



2024:DHC:9623



\$~16

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

%

Date of decision: 6th December, 2024

+ CS(COMM) 835/2022 with I.A. 20324/2022 and I.A. 1293/2024

CROSSFIT, LLC

.....Plaintiff

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

versus

MOHAN LAL SIRVI

.....Defendant

Through: Mr. Arnav Goyal, Advocate.

CORAM:

HON'BLE MR. JUSTICE AMIT BANSAL

AMIT BANSAL, J. (Oral)

CS(COMM) 835/2022 and I.A. 1293/2024 (Under Order XIII-A of the CPC seeking summary judgment against the defendant)

1. The present suit has been filed seeking relief of permanent injunction restraining the defendant from infringing the trademark of the plaintiff, passing off their goods and services as that of the plaintiff, along with other ancillary reliefs.

PLEADINGS IN THE PLAINT

2. The plaintiff, CrossFit, LLC, is a company incorporated under the laws of United States of America, engaged in the business of providing products and services in the health, fitness training and competition, and nutrition space. The plaintiff's business traces its origin to its first gym

Signature Not Verified

Digitally Signed
By: DHARMENDR SINGH
Signing Date: 13.12.2024
14:45:22

CS(COMM) 835/2022

Page 1 of 9



2024:DHC:9623



called 'CrossFit Santa Cruz' which was started in 1995 in Santa Cruz, California by its founder, Mr. Greg Glassman.

3. The plaintiff asserts that the plaintiff is the proprietor of the 'CrossFit' mark which was originally coined and adopted in the year 1985. It is claimed to be an arbitrary mark exclusively used by the plaintiff in the commercial space for its physical fitness products and services.

4. The plaintiff is the registered proprietor of the following trademarks in India:

Regn. No.	Trademark	Date of Application	Classes
IRDI: 2745868 International Filing No. 1184215	CROSSFIT (Device)	21 st January, 2014	99 [Classes 16 and 28]
IRDI: 2175375	CROSSFIT (Word)	14 th July, 2011	99 [Classes 25 and 41]

The Certificates of Registrations are filed as document no. 1 of the documents filed along with the plaint. All the aforesaid trademark registrations remain valid and subsisting.

5. It is further stated that the plaintiff also owns hundreds of registrations for the 'CrossFit' mark in jurisdictions around the world, including the United States of America, and the European Union as European Union Trademark (EUTM) Registrations. A detailed list is given in paragraph 10 of the plaint.

Signature Not Verified

Digitally Signed
By: DHARMENDER SINGH
Signing Date: 13.12.2024
14:45:22

CS(COMM) 835/2022

Page 2 of 9



2024:DHC:9623



6. Furthermore, the plaintiff's 'CrossFit' mark was recognized to be a 'well-known' trademark under Section 2(1) (zg) of the Trade Marks Act, 1999 by this Court in **CrossFit Inc. v. Gurpreet Singh & Anr.** [CS (OS) No. 2114/2014, decided on 30th October, 2015].

7. It is averred in the plaint that the plaintiff has also used the mark 'CrossFit' as a part of its domain name, www.crossfit.com, which was registered in October 1999 and has been accessed by millions of global viewers in the past several years. The plaintiff is stated to be the first entity to use the 'CrossFit' mark for its physical fitness and training services, and over the years, the 'CrossFit' trademark has grown to become a brand uniquely attributable to the high standards of goods and services rendered by the plaintiff.

8. It is further averred that the plaintiff has also created the 'CrossFit' Games which have been held annually since 2007 and which culminate in the ceremonious crowning of the 'Fittest Man and Woman on Earth'. From 2010 to 2020, Reebok Ltd. was the title sponsor of the Reebok 'CrossFit' Games. The plaintiff's promotional and advertising expenses worldwide for its products and services during the period 2017-2022 are given in paragraph 13 of the plaint. As a result of the above-mentioned activities, the plaintiff's 'CrossFit' trademark has acquired tremendous reputation and goodwill amongst the members of the trade and the public.

9. It is stated that the plaintiff has strengthened its presence in India through twenty-four authorized and duly licensed "affiliate" training facilities in cities such as New Delhi, Gurugram, Mumbai, Pune, Hyderabad, and Bangalore since 2009.

Signature Not Verified

Digitally Signed
By: DHARMENDER SINGH
Signing Date: 13.12.2024
14:45:22

CS(COMM) 835/2022

Page 3 of 9



2024:DHC:9623



10. The defendant is stated to be running and operating a Gym and Fitness Center using the mark 'CROSSFIT' without any authorization from the plaintiff.

