 34119/2024 (Application to file additional documents)

5. The present application has been filed on behalf of the plaintiffs under Order XI Rule 1(4) CPC, as amended by the Commercial Courts Act, 2015, read with Section 151 CPC, seeking liberty to file additional documents at the appropriate stage.



6. The plaintiffs, if they wish to file additional documents at a later stage, shall do so strictly as per the provisions of the Commercial Courts Act, 2015 and the DHC (Original Side) Rules, 2018.

7. Accordingly, the present application is disposed of.

I.A. No. 34118/2024 (Exemption from effecting advance service)

8. The present is an application under Section 151 CPC seeking exemption from advance service to the defendants.

9. The plaintiffs seek urgent interim relief, and have also sought appointment of a Local Commissioner. Therefore, in the peculiar facts and circumstances of this case, exemption from effecting advance service upon the defendants, is granted.

10. For the reasons stated in the application, the same is allowed and disposed of.

I.A. No. 34121/2024 (seeking exemption from undergoing Pre-institution Mediation)

11. The present is an application under Section 12A of the Commercial Courts Act, 2015 read with Section 151 of CPC seeking exemption from undergoing Pre-institution Mediation.

12. Having regard to the facts of the present case and in the light of the judgment of Supreme Court in the case of *Yamini Manohar versus T.K.D. Keerthi*, 2023 SCC OnLine SC 1382, and Division Bench of this Court in *Chandra Kishore Chaurasia Versus RA Perfumery Works Private Ltd.*, 2022 SCC OnLine Del 3529, exemption from undergoing Pre-institution Mediation, is granted.

13. Accordingly, the application stands disposed of.

CS(COMM) 605/2024

14. Let the plaint be registered as suit.



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15. Upon filing of the process fee, issue summons to the defendants by all permissible modes. Summons shall state that the written statement be filed by the defendants within thirty days from the date of receipt of summons. Along with the written statement, the defendant shall also file affidavit of admission/denial of the plaintiffs' documents, without which, the written statement shall not be taken on record.

16. Liberty is given to the plaintiffs to file replication within thirty days from the date of receipt of the written statement. Further, along with the replication, if any, filed by the plaintiffs, an affidavit of admission/denial of documents of the defendant, be filed by the plaintiffs, without which, the replication shall not be taken on record. If any of the parties wish to seek inspection of the documents, the same shall be sought and given within the timelines.

17. List before the Joint Registrar (Judicial) for marking of exhibits, on 06th September, 2024.

18. List before the Court on 07th November, 2024.

I.A. No. 34116/2024 (Application under Order XXXIX Rules 1 and 2 CPC read with Section 151 CPC seeking interim injunction)

19. The present suit has been filed for permanent injunction restraining infringement of trademarks, passing off, dilution, tarnishment, unfair trade practices, damages, rendition of accounts, delivery up etc.

20. It is submitted that plaintiff no. 1 was established in collaboration with plaintiff no. 2, which is an Italian company, well-known for footwear products all over the world. It is submitted that plaintiff no. 1 also exports footwear to other countries under its well-known trademark INLBU and several other trademarks.

21. Learned counsel appearing for the plaintiffs submits that the present



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suit concerns the plaintiffs' registered and well-known trademark INBLU, which was originally adopted for use in India by the plaintiffs' Director, i.e., Mr. Jaikishan Adnani in 2001, knowing well that no such identical or similar trademark was in use for similar products in the market. The trademark INBLU has been in use in the open market for footwear manufactured by the plaintiffs, continuously and extensively, since its adoption in the year 2001. The plaintiffs' products bearing INBLU trademark are sold all over India, including Delhi.

