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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of Decision: 13th July, 2022
+ **CS (COMM) 292/2021**

FRANKFINN AVIATION SERVICES
PRIVATE LIMITED.

.... Plaintiff

Through: Mr. Kapil Midha and Ms. Versha
Singh, Advocates. (M:9818382806)

versus

M/S FRANKFINN CREATIONS & ORS.

..... Defendants

Through: None.

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

% **13.07.2022**

I.A.7497/2021 (for stay)

1. Vide order dated 6th October, 2021, the interim injunction already granted was made absolute.
2. *Status quo* in respect of the domain name being 'www.frankfinncreations.com' shall be maintained during the pendency of the suit.
3. Accordingly, **I.A.7497/2021** is disposed of.

CS (COMM) 292/2021 & I.A.8404/2021 (u/O XXXIX Rule 2A CPC)

4. The present suit has been filed by the Plaintiff - Frankfinn Aviation Services Private Limited seeking permanent and mandatory injunction restraining the infringement of the trademark 'FRANKFINN', passing off, acts of unfair competition, dilution, rendition of accounts, damages, delivery up and other reliefs, against the Defendant No.1 - M/s. Frankfinn Creations- which is a sole proprietary concern run by Defendant No.2 - Mr. Manoj



Kumar.

5. The Plaintiff is engaged in the field of imparting training in the field of aviation, hospitality, travel management and customer services. It is the case of the Plaintiff that it is the original owner, adopter and user of the mark 'FRANKFINN'. As per the Plaint, the mark 'FRANKFINN' was coined and adopted in India in the year 1980 and is also a registered trademark of the Plaintiff in various Classes, including Class 35, 37, 16 & 41, both in logo form and word mark form. The persons, who have obtained training from the Plaintiff, are stated to be obtaining the highest placements in various entities. Thus, the Plaintiff has received commendations for having one of the highest track records in placements.

6. The flagship website of the Plaintiff is 'www.frankfinn.com' where the details of all the services offered by the Plaintiff are accessible. The Plaintiff has also registered various other domain names which have been listed in the Plaint. The Plaintiff claims that the mark 'FRANKFINN' has become a well-known trademark as it enjoys the reputation and goodwill in India as also internationally. Reliance is placed upon various articles which have been published by internationally renowned publications such as New York Times, Financial Times UK, BBC, Channel 4, etc. The Plaintiff has various well-known celebrities, who have endorsed and have promoted its brand including Bollywood actress, Ms. Alia Bhatt. The revenues of the Plaintiff have been placed on record which shows that the Plaintiff's turnover for the financial year 2019-20 is to the tune of about Rs.200 crores. The advertisement expenditure of the Plaintiff has been placed on record and a perusal of the same shows that the expenditure in the year 2019 was to the tune of Rs.26 crores.



7. The Plaintiff is aggrieved by the Defendants' use of the mark and name 'FRANKFINN CREATIONS' for its event management business. The Defendant Nos.1 & 2 are based in Patna. According to the Plaintiff, they are using the mark 'FRANKFINN', both as part of their trading style, trademark, as also, their domain name 'www.frankfinncreations.com'. The case of the Plaintiff is that the Defendants' use of the mark is illegal and fraudulent, and such use constitutes infringement of the registered trademark, passing off, unfair competition, and dilution. Accordingly, the Plaintiff has filed the present suit praying for a decree of permanent and mandatory injunction and for damages of Rs.2 crores.

8. Vide order dated 14th June, 2021, an *ex parte ad-interim* injunction was granted restraining the Defendants from using the mark 'FRANKFINN'. The operative portion of the said order reads as under:

"7. The plaintiff has, therefore, disclosed a 'prima facie case' in its favour. The 'balance of convenience' is also in favour of the plaintiff inasmuch as they have been in the field since 2006/2007 whereas, even as per the web-page of the defendants, they have started their business only in July 2020. Considering the fact that the long use of the trademark "FRANKFINN" by the plaintiff has accrued to it 'goodwill', if there is any dilution and passing off and infringement of the said trademark by the defendants, it is the plaintiff which will suffer 'irreparable loss and injury'.

