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

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Date of Decision : 12th May, 2023

+ CS(COMM) 71/2022, I.A. 1538/2022 (O-XXXIX R-1 & 2 of CPC),
I.A. 1543/2022 (u/s 12A Commercial Courts Act), I.A. 10960/2022
(for condonation of delay of 75 days in filing Rejoinder to Reply filed
by D-5)

INFINITI RETAIL LIMITED Plaintiff
Through: Mr.Sauhard Alung, Advocate.

versus

CROMA THROUGH ITS PROPRIETOR &
ORS. Defendants
Through: None.

CORAM:
HON'BLE MR. JUSTICE AMIT BANSAL

AMIT BANSAL, J. (Oral)

**CS(COMM) 71/2022 and I.A. 7346/2023 (O-XIII A of the CPC seeking
summary judgment)**

1. The present suit has been filed seeking the relief of permanent injunction restraining the defendant from infringing the trademark of the plaintiff, passing off and other ancillary reliefs.

BRIEF FACTS

2. Briefly the case set up by the plaintiff is as under:

2.1. The plaintiff, Infiniti Retail Limited is a part of TATA Group. It owns and manages a national chain of retail shops offering a wide range of

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electronics, consumer products, household appliances and allied goods which include televisions, home appliances, kitchen appliances, phones, computers, audio and video products, camera, grooming and wellness products, gaming products, accessories etc., under the mark “CROMA”.

2.2. The plaintiff operates through more than 225 physical stores since 2006 and also through its website www.croma.com, registered in 1996. The plaintiff employs approximately 13,000 people.

2.3. The plaintiff spent approximately Rs.35 lakhs in conceptualising the mark “CROMA” for its business. Thereafter, approximately Rs.60 lakhs were spent in designing and adopting a “CROMA” sub brands and nearly Rs.20 lakhs were spent on designing and conceiving new logos for the “CROMA” brand.

2.4. The plaintiff is the registered proprietor of the mark “CROMA” and “CROMA” formative marks in Classes 9, 11 and 35 in relation to wide range of goods and services, details of which are given in paragraph (s) of the application.

2.5. The mark “CROMA” has been declared to be a ‘well-known trademark’ by the Registrar of Trade Marks vide notification dated 24th February, 2020.

2.6. The well-known mark “CROMA” is the sole component of the plaintiff’s website and forms a significant part of the business done by the plaintiff under the mark “CROMA”.

2.7. The plaintiff has also given details of the revenue earned by sale of products through the plaintiff’s services under the mark “CROMA”. The net revenue generated in the year 2007 was around Rs.30 crores whereas the revenue generated in the financial year 2018 was around Rs.3534 crores.

The plaintiff has also given details of marketing and promotional expenses incurred in respect of its business under the “CROMA” trademark/name. The promotional expenses incurred by the plaintiff in the year 2010 were around Rs.25 cores whereas the promotional expenses incurred in the year 2021 were around Rs.66 crores. The plaintiff has also promoted its goods and services under the mark “CROMA” on its social media platform such as Facebook, Twitter, YouTube and Instagram and has garnered almost 4,06,681 followers across all such platforms.

2.8. Owing to the long and continuous use of the well-known trademark “CROMA”, the plaintiff has acquired immense goodwill and reputation.

2.9. In January 2022, the plaintiff was made aware of the registration of the domain name www.croma.in (hereinafter ‘impugned website’) containing plaintiff’s registered and well-known trademark “CROMA” by a third party. The said website was being squatted on by an unrelated third party who has been earning revenues through targeted geo-located advertisements provided by a separate service. The said website was also being offered for sale for an amount of USD 3500.

2.10. The defendant no.1 is the owner of the impugned website. The defendant no. 2 is the Domain Name Registrar of the impugned website. The ‘WhoIs’ database reveals that the identity of the registrant of the impugned website is completely hidden.

2.11. The unauthorised and illegal use of the plaintiff’s well-known trademark “CROMA” infringes the trademark of the plaintiff.

