

'Higher Standards Of Probity Expected From IPR Lawyers': Delhi High Court Restrains Kolkata Law Firm From Using Identical Logo

2022 LiveLaw (Del) 1049

IN THE HIGH COURT OF DELHI AT NEW DELHI

PRATHIBA M. SINGH; J.

CS (COMM) 732/2022 and I.A. 17155/2022-17157/2022; 19.10.2022

SUJATA CHAUDHRI versus SWARUPA GHOSH

Plaintiff through: Mr. Dushyant K. Mahant, and Mr. Jaskaran Singh, Advocates with Plaintiff in person.

Defendant through: Ms. Rajeshwari H., Ms. Sugandh Shahi and Ms. Swapnil Gaur, Advocates with Defendant in person.

ORDER

1. This hearing has been done through hybrid mode.

I.A.17156/2022 (additional documents)

2. This is an application filed on behalf of the Plaintiff seeking leave to file additional documents under the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 (*hereinafter*, 'Commercial Courts Act'). The Plaintiff, if it wishes to file additional documents at a later stage, shall do so strictly as per the provisions of the Commercial Courts Act.

3. **I.A.17156/2022** is disposed of.

I.A. 17157/2022 (for exemption)

4. This is an application filed on behalf of the Plaintiff seeking exemption from filing cleared/typed/translated/original copies of documents at this stage. Exemption is allowed, subject to all just exceptions. **I.A. 17157/2022** is disposed of.

CS (COMM) 732/2022

5. Let the plaint be registered as a suit.

6. Issue summons to the Defendant. Notice is accepted by Ms. Rajeshwari H., Id. Counsel for the Defendant.

7. A written statement to the plaint shall be positively filed within 30 days. Along with the written statement, the Defendant shall also file an affidavit of admission/denial of the documents of the Plaintiff, without which the written statement shall not be taken on record.

8. Liberty is given to the Plaintiff to file a replication within 15 days of the receipt of the written statement. Along with the replication, if any, filed by the Plaintiff, an affidavit of admission/denial of documents of the Defendant, be filed by the Plaintiff, without which the replication shall not be taken on record. If any of the parties wish to seek inspection of any documents, the same shall be sought and given within the timelines.

9. List before the Joint Registrar for marking of exhibits on 2nd December, 2022. It is made clear that any party unjustifiably denying documents would be liable to be burdened with costs.

10. List before Court on 13th January, 2023.

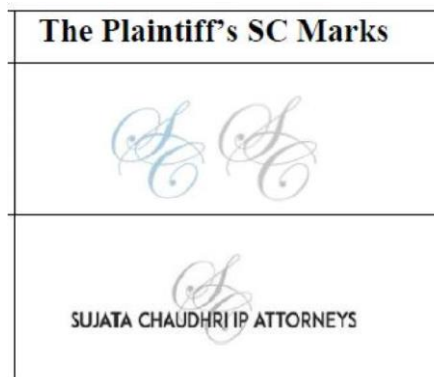
I.A. 17155/2022 (u/O XXXIX Rules 1 & 2 CPC)

11. Issue notice. Notice is accepted.

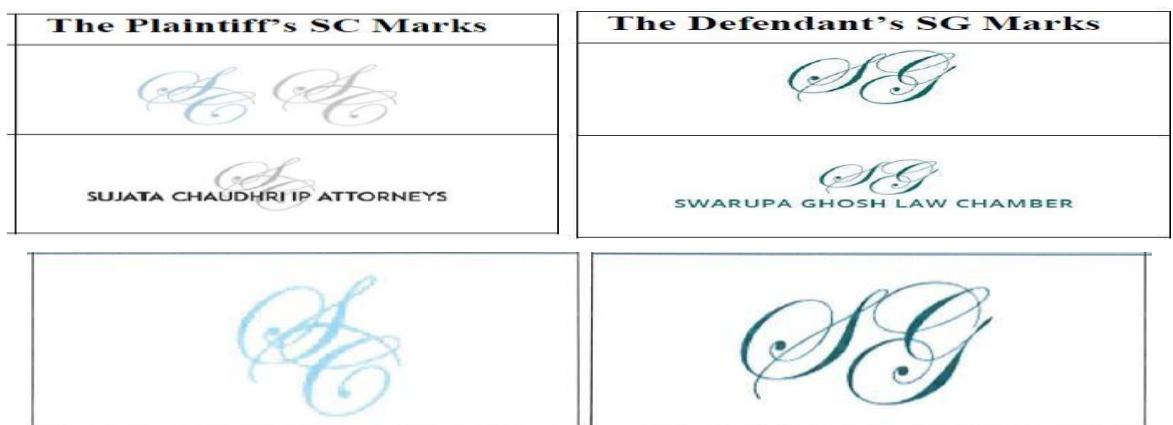
12. The present suit has been filed by the Plaintiff - Ms. Sujata Chaudhri who is the proprietor and managing partner of Sujata Chaudhri IP Attorneys, seeking permanent injunction restraining trademark infringement, copyright infringement and passing off against the Defendant - Ms. Swarupa Ghosh – an IP lawyer.

