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

Date of Decision: 28th April, 2022

+ **CS (COMM) 78/2021 & I.As. 2346/2021, 9196/2021**

TM 25 HOLDING BV

..... Plaintiff

Through: Mr. Pravin Anand, Mr. Shobhit
Agrawal and Mr. Deepank Singhal,
Advocates. (M:9782830038)

versus

UMA MANJA SHIVAPPA

..... Defendant

Through: None.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

I.A. 9196/2021(u/O XXXIX Rule 2A CPC)

2. The present application has been filed by the Plaintiff on the ground that the Defendant has not complied with the injunction order dated 16th February, 2021 passed by the Id. Single Judge of this Court. The brief background of the case is that the Plaintiff had instituted the present suit seeking protection of its trademark 'G-STAR' which was adopted by it in 1989 for various apparel, including jeans, tops and other clothing, as well as a diverse line of luxury accessories, etc. The Plaintiff had also opened its store in India in July 2015. The Plaintiff was earlier using the mark 'GAPSTAR' earlier and switched to 'G-STAR' IN 1994. The mark 'G-STAR' is also registered in favour of the Plaintiff in India under various classes.

3. In June 2020, the Defendant was found to be using 'GS STAR' for apparel and has also filed an application dated 21st November, 2018 before



the trademark registry bearing no.4003995 for the registration of the same for the same class of products as that of the Plaintiff on a 'proposed to be used' basis. The products of the Defendant were also found to be advertised and promoted on www.indiamart.com and www.justdial.com. It was in this background that this Court had granted an interim injunction on 16th February, 2021 in the following terms:

“12. Considering the averments in the plaint and the documents filed, the plaintiff has made out a prima facie case in its favour and in case, no ex-parte ad-interim injunction is granted, the plaintiff would suffer an irreparable loss. The balance of convenience also lies in favour of the plaintiff and against the defendant.

13. Consequently, till the next date of hearing, the defendant, his partners, agents, servants, distributors and any other persons acting for and on behalf of the defendant are restrained from using in the course of trade the mark 'GS STAR' including in any stylized representations, and from selling, offering for sale, manufacturing, advertising, importing, exporting, or in any manner commercially dealing in any goods, whether offline or online, bearing the impugned mark or any other mark identical or deceptively similar to plaintiff's 'G-STAR' trade marks amounting to infringement of the plaintiff's registered trade marks.

14. Compliance under Order XXXIX Rule 3 CPC be done within one week.”

4. A Local Commissioner was appointed on 16th August, 2021 as the Defendant was not complying with the above injunction order. The Commission was since executed, but the Local Commissioner could not find any products with the mark 'GS STAR' in the premises of the Defendant. The Defendant was shown to have used the new board by the name 'Higher Fields Way 2 Journey' for its apparels. Photographs were placed on record



by the Local Commissioner of the apparels and the board with the name 'Higher Fields Way 2 Journey'. However, in the present application, the contention of the Plaintiff is that the Defendant has not been complying with the injunction order dated 16th February, 2021. The said application is based on the affidavit of an independent investigator- Nripendra Kashyap, who visited the Defendant's premises in June, 2021. The investigator's affidavit shows the followings:

- i. Listings on www.indiamart.com and www.justdial.com of the Defendant being continued.
- ii. Photographs of the Defendant's premises along with the products, labels and tags bearing the mark 'GS STAR'.

5. The Court has perused the application under Order XXXIX Rule 2A CPC and the report of the Local Commissioner. It is noticed by the Court that the investigator claims to have gone to the Defendant's premises on 26th June, 2021. However, the Commission was executed on 20th August, 2021. It is possible that the Defendant upon receiving a copy of this application may have stopped using the mark 'GS STAR' and adopted new mark. Since the Local Commissioner's report is subsequent to the investigator's report and the Local Commissioner's report also shows that the Defendant's display board, tags on the clothes have been changed and the mark 'GS STAR' is no longer in use, this Court is of the opinion that the only orders that would be called for, at this stage, would be for a direction to www.indiamart.com and www.justdial.com to remove the Defendant's listings bearing the mark 'GS STAR'.

6. Accordingly, the Plaintiff is permitted to approach both these platforms with the URLs of the Defendant's listings and seek for removal of



the same. The said platforms upon receipt of the present order of this Court shall remove the Defendant's listings bearing the mark 'GS STAR' within 36 hours.

7. The contempt application is disposed of in the above terms.

CS(COMM) 78/2021 & I.A. 2346/2021(for stay)

8. Despite the service having been effected, the Defendant has chosen not to appear in the present suit for the last several hearings, including 5th April, 2021, 28th April, 2021, 4th May, 2021, 13th July, 2021, 27th July, 2021, 9th August, 2021, 16th August, 2021 and 29th September, 2021.

9. It is clear that the Defendant has knowledge of the present suit and the injunction order dated 16th February, 2021, inasmuch as the Local Commissioner's report has recorded that the Defendant has changed its mark. A perusal of the record shows that, as of June, 2021, the Defendant continued to use the mark 'GS STAR', despite the injunction order dated 16th February, 2021.

