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

Date of Decision: 23rd February, 2024

+ **CS(COMM) 313/2020 & I.A. 6773/2020**

TM25 HOLDING BV & ANR.

..... Plaintiffs

Through: Mr. Saif Khan and Mr. Prajwal
Kushwaha, Advocates.

versus

KARTHIK BHASKAR & ANR.

..... Defendants

Through: None.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

SANJEEV NARULA, J. (Oral):

1. The Plaintiffs, belonging to the G-Star Group of Companies, have instituted the present lawsuit to address the infringement of their registered

trademarks “G-STAR”, “”, “”, “”,

“”, “G-STAR RAW”, “RAW”, “G-RAW” and “RAW DENIM 3301” [*collectively*, “G-STAR marks”] as well as violations related to trade dress and copyright.

THE PLAINTIFFS’ CASE

2. Mr. Saif Khan, counsel for Plaintiffs, makes the following



submissions:

2.1. The G-Star Group of Companies was founded in Amsterdam in 1989 by Mr. Jos Van Tilburg, a leading global fashion designer under the brand name “GAPSTAR”, which was later changed to “G-STAR” in 1996. The Plaintiffs primarily deal in designing and marketing of jeans, tops and other clothing, as well as a diverse line of luxury accessories such as sunglasses, bags and footwear. They have been consistently ranked as one of the best-selling brands in Europe and globally, and was the tenth-most sold denim brand worldwide in 2016 and 2017.

2.2 The Plaintiffs enjoy an unparalleled presence in the world, both through offline and online modes, including their website “www.g-star.com”, having established themselves in 25 countries with more than 5,000 points of sale located in prominent cities across the world. The Plaintiffs’ first retail store for the sale of their G-Star products, was opened in India in 2015, and ever since, have expanded to six stores with two “Q-Shop in Shops” at Mumbai and New Delhi.

2.3 The G-STAR marks stand registered in the name of the Plaintiffs in classes 25, 03, 18, 09, 41, 13, 35. Additionally, during 2000-2001 Plaintiffs,

devised a unique logo/ device “” called the “Wokkie device”, which is placed on the back pocket of the jeans produced by the Plaintiffs. Plaintiff No. 2 has obtained a multi-class registration for the Wokkie device.¹

2.4. The mark “G-STAR” is a coined and inventive mark, having no

¹ Particulars of registration are set out in paragraph No. 15 of the plaint.



ordinary meaning or connotation for the products, and are exclusively used by Plaintiffs. The logo/ labels/ device for “G-STAR” and “G-STAR RAW” marks and the Wokkie device have been designed in a unique and distinctive style and thus, constitute original artistic works of the Plaintiffs. By virtue of the continuous and uninterrupted use since 1996, the Plaintiffs are identified as the source of the products manufactured and sold under the G-STAR marks and the Wokkie device. The Plaintiffs’ annual revenue figures of Rs. 7,40,32,481.60/- in the financial year 2018-2019, and promotional expenses of Rs. 2,50,50,76,031.25/- are a testament to their goodwill and reputation.

2.5. In July, 2019, during a routine check of the trademarks journal, the Plaintiffs learnt of Defendant No. 1’s application for registration of “GO



STAR DENIM” / “ mark [application No. 4108801 dated 06th March, 2019] for the same class of products. The application disclosed Defendant No. 1’s user date as 06th March, 2019. Shortly thereafter, on 10th July, 2019, Plaintiff No.1 filed a Notice of Opposition, asserting that the



“ ” is almost identical to Plaintiffs’ G-STAR marks. Upon examining the documents annexed with Defendant No. 1’s counter-statement to the opposition, Plaintiffs found that Defendant No. 1 was using a slavish imitation of their G-STAR marks and Wokkie device on their products in the same colour combination. These observations were also



confirmed by the investigation of a private agency. A telephonic inquiry made to Defendant No. 1 regarding the purchase of products bearing the impugned marks led to a referral to his brother, Defendant No. 2 (Mr. Seenu), along with the provision of his contact details. When Defendant No. 2 was contacted, he readily agreed to supply products featuring the impugned marks to any location in the country, including New Delhi. Consequently, the agency procured samples of the impugned counterfeit products from the Defendants. The delivery of these products served as concrete evidence that the Defendants had indeed engaged in the unauthorized replication and usage of the Plaintiffs' registered G-STAR marks, thereby infringing upon the Plaintiffs' intellectual property rights.

