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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(COMM) 616/2022, I.A. 14338/2022 & I.A. 7580/2024**

PUMA SE

..... Plaintiff

Through: Mr. Ranjan Narula, Ms. Aishani Singh
and Ms. Shivangi Kohli, Advocates.

versus

ASHOK KUMAR TRADING AS R.K. INDUSTRIES Defendant
Through: None.

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

ORDER

04.04.2024

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I.A. 7580/2024 (under Order XIII A and VIII Rule 10 read with Section 151 of CPC, 1908)

1. This application has been filed by the plaintiff under Order XIII A and Order VIII Rule 10 read with Section 151 of the Code of Civil Procedure, 1908 (“CPC”) seeking a decree against the defendant in view of the fact that the defendant had not appeared post summons being issued on 05th September, 2022 when an ad-interim *ex-parte* injunction was also granted in favour of the plaintiff in I.A. 14338/2022 in the following terms:

“19. Accordingly, till the next date of hearing, the Defendant, its proprietors, partners, directors and all others acting for or on its behalf are restrained from advertising, selling, offering for sale, etc., any products, including shoes, sports wear, accessories etc., under the Plaintiffs mark, PUMA, as also the leaping cat device mark, or any other mark, which is identical, or deceptively/confusingly similar to the Plaintiffs trademarks.”




2. Subsequently thereto, attempts were made to serve the defendant when an application for substituted service was made. Thereafter, on 01st September, 2023, the Joint Registrar noted that the defendant had been served on 28th July, 2023 by way of publication in the newspaper. However, neither written statement has been filed nor has anyone appeared on behalf of the defendant. Defendant's right to file written statement was closed on 12th February, 2024.

3. In these circumstances, a decree is sought under Order VIII Rule 10 as well as under Order XIII A of CPC.

4. This Court has perused the order dated 05th September, 2022 when an *ex-parte* ad-interim injunction was granted, and narrated the essential facts on which the plaintiff relies upon in its favour for seeking an injunction. Paras 14 to 18 of the said order are relied upon and are extracted as under:

"14. The Plaintiff - Puma Se, a German company, has filed the present suit seeking permanent injunction restraining infringement of trademark, unfair trade competition, rendition of account, damages etc, against the Defendant, Ashok Kumar, trading as 'R.K Industries'.

15. The Plaintiff is engaged in the manufacture, marketing and selling of sophisticated sportswear and athletic shoes under the well-known trademark, 'PUMA', its variants in device and logo

forms, as also the leaping cat device mark  *(hereinafter "Plaintiff's marks"). The word PUMA was coined wayback in 1948. The Plaintiff claims to be one of the world's leading sports apparel brands, which has been designing, developing, selling and marketing footwear, apparel and sports accessories, for over 70 years. The mark PUMA is claimed to be a globally renowned mark, which is endorsed by famous celebrities across the world - such as soccer celebrities like Pele, and Diego Maradona. PUMA products are available in more than 20 countries, and the*



company employs more than 10,000 people worldwide. The sales of the Plaintiff for the year 2019 is claimed to be more than 5500 million euros, with promotional expenses being more than 1100 million euros. In India, the sales of the Plaintiff for the year 2021 are stated to be more than Rs. 50 crores.

16. The mark PUMA, along with the device mark, and similar variants, CS (COMM) 616/2022 have numerous registrations in several countries across the world, including in India. The earliest trademark registration of the word mark 'PUMA' in India, bearing no. 323053, in class 18 for "ARTICLES MADE OF LEATHER OR IMITATIONS THEREOF", dates back to 1977. The Plaintiff has various other registrations and pending applications for the PUMA word mark, the leaping cat device mark, and other connected logo forms and variants, as set out in paragraph 12 of the Complaint. The mark PUMA is registered in India, not only in class 18, but also in class 25 for "CLOTHING AND FOOTWEAR FOR SPORTS, ATHLETIC AND LEISURE PURPOSES", bearing no. 323054, and thus, the statutory rights are claimed in the said mark.

17. The Plaintiff has filed the present suit in order to curb the manufacture and sale of counterfeit products by the Defendant, bearing the Plaintiffs / well-known marks. As per the Plaintiff, a field enquiry revealed in July, 2022 that the Defendant was manufacturing, supplying and selling garments including, t-shirts and track pants, bearing the Plaintiffs mark PUMA, as also the leaping cat device mark. It is submitted by the Plaintiff that the said products are completely counterfeit, and do not originate from the Plaintiff. Reliance is placed upon an affidavit filed by brand protection manager of the Plaintiff, Mr. Anuj Bedi, dated August, 2022. A sample purchase of the Defendant's products was executed on 10th August, 2022. Upon examining the said products, Mr. Anuj Bedi confirmed that the products purchased from the Defendant are completely counterfeit. The affidavit reveals that 'the appearance design/style of the PUMA trackpant does not match with PUMA design'. Ld. Counsel for the Plaintiff further submits that sale of the counterfeit PUMA branded products is significantly eroding the goodwill and reputation, and also causing huge monetary loss to the Plaintiff.