2.12. Accordingly, the present suit was filed.

PROCEEDINGS IN THE SUIT

3. This Court vide order dated 28th January, 2022 granted *ex parte* ad

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interim injunction in favour of the plaintiff under I.A.1538/2022 restraining the defendant no.1 from using the trademark “CROMA”. The relevant portion of the said order is as under:

“20. In light of the submissions made, this Court is of the view that the plaintiff has disclosed a prima-facie case in its favour in view of the fact that CROMA and allied marks are all registered in the name of the plaintiff and the trademark CROMA has also been declared to be well-known. The reputation of the plaintiff has been sought to be encashed by the defendant No.1 as reflected by its valuation of its domain name at USD 3500. Thus, it is clear that the loss caused to the plaintiff would be irreparable, if defendant No.1 was to continue with its activities including the possible transfer of the domain name to third-parties. The balance of convenience also clearly lies in favour of the plaintiff No.1, which as noted, is the registered proprietor of the trademark CROMA which is a declared well-known mark.

21. It is therefore, directed that till the next date of hearing, the defendant No.1, its associated companies, subsidiaries, directors, wholesalers, distributors, partners or proprietors, as the case may be, its officers, servants and agents, or anyone acting for or on its behalf are restrained from using the plaintiff’s registered and well-known trademark CROMA and/or the Croma Logo and/or any mark deceptively similar to the plaintiff’s trademarks and/or formative marks in any manner including though not limited to in relation to advertising, directly or indirectly offering any goods or services, using or registering corporate names, domain names, including the impugned website, ‘www.croma.in’, or listings on social media websites or e-commerce sites or doing any other act amounting to infringement of the plaintiff’s registered trademarks. The Defendant No.2 is directed to suspend the domain name ‘www.croma.in’ within 36 hours of the receipt of the order of this Court. The Defendants No.3 and 4 are directed to block access to the said website being ‘www.croma.in’ within 36 hours of the receipt of the order of this Court.”

4. The matter was thereafter placed before the Joint Registrar for completion of service and pleadings.

5. The notice could not be served on the defendant no.1 due to it being a website. To ascertain the details of the defendant no.1, the plaintiff filed an application, being I.A.3839/2022 for impleading National Internet Exchange of India as the defendant no.5. The said proposed defendant provided the details of the defendant no.1 and blocked the impugned domain name. The said application was disposed of in view of the proposed defendant no.5 filing an affidavit undertaking to comply with and abide by all future and final orders which shall be passed in the present suit.

6. Fresh summons were issued to the defendant no.1 vide order dated 17th October, 2022. As per the affidavit of service filed on behalf of the plaintiff, the defendant has been served through e-mail on 6th December, 2022 and through speed post on 7th December, 2022. Despite service none appeared on behalf of the defendant no.1. Nor has any written statement been filed. Consequently, the defendant no.1 was proceeded against *ex parte* vide order dated 17th February, 2023.

7. The defendants no. 3 and 4 have already been deleted from the array of parties pursuant to the order dated 8th April, 2022.

8. In view of the above, counsel for the plaintiff has filed the present application under order XIII A of the CPC for passing of a summary judgment against the defendant no.1.

ANALYSIS AND FINDINGS

9. I have heard the counsel for the plaintiff and perused the record of the case.

10. At the outset, it may be relevant to note that the defendant no.1 has

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deliberately chosen not to enter appearance despite being served. Ample opportunity has been given to the defendant no.1 to appear before the Court and defend the case; however, no written statement has been filed by the defendant no.1. The maximum permissible period of 120 days in filing the written statement is already over. It is evident that the defendant no.1 has no defence to put forth on merits.

11. In terms of Rule 4 of Chapter VII of the Delhi High Court (Original Side) Rules, 2018, since the defendant no.1 has failed to file the affidavit of admission/denial of documents filed by the plaintiff, the documents filed by the plaintiff shall be deemed to be admitted.

12. From the averments made in the plaint and the documents filed therewith, the plaintiff has been able to prove that it is the registered proprietor of the well-known trademark “CROMA” in several classes and the said registrations are valid and subsisting. The plaintiff has also been able to show its goodwill and reputation in respect of the “CROMA” trademarks. Further, the plaintiff has placed on record various orders passed by this Court wherein the right of the plaintiff has been duly enforced against the infringers using the mark identical/similar to the plaintiff’s mark. Plaintiff has established statutory as well as common law rights on account of long usage of the “CROMA” mark.