8. Accordingly, the defendants are restrained, till the next date of hearing, from using the trademark "FRANKFINN" in their website or at any other place or through any other means as a name for the services they are providing."



9. On the said date, a Local Commissioner was also appointed for visiting the premises of the Defendants in order to make an inventory and take custody of the infringing material, as also, the Defendant's books of accounts. The said Local Commission was executed on 22nd June, 2021 and the report of the Local Commissioner was brought on record. A perusal of the said report shows brazen non-compliance by the Defendants, as also, threats that have been levelled by the Defendants against the Plaintiff. The relevant extracts of the report of the Local Commissioner are set out below:

“6. Thereafter, Defendant No.2 came out of his cabin and stated that the Commissioner and Plaintiff's counsel should not have dared to enter the premises. He threatened the Commissioner of breaking his mobile phone as the Commissioner had taken few photographs of the premises, as directed by this Hon'ble Court. The Commissioner tried explaining the order passed by this Hon'ble Court and requested them to allow the Commissioner to execute the Commission as per the order but to the utter shock of the Commissioner, Defendant No.2 along with his staff started abusing and threatening the Commissioner and the Plaintiff's representative. Further, Defendant No.2 asked for the details of Plaintiff's counsel and stated that he will teach him and the Commissioner a lesson by filing false and frivolous cases against them, including defamation.

7. The Defendant No.2 and his staff threw the order passed by this Hon'ble Court and the paper books which were earlier supplied to them and stated that they are not obliged to follow any order passed by this Hon'ble Court as this Hon'ble Court is situated in New Delhi and not



Patna. Fearing danger to life and personal belongings, the Commissioner along with the Plaintiff's representative left the premises at around 3.05 PM.

8. As this Hon'ble Court had directed the Commissioner to seek police assistance if required, for the compliance of the order passed by this Hon'ble Court, the Commissioner along with Plaintiff's representative went to the local police station P.S Rupaspur, Patna as the premises were under their jurisdiction. The Commissioner along with Plaintiff's representative reached P.S Rupaspur, Patna at around 3.20 PM. A copy of the photograph taken outside P.S Rupaspur, Patna is annexed as **Annexure- 3**.

9. The Commissioner along with the Plaintiff's representative met the SHO, P.S Rupaspur and submitted a copy of the order passed by this Hon'ble Court. The Commissioner explained the order passed by this Hon'ble Court and sought necessary police assistance to carry out the commission. However, the SHO P.S Rupaspur expressed his inability to follow the order passed by this Hon'ble Court stating that the present case is a civil dispute and he would require permission from the Senior Superintendent of Police, Patna (hereinafter referred to as the '**SSP, Patna**') to provide any help or take any action. He asked the Commissioner and the Plaintiff's representative to meet the SSP, Patna if they need any help or assistance. The Commissioner tried explaining the order passed by this Hon'ble Court and again sought police assistance but the SHO refused and asked the Commissioner to seek permission from SSP, Patna for any such help.



10. In view of the Defendants' conduct, the Local Commissioner attempted to obtain the police assistance from SSP, Patna, but to no avail. Hence, the Local Commission was inconclusive.

11. On the next date of hearing i.e., on 15th July, 2021, upon the Court being apprised of this position, a fresh application under Order XXXIX Rule 2A CPC being ***I.A. 8404/2021*** was filed by the Plaintiff, and the Court directed the fresh execution of the Local Commission. The Court, vide order dated 15th July, 2021, observed that the expenses of the Local Commissioner shall be made by the Plaintiff at this stage, subject to further orders. On the said date, the Defendant No.1 was represented by Mr. Pramod Rajpati, who stated that he was the counsel for the Plaintiff.

