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

+ **CS(COMM) 93/2021, I.A. 2795/2021 & I.A. 12233/2023**

PUMA SE

..... Plaintiff

Through: Mr. Ranjan Narula, Mr. Shashi P. Ojha, Ms. Aishani Singh and Ms. Shivangi Kohli, Advs.

versus

GIRISH VOHRA OWNER AND PROPRIETOR OF- GIRISH ENTERPRISES

..... Defendants

Through: None

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

ORDER (O R A L)

27.07.2023

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1. The plaintiff is a company established and incorporated in Germany. It sells its goods in India through its wholly owned subsidiary Puma Sports Pvt. Ltd., under its distinctive  logo.

2. The plaintiff also operates through a website www.puma.com which was created on 19 September 1997. The plaintiff asserts that the plaintiff has been selling Puma branded products in India since 1980s. The plaintiff's trademark PUMA stands declared as a well-known trademark within the meaning of Section 2(1)(zg) of the Trade Marks Act in 2019 by the Registry of Trade Marks.

3. The present dispute is concerned with the RS-X 3D series of





sports shoes manufactured and sold by the plaintiff. The plaintiff asserts that the plaintiff entered the Indian market, with these shoes in November 2018. To vouchsafe the reputation and goodwill of the RS-X 3D range of shoes of the plaintiff, the plaintiff has provided the returns from sales of the RS-X series of the plaintiff's shoes in India from the year 2018 to the year 2023, which looks thus:

Year	Sum of Net Invoice
2018	2,56,701
2019	6,91,49,625
2020	15,98,11,843
2021	10,80,98,988
2022	7,24,36,375
2023	17,40,96,415
Grand Total	INR 58,38,49,948

4. Additionally, Mr. Narula, learned Counsel for the plaintiff has taken me through various news items, placed on record with the plaintiff, which gave wide publicity to the launch, in India, of the plaintiff's RS-X collection.

5. Inasmuch as the defendants have neither chosen to enter appearance nor filed a written statement by way of response to the plaintiff, one may take the aforesaid assertions in the plaintiff, regarding the plaintiff's goodwill and reputation, as uncontroverted. Even otherwise, given the fact that, within three years of its launch, i.e. by the time the present suit came to be filed, the sales of the plaintiff's RS-X series of shoes had shot up, like Lyka, from ₹ 2,56,701/- in



2018 to ₹ 15,98,11,843/- in 2020 and, even, during the period of the Covid 2019 Pandemic, to ₹ 10,80,98,988/- in 2021, *prima facie*, vouchsafes the goodwill and reputation commanded by the plaintiff's RS-X series of shoes in the market.

6. The plaintiff is aggrieved by the fact that the defendant had, in its BERKINS brand of shoes, imitated the design of the plaintiff's RS-X 3D series, so as to render the two shoes virtually indistinguishable to the eye of an average consumer. Thus, submits the plaintiff, the Defendant 2 has, by adopting a trade dress for its BERKINS brand of range of shoes which is nearly identical to the plaintiff's RS-X range of shoes, sought to pass off its products as those of the plaintiff. The plaint also provides, in the documents filed therewith a comparison of the plaintiff's RS-X 3D shoes and the defendant's BERKINS shoes, thus:

Photograph of Plaintiff's RS X-3D shoes	Photograph of Defendant's impugned product (Berkins)
	



7. I have physically seen the two shoes and it is clear that the Defendant 2 has deliberately used a colour scheme, an overall design and look and appearance, for its BERKINS range of shoes which imitates the colour scheme, design and appearance of the plaintiff's RS-X 3D range of shoes.

8. Inasmuch as the plaintiff has also placed on record sufficient material to establish the goodwill and reputation commanded in the Indian market by the said RS-X range of shoes, the facts of the plaint make out case of passing off, by the defendant, through its BERKINS range of shoes, of the RS-X range of shoes of the plaintiff. There is every likelihood of a customer mistaking the products of the defendant for that of the plaintiff, given the strikingly similar appearance of the two products.

9. Consequent on issuance of summons in this suit, the Defendant



2 has initially entered appearance but chose, thereafter, not to contest the proceedings.

10. The suit already stands decreed *qua* Defendant 1 on 3 March 2022 except to the extent of damages. Defendant 2 never chose to file a written statement and stopped appearing in the proceedings as a result of which it was proceeded *ex parte* on 20 March 2023.

11. As the suit has not been contested by Defendant 2, the allegations in the plaint are deemed to stand admitted by the said defendant.

12. As a result, in addition to the decree that has been passed on 3 March 2022 *vis-à-vis* Defendant 1, the suit stands additionally decreed in the following terms:

(i) There shall be a decree against Defendant 2, perpetually injunctioning Defendant 2 and all others acting on its behalf from manufacturing or selling any shoes bearing the impugned design or any other design which is deceptively similar to the design of the plaintiff's RS-X 3D range of shoes.

(ii) Each of the defendants shall be liable to pay punitive damages, in addition, of ₹ 50,000/-, to the plaintiff.

(iii) Defendant 1 shall additionally comply with the directions contained in the order and decree dated 3 March 2022 passed by





this Court in the present proceedings.

13. The suit stands finally decreed in the aforesaid terms.
14. Let a decree sheet be drawn up accordingly by the Registry.

C.HARI SHANKAR, J

JULY 27, 2023

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