13. The impugned website of the defendant no.1 is identical/deceptively similar to that of the plaintiff and is likely to deceive the public of its association with the plaintiff. In *Anugya Gupta v. Ajay Kumar and Anr.*, 2022 SCC OnLine Del 1922, this Court while applying the principles of the trademark law has held that the right of the proprietor in a domain name is entitled to equal protection. The user traffic may be diverted due to the use

of the same or similar domain name, which could result in a user mistakenly accessing one domain name instead of the one intended. A domain name may, therefore, have all characteristics of a trademark and could result in an act of passing off. Similarly, the use of the trademark “CROMA” as a part of the impugned website is likely to deceive unwary consumers of their association with the plaintiff.

14. From the above, it is clear that the defendant no.1 has registered the impugned website with the sole purpose of directing traffic of legitimate consumers by deceiving them into believing that the impugned website is associated with the plaintiff. Further, the defendant no.1 is earning revenue through advertisements on the parked impugned website and soliciting to offer the website for a large sum of money. The acts of the defendant no.1 amount to infringement of the well-known trademark of the plaintiff and passing off the services of the defendant no. 1 as that of the plaintiff. Such acts of the defendant no.1 would also lead to tarnishment of the plaintiff's mark.

15. In view of the observations made above and undisputed factual position, it appears that the defendant no.1 does not have any real prospect of successfully defending the claims in the present suit.

16. I am of the opinion that no purpose would be served by directing the plaintiff to lead *ex parte* evidence by filing an affidavit of examination in chief. Therefore, in my opinion, this is a fit case where a Summary Judgment in terms of Order XIII-A of the CPC, as applicable to commercial disputes of a specified value, read with Rule 27 of the IPD Rules, deserves to be passed in favour of the plaintiff and against the defendant no.1. Reference in this regard may be made to the judgment in ***Su-Kam Power***

Systems Ltd. v. Kunwer Sachdev, 2019 SCC OnLine Del 10764, has observed as under:

“90. To reiterate, the intent behind incorporating the summary judgment procedure in the Commercial Court Act, 2015 is to ensure disposal of commercial disputes in a time-bound manner. In fact, the applicability of Order XIII A, CPC to commercial disputes, demonstrates that the trial is no longer the default procedure/norm.

91. Rule 3 of Order XIII A, CPC, as applicable to commercial disputes, empowers the Court to grant a summary judgement against the defendant where the Court considers that the defendant has no real prospects of successfully defending the claim and there is no other compelling reason why the claim should not be disposed of before recording of oral evidence. The expression “real” directs the Court to examine whether there is a “realistic” as opposed to “fanciful” prospects of success. This Court is of the view that the expression “no genuine issue requiring a trial” in Ontario Rules of Civil Procedure and “no other compelling reason.....for trial” in Commercial Courts Act can be read mutatis mutandis. Consequently, Order XIII A, CPC would be attracted if the Court, while hearing such an application, can make the necessary finding of fact, apply the law to the facts and the same is a proportionate, more expeditious and less expensive means of achieving a fair and just result.

92. Accordingly, unlike ordinary suits, Courts need not hold trial in commercial suits, even if there are disputed questions of fact as held by the Canadian Supreme Court in Robert Hryniak (supra), in the event, the Court comes to the conclusion that the defendant lacks a real prospect of successfully defending the claim.”

17. The aforesaid principles are fully applicable in the facts and circumstances of the present case and therefore, the plaintiff is entitled to a summary judgment.

18. In view of the above, the present application is allowed.

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RELIEF

19. The registrations and the long usage of the trademark “CROMA” by the plaintiff, as also the goodwill vesting in the well-known trademark “CROMA” entitles the plaintiff for grant of a decree of permanent injunction in terms of the plaint.

20. Accordingly, the present suit is decreed in favour of the plaintiff in terms of prayer clauses 45 (a), (b) and (c).

21. Additionally, the defendant no.2 is directed to transfer the impugned domain name www.croma.in to the plaintiff, within two weeks failing which, the National Internet Exchange of India shall send a written communication to the defendant no.2 to transfer the impugned name www.croma.in to the plaintiff.

22. In view thereof, counsel for the plaintiff does not press for remaining reliefs sought in the plaint.

23. Let the decree sheet be drawn up.

24. In view of the above, all pending applications stand disposed of.

MAY 12, 2023

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AMIT BANSAL, J

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