12. Accordingly, the Local Commission was executed once again on 24th July, 2021. On the said date, after great difficulty, the Local Commissioner was able to obtain the permission from SSP, Patna at 5:00 pm. Thereafter, the Local Commission was executed wherein it was revealed that the Defendants had taken down the banner containing the mark 'FRANKFINN' and no other material was also found bearing the mark 'FRANKFINN'. The relevant extracts of the said report read as under:

“8. The Commissioner and the Plaintiff's representative went to PS Rupaspur and the written order from the SSP Patna directing SHO Rupaspur to provide necessary assistance came at around 5 PM. Thereafter, the Commissioner and Plaintiff's representative along with two policemen left for the premises of the Defendant to carry out the Commission.

9. On reaching the Defendant's premises, it was observed that the infringing banner with



the name “Frankfinn” which was present last time was removed from the exterior of the premises. On entering the premises, the Defendant No.2 was present and he was aware of the order passed by this Hon’ble Court. The Commissioner thereafter inspected the entire premise thoroughly. However, no infringing material by the name of “Frankfinn” was found at the premises. On enquiring about the books of accounts including ledgers, cash books, bill books etc., the Defendant No.2 informed the Commissioner that no such book or ledger was maintained as it was a new company and no business was done.

10. After looking into the premises in detail and not finding any infringing product, the Commissioner and the Plaintiff’s representative along with the Policemen left the premises.”

13. Since 17th December, 2021, the Defendants have stopped appearing in this matter. Even on the last date of hearing i.e., 22nd March, 2022, none appeared for the Defendants and this Court had directed that an intimation be issued by the Registry to the Id. Counsel for the Defendants. Today, the Registry has reported that an email has been sent to the Id. Counsel for the Defendant, however, none has appeared today. No written statement has been filed by the Defendants in the present case, despite the Defendants having been served almost one year ago.

14. Following the rationale 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]***, no *ex parte* evidence would be required in this matter. 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.”

15. In the present case, it is clear that the Defendants have no defence, especially considering the Plaintiff's goodwill and rights in the mark 'FRANKFINN'. Since the Defendants have also not filed their written statement, the pleadings in the Plaint remain unrebutted. The Defendant Nos.1 & 2 have clearly violated the rights of the Plaintiff in the mark 'FRANKFINN'. This Court is of the opinion that a decree is liable to be passed in favour of the Plaintiff, in terms of the reliefs as sought in paragraphs 66(a) and 66(b) of the Plaint. Since the infringing material was not found by the Local Commissioner, the relief as sought in paragraph



66(c) of the Plaint is infructuous.

16. The domain name 'www.frankfinncreations.com' registered by the Defendants shall be transferred by the concerned Registrar i.e., PublicDomainRegistry.com, to the Plaintiff, within two weeks, upon the service of the present order, by email at 'corpdomains@endurance.com'.

17. The said mark is a well-known and highly distinctive mark. The adoption and use of the mark 'FRANKFINN' by the Defendants was clearly dishonest and *mala fide*. No explanation has been given by the Defendants for adopting an identical mark. Under these circumstances, as also, in view of the repeated costs incurred by the Plaintiff for execution of the Local Commissions and the court fee which has been paid by the Plaintiff, the Plaintiff is granted damages to the tune of Rs.15 lakhs, in terms of the relief as sought in paragraph 66(f) of the Plaint.

18. Decree sheet be drawn accordingly.

19. Insofar as the contempt application being ***I.A.8404/2021*** under Order XXXIX Rule 2A CPC is concerned, the Defendants clearly misbehaved with the Local Commissioner. The Defendant No.2 abused the Local Commissioner, and did not cooperate in the execution of the Local Commission. The Local Commissioner's report is quite revealing and establishes the contumacious conduct of behalf of the Defendant No.2. Further, the Defendants have chosen not to appear in the matter, despite being duly served. The conduct of the Defendant no.2 *prima facie* constitutes contempt on the face of the Court.

20. Under these circumstances, let bailable warrants be issued against Mr. Manoj Kumar, for the sum of Rs.25,000/-, to be served through SSP, Patna. Let a status report be placed on record by the SSP, Patna in this regard, by



the next date of hearing. Defendant no.2 shall be present before this Court on the next date of hearing.

21. List the contempt application ***I.A.8404/2021*** on 13th October, 2022.

**PRATHIBA M. SINGH,
JUDGE**

JULY 13, 2022/dk/ad