22. He submits that along with the common law rights in the trademark INBLU, the plaintiff no. 1 has also secured statutory protection for the same in India. The details of the registration of the trademark in favour of the plaintiffs, are as follows:-

S. No.	Registration No.	Trade Mark	Class	Date of Application	Status
1.	1047758		25	26/09/2001	Registered and valid till 26/09/2031
2.	1953268		25	20/04/2010	Registered and valid till 20/04/2030
3.	2083840		25	11/01/2011	Registered and valid till 11/01/2031
4.	2083841		25	11/01/2011	Registered and valid till 11/01/2031
5.	1234443		25	11/09/2003	Registered and valid till 11/09/2033



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6.	2915185		25	04/03/2015	Registered and valid till 04/03/2025
7.	2448316		25	24/12/2012	Registered and valid till 24/12/2032
8.	4470522		25	12/03/2020	Pending
9.	4563794	INBLU (Word Mark)	25	10/07/2020	Pending
10.	4563792		25	10/07/2020	Pending
11.	4563793	BLU (WORD MARK)	25	10/07/2020	Pending

23. It is further submitted that the plaintiff no. 1 was until recently, the owner and registered proprietor of the INBLU trademarks in India. However, recently, the plaintiff no. 1 has sold and assigned the said trade mark to the plaintiff no. 2 by way of Deed of Assignment dated 01st February, 2023. Thus, it is submitted that plaintiff no. 1 is now the exclusive licensee of the INBLU trademarks in India by way of License Deed dated



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01st February, 2023. Further, the plaintiff no. 2 has also filed the appropriate requests before the Trade Marks Registry seeking to bring on record its name as the subsequent proprietor of the INBLU trademarks, and the same are currently pending.

24. It is submitted that besides the registrations and applications in India, the plaintiffs have also obtained registration of the trademark INBLU in several other countries across the world.

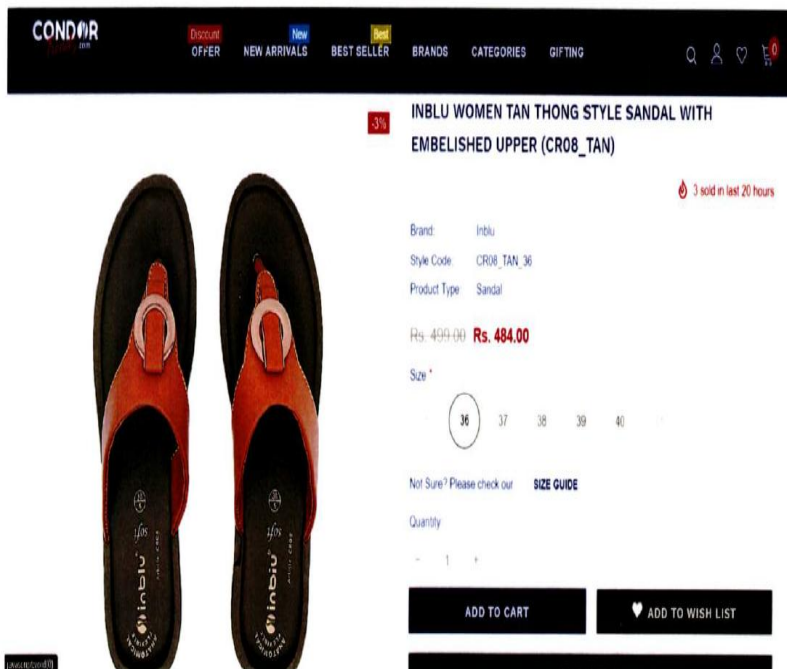
25. Learned counsel for the plaintiffs submits that the plaintiffs' products and its trademarks have acquired tremendous reputation and goodwill amongst consumers and the members of the trade in India and other countries, and that the same have also acquired a secondary significance as indicative of the trade origin of the plaintiffs' products.

26. He submits that in the first week of July, 2024, the plaintiff no. 1 came to know from its market sources in Delhi, that footwear products under the mark ENBLUE are being manufactured and packed in Delhi and being exported in the overseas markets, which is causing confusion among the traders for the reason that the said mark is phonetically and visually similar to the plaintiffs' registered trademark INBLU. It is submitted that to conduct further enquiry, the plaintiffs availed the services of a private investigator, who found out that the impugned products are being manufactured, marketed, sold and exported by the defendant no. 1.

