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

+ **CS(COMM) 312/2023 I.A. 9452/2023**

M/S JAQUAR AND COMPANY PVT. LTD. Plaintiff

Through: **Mr. Navdeep Suhag, Ms. Mehak
Khanna, Advocates.**

versus

YOUSAF THOTTASSERI Defendant

Through: **Mr. Slivendra Pratap Singh, Mr.
Navdeep Suhyag and Ms. Mehak
Khanna, Advocates.**

**CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL**

**ORDER
14.05.2024**

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1. No one appears on behalf of defendant.
2. An *ex parte ad interim* injunction order was passed in favour of the plaintiff dated 16th May, 2023, when summons and notices were issued.
3. However, no one appears on behalf of defendant. Accordingly, as per direction of the Court dated 06th February, 2024, the defendant was proceeded *ex parte*.
4. The background facts and circumstances, are already recorded by Court in order dated 16th May, 2023 in paras 1 to 9, which are reproduced as under:



1. This is a plaint alleging infringement, by the defendant, of the registered trademark of the plaintiff. The rival marks are the following:

PLAINTIFF'S MARK	DEFENDANT'S MARK

2. The plaintiff is part of the JAQUAR group, founded in 1960. It claims to be a market leader in sanitary fittings. The plaintiff is also the proprietor of the following registrations:

Sr.No.	Trademark	Application No.	Class
1.	JAQUAR	440135	11
2.		3262446	35
3.		3262447	11



4.		3310038	11
5.		3503776	11
6.		3503777	11
7.		3503784	11
8.		3503785	11
9.		3503778	11
10.		3503782	11
11.		3503783	11
12.		3503781	11
13.		3503779	11
14.		3503780	11

3. The plaintiff owns and operates the domain name www.jaquar.com and www.jaquar.in, through which it sells, promotes and advertises its goods and services.

4. In order to vouchsafe its reputation in the market, the plaintiff has provided its sales figures, from use of the mark JAQUAR, from 2011-2012 till 2021-2022. In the year 2021-2022 alone, the sales figures of the plaintiff are to the tune of ₹ 498 crores. The plaintiff also provides the promotional expenses incurred by the plaintiff on a year-to-year basis. In the year 2021-2022, the plaintiff has incurred promotional expenses to the tune of ₹ 19.5 crores.

5. The defendant is located in Kerala and is selling and advertising its products which are allied and cognate to those for which the plaintiff uses its JAQUAR mark, under the mark JACUAR, adopting a



logo which is deceptively similar to the plaintiff's device mark. The defendant is also stated to be operating a website www.jacuar.in, the layout and appearance of which is similar to the plaintiff's website. It is further alleged that the defendant has also copied the plaintiff's "JACUAR EXPERIENCE BATHING" tagline. The defendant is also operating the domain name www.jacuar.in which is deceptively similar to the plaintiff's domain names www.jacuar.in.

6. The plaintiff further asserts that the defendant has applied for registration of the mark JACUAR for "Apparatus for installations for lighting, heating, cooling, steam generating, cooking, drying, ventilating, water supply and sanitary purposes, kitchen sinks, sanitary ware, bathroom sinks". Though the said application was refused by the Registrar, the defendant is stated to be blatantly continuing to use the mark JACUAR.

7. The plaintiff also claims copyright in the logo , as an artistic work under the Copyright Act. It is stated that, by using a deceptively similar logo, the defendant has also infringed the plaintiff's copyright.

8. A comparison of the logos used by the plaintiff and the defendant make out a clear *prima facie* case of infringement, by the defendant, of the plaintiff's registered device mark as well as an attempt to pass off the goods of the defendant as those of the plaintiff. Besides, the mark JACUAR, even seen as a word mark, is deceptively similar to the plaintiff's mark JAQUAR and is phonetically almost identical. As the marks are used in respect of the same category of goods, which are purchased by the same category of consumers, the triple identity test, which marks a case of infringement is also *prima*



facie satisfied in the present case.

9. It is in these circumstances, that the plaintiff has approached this Court by means of the present suit, seeking a permanent injunction against the defendant and all others acting on its behalf from using, in any manner, the mark JACUAR, the domain name www.jacuar.in or any other mark or domain name which is confusingly or deceptively similar JAQUAR mark of the plaintiff, apart from rendition of profits, delivery up, costs and damages.

5. An *ex parte ad interim* injunction was passed in the following terms:

18. As such, till the next date of hearing, the defendant as well as all others acting on its behalf shall stand restrained from selling bathrooms and sanitary fittings or goods related thereto, bearing the name JACUAR or any other name or mark which is identical or deceptively similar to the plaintiff's mark JAQUAR. The defendant shall also stand restrained from operating the domain name www.jacuar.in or from registering any domain name which is deceptively similar to the plaintiff's domain name www.jaguar.in or www.jaquar.com.

6. The details of the various trademark registrations in favour of the plaintiff are extracted below:



Trademark	Appl. No.	Class
JAQUAR	440135	11
	3262446	35
	3262447	11
	3310038	11
	3503776	11
	3503777	11
	3503784	11
	3503785	11
	3503778	11
	3503782	11

	3503783	11
	3503781	11
	3503779	11
	3503780	11

7. The plaintiff's domain name was www.jaquar.com and www.jaquar.in.
8. The grievance was against the defendant who was using the mark



‘JACUAR’ and the domain name www.jacuar.in.

9. The comparative between the plaintiff and defendants mark are reproduced as under: -

PLAINTIFF'S MARK	DEFENDANT' MARK
	

10. It is evident that the defendant has sought to infringe plaintiff's mark and therefore, the plaintiff is entitled to a decree in their favour in these circumstances.

11. Considering defendant chose not to appear and not to file any written statement /reply, accordingly, in consonance with Order VIII Rule 10 of Code of Civil Procedure, 1908, decree is passed in terms of prayer in para 52(a) and (b) & (c) of the plaint, which are extracted as under:



- a. an order for permanent injunction restraining the Defendant, their proprietors or partners or directors as the case may be, their principal officers, servants, agents and all others acting for and on behalf of the Defendant from using, selling and offering for sale the products under the mark JACUAR and using the domain name www.jacuar.in which is identical/ deceptively similar to the registered and well-known mark/name JAQUAR and domain names www.jaquar.com and www.jaquar.in of the Plaintiff, in any manner and for any goods and services particularly for bathroom and sanitary fittings, so as to cause confusion or deception leading to infringement thereof; AND
- b. an order for permanent injunction restraining the Defendant, their proprietors or partners or directors as the case may be, their principal officers, servants, agents and all others acting for and on behalf of the Defendant from using, selling and offering for sale the products under the mark JACUAR or any other mark which is identical/ deceptively or confusingly similar to the registered trade dress of the Plaintiff in any manner and for any goods and services particularly bathroom and sanitary fittings so as to cause confusion or deception leading to passing off of the Defendant's goods or business as those of the Plaintiff's; AND
- c. an order restraining the Defendant, their proprietors or partners or directors as the case may be, their principal officers, servants, agents and all others acting for and on behalf of the Defendant from using, selling and offering for sale the products under the mark JACUAR or any other mark which is identical/ deceptively or confusingly similar to the mark  registered of the Plaintiff in any manner and for any goods and services particularly for bathroom and sanitary fittings, so as to cause confusion or deception leading to unfair competition and dilution of Plaintiff's trade mark JAQUAR, get up thereof ; AND

12. Decree sheet be drawn up accordingly.



13. Pending applications, if any, are rendered infructuous.
14. Suit is disposed of in the above terms.
15. Order be uploaded on the website of this Court.

ANISH DAYAL, J

MAY 14, 2024/RK