11. In and around January 2020, the plaintiff became aware that the defendant had applied for registration of the mark 'CROSS FIT' (hereinafter referred to as the 'impugned mark') bearing Application No. 3549627 under Class 41 of the Trade Marks Act, 1999 and the same was advertised in the trademarks journal. The said application was filed by the defendant on 16th May, 2017 on a '*proposed to be used*' basis for providing 'gymnastic facilities; fitness club facilities'.

12. Thereafter, the plaintiff sent a letter dated 5th February, 2020, demanding the defendant to withdraw the aforesaid trademark application. Since no response was forthcoming, the plaintiff filed its Opposition on 13th February, 2020 to the said application of the defendant for the impugned mark. Notice of Opposition was duly served on the defendant on 11th March, 2020.

13. Despite opportunity being given to respond to the Notice of Opposition, the defendant did not file any response. Subsequently, the Registrar of Trade Marks passed an order dated 9th September, 2022 rendering the trademark application by the defendant for the impugned mark as 'Abandoned'.

14. It is the case of the plaintiff that despite filing the aforesaid trademark application on a '*proposed to be used*' basis, the defendant had already started using the impugned mark from the date of filing the trademark application as stated in an Affidavit filed by the defendant in support of the

Signature Not Verified

Digitally Signed
By: DHARMENDR SINGH
Signing Date: 13.12.2024
14:45:22

CS(COMM) 835/2022

Page 4 of 9



2024:DHC:9623



show-cause hearing. The defendant had also attached invoices to demonstrate his use of the mark. The said invoices are placed on record by the plaintiff as documents filed along with the plaint. This shows the wilful and deliberate *mala fide* intention of the defendant in adopting the impugned mark.

15. Accordingly, the plaintiff filed the present suit on 29th November, 2022 seeking to restrain the defendant from carrying on his infringing activities.

PROCEEDINGS IN THE SUIT

16. On 2nd December, 2022, this Court granted an *ex parte ad interim* injunction in favour of the plaintiff restraining the defendant from using in



the course of trade, the mark 'CROSS FIT' and logo and/or any other marks which are identical or deceptively similar to the 'CrossFit' trademarks of the plaintiff. This Court also appointed a Local Commissioner to visit the defendant's premises.

17. The Local Commissioner conducted the commission on 6th December, 2022 at the defendant's premises and found several hoardings, cashbooks, advertisement pamphlets etc. bearing the plaintiff's trademarks.

18. *Via* order dated 30th October, 2023, on the basis of the statement made by the defendant in the written statement that he does not intend to use the impugned mark 'CROSS FIT', the present suit has been partly decreed *qua* the defendant in terms of prayer clauses 53(a) to 53(d). However, the issues of damages and costs were left open.

Signature Not Verified

Digitally Signed
By: DHARMENDR SINGH
Signing Date: 13.12.2024
14:45:22

CS(COMM) 835/2022

Page 5 of 9



2024:DHC:9623



19. Thereafter, the counsel for the plaintiff filed the present application being I.A. 1293/2024 under Order XIII-A of the Code of Civil Procedure, 1908 (hereinafter, 'CPC') for passing of a summary judgment on the aspect of damages and costs.

20. *Via* order dated 18th January, 2024, this Court issued notice in the aforementioned application and granted four weeks' time to the defendant to file a reply.

21. Since the defendant could not file the reply within the stipulated time limit, this Court granted extension of time to file the same on 12th March, 2024 and thereafter, on 4th July, 2024. Despite this, no reply was filed by the defendant.

22. *Via* order dated 25th November, 2024, this Court granted an opportunity to the counsel for the defendant to seek instructions from his client with respect to damages and costs.

23. Counsel for the defendant submits that the defendant is not willing to pay any amount towards damages and costs.

24. In these circumstances, counsel for the plaintiff presses for a decree on the aspect of damages and costs against the defendant under Order XIII-A of the CPC.

ANALYSIS AND FINDINGS

25. I have heard the submissions of learned counsel for the plaintiff and also perused the material on record.

26. In the present application for summary judgment, the plaintiff seeks legal costs to the tune of Rs.3,74,000/-. The plaintiff has given details of the costs incurred in pursuing the present dispute in paragraph 12 of the present

Signature Not Verified

Digitally Signed
By: DHARMENDER SINGH
Signing Date: 13.12.2024
14:45:22

CS(COMM) 835/2022

Page 6 of 9



2024:DHC:9623



application. The plaintiff also claims to be entitled to damages to the tune of Rs.3,00,000/- on account of loss of profits and the unfair gains made by the defendant by illegal use of the plaintiff's trademarks, as given in paragraph 15 of the present application.