18. *The Court has seen the physical products, which have been handed over during the hearing, by the Id. Counsel for the Plaintiff, and has also examined the affidavit filed by Mr. Anuj Bedi. A perusal of the products and the said report, prima facie, reveals that the products which have been purchased from the Defendant are not original PUMA products. The manner in which the basic information is lacking on the labels of the products, as also the packaging of the products not being in the standard usually used by the Plaintiff, the Court is convinced that the Defendant's products are counterfeit PUMA products. The Plaintiff has made out a prima facie case for grant of ex-parte ad-interim injunction in its favour.”*

5. Subsequent to the said order, when a Local Commissioner was appointed to visit the premises of the defendant at Budh Vihar, New Delhi-110086. A report of the Local Commissioner dated 25th September, 2022 has been filed. As per para 7 of the Local Commissioner's report, it transpires that a total of 383 pairs of lowers/track pants bearing the impugned mark 'PUMA' were found at the premises along with 64 stickers bearing the mark 'PUMA'. The said products were handed over on *superdari* to the plaintiff.

6. The pictures of the goods received are as under:





This is a digitally signed order.

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The Order is downloaded from the DHC Server on 18/05/2024 at 11:44:04



7. In view of the decision in *Puma SE v. Ashok Kumar*, 2023 SCC OnLine Del 6764, and the earlier decision in *Hindustan Unilever Limited v. Reckitt Benckiser India Limited*, 2014 SCC OnLine Del 490, courts usually grant notional or compensatory damages, unless there are extenuating circumstances, and overwhelming evidence of wrong doing, when punitive damages can be awarded.

8. In *Koninlijke Philips and ors v. Amazestore and Ors*, 2019:DHC:2185, the Court laid down certain standards for grant of damages, as part of the said standards, this situation would be of a repeated knowing infringer causing minor/major impact to the plaintiff. In which case, costs



plus partial/compensatory damages are to be awarded.

9. In **Koninlijke Phillips** (*supra*), this Court has stated as under:

“41. Keeping in view the aforesaid, this Court is of the view that the rule of thumb that should be followed while granting damages can be summarised in a chart as under:

42. It is clarified that the above chart is illustrative and is not to be read as a statutory provision. The Courts are free to deviate from the same for good reason.”

10. The said decision was cited with approval also in **Puma SE v. Ashok Kumar** (*supra*).

#	<i>Degree of mala fide conduct</i>	<i>Proportionate award</i>
(i)	<i>First-time innocent infringer</i>	<i>Injunction</i>
(ii)	<i>First-time knowing infringer</i>	<i>Injunction + Partial Costs</i>
(iii)	<i>Repeated knowing infringer which causes minor impact to the Plaintiff</i>	<i>Injunction + Costs + Partial damages</i>
(iv)	<i>Repeated knowing infringer which causes major impact to the Plaintiff</i>	<i>Injunction + Costs + Compensatory damages.</i>
(v)	<i>Infringement which was deliberate and calculated (Gangster/scam/mafia) + wilful contempt of court.</i>	<i>Injunction + Costs + Aggravated damages (Compensatory + additional damages)</i>



11. In *Inter Ikea Systems BV (supra)*, the issue of damages has been dealt with *inter alia* in para 20 wherein reference to *Hindustan Unilever Limited v. Reckitt Benckiser India Limited*, ILR (2014) 2 Del 1288 was made. It has been noted that the Courts have upheld the procedure of using rough and ready calculation for award of damages.

12. As per the decision in *Koninlijke Philips (supra)*, it seems from the facts before the Court that at best, the defendant would be identified as first-time knowing infringer since there is no other evidence that there is repeated infringement. As a result, the proportionate award in favour of the plaintiff will be injunction and partial costs.

13. The actual costs of the litigation claimed by the plaintiff is Rs. 6.09 Lakhs, which includes the court fees of about Rs. 2 Lakhs, Local Commissioner's fee of about 1.15 Lakhs and Counsel's fee of about Rs.2.88 Lakhs.

14. Accordingly, the Court considers it fit to award a decree in favour of the plaintiff in terms of prayer 37(a) & (b) of the plaint as well as costs of Rs.3.5 Lakhs in favour of the plaintiff.

15. Decree Sheet be drawn up accordingly.

16. Suit is disposed of.

17. Pending applications, if any, are rendered infructuous.

18. Order be uploaded on the website of this Court.

ANISH DAYAL, J

**APRIL 4, 2024/
kct**