10. The rights of the Plaintiff in the mark 'G STAR' are clearly borne out from the record. The Plaintiff's background has been captured in the Plaint. A perusal of the same shows that the Plaintiff is using various variants of the mark 'G STAR', including 'G STAR' logo form, G-STAR, G-STAR RAW, RAW, G-RAW and RAW DENIM 3301. The mark 'G-STAR' and its formative marks have also been registered by the Plaintiff in Classes 3, 18, 25, and 9. The details of the said registrations are as under:

Trademark	No.	Classes	Status
G-STAR	640597	25	Registered
	654628	03	Registered



	654629	18	Registered
	654630	25	Registered
G-Star	1603526	9,41	Registered
	1708619	18, 25 & 35	Registered
	2292047	03,09, 14, 18, 25 & 35	Registered
	2292048	18, 25 & 35	Registered
	2292045	18 & 25	Registered

11. In the opinion of this Court, the mark 'GS STAR' used by the Defendant is clearly identical and deceptively similar to the Plaintiff's mark 'G-STAR'. There can be no justification for use of the said mark in respect of identical products, especially when the mark of the Plaintiff is registered in India and the mark is being used the Plaintiff in India. The Defendant is also conscious of the importance of trade marks and, has in fact, has filed the Trademark Application bearing no.4003995, for the registration of the mark 'GS STAR' in Class 25, on 21st November, 2018, on a 'proposed to be used' basis.

12. The Plaintiff is clearly the prior user of the mark 'G-STAR' globally as also in India. The Plaintiff also enjoys goodwill and reputation in the said mark 'G-STAR' in relation to apparels and garments. The Plaintiff has also opposed the trademark of the Defendant.

13. In view of the non-appearance on behalf of the Defendant despite



service, this Court is of the opinion that no *ex parte* evidence would be required in this matter, in view of the decision of the Id. Single Judge of this Court in *Disney Enterprises Inc. & Anr. v. Balraj Muttneja & Ors.* [CS (OS) 3466/2012 decided on 20th February, 2014]. The same has been reiterated by the Court in *S. Oliver Bernd Freier GMBH & CO. KG v. Jaikara Apparels and Ors.* [210 (2014) DLT 381], as also, in *United Coffee House v. Raghav Kalra and Ors.* [2013 (55) PTC 414 (Del)]. The relevant observations from the judgment in *Disney Enterprises Inc. (supra)*, are as under:

“3. Though the defendants entered appearance through their counsel on 01.02.2013 but remained unrepresented thereafter and failed to file a written statement as well. The defendants were thus directed to be proceeded *ex-parte* vide order dated 04.10.2013 and the plaintiffs permitted to file affidavits by way of *ex-parte* evidence. 4. The plaintiffs, despite having been granted sufficient time and several opportunities, have failed to get their affidavits for leading *ex-parte* evidence on record. However, it is not deemed expedient to further await the same and allow this matter to languish, for the reason that I have in Indian Performing Rights Society Ltd. Vs. Gauhati Town Club MANU/DE/0582/2013 held that where the defendant is *ex parte* and the material before the Court is sufficient to allow the claim of the plaintiff, the time of the Court should not be wasted in directing *ex parte* evidence to be recorded and which mostly is nothing but a repetition of the contents of the plaint.”

14. In the facts and circumstances of this case, this Court is empowered under the Rule 27 of the Delhi High Court Intellectual Property Division Rules, 2022 to pass summary judgment, without the requirement of filing a



specific application seeking the same. Accordingly, the present suit is decreed in terms of the reliefs sought in paragraphs 49(a), (b) and (c) of the Plaintiff.

15. Further, the Defendant has deliberately continued the use of the mark 'GS STAR' despite being aware of the Plaintiff's mark 'G-STAR' as also the reputation thereof, through the opposition proceedings to its mark. The said opposition was filed by the Plaintiff in June, 2020. Thereafter, the Defendant filed the Counter Statement on 15th August, 2020, but continued to use the mark 'GS STAR' for almost a year till June, 2021. Thus, the use by the Defendant of the mark 'GS STAR' after the filing of the opposition by the Plaintiff, is clearly deliberate and intentional. In view of the above, this is a fit case for grant of damages, in terms of the relief sought in paragraph 49(e) of the Plaintiff, to the tune of Rs.10,00,000/- in favour of the Plaintiff and against the Defendant. The said damages be paid to the Plaintiff by the Defendant, within eight weeks.

16. The Plaintiff has also incurred litigation costs, including court fee, fees of the Local Commissioner and other expenses. Thus, costs of Rs.3,50,000/- is also awarded in favour of the Plaintiff, in terms of the relief sought in paragraph 49(g) of the Plaintiff. Let the said costs be paid to the Plaintiff by the Defendant, within eight weeks.

17. Decree sheet be drawn accordingly. All pending applications are disposed of. If the payments in terms of this decree are not made, the Plaintiff is at liberty to avail of its remedies, in accordance with law.

PRATHIBA M. SINGH
JUDGE

APRIL 28, 2022/dj/sk/ad