27. Learned counsel for the plaintiffs draws the attention of this Court to the documents showing the plaintiffs' product as well as defendants product, which are reproduced as follows:-



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DEFENDANT'S PRODUCT 'ENBLUE'



28. Attention of this Court is further drawn to various sales figures of the plaintiffs for their product with the trademark INBLU. Further, attention of this Court has also been drawn to the various awards, which have been conferred upon the plaintiffs.

29. Learned counsel appearing for the plaintiffs further submits that upon



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the inquiry by its Investigator, the plaintiffs were shocked to find out that the

defendants have dishonestly adopted ENBLUE , a deceptively similar mark for identical goods, being clearly aware of the plaintiffs prior existing products under the trademark INBLU



30. It is submitted that as per the private investigator hired by the plaintiffs, the defendants have their own brand named 'Airson Shoes' and they are using the domain name www.airsonshoes.com for the same. However, despite the said fact, instead of continuing their business under their own brand, the defendants have chosen to indulge in unlawful activities and have adopted a deceptively similar mark ENBLUE, to ride upon the goodwill and reputation of the Plaintiffs' trademark INBLU.

31. Thus, learned counsel appearing for the plaintiffs submits that the defendants are using a deceptively similar trademark for identical products, without the authority or license of the plaintiffs, are infringing the plaintiffs'



registered trademark INBLU , and passing off their own low-quality products as that of the plaintiffs, which is causing confusion and deception in the minds of the traders and consumers, who are being misled into believing that the products of the defendants are originating from the plaintiffs.

32. It is submitted that the act of the defendants also amounts to passing off its products, as those of the plaintiffs by using the same features of the plaintiffs' trademark in its own mark.

33. It is further submitted that the defendants are using the impugned



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mark dishonestly with the clear intention to cash upon the plaintiffs' hard earned reputation and goodwill over the trademark INBLU and other products thereunder. There can be no other conceivable reason for the defendants, to imitate the plaintiffs' trademark which cannot occur by chance or by coincidence. Further, the unlawful acts of the defendants in imitating the plaintiffs' trademark, also dilutes the distinctiveness of the plaintiffs' trademark and brand equity therein, and thereby tarnishes the goodwill and reputation attached with it.

34. Having heard learned counsel appearing for the plaintiffs, this Court is of the view that the plaintiffs have made out a *prima facie* case in their favour and the balance of convenience is also in favour of the plaintiffs and against the defendants. Further, the plaintiffs will suffer irreparable loss, in case no *ex-parte ad-interim* injunction is granted in favour of the plaintiffs.

35. This Court has also perused the various orders passed in previous litigations in favour of the plaintiffs, wherein *ex-parte ad-interim* injunction have been granted in favour of the plaintiffs.

36. In particular, this Court notes order dated 29th January, 2020 passed in CS(COMM) 46/2020, wherein, injunction was passed in favour of the plaintiffs, in the following manner:-

“xxx xxx xxx

7. Consequently, the defendant is restrained, until the next date of hearing, from manufacturing, selling or otherwise dealing in

footwear under the mark  Enblue, or any other mark or name deceptively similar to that of the plaintiff's registered mark

“INBLU”/“”.

xxx xxx xxx”

37. Considering the submissions made before this Court and perusal of the documents on record, it is apparent that the defendants, by using a



deceptively similar trademark for identical products, without the authority or license of the plaintiffs', are infringing the plaintiffs' registered trademark

'INBLU' , which is likely to cause confusion and deception in the minds of the traders and consumers, who are likely to be misled into believing that the products of the defendants are originating from the plaintiffs. The defendants have adopted a phonetically similar mark, which cannot be permitted, as defendants cannot be allowed to appropriate to themselves, the goodwill and reputation of the plaintiffs and their trademarks.

