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

Date of decision: 30th January, 2023

+ **CS(COMM) 103/2020**

M/S. ERD TECHNOLOGIES PVT. LTD. Plaintiff

Through: Mr. Vishal Patel, Advocate.

versus

SHREE AMBESHWAR MOBILE CENTRE & ORS..... Defendants

**Through: Defendants No. 1 and 2 *ex-parte* by
order dated 02nd November, 2022.**

**Defendant No. 3 – Ashok Kumar/ John
Doe**

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

SANJEEV NARULA, J. (Oral):

1. Present suit has been filed seeking *inter alia*, permanent injunction restraining infringement of registered trademark and copyright, passing off, delivery up, damages and costs.

2. Plaintiff-company is engaged in the business of manufacturing, marketing and selling of mobile phone batteries, travel chargers, car chargers, power banks, USB cables, universal battery charger, etc. under its registered



trademark “ ” and other formative variants thereof,

registered under various classes [*hereinafter collectively, “Plaintiff’s marks”*]. Since 1998, Plaintiff’s predecessor continuously and extensively used the said marks. Following the amalgamation of the Plaintiff with its predecessor company, the ownership and legacy in said marks and copyrights vested therein have now been transferred to the Plaintiff.

3. Particulars of Plaintiff’s trademark registrations are set out at paragraph No. 11. In addition to registrations in India, Plaintiff, through its predecessor has also secured registrations of its marks in several countries, including China, Nepal, Hong Kong, Sri Lanka etc.

4. Plaintiff has expended heavily towards sale and promotion of its products and has generated substantial revenue therefrom, details whereof are mentioned in paragraphs No. 16 and 17 of the plaint.

5. In February, 2020, the Plaintiff, through its distributor/ dealer/ retailer, became aware of Defendants No. 1 and 2 indulging sale of counterfeit goods/ products under their registered marks. Following that, Plaintiff demanded discontinuation of sale of counterfeit products that violated their trademarks through its distributors; however, Defendants persisted in selling the infringing goods without issuing authorised invoices. Taking note of above circumstances, on 05th March, 2020, an *ex-parte* ad-interim injunction was granted in favour of Plaintiff, to the following effect:

“7. The defendants till further orders are restrained from using the trade



mark/ label ‘ERD’/ or any other mark or name similar or deceptively similar thereto in respect of mobile phone batteries,

travel chargers, car chargers. Power Banks, USB cables, universal battery charger, LED lights, CCTV power supplies, etc. included in Class-9 or other similar goods in any manner whatsoever. The defendants are also restrained from infringing the copyright and from adopting the trade dress of the aforesaid products of the plaintiff.”

6. Amongst the two Local Commissioners appointed by order dated 05th March, 2020, one has seized infringing products [50 pieces of PC-22 (White) Micro USB Data Cable] bearing Plaintiff’s registered marks, whose origin or source was unascertainable.¹

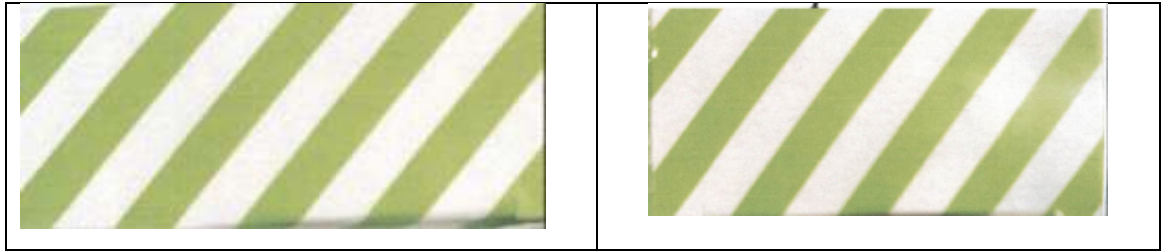
7. Defendants’ counsel appeared on one or two occasions but did not file their *vakalatnama*. Defendants have failed to file written statement(s), despite multiple opportunities, resulting in closure of their right to do so *vide* order dated 22nd August, 2022. Eventually, by order dated 02nd November, 2022, they were proceeded *ex-parte*. In the interregnum, *ex-parte* interim injunction dated 05th March, 2020 was made absolute on 14th December, 2020.

8. In above facts, counsel for Plaintiff, on instructions, does not press for damages and only seeks the relief of decree of permanent injunction against the Defendants and award of costs.

