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IN THE HIGH COURT OF DELHI AT NEW DELHI

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**Reserved on: 11th July, 2018
Pronounced on: 31st July, 2018**

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CS(COMM) 503/2016, IA No.5766/2016

CHRISTIAN LOUBOUTIN SAS Plaintiff
Through Mr.Pravin Anand, Ms.Rashi Punia
and Mr.Shamim Nooreyezdan,
Advocates.

versus

ASHISH BANSAL & ANR. Defendants
Through None being *ex parte*.

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

YOGESH KHANNA, J.

1. The plaintiff has filed this suit for permanent injunction, infringement of trademark, passing off, damages, rendition of accounts against the defendants.
2. The brief facts leading to the filing of this suit, as alleged, are:-
 - a) the plaintiff is a well-known French company famous for its high end luxury products. The Plaintiff derives its name from Mr.Christian Louboutin, the famous designer. The Plaintiff is well-known for its women's shoes with its distinctive "Red soles". The Plaintiff has also branched out into handbags and men's shoes. The success, repute and well-known character of the Plaintiff's products have been mentioned in paragraphs 2 to 16 and 28 of the plaint;

b) the Plaintiff has a presence in over 60 countries including India. The distribution of the Plaintiff's products is through a limited authorized distribution network including department stores (like SAKS, SELFRIDGES, HARRODS, etc.) and more than 120 boutiques around the world. In India, the Plaintiff presently has two stores, one in Delhi and one in Mumbai;

c) the Plaintiff in the year 1992, as a result of his creation and inspiration decided to colour the outsoles of the shoes in red, to act as a source identifier. Since then, virtually all the shoes that the Plaintiff has created has had this characteristic red sole. A shoe with a red sole clearly identifies the product as the Plaintiff's and distinguishes it from the goods of every other person

d) the distinctive nature of the Plaintiff's 'RED SOLE' trademark has also been recognised by Trade Mark offices all around the world. The said trademarks have been registered in various countries around the world. Details of registrations are mentioned at paragraph 17 of plaint.

e) The Plaintiff's 'RED SOLE' trademark, i.e. , wherein a specific tone of colour red (Pantone no. 18.1663TP) is applied to the outsole of a shoe, is unique in its own accord and became known in the world of fashion only after being introduced by the Plaintiff herein. The trademark, being an innovation of the Plaintiff, is used and known only in relation to the Plaintiff and goods of the Plaintiff only. The 'RED SOLE' trademark has thus become the signature of the Plaintiff;

f) the Plaintiff's registered trademarks in India have been enumerated in paragraph 21 of the plaint. Of particular relevance to the instant case is trademark registration no. 1922048 for the red

sole trademark -  which has been granted after rigorous examination by the trademark office.

g) the annual turnover of the plaintiff in India for the years 2012 to 2015 in para No.19 of plaint. The Plaintiff's RED SOLE trademark also enjoys immense trans-border reputation. The Plaintiff submits that its 'RED SOLE' trademarks, have acquired a well-known character and the plaintiff is a well-known luxury brand with presence in over 60 countries including India. The plaintiff has been using its 'RED SOLE' trademarks extensively and continuously since 1992. The plaintiff's 'RED SOLE' trademarks are known to customers throughout India;

h) the plaintiff is recognised as a sole licensor of the Christian Louboutin trademarks and has successfully enforced its rights in the said trademarks. The plaintiff has extensively promoted its luxury products under its Christian Louboutin trademarks including the 'RED SOLE' trademark in India. The plaintiff has extensive presence over the Internet.

i) The plaintiff's website is accessible to consumers in India and have served in making customers in India aware of the plaintiff, the various luxury products of the Plaintiff and the Plaintiff's well renowned trademarks including the 'RED SOLE' trademark;

- j)* The plaintiff has received various awards and accolades for the luxury products made available under the plaintiff's well-known trademarks including the 'RED SOLE' trademark.
- k)* the consumers in India identify the Plaintiff as the sole proprietor of the Christian Louboutin trademarks including the 'RED SOLE' trademark and any use of the said trademarks by an unrelated entity will entail taking undue advantage of the reputation and goodwill of the Plaintiff, which has been built painstakingly over the several decades;
- l)* the plaintiff has been vigilant in protecting and safeguarding its trademark rights from misuse by third parties throughout the world, including in India;
- m)* it is alleged that defendants are located in Kamla Nagar Market, New Delhi, who were found to be dealing in infringing and counterfeit shoes bearing the RED SOLE trademark of the Plaintiff;
- n)* the Plaintiff found out about the Defendants' infringing activities sometime in December, 2015, during a market survey conducted by an independent investigator. Further investigation carried out in January and February, 2016, confirmed the infringing activities of the Defendant entities.
- o)* the defendants are also liable to pay punitive damages for the obvious and willful infringement of the Plaintiffs' Trademark for its contemptuous conduct; hence this suit.