38. Accordingly, considering the facts and circumstances of the present case, it is directed that the defendants and all persons and entities acting for or on their behalf, are restrained from using the impugned mark ENBLUE



or any other mark, which is deceptively similar or identical to the plaintiffs registered trademark INBLU , amounting to infringement/passing off of the plaintiffs' registered trademark, till the next date of hearing.

39. Issue notice to the defendants by all permissible modes, upon filing of process fees, returnable on the next date of hearing.

40. Reply, if any, be filed within a period of four weeks from the date of service.

41. Rejoinder thereto, if any, be filed within a period of two weeks, thereafter.

42. Compliance of Order XXXIX Rule 3 CPC, be done, within a period of two weeks, from today.

43. List on 07th November, 2024.



I.A. No. 34117/2024 (for appointment of Local Commissioner)

44. Learned counsel appearing for the plaintiffs submits that the defendants have dishonestly adopted ENBLUE , which is a deceptively similar mark for identical goods, being clearly aware of the plaintiffs' prior existing trademark INBLU . Thus, it is submitted that the subsequent adoption by the defendants of the impugned mark and their promotion of the impugned products are evidence of the intention of the defendants to ride upon the goodwill and reputation of the plaintiffs.

45. It is submitted that the plaintiffs believe that upon service, the defendants are likely to remove all physical evidence and/or deny their involvement in the infringing activities. Therefore, in order to preserve the evidence of infringement, it is necessary that a Local Commissioner be appointed to visit the premises of the defendants.

46. Accordingly, the following directions are issued:

46.1 Mr. Japman Singh, Advocate (Mob. No. 9811134790), is appointed as a Local Commissioner, in order to visit the premises of the defendants, as under:-

***H-52, Udyog Nagar,
Peeragarhi, Mangolpuri,
West Delhi - 110041***

46.2 The learned Local Commissioner, along with a representative of the plaintiffs and its counsel, shall be permitted to enter upon the premises of the defendants mentioned above, or any other location/premises, that may be identified during the course of commission, in order to conduct the search



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and seizure.

46.3 The learned Local Commissioner shall conduct a search at the defendants' premises and seize impugned goods, bearing any mark depicted in paragraph 38 of this Order, as well as any other infringing goods (including unfinished/semi-finished goods), which are similar, identical or deceptively similar to the plaintiffs' trademarks.

46.4 After seizing the infringing material, the same shall be inventorized, sealed and signed by the learned Local Commissioner, in the presence of the parties, and released on *superdari* to the defendants, on their undertaking to produce the same, as and when further directions are issued, in this regard.

46.5 The learned Local Commissioner shall also be permitted to make copies of the books of accounts including ledgers, cash books, stock registers, invoices, books, etc., in so far as they pertain to the infringing products.

46.6 Further, the learned Local Commissioner shall be permitted to undertake/arrange for photography/ videography of the execution of the commission.

46.7 Both the parties shall provide assistance to the learned Local Commissioner for carrying out the aforesaid directions.

46.8 In case, any of the premises are found locked, the learned Local Commissioner shall be permitted to break open the lock(s). To ensure an unhindered and effective execution of this order, the Station House Officer ("SHO") of the local Police Station, is directed to render all assistance and protection to the Local Commissioner, as and when, sought.

46.9 The fee of the learned Local Commissioner, to be borne out by the plaintiffs, is fixed at ₹ 1,50,000/-. The plaintiffs shall also bear all the expenses for travel of the Local Commissioner and other miscellaneous out-



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of-pocket expenses, for the execution of the commission. The fee of the Local Commissioner shall be paid in advance by the plaintiffs.

46.10 The Local Commission shall be executed within a period of two weeks from today. The Local Commissioner shall file the report within a period of four weeks from the date, on which the commission is executed.

47. The order passed today, shall not be uploaded for a period of two weeks.

48. The present application stands disposed of, in the aforesaid terms.

49. *Dasti* under the signatures of the Court Master.

MINI PUSHKARNA, J

JULY 24, 2024

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