9. The comparison of Plaintiff’s product packaging / trade dress bearing their marks and Defendants’ impugned products is as follows:

¹ Local Commissioner Report filed *vide* Index No.- D-1060489 on 12th November, 2020.

<i>Plaintiff's products</i>	<i>Impugned products of Defendants</i>
 The image shows the packaging for a Plaintiff's mobile charger. It is a green box with a white background at the bottom. The text on the box reads "MOBILE CHARGER" and "2 Amp Micro USB". It features an image of a white charger and a white cable. There is a BIS Approved logo on the left and a "Data Charging Cable" logo on the right. The ERD logo is at the bottom, with the text "SMART PHONE CHARGER" below it.	 The image shows the packaging for an impugned mobile charger. It is a green box with a white background at the bottom. The text on the box reads "MOBILE CHARGER" and "2 Amp Micro USB". It features an image of a white charger and a white cable. There is a BIS Approved logo on the left and a "Data Charging Cable" logo on the right. The ERD logo is at the bottom, with the text "SMART PHONE CHARGER" below it.
 Made in India, Challenging The World.	 Made in India, Challenging The World.
 A QR code is visible on the bottom right of the Plaintiff's packaging, next to a green and white striped background.	 A QR code is visible on the bottom right of the Impugned packaging, next to a green and white striped background.



10. The impugned mark and packaging are identical to Plaintiff's, without any noticeable differences. Both the parties are dealing in same class of electronic goods, through common trade channels. Defendants No. 1 and 2



are selling products bearing Plaintiff's registered mark – without authorisation or permission from the Plaintiff, which amounts to infringement under section 29 of the Trademarks Act, 1999. The sale of such products, which do not emanate from Plaintiff, is bound to result in public confusion and deception. Such products are thus, counterfeit and an indication of Defendants' ill-motive to profit off Plaintiff's goodwill and reputation. The consumers of impugned/ counterfeit products would make an instant connection with Plaintiff's products and be led into believing that the same are produced by Plaintiff, resulting in irreparable harm to Plaintiff's business, goodwill and reputation. Plaintiff through its predecessor, has acquired rights and interests in Plaintiff's registered marks and copyright and thus, is entitled to statutory protection and injunction restraining Defendants' unscrupulous activities. Therefore, the Court is satisfied that the use of the mark “



” by the Defendants constitutes infringement and

passing off of Plaintiff's trademarks.

11. Plaintiff's case is further strengthened by seizure of 50 Micro USB Data Cable found at the premises of Defendant No. 2 which bear Plaintiff's registered marks. The Plaintiff's representative, who accompanied the Local Commissioner at said location, confirmed that same were not manufactured by Plaintiff.

12. Despite full knowledge, the Defendants have not contested the suit and have not filed their written statement(s). On the basis of documents and pleadings, the Court is satisfied that the Plaintiff is entitled to a judgment in accordance with Order VIII Rule 10 of the Code of Civil Procedure, 1908.

13. The suit is decreed in favour of the Plaintiff and against the Defendants in terms of paragraph No. 37(a) to (e) of the plaint.

14. The counterfeit goods handed over to Defendant No. 2 on *superdari* by the Local Commissioner, detailed in the Report filed on 12th November, 2020, are directed to be delivered to the Plaintiff for destruction, as per applicable rules and regulations.

15. The Plaintiff has paid court fees, incurred the expense of appointing Local Commissioner and legal expenses for initiating and filing the present suit. Thus, in view of the judgment of the Supreme Court in *Uflex Ltd. v.*

Government of Tamil Nadu,² as well as in terms of the Commercial Courts Act, 2015 and Delhi High Court (Original Side) Rules, 2018 read with Delhi High Court Intellectual Property Division Rules, 2022, Plaintiff is entitled to actual costs, recoverable jointly and severally from Defendants No. 1 and 2. Plaintiff shall file its bill of costs in terms of Rule 5 of Chapter XXIII of the Delhi High Court (Original Side) Rules, 2018 on or before 31st March, 2023. As and when the same is filed, the matter will be listed before the Taxing Officer for computation of costs.

16. Suit is decreed in these terms. Registry is directed to draw up the decree sheet.

17. Suit and pending applications are accordingly disposed of.

SANJEEV NARULA, J

JANUARY 30, 2023

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(Corrected and released on 7th February, 2023)

² 2021 SCC Online SC 738.