13. The case of the Plaintiff is that she is an Intellectual Property Rights (IPR) lawyer, who was initially enrolled with the Bar Council of Delhi in 1996. She, thereafter, moved to New York and was admitted to practice law in New York. She relocated to India in 2011 and started the firm Sujata Chaudhri IP Attorneys, a boutique IP law firm in 2014.

14. The Plaintiff adopted a distinctive SC Device Mark which is used either alone or in conjunction with the words SUJATA CHAUDHRI IP ATTORNEYS (*hereinafter, 'Plaintiff's logos'*). The said device mark along with words SUJATA CHAUDHRI IP ATTORNEYS was registered by the Plaintiff bearing No.2823275 in class 45 in respect of legal services including intellectual property consultancy, litigation, legal research, licensing; advisory and consultancy services relating to law, including intellectual property law. The Plaintiff's logos are as follows:



15. The Plaintiff, in mid-2022, learnt that the Defendant had adopted an almost identical logo for her law chamber - Swarupa Ghosh Law Chamber offering legal advisory services, particularly in the area of Intellectual Property Law which is identical to the services provided by the Plaintiff. The said logo contains an SG Device mark along with the words SWARUPA GHOSH LAW CHAMBER (*hereinafter, 'Defendant's logos'*). A comparison of the Plaintiff's and the Defendant's logos is as follows:



16. Mr. Dushyant Mahant, Id. Counsel appearing for the Plaintiff submits that the SC Device mark was designed by the Plaintiff and thus, the copyright in the same is liable to be protected. He further submits that the Plaintiff's adoption of the SC Device mark is prior as it has been in use since 2014, whereas the Defendant has started her practice only in 2017. In view of the fact that the logos were almost identical, the Plaintiff issued a

notice dated 20th June 2022 to the Defendant calling upon her to change her logo. Alternative logos were also suggested in the said notice. Thereafter, the Plaintiff attempted resolution through pre-litigation mediation. However, no amicable settlement could be arrived at. Hence, the present suit.

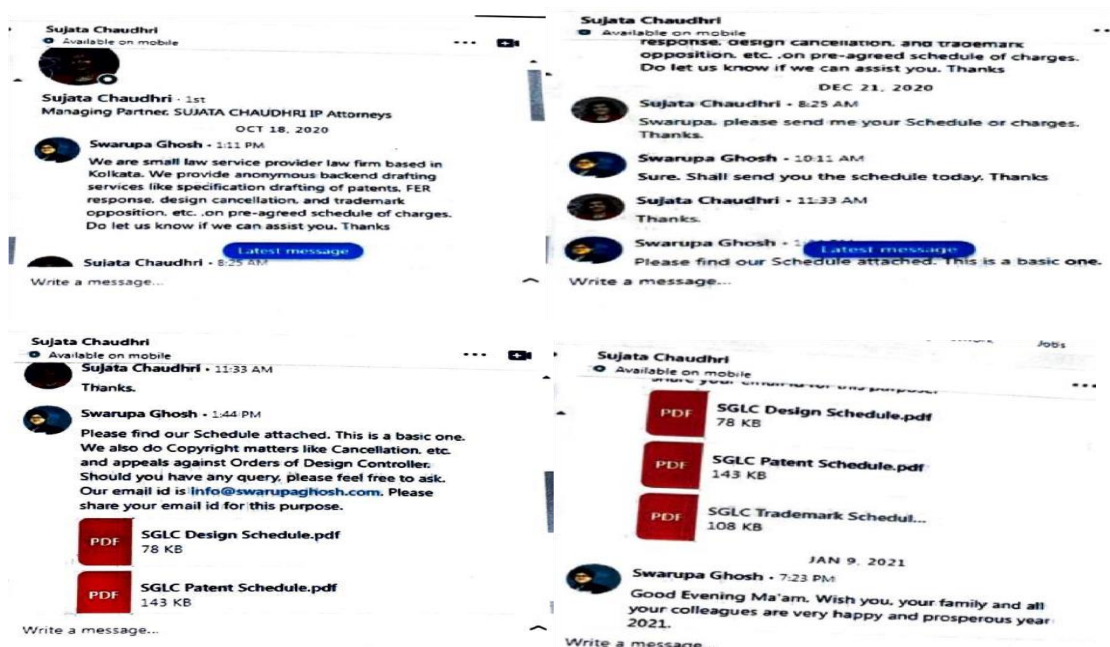
17. Ms. Rajeshwari H., Id. Counsel appearing for the Defendant submits that the Defendant is a *bona fide* adopter of the SG logo, which is based on the Edwardian Script ITC font. The said font is an openly available public domain font and thus, there cannot be any monopoly on it. She further submits that the Defendant and the Plaintiff have exchanged messages on LinkedIn in October, 2020 and hence the claim of the Plaintiff that they learnt of the Defendant's logo in mid-2022 is incorrect.