3. Upon due service and failure to appear in Court, the defendants were proceeded ex parte and matter was posted for ex parte evidence vide order dated 31.05.2017.

4. During the course of evidence, the plaintiff has examined sole witness *PW1* Shri Pankaj Pahuja who tendered his affidavit of evidence as *Ex.PW1/A* and relied upon the documents *Ex.PW1/1* to *Ex.PW1/32*.

5. Before proceeding further, let me go through the documents exhibited by the witness. *Ex.PW1/1* is power of attorney in favour of the witness; *Ex.PW1/2* is the report of the local commissioner executed on 22.05.2016 in this case pursuant to order dated 09.05.2016; *Ex.PW1/3* is print out of the official website of the plaintiff; *Ex.PW1/4* is the print out of the leading magazine about the product of the plaintiff; *Ex.PW1/5* is the print out of women wearing the product of the plaintiff; *Ex.PW1/6* is the print out of different books; *Ex.PW1/7* is print out of book of plaintiff; *Ex.PW1/8* is the online articles about plaintiff; *Ex.PW1/9* and *Ex.PW1/10* is about the stores of plaintiff in India; *Ex.PW1/11* is the print out of newspaper reports; *Ex.PW1/12* is the print out about the trademark of the plaintiff; *Ex.PW1/13* is the print out of international magazines; *Ex.PW1/14* is the print out of fashion magazines; *Ex.PW1/15* are the print out of the decisions in favour of the plaintiff; *Ex.PW1/16* to *Ex.PW1/24* are the copies of the different trademark certificates in favour of the plaintiff; *Ex.PW1/25* is the print out of different trademark pending applications; *Ex.PW1/26* is the print out of 'STOPFAKE' online article about the plaintiff; *Ex.PW1/27* is print out of orders passed by this Court in different cases in favour of the plaintiff; *Ex.PW1/28* print out of facebook page of the defendant; *Ex.PW1/29* is the original affidavit of

the investigator of the plaintiff; *Ex.PW1/30* are the photographs of the counterfeit product purchased from defendant by investigator; *Ex.PW1/31* is the original cash memo and *Ex.PW1/32* is the business card of the defendant which was procured at the time of purchase of counterfeit product. The witness further deposed regarding the requisite certification under Section 65B of the Indian Evidence Act, 1872 pertaining to the different electronic records in the form of printout, copies and extracts of records as mentioned above.

6. The acts of the defendants in adopting and using the identical/deceptively similar impugned mark and dealing in the goods which are identical to the goods of the plaintiffs.

7. It is also settled law in infringement cases, if the defendant's mark is closely, visually and phonetically similar, then no further proof is necessary as held in *Kaviraj Pandit Durga Dutt Sharma vs Navarattana Pharmaceutical Lab.* AIR 1965 SC 980.

8. In *Mex Switchgears Pvt Ltd vs Max Switchgears Pvt Ltd* CS (OS) 1299/2013 this Court observed that the essential features of rival marks are to be considered in determining infringement.

9. From the perusal of the record above, the plaintiff has been able to prove the defendants adoption and using of counterfeit registered trademark, trade dress, deceptively similar domain name, unequivocally amounts to the infringement of the plaintiffs registered domain name, trademark, trade dress etc and amounts to passing of their goods and business as this is without authorization/affiliation by the plaintiffs and

hence, the plaintiffs is entitle to a decree for reliefs prayed in sub paras (a) to (d) of prayer clause (para No.53)of the plaint viz.:-

a) an order for permanent injunction restraining the Defendants, their partners, if any, officers, servants, agents, distributors, stockists and representatives from manufacturing, selling and/or offering for sale, advertising, directly or indirectly dealing in (either through their physical shop/s or online, including through social media or any e-commerce platforms, or any manner whatsoever), footwear including ladies shoes or any other goods bearing the Plaintiffs registered trademark No. 1922048,

for the 'RED SOLE' trademark i.e. , or any similar trademark amounting to an infringement of the said registered Trademark of the Plaintiff as also the other registered trademarks of the Plaintiff as mentioned in paragraph 21 of the plaint;

b) An order for permanent injunction restraining the Defendants, their partners, if any, their officers, servants, agents, distributors, stockists and representatives from manufacturing, selling and/or offering for sale, advertising, directly or indirectly dealing in footwear including ladies