27. At the outset, it may be relevant to note that the defendant has admitted in the written statement dated 23rd January, 2023 that he has already ceased using the mark 'CROSS FIT' and does not intend to use the same in future. Pertinently, the defendant did not file a reply to the present application for summary judgment, despite being granted multiple opportunities on 18th January, 2024, 12th March, 2024 and 4th July, 2024.

28. Since the defendant has failed to take any requisite steps to contest the present application, it is evident that the defendant has no defence to put forth on the issue of damages and costs.

29. In ***Su-Kam Power Systems Ltd. v. Kunwer Sachdev***, 2019 SCC OnLine Del 10764, this Court has observed as under:

"90. To reiterate, the intent behind incorporating the summary judgment procedure in the Commercial Court Act, 2015 is to ensure disposal of commercial disputes in a time-bound manner. In fact, the applicability of Order XIII A, CPC to commercial disputes, demonstrates that the trial is no longer the default procedure/norm.

91. Rule 3 of Order XIII A, CPC, as applicable to commercial disputes, empowers the Court to grant a summary judgement against the defendant where the Court considers that the defendant has no real prospects of successfully defending the claim and there is no other compelling reason why the claim should not be disposed of before recording of oral evidence. The expression "real" directs the Court to examine whether there is a "realistic" as opposed to "fanciful" prospects of success. This Court is of the view that the expression "no genuine issue requiring a trial" in Ontario Rules of Civil Procedure and "no other compelling reason.....for trial" in Commercial Courts Act can be read mutatis

Signature Not Verified

Digitally Signed
By:DHARMENDER SINGH
Signing Date:13.12.2024
14:45:22

CS(COMM) 835/2022

Page 7 of 9



2024:DHC:9623



mutandis. Consequently, Order XIII A, CPC would be attracted if the Court, while hearing such an application, can make the necessary finding of fact, apply the law to the facts and the same is a proportionate, more expeditious and less expensive means of achieving a fair and just result.

92. Accordingly, unlike ordinary suits, Courts need not hold trial in commercial suits, even if there are disputed questions of fact as held by the Canadian Supreme Court in Robert Hryniak (supra), in the event, the Court comes to the conclusion that the defendant lacks a real prospect of successfully defending the claim.”

30. The aforesaid principles are fully applicable in the facts and circumstances of the present case. As elaborated above, the defendant has no real prospect of successfully defending the claims of damages and costs. Further, taking into account that the defendant has not set up any defence, there is no compelling reason for the recording of oral evidence.

31. Therefore, this is a fit case where a summary judgment in terms of Order XIII-A of the CPC can be passed in favour of the plaintiff and against the defendant on the aspect of damages and costs.

32. A reference may be made to the judgment in **Hindustan Lever Ltd. v. Satish Kumar**, 2012 SCC OnLine Del 1378. The relevant observations are set out below:

“23. One of the reasons for granting relief of punitive damages is that despite of service of summons/notice, the defendant had chosen not to appear before the court. It shows that the defendant is aware of the illegal activities otherwise, he ought to have attended the proceedings and give justification for the said illegal acts. Since, the defendant has maintained silence, therefore, the guilt of the defendant speaks for itself and the court, under these circumstances, feels that in order to avoid future infringement, relief of punitive damages is to be granted in favour of the plaintiff.”

Signature Not Verified

Digitally Signed
By: DHARMENDER SINGH
Signing Date: 13.12.2024
14:45:22

CS(COMM) 835/2022

Page 8 of 9



2024:DHC:9623



33. In the present case, the defendant filed a trademark application dated 16th May, 2017 for the impugned mark on a '*proposed to be used*' basis. The defendant also filed an affidavit claiming use of the impugned mark from the same date as the filing of the said application. Along with the affidavit, the defendant had attached invoices to demonstrate his use of the mark. The aforementioned actions are contradictory in nature and are clearly aimed at capitalizing on the plaintiff's goodwill and reputation.

34. As per the report of the Local Commissioner appointed in the present case, large quantities of infringing products bearing the impugned mark were seized.

35. Taking into consideration the totality of circumstances, I am of the view that the defendant's conduct warrants the imposition of both costs and damages. Even though the plaintiff has claimed a sum of Rs.6,74,000/- towards damages and costs, which amounts have not been refuted by the defendant, I am inclined to award a cumulative sum of Rs.5,00,000/- towards damages and costs.

36. It is ordered accordingly.

37. Let the decree sheet be drawn up.

38. All pending applications stand disposed of.

AMIT BANSAL, J

DECEMBER 06, 2024

Vivek/-

Signature Not Verified

Digitally Signed
By:DHARMENDER SINGH
Signing Date:13.12.2024
14:45:22

CS(COMM) 835/2022

Page 9 of 9