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

+ **CS(COMM) 131/2019**

**VIVO MOBILE COMMUNICATIONS CO., LTD.** ..... Plaintiff

Through Mr.Neeraj Grover with Mr.Shashwat  
Rakshit and Mr.Naqeeb Nawab,  
Advocates.

versus

**MS. KANCHAN SHAW & ANR.**

..... Defendants

**CORAM:**

**HON'BLE MR. JUSTICE MANMOHAN**

**ORDER**

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**12.03.2019**

**I.A.No.3567/2019**

Keeping in view the averments in the application, plaintiff is exempted from filing the original/clear/typed/translated and certified copies of the documents at this stage.

Needless to say, this order is without prejudice to the rights and contentions of the parties.

Accordingly, the present application stands disposed of.

**I.A.No.3566/2019**

Keeping in view the averments in the application, plaintiff is permitted to file additional documents within a period of thirty days.

Accordingly, the present application is allowed subject to just exceptions.

**CS(COMM) No.131/2019**

Let the plaint be registered as a suit.

Issue summons in the suit to the defendants by all modes including *dasti*, returnable for 02<sup>nd</sup> May, 2019.

The summons to the defendants shall indicate that a written statement to the plaint be positively filed within four weeks of the receipt of the summons. Liberty is given to the plaintiff to file a replication within two weeks of the receipt of the advance copy of the written statement.

The parties shall file all original documents in support of their respective claims along with their respective pleadings. In case parties are placing reliance on a document which is not in their power and possession, its detail and source shall be mentioned in the list of reliance which shall be also filed with the pleadings.

Admission/denial of documents shall be filed on affidavit by the parties in accordance with the Delhi High Court Rules.

List the matter before Joint Registrar on 24<sup>th</sup> April, 2019 for completion of pleadings

**I.A. No.3565/2019**

Issue notice to the defendants by registered post and *dasti*, returnable for 24<sup>th</sup> April, 2019 before the Joint Registrar.

It is pertinent to mention that present suit has been filed for declaration, permanent injunction restraining infringement of trademark and passing off, delivery up, damages and rendition of accounts.

In the plaint, it is stated that the plaintiff's predecessor BBK communication technology Co. Ltd., was established in 1995 and is today the third largest smart phone company in sales volume in China. It is stated that BBK assigned all its IPR including the trademarks rights to the plaintiff.

In the plaint, it is stated that the plaintiff through its predecessor in

2011 honestly adopted the inherently distinctive and unique word mark VIVO and has been using it continuously in respect of its goods and services. It is stated that in 2014, the plaintiff's licensee Vivo Mobile India Private Limited was formed to expand the operations of Vivo in the Indian market and is today one of the leading and well-known entity in telecommunication sector in India.

It is averred in the plaint that the plaintiff is the registered proprietor of the trademark VIVO under classes 09, 35 and 36 of the Trademarks Act, 1999.

It is the plaintiff's case that the sales revenue of the plaintiff in India for the year 2018 was more than Rs 10,000 crore. It is stated that the plaintiff has also spent extensively on promotion of its brand.

Learned counsel for plaintiff states that in July 2018, the plaintiff came across the defendant no.1's application for registration of the mark IVVO in class 09 of the Trade Marks Act, 1999 on 'proposed to be used basis'. Learned counsel for the plaintiff states that the plaintiff conducted investigation which revealed that the defendant no.1 is the promoter and one of the directors of the defendant no.2 and that defendant no.2 is engaged in the business of inter alia mobile phones. He states that the investigation also revealed that no products of the defendants under the impugned mark IVVO were available in the market.

Learned counsel for plaintiff states that the plaintiff sent a legal notice dated 20<sup>th</sup> July, 2018 to the defendants for withdrawal of the above mentioned application. He states that the defendants replied to the said legal notice in the fourth week of August 2018, claiming that their IVVO marks were completely different and were meant for rural markets only. He states

that the defendants also stated that they are involved in selling feature phones and would never launch a smart phone. He states that the defendants also showed their willingness to discuss the matter further and resolve it amicably. He states that thereafter the plaintiff sent an email dated 5<sup>th</sup> September, 2018, to the defendants asking the defendants to consider a personal meeting. However, the defendants haven't responded to the same.