shoes bearing the 'RED SOLE' trademark i.e. , or any similar trademark or doing any other act amounting to passing off of the Defendants' products as those of the Plaintiff, through any of its shops, social media platform or in any manner whatsoever;

c) An order for permanent injunction restraining the Defendants, their principal officers, servants, agents, their affiliates, subsidiaries, distributors, and all others acting for and on their behalf from using trademarks, which are identical or deceptively or confusingly similar to

the Plaintiffs registered trademarks, including the 'RED SOLE'

trademark i.e.  , so as to misrepresent the quality/ origin of then goods and from taking unfair advantage of the Plaintiffs reputation and goodwill in the said trademarks or any similar trademark amounting to unfair competition, and or causing dilution of the Plaintiff s abovementioned trademarks;

d) An order for delivery up to the Plaintiff by the Defendants of all finished and unfinished materials and accessories, packaging, labels, dies, blocks, stationery and other material bearing any of the Plaintiff s trademarks or bearing any other mark(s)/logo/device similar thereto, for the purpose of erasure/destruction;

10. The suit is decreed against the defendants in terms of prayers above.

11. The plaintiffs have also suffered immense loss to goodwill and reputation and hence are entitled to a grant of damages not only in terms of compensatory damages but also in the form of punitive damages.

12. The learned counsel for the plaintiff on the issue of punitive and compensatory damages has relied upon *Hindustan Unilever Limited vs. Reckitt Benckiser*, 207(2014) DLT 713(DB) wherein reliance was placed on *Rookesv Barnard*, [1964] 1 All ER 367.

13. It is also submitted the Court must also grant punitive damages taking into account the mala fide conduct of the defendants, which is clearly not proportional to the quantum of actual damages that the plaintiffs have proven through documentary evidence filed in the suit on

the following factors viz defendants despite service, chose not to contest the present proceedings; and it has been in contempt of the injunction order dated 09.05.2016 and have using the impugned online websites.

14. Besides above the learned counsel for plaintiff claimed the rendition of accounts of profit illegally earned by defendants or in the alternate damages to the extent of ₹ 1,00,05,000. The plaintiffs have also relied upon *Jockey International Inc & Anr vs. R. Chandra Mohan & Ors* 211 (2014) DLT 757 which read as under:-

“43. I am in agreement with the aforesaid submission of learned counsel for the plaintiffs that damages in such cases must be awarded and a defendants, who chooses to stay away from the proceedings of the Court, should not be permitted to enjoy the benefits of evasion of court proceedings. Any view to the contrary would result in a situation where a defendants who appears in Court and submits its account books would be liable for damages, while another defendants who, chooses to stay away from court proceedings would escape the liability on account of failure of the availability of account books. A party who chooses not to participate in court proceedings and stays away must, thus, suffer the consequences of damages as stated and set out by the plaintiffs. There is a larger public purpose involved to discourage such parties from indulging in such acts of deception and, thus, even if the same has a punitive element, it must be granted. R.C. Chopra, J. has very succinctly set out in Time Incorporated's case (supra) that punitive damages are founded on the philosophy of corrective justice.”

15. Under the given facts and circumstances of this case where the defendants reclused themselves from the proceedings, cannot be permitted to enjoy the benefits of evasion or covert priorities as has been using the domain websites and have been infringing the plaintiffs' trademark certainly makes the defendants liable to pay the damages to the plaintiffs. Hence, a decree for a sum of ₹ 20.00 Lac in favour of the plaintiffs and against defendants, is also passed on account of infringing the registered marks, trade dress and violating interim order. The plaintiffs shall also be entitled to interest @ 10% pa on the damages so awarded from the date of filing of the suit till the date of realisation.

Costs of the suit is also awarded to the plaintiff and against the defendants. The defendants are jointly and severally liable to pay the damages and costs to the plaintiff. Decree Sheet be drawn.

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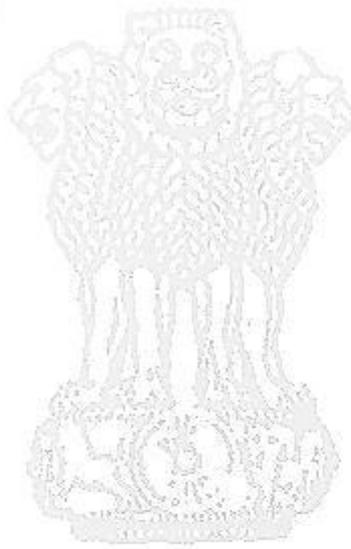
16. In view of above order, the application stands disposed of.

YOGESH KHANNA, J

JULY 31, 2018

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HIGH COURT OF DELHI



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