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

Date of Decision: 6th September, 2022

+ **CS(COMM) 543/2021**

CROSS FIT LLC Plaintiff

Through: Mr. Saif Khan and Mr. Shobhit
Agrawal. (M-8800520258)

versus

**RTB GYM AND FITNESS CENTRE THROUGH ITS
PROPRIETOR MR. ARUN SHARMA** Defendants

Through: None.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

1. This hearing has been done through hybrid mode.
2. The present suit has been filed by the Plaintiff seeking permanent injunction restraining infringement of trademark, passing off, dilution and tarnishment of trademark, unfair competition, damages, rendition of accounts, delivery up, and other reliefs. The Plaintiff claims to be the proprietor of the registered trademark 'CROSSFIT' used in respect of services in the health, fitness and nutrition sector. The details of the Plaintiff's registrations in respect of the mark 'CROSSFIT' are set out below:



Regn.No	Trademark	Date of Application	Cl.
IRDI – 2745868 International Filing No. 1184215	CROSSFIT (Device)	21 st January 2014	99 [Classes 16 and 28]
2175375	CROSSFIT (Word)	14 th July 2011	99 [Classes 25 and 41]

3. The Plaintiff is a company based out of California, USA incorporated under the name CrossFit Inc., in the year 2004. Thereafter, the Plaintiff was incorporated in the State of Delaware, USA in the year 2008. As set out in the Plaintiff, the Plaintiff is mainly engaged in the business of providing products and services in the health, fitness and nutrition space. The business model of the Plaintiff includes providing services for strength training, fitness programs in addition to conducting fitness seminars and providing trainer certifications. It has operations in more than 145 countries and has more than 1.3 lakh accredited CrossFit Level 1 trainers. There are more than 15,000 gyms which are affiliated with the Plaintiff and are using the mark 'CROSSFIT'.

4. The Plaintiff coined and adopted the mark 'CROSSFIT' in the year 1995 and has been continuously and extensively using the said mark in respect of its products and services. In India, the first 'CROSSFIT' gym was opened in the year 2009 and it has more than 40 licensees/affiliates. The Plaintiff also registered the domain name 'www.crossfit.com' in October, 1999. The Plaintiff has obtained various registrations for the word and device mark



‘CROSSFIT’ in India and in other jurisdictions, including European Union, Australia, USA, Japan, Bahrain, China, Israel, Jordan, Kuwait, Saudi Arabia and United Arab Emirates. The ‘CROSSFIT’ mark is used by the Plaintiff, as also, its licensees across the world. It has collaborations with various other companies and foundations, and has organized several events, including the ‘CROSSFIT’ Games, which are held annually since the year 2007. The mark is extensively advertised and popularised. The advertising expenses incurred by the Plaintiff in respect of services provided by the Plaintiff under the mark ‘CROSSFIT’ is stated to be over USD 2.5 million in the year 2016. The Plaintiff’s sponsorship revenue for the year 2018-21 was also around USD 25 million.

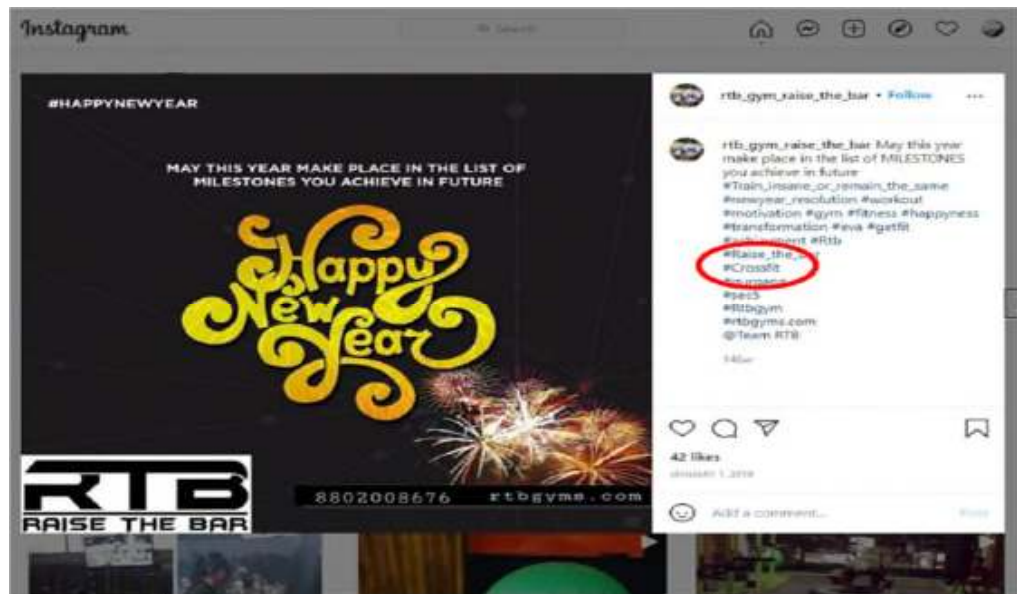
5. The grievance of the Plaintiff is that the Defendant is a gym and fitness centre owned and operated by its proprietor Mr. Arun Sharma and is using the identical mark ‘CROSSFIT’ in respect of identical services relating to gym and fitness. The Plaintiff acquired knowledge of the use of the said mark by the Defendant in September, 2020. The case of the Plaintiff is that the Defendant has been prominently displaying the mark ‘CROSSFIT’ at its premises, literature, online pages as hashtags since March, 2018. The mark ‘CROSSFIT’ as used by the Defendant is depicted below:





6. The Defendant was also using the mark 'CROSSFIT' on various online directories and social media platforms, including Facebook, Instagram, Justdial, Fitternity etc. The screenshots of the Defendant's web pages using the mark 'CROSSFIT' have been placed on record and some of them are reproduced below:





7. In these circumstances, the Plaintiff has filed the present suit. Prior to filing of the present suit, the Plaintiff also attempted pre-litigation mediation in August, 2021. However, the Defendant did not appear. A legal notice dated 29th September, 2020 was also issued by the Plaintiff, but the same was not replied to by the Defendant.

8. The matter was listed before the Court for the first time on 29th October, 2021. On the said date, summons and notice were issued by the Court. An *ex parte ad-interim* injunction was also granted by the Court, vide order dated 29th October, 2021, in the following terms:

“I.A. 14144/2021

1. This is an application under Order 39 Rules 1 and 2 CPC seeking the following reliefs:-

“a) An ex-parte order of ad interim injunction restraining the Defendant, partners or proprietors therein, as the case may be, its officers, servants, agents, dealers, franchisees from using in the course of trade



the mark 'CROSSFIT' or any other mark/logo identical and/or deceptively similar to the Plaintiff's mark 'CrossFit', whether offline or online, amounting to infringement of the trademark and passing off;

b) An ex parte order of ad-interim injunction directing the Defendant to immediately take down all posts, listings, pictures etc. mentioning the word/mark 'CROSSFIT' from all websites, webpages, social media pages run by the Defendant; and

XXX XXX XXX

7. The plaintiff has made out a prima facie case. An interim injunction is passed in favour of the plaintiff and against the defendant in terms of prayer 15(a) and 15(b) above."

9. The above interim order granted on 29th October, 2021 was made absolute during the pendency of the present suit, vide order dated 15th February, 2022.

10. It is noticed that, despite service, the Defendant has chosen not to appear. As recorded in order dated 15th February, 2022, the affidavit of service dated 14th December, 2021 has been filed by the Plaintiff which shows that the Defendant has been served by speed post, as also, by email. Accordingly, the Defendant was proceeded against *ex parte* on the said date. In addition, it is noted that the Registry has also issued summons to the Defendant.

11. In view of the above, following the judgment in ***Disney Enterprises Inc. & Anr. v. Balraj Muttneja & Ors. [CS (OS) 3466/2012 decided on 20th February, 2014]***, this Court is of the opinion that 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.”

12. In view of the foregoing discussion, this Court is convinced that the Plaintiff has made out a case for the grant of permanent and mandatory injunction and the present suit is liable to be decreed. Accordingly, the present suit is decreed in terms of the reliefs sought in paragraph 44 of the Plaint, as extracted below:

“a) Decree for permanent injunction restraining the Defendants, their partners or proprietors, as the case may be, their officers, servants, agents, dealers, franchisees from using in the course of trade the mark ‘CROSSFIT’ or any other mark/logo identical and/or deceptively similar to the Plaintiff’s mark ‘CrossFit’, whether offline or online, amounting to infringement of



the trademark;

b) Decree for permanent injunction restraining the Defendants, their partners or proprietors, as the case may be, their officers, servants and agents, dealers, franchisees from using the mark 'CROSSFIT' or any other mark/logo identical and/or deceptively similar to the Plaintiff's mark 'CrossFit', whether offline or online, for offering goods and services, amounting to passing off of the Defendants' goods/services as that of the Plaintiff's;

a) An order of mandatory injunction directing the Defendants to take down its websites, domain name, online pages and all posts, listings, pictures etc. mentioning the word/mark 'CROSSFIT' from all websites, webpages, social media handles run by the Defendants.

