



\$~14

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

+ **CS(COMM) 601/2021**

THE FOUNDRY VISIONMONGERS LIMITED Plaintiff

Through: Mr. Shantanu Sahay, Ms. Imon Roy,
Ms. Shreya Shukla, Ms. Vareesha
Irfan

Ms. Imon Roy and Ms. Vareesha Irfan, Advs.

versus

YUVA ANIMATION STUDIOS PRIVATE LIMITED & ANR.

..... Defendants

Through: None

CORAM:

HON'BLE MR. JUSTICE ANISH DAYAL

ORDER
28.02.2024

%

1. This suit has been filed seeking decree of permanent injunction restraining defendants and all those acting on their behalf from directly or indirectly copying, reproducing, storing, installing and/or using pirated/unlicensed software programs of Plaintiff including "NUKE", "NUKE X", "NUKE Studio" and any of its versions.

2. This Court had granted an *ex parte ad interim* injunction in favour of plaintiff on 25th November, 2021 which was made absolute by order dated 7th March, 2023. Despite notice, no one has appeared on behalf of defendants throughout the proceedings. The suit, therefore, has to be decreed in favour of plaintiff.

3. As regards issue of costs and damages, counsel for plaintiff has filed evidence by way of an affidavit regarding damages and statement of costs. As per the statement of costs, an amount of Rs. 3.11 lakhs has been claimed



towards costs and expenses, including court fees and further as regards the revenue loss, the amount estimated is Rs. 3.74 crores.

4. It is noted that defendants had five permanent licenses from plaintiff's Nuke software, as per plaintiff's database, whose maintenance expired on 20th September, 2020. There were subsequent communications with the defendants' representatives regarding the expiration of licenses and request for further renewal. However, the defendants did not renew the said licenses and it was later discovered that the unauthorised version of the plaintiff's software's were being used on about 105 computer systems with infringement hits (as reported through plaintiff's "phone home" technology) being 7,695.

5. Considering that defendants have chosen not to defend the suit, costs and damages will have to be awarded in favour of plaintiff. In view of this Court, the decision in CS(COMM) 737/2016 titled as ***Koninlijke Philips N.V. & Anr. v. Amazestore & Ors.***, 2019:DHC:2185 (where the standards for grant of damages have been laid down), and which was cited and relied upon in CS(COMM) 703/2022 titled as ***Puma Se v Ashok Kumar***, 2023:DHC:7696, as also in the decision of this Court in CS(COMM) 1324/2016 titled as ***Microsoft Corporation & Ors. v. Satveer Gaur & Anr.***, 2020:DHC:1976 (where damages of Rs.30 lakhs were awarded in favour of plaintiff in the situation of unlicensed software) have to be kept in mind while awarding costs and damages.

6. Considering that defendant is a first-time infringer, however, had knowledge of the aspect of license of plaintiff and still continued to use the unlicensed version of plaintiff's software, therefore, in terms of ***Koninlijke Philips N.V. (supra)***, plaintiff is entitled to decree of injunction with partial damages. Accordingly, a sum of Rs. 25 lakhs are awarded in favour of plaintiff towards costs and damages.



7. Decree sheet be drawn in terms of para 54(a) of prayer clause of plaint, in addition to directions for costs and damages, as noted above.
8. Para 54(a) of prayer clause of plaint is extracted as under:

“a. A decree of permanent injunction restraining the Defendants, their agents, franchisees, servants and all others acting for and on their behalf, from directly or indirectly copying, reproducing, storing, installing and/or using pirated/unlicensed software programs of Plaintiff including "NUKE", "NUKE X", "NUKE Studio" and its various versions or any other software programs developed by the Plaintiff in any manner that may amount to infringement of the Plaintiffs copyright subsisting in its software programs and software related documentation.”
9. Suit is accordingly disposed of.
10. Pending applications, if any, are disposed of as infructuous.
11. Order be uploaded on the website of this Court.

ANISH DAYAL, J

FEBRUARY 28, 2024/sm/na