PROCEEDINGS THIS FAR

3. While issuing summons on 13th August, 2020, the Court found sufficient grounds to grant an ad-interim *ex-parte* injunction in favour of the Plaintiffs and against the Defendants, thereby restraining the Defendants, as well as anybody acting on their behalf, from utilizing the marks “GO STAR

DENIM” and/ or the “Wokkie” / “” device, or any mark or device that is identical or bears deceptive similarity to the Plaintiffs' “G-STAR RAW” trademarks.

4. On service of summons, Defendant No. 1 contested the suit by filing a written statement. Defendant No. 2 however, despite service of summons, on 20th September, 2022, failed to submit a defence or enter appearance. Accordingly, their right to file a written statement was closed on 10th March, 2023. Parallely, none has been appearing for Defendant No. 1 since 18th



January, 2023. Given the Defendants' continued absence and failure to appear, the Court, through order dated 13th July, 2023, decided to proceed *ex-parte* against the Defendants.

DEFENDANT NO. 1'S CONTENTIONS

5. Defendant No. 1 in their written statement submits that they have conceived and adopted the impugned mark "GO STAR DENIM" /



" in relation to their business in 2019, and the same is structurally, visually, and phonetically different from the Plaintiffs' G-STAR marks. Further, it is contended that the Plaintiffs' registrations do not entitle them to claim exclusive rights over the letter 'G' and the word 'STAR' separately. Thus, use of 'STAR' as suffix will not amount to infringement of Plaintiffs' rights.

6. Defendant No. 1 has raised a challenge to the jurisdiction of this Court, arguing that neither the parties are located in Delhi, nor did the cause of action arise in Delhi. Defendant No. 1 has further clarified their relationship with Defendant No. 2, stating that on his request, Defendant No. 1 permitted Defendant No. 2 to sell garments under their "GO STAR DENIM" mark. Defendant No. 1 alleges to be completely unaware of the sale of Plaintiffs' counterfeit products by Defendant No. 2.

ANALYSIS AND RELIEF

7. A comparison of the manner of use of Plaintiffs' G-STAR marks with



Defendants' is provided below:

<i>Plaintiffs' products</i>	<i>Defendants' products</i>
   	   



8. Upon reviewing the comparison between the Plaintiffs' and Defendants' products, it becomes evident that there has been a clear and deliberate replication of the Plaintiffs' "G-STAR RAW" trademarks and the



Wokkie device/ “ ”. This copying constitutes significant infringement and counterfeiting. In the Court's assessment, Defendant No. 1's written statement does not present any credible defence against the allegation of trademark infringement. The written statement appears to consist primarily of bare denials to the claims and allegations articulated by the Plaintiffs in their plaint. The Defendants' argument asserting dissimilarity between the contested marks lacks any substantial basis. The evidence presented, including the visual and conceptual similarities highlighted through the investigation and subsequent purchase of products bearing the impugned marks, supports the allegation of infringement. The Defendants' use of these marks, especially in conjunction with products that compete directly with those of the Plaintiffs, undermines the distinctiveness of the Plaintiffs' trademarks and leads to consumer confusion, thereby violating the Plaintiffs' intellectual property rights.