c) Decree for permanent injunction restraining the Defendants, their partners or proprietors, as the case may be, their officers, servants and agents, dealers, franchisees acting for and on their behalf etc. from engaging in any acts whatsoever that will result in the unfair competition, dilution and tarnishment of the Plaintiff's trademark 'CrossFit'; and

d) An order of delivery up of all infringing material including brochures, cartons, applications, promotional material or any other material where the mark 'CROSSFIT' or any other mark/logo identical and/or deceptively similar to the Plaintiff's mark 'CrossFit' appears for purposes of destruction and/or erasure; and"

13. Pursuant to the previous order dated 12th May, 2022, the Plaintiff has filed an affidavit dated 5th September, 2022 of Mr. Dinesh Sharma, as to whether the Defendant has complied with the injunction order, along with the statement of costs. A perusal of the said affidavit shows that the Defendant is continuing to use the mark 'CROSSFIT' despite the injunction granted in the



present suit. The Defendant, having had knowledge of the injunction order dated 29th October, 2021, has chosen not to respond or even contest the matter. The fact that the Defendant has knowledge of the present suit and the injunction is established from the following facts and circumstances -

- i. Issuance of legal notice dated 29th September, 2020, to which no reply was received.
- ii. Issuance of notice in the pre-litigation mediation under the aegis of the Delhi High Court Mediation and Conciliation Centre, wherein the Defendant failed to enter appearance.
- iii. Email dated 17th September, 2021 at the pre-litigation mediation stage which shows that a telephonic conversation took place between the Plaintiff and the proprietor of the Defendant, Mr. Arun Sharma.
- iv. Compliance has been effected under Order XXXIX Rule 3 CPC.
- v. Summons have been issued by the Court Registry.
- vi. Affidavit of service dated 14th December, 2021 has been filed by the Plaintiff which shows that the Defendant has been served by speed post, as also, by email.

14. Despite the above, the Defendant has chosen to neither comply with the order nor raise any defence in the present suit. Thus, considering the observations of the Supreme Court on the issue of costs to be awarded in commercial matters in *Uflex Ltd. v. Government of Tamil Nadu & Ors. [Civil Appeal Nos.4862-4863 of 2021, decided on 17th September, 2021]*, this Court is convinced that the present is a fit case for the grant of actual costs in favour of the Plaintiff.



15. The statement of costs has been filed by the Plaintiffs as part of the affidavit dated 5th September, 2022. As per the said statement of costs, The Plaintiff has incurred expenses to the tune of Rs.8,54,069/- on various accounts including legal fees, court fees and miscellaneous expenses. Accordingly, in view of the fact that the Defendant has brazenly violated the orders of the Court, costs of Rs.10,00,000/- are awarded in favour of the Plaintiff.

16. The Defendant shall pay the said amount within three months, failing which, the Plaintiff is permitted to avail of its remedies, in accordance with law.

17. The Plaintiff is also permitted to approach the concerned online directories and social media platforms for taking down of the infringing listing and posts of the Defendant, using the mark 'CROSSFIT'. Upon the said notice being issued to the intermediaries, the infringing listings and posts shall be taken down, within 48 hours.

18. The present suit is decreed in the above terms. Decree sheet be drawn accordingly. All pending applications are also disposed of.

Contumacious Conduct of the Defendant

19. This Court has perused the affidavit dated 5th September, 2022 filed by the Plaintiff. A perusal of the same clearly shows the continued use of the Plaintiff's mark 'CROSSFIT' by the Defendant in violation of the injunction granted. In the opinion of this Court, the conduct of the Defendant constitutes contempt of the injunction order dated 29th October, 2022.

20. In the case of ***National Lawyers Campaign for Judicial Transparency and Reforms and Ors. v. Union of India [W.P.(C) No.191/2019; Order dated 12th March, 2019]***, the Supreme Court has observed as under:



“13. When contempt is committed in the face of the Court, judges’ hands are not tied behind their back”

21. Recently, in *Urban Infrastructure Real Estate Fund v. Dharmesh S. Jain & Anr.* [Contempt Petition (C) No.940/2021 decided on 10th March, 2022], the Supreme Court has observed as under:

“13.3 Contempt jurisdiction could be invoked in every case where the conduct of a contemnor is such as would interfere with the due course of justice; vide Rama Narang vs. Ramesh Narang [(2006) 11 SCC 114. Contempt is a matter which is between the Court passing the order of which contempt is alleged and the contemnor; questions as to executability of such order is a question which concerns the parties inter-se. The power of the Court to invoke contempt jurisdiction, is not, in any way, altered by the rights of the parties inter-se vide *Bank of Baroda vs. Sadruddin Hasan Daya* – [(2004) 1 SCC 360].