Learned counsel for the plaintiff states that the plaintiff was shocked when the plaintiff was served with summons pertaining to the Howrah District court instituted by the defendants under section 142 of the Trade Marks Act, 1999, alleging groundless threats. He states that upon a perusal of the suit papers it was revealed that that defendant no.1 claimed that the impugned trademark IVVO was coined and adopted by the defendant no.2, being an abbreviation of **I**nnovation, **V**ariety, **V**alue and **O**mnipresent to manufacture and sell mobile phones.

Learned counsel for the plaintiff states that around second week of December 2018, the plaintiff again conducted market enquiries which revealed that the defendants product under the impugned marks



IVVO/ivvo/ are now available in Delhi. The enquiries also revealed that the offending products under the impugned marks are also available on the defendant's website [www.ivvo.com](http://www.ivvo.com) and [www.britzo.in](http://www.britzo.in) which are easily accessible in Delhi. He states that the plaintiff purchased two samples of the impugned products from the defendants' website, which were delivered to Delhi.

A comparative chart of the plaintiff and defendants' mark showing is reproduced herein below:-

| Plaintiff's famous trademark                                                                                                                                                                                                                                        | Defendants' impugned marks                                                                              |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------|
| VIVO                                                                                                                                                                                                                                                                | IVVO                                                                                                    |
| <b>Points of similarity:</b> <ul style="list-style-type: none"> <li>➤ The marks are nearly identical and/ or deceptively similar (phonetically, structurally and visually).</li> <li>➤ Only the first two alphabets- 'V' and 'I' have been interchanged.</li> </ul> |                                                                                                         |
| <p><b>ViVO</b></p>                                                                                                                                                               | <p><b>iVVO</b></p>  |
| <b>Points of similarity:</b> <ul style="list-style-type: none"> <li>➤ Word elements VIVO/ ViVO and IVVO/ iVVO are</li> </ul>                                                                                                                                        |                                                                                                         |

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|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------|
| nearly identical and/ or deceptively similar                                                                                                                                                                                                                                                                                                                                                  |                                                           |
| <ul style="list-style-type: none"> <li>➤ Defendants are also using the combination of uppercase and lowercase letters, particularly, the alphabet 'I' is being used in the same manner, i.e. in lowercase as 'i'.</li> <li>➤ The stylization and manner of writing is similar.</li> <li>➤ Defendants have adopted the deceptively similar colour scheme for the impugned logo mark</li> </ul> |                                                           |
| <u><a href="http://www.vivo.com">www.vivo.com</a></u>                                                                                                                                                                                                                                                                                                                                         | <u><a href="http://www.ivvo.co.in">www.ivvo.co.in</a></u> |
| <b>Points of similarity:</b> <ul style="list-style-type: none"> <li>➤ Defendants' domain name includes the identical and/ or deceptively similar mark ivvo (only the first two alphabets- 'v' and 'i' have been interchanged).</li> </ul>                                                                                                                                                     |                                                           |

Learned counsel for the plaintiff states that the defendants have been operating with a malafide intent to ride upon the goodwill associated with the plaintiff in relation to its prior and famous VIVO marks.

The Supreme Court in the case of *Midas Hygiene Industries P. Ltd. & Anr. vs. Sudhir Bhatia & Ors., 2004 (28) PTC 121 (SC)* has held that in case of infringement of trademark normally an injunction must follow and that delay is not fatal in bringing infringing action.

Keeping in view the aforesaid, this Court is of the opinion that a *prima facie* case of infringement and passing off is made out in favour of the plaintiff and balance of convenience is also in its favour. Further, irreparable harm or injury would be caused to the plaintiff if an interim injunction order is not passed.

Consequently, till further orders, the defendant, their directors/proprietors/partners, principals, employees, agents, affiliates, distributors, franchisees, representatives, assigns and all those connected with them in their business are restrained from using the impugned marks



or any other mark/device/logo/domain name or trade name which is identical and/or deceptively or confusingly similar to the plaintiff's earlier and/or registered VIVO marks in any manner whatsoever.

Let the provisions of Order XXXIX Rule 3 CPC be complied within one week.

Order dasti under the signature of the Court Master.

**MANMOHAN, J**

**MARCH 12, 2019**  
**KA**