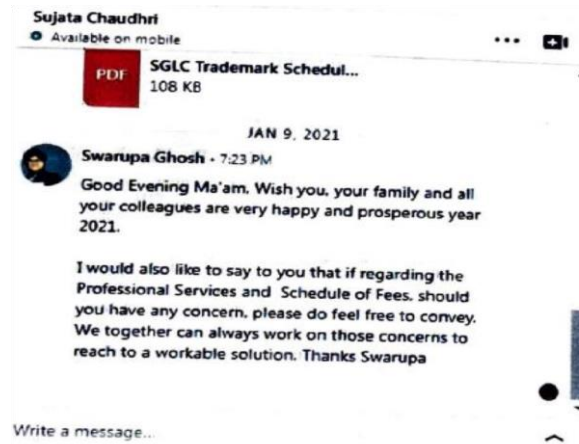
18. Mr. Dushyant Mahant, Id. Counsel submits that insofar as the LinkedIn messages are concerned, the Defendant had contacted the Plaintiff and wanted to share her firm's schedule of charges to which the Plaintiff, out of courtesy, had merely asked her to share the same. He submits that the logo was not noticed by the Plaintiff at that stage as the Plaintiff receives a large number of messages on LinkedIn on a daily basis and that the Defendant's message did not contain the logo. Thus, there has been no acquiescence or waiver by the Plaintiff in respect of the Defendant's logo. Moreover, Mr. Dushyant Mahant, Id. Counsel submits that even during the mediation proceedings, the conduct of the Defendant was not bonafide.

19. Heard counsels for the parties and perused the record.

20. The first and foremost feature of this case is that both the parties are IPR lawyers who offer almost identical services to their clients. The names Sujata Chaudhri and Swarupa Ghosh are not similar and neither the Plaintiff is seeking any injunction *qua* the name. However, a comparison of the Plaintiff's and the Defendant's logos shows that they are almost identical and it is impossible to even decipher the differences between the two. The only issue in this matter relates to the artistic way in which the name of the Defendant's law firm and the SG device mark is written in the Defendant's logo.

21. As per the LinkedIn messages handed over to the court today, it is clear that the Defendant was aware of the Plaintiff's law firm - Sujata Chaudhri IP Attorneys and was promoting her services to the Plaintiff and not the other way around. The messages exchanged between the Defendant and the Plaintiff read as under:





22. The said messages do not highlight or contain the Defendant's logo. The said logo is not visible unless may be one actually opens the message, upon which the logo may become visible. This solitary instance of the Defendant seeking to share her schedule of charges to the Plaintiff cannot be used by the Defendant to argue that there is acquiescence to the Defendant's logo by the Plaintiff.

23. The Plaintiff's logo is a part of the registered mark bearing No.2823275 in class 45 wherein the stylized SC device mark is clearly visible. The said SC device mark forms an inalienable part of the said registration. Under such circumstances, the use of an almost identical logo in respect of identical services would be violative of the Plaintiff's statutory and common law rights. The mere fact that the font may be an openly available font does not mean that the same very font has to be used by the Defendant, from amongst the thousands of font options that are available. The Plaintiff has, bonafidely attempted amicable resolution prior to the filing of the present suit which has also not borne any result. Clearly, therefore, the intervention of the Court would be needed in these facts.

24. This Court is of the opinion that higher standards of probity would be expected, from lawyers and legal professionals especially IPR lawyers, inasmuch as there is a duty cast upon them to ensure that they do not imitate or adopt a name or logo which is already in existence or in use by another person or entity, offering similar services.

25. Owing to the confusing/deceptive similarity between the two logos, this Court is *prima facie* of the opinion that the Plaintiff has made out a *prima facie* case for the grant of interim injunction and that the balance of convenience lies in its favour. Moreover, irreparable injury would be caused to the Plaintiff if the interim injunction is not granted. Thus, the Defendant ought not to be permitted to use its logo, which is almost identical to the Plaintiff's logo.

26. Accordingly, the Defendant shall stand restrained from using the impugned SG logo as extracted above with effect from 1st January, 2023. If the Defendant wishes to adopt the alternative logo to amicably resolve the issue, she is permitted to move an application before this Court.

27. Reply to the application be filed within four weeks.

28. List before the Court on 13th January, 2023.