15. When a party which is required to comply with the terms or directions in an order has not done so within such time as stipulated in the order, two options are available to the party which was required to comply with such order:

(a) give an explanation to the Court as to the circumstances due to which the party could not comply with the order of the Court;

(b) seek for further time to comply with the order of the Court. If a delay has occurred in complying with the terms of an order and the party which was to comply with the order has not resorted to either of the two aforesaid options, then, the party responsible for delay in compliance, may be held to have committed contempt; vide *State of Bihar vs. Subhash Singh* - [(1997) 4 SCC 430]

15.1 Further, the decision of this Court in *Maruti Udyog vs. Mahinder C. Mehta* AIR 2008 SC 309 suggests that irrespective of whether or not a decree is executable, the



question to be considered by this Court in determining whether a case for contempt has been made out was, whether, the conduct of the contemnor was such as would make a fit case for awarding punishment for contempt of Court.

16. Applying the legal propositions discussed supra, to the facts of the case at hand, we are of the view that the conduct of the respondent/contemnors is such as would justify invocation of contempt jurisdiction of this Court. *Not only have the contemnors unreasonably delayed and defaulted in compliance of the orders of this Court without explaining the cause for such default, or seeking extension of time for compliance; but they have also sought to avoid compliance of the order, even after taking benefit of the extended time period granted for compliance of the same. The contemnors cannot, at this juncture, claim that the requirement of deposit was not mandatory, but directory and therefore noncompliance thereof would not constitute contempt.”*

22. The conduct of the Defendant in the present case *prima facie* amounts to contempt. Issue notice to show case to the Defendant’s proprietor Mr. Arun Sharma as to why contempt action ought not to be initiated.

23. In view of the settled legal position as set out above and in order to ensure the strict compliance with the orders of the Court, as also, the timely execution of the present decree, this Court deems it appropriate to appoint a Local Commissioner to visit the premises of the Defendant to ensure compliance of the orders of this Court by removing any hoardings and any other billboards, signage, display material, brochures, packaging, and literature bearing the mark ‘CROSSFIT’.

24. Accordingly, **Ms. Meghna Jandu, Advocate [M:9654191254]**, is appointed as the Local Commissioner to visit the premises of the Defendant.



The mandate of the Local Commissioner is set out below:

- i) The Local Commissioner shall visit the premises of the Defendant - RTB Gym and Fitness Centre, which is the proprietary concern of Mr. Arun Sharma, located at ***Plot No-77, Sheetla Mata Road, Opposite Paradise Garden, Sector 05, Gurugram 122001, New Delhi.***
- ii) The Local Commissioner shall remove and take down any infringing billboards, advertisements, signage and/or hoardings using the mark 'CROSSFIT' or any other mark which is identical, deceptively similar or confusingly similar to the Plaintiff's mark 'CROSSFIT'.
- iii) The Local Commissioner shall prepare a complete inventory and seize any stock of infringing products, as also, any packaging material, stationery, promotional material, invoices, brochures, or any other literature or items, bearing the mark 'CROSSFIT', or any other mark which is identical, deceptively similar or confusingly similar to the Plaintiff's mark 'CROSSFIT'.
- iv) The seized products and material shall be handed over to the Plaintiff on *superdari*, subject to the undertaking that the said products shall be kept in safe custody, and shall not be utilized in any manner, without the permission of the Court.
- v) The Local Commissioner is permitted to take the assistance of the local SHO of the concerned area, if required;
- vi) The Local Commissioner is permitted to take photographs and videograph the proceedings, if required.
- vii) Two representatives of the Plaintiffs, including an advocate,



are permitted to accompany the Local Commissioner for the purpose of facilitating the inspection;

viii) The present order shall be communicated by the Local Commissioner to the Defendant. Copy of the order shall be served by the Local Commissioner upon the Defendant at the time of execution of the Local Commission.

25. The fee of the Local Commissioner is fixed at Rs.1,50,000/- excluding traveling and other miscellaneous expenses. The said fee shall be borne by the Plaintiff.

26. The Local Commission shall be executed within a period of two weeks. The report of the Local Commissioner shall be filed within two weeks after the execution of the Local Commission.

27. The proprietor of the Defendant, Mr. Arun Sharma, shall remain present in Court on the next date of hearing. Let Reply to the show cause be filed within six weeks.

28. List before the Court for hearing on the show cause for contempt on 29th November, 2022.

29. Order *Dasti*.

PRATHIBA M. SINGH, J

SEPTEMBER 6, 2022

dj/ad