9. The Plaintiffs have continuously and without interruption used their registered G-STAR marks since 1996. Plaintiff No. 1 secured registration



for the “ ” device in 2012, long before the Defendants' alleged commencement of use of the impugned “GO STAR RAW” marks



and associated device by Defendant No. 1 in 2019. This chronological precedence clearly demonstrates that the Defendants' adoption of a mark nearly identical to that of the Plaintiffs was carried out in bad faith, with the unmistakable intention of capitalizing on the Plaintiffs' well-established reputation and goodwill. The deliberate choice by the Defendants to use a mark so closely resembling that of the Plaintiffs', particularly in the same industry and market segments, evidences a strategic attempt to mislead consumers and benefit from the commercial recognition and trust the Plaintiffs have built over decades. Such actions not only infringe upon the Plaintiffs' trademark rights, but also pose a significant threat to their brand identity in the marketplace.

10. The objection to territorial jurisdiction of this Court also lacks merit as the impugned products were delivered by the Defendants to the Plaintiffs' agent in New Delhi. That apart, as the Plaintiffs carry on business within the jurisdictional bounds of this Court through its various stores, in terms of Section 134(2) of the Trademarks Act, 1999, they are entitled to institute a suit before this Court.

11. Considering the aforementioned facts and circumstances, in the opinion of the Court, the Plaintiffs are entitled to a summary judgment under Order XIII-A of the Code of Civil Procedure, 1908 ["CPC"] read with Rule 27 of the Delhi High Court Intellectual Property Rights Division Rules, 2022. In light of the material presented and the fact that Defendants have been proceeded *ex-parte*, the Court is of the opinion that no purpose would be served by directing the Plaintiffs to lead *ex-parte* evidence.²

² See: *Disney Enterprises Inc. & Anr, v. Balraj Muttneja and Ors.*, 210 (2014) DLT 381, and *S. Oliver Bernd Freier GMBH & Co. KG v. Jaikara Apparels and Ors.*, 2013 (55) PTC 414 (Del).



12. In light of the foregoing, the suit is decreed in favour of Plaintiffs and against Defendants, restraining the Defendants, and any other persons acting on their behalf from:

(i) selling, offering for sale, manufacturing, advertising, importing, exporting, using in the course of trade the impugned marks or in any manner commercially dealing in any goods bearing “GO STAR DENIM”/



“ ” and/ or the Wokkie device – “  ” or any other mark identical or deceptively similar to Plaintiffs’ G-STAR marks amounting to or dilution, tarnishment, infringement or passing off of the Plaintiffs’ trademarks and trade dress, as aforesaid, or unfair competition.

(ii) selling, offering for sale, advertising, manufacturing, importing, exporting, and directly or indirectly dealing in any goods bearing the

Plaintiff No. 2’s “okkie device – “  ” styled stitching pattern in form of the semi-arc on the back-pocket, which amounts to infringement of Plaintiff’s trade dress rights in the overall getup/ layout of the products.

(iii) reproducing, publishing, or in any manner putting to use or applying the Plaintiff No. 1’s “G-STAR RAW” typeface/ script, artistic writing style and curvy ‘wokkie’ stitching in the overall get up etc., which would amount to infringement of Plaintiffs’ copyright in their original artistic works.

13. The Plaintiffs, as clarified by Mr. Khan, are not pursuing the relief of damages. Nonetheless, Plaintiffs’ request for award of actual litigation cost



is found reasonable, given that the Plaintiffs have incurred expenses in pursuing the instant suit, and considering the Defendants' decision to abstain from participating in the proceedings. The Plaintiffs should not be penalized for seeking to protect their legal rights, especially in cases where their action is necessitated by infringement by the opposite party. The award of costs would serve as a measure to offset the financial burden placed on the Plaintiffs as a result of the Defendants' actions and their subsequent non-participation in the legal process. Accordingly, Plaintiffs are awarded costs of Rs. 10,13,200/-, as per estimates filed by the Plaintiffs in their written submissions, which includes the attorney fee, as well as the court fee.

14. Decree sheet be drawn up.

15. The suit and pending applications are disposed of.

SANJEEV NARULA, J

FEBRUARY 23, 2024

as

(Corrected and released on 08th March, 2024)