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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(COMM) 549/2022
USHA INTERNATIONAL LIMITED Plaintiff
Through: Mr.Prashant Gupta, Adv.

versus

MR HASEEN AHMED TRADING AS TUSHA SEWING
MACHINE CO Defendant
Through: Nemo.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

% **08.08.2022**

IA 12641/2022 (Exemption)

1. Allowed, subject to all just exceptions.

IA 12640/2022

2. This is an application seeking exemption from serving a copy of the suit paper book to the defendants in advance.

3. It is alleged that the said service has not been made as it is apprehended that the defendants may, on service of the notice, transfer, remove or dispose of the goods being manufactured under the impugned trade mark and logos. Appointment of a Local Commissioner is also prayed along with the suit.

4. Having considered the contents of the application, the same is allowed. The plaintiff is exempted from making an advance service of the paper book of the suit to the defendants.

IA 12639/2022

5. This is an application filed on behalf of the plaintiff seeking leave to file additional documents which are not in the power, possession, control or

custody of the plaintiff at the moment.

6. The plaintiff may file the additional documents strictly in accordance with the provisions of the law.

7. The application stands disposed of.

CS(COMM) 549/2022

8. Let the plaint be registered as a suit.

9. Issue summons to the defendants to be served through all permitted modes, including electronically, returnable on 7th December, 2022.

10. The summons to the defendant(s) shall indicate that the written statement(s) to the plaint shall be positively filed within a period of 30 days from the date of receipt of summons. Along with the written statement(s), the defendant(s) shall also file the affidavit(s) of admission/denial of the documents of the plaintiff, without which the written statement(s) shall not be taken on record.

11. Liberty is given to the plaintiff to file a replication(s) within a period of 15 days of the receipt of the written statement(s). Along with the replication(s), if any, filed by the plaintiff, the affidavit(s) of admission/denial of documents of the defendant(s) be filed by the plaintiff, without which the replication(s) 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.

IA 12637/2022



12. Issue notice.

13. On the plaintiff taking steps, let notice be served on the defendants through all permissible modes, including electronically, returnable on 7th December, 2022.

14. Let reply to the application be filed by the defendants within a period of four weeks of receipt of notice. Rejoinder thereto, if any, be filed within a period of two weeks thereafter.

15. It is the case of the plaintiff that the plaintiff adopted the mark **USHA** in the year 1936 and has been using the same in relation to sewing machines and parts thereof since then. With the passage of time, it has worked tirelessly to build the reputation and goodwill in the said mark. The same was first registered under the registration no.3058 for '*sewing machines*' under Class 07 as far back as 04.08.1942. The plaintiff gives the details of its various registration in the said mark in paragraph 11 of the plaint.

16. The plaintiff asserts that its sales in the financial year 2021-22 alone were to the tune of Rs.57,360 Lakh. The total annual expenditure on advertisement and promotion for the same period was Rs.9710.57 Lakh.

17. The plaintiff has contended that the logos  and  comprise an '*original artistic work*' under Section 2(c) of the Copyright Act, 1957 (in short, 'the Copyright Act') and were registered as copyrighted works of the plaintiff in the years 1970 and 1979, thereby giving the plaintiff the exclusive right to copy or reproduce the same.

18. The plaintiff is aggrieved of the adoption of the mark **TUSHA** as also

the logos  and  by the defendants.

The plaintiff claims that it gained knowledge of the use of the said mark only in the first week of March, 2022. Thereafter, it served the defendants with the cease-and-desist notice dated 21.03.2022. The defendants, however, asserts that their mark is registered under the registration no.

4643131 dated 06.09.2020 under Class 07 with respect to the ‘*sewing machines and parts thereof included in Class-7 (except needles)*’.

19. The plaintiff asserts that this registration was applied for by the defendant on a ‘*proposed to be used*’ basis. The registration was granted during the period when the country was struggling with the COVID-19 pandemic, and in terms of the judgment of passed by a Co-ordinate Bench of this Court in WP(C)-IPD No.4/2022 titled ***Dr.Reddy’s Laboratories Ltd. vs. Controller General of Patent Designs & Trade Marks***, the registration of the said mark, on opposition being filed by the plaintiff, is deemed to have been suspended.

20. The learned counsel for the plaintiff asserts that the adoption of mark by the defendants is dishonest and is intended only to ride on the reputation of the plaintiff.

21. The learned counsel for the plaintiff also submits that the mark of the plaintiff has already been declared to be a ‘well-known trade mark’ under Section 2(1)(zg) of the Trade Marks Act, 1999 in ***Usha Rani v. Registrar of Trade Marks and Anr.***, 2004 (29) PTC 647 (IPAB).

22. Having considered the submissions made by the learned counsel for the plaintiff, perused the plaint and the documents annexed therewith, I am of the opinion that the plaintiff has been able to make out a good *prima facie* case in its favour. The two marks appear to be deceptively similar; the plaintiff has shown its goodwill and reputation in its mark; and also asserted that it has been zealously protecting the same. The balance of convenience is also in favour of the plaintiff and against the defendants.

23. The plaintiff is likely to suffer grave injury in case *ad-interim* injunction is not granted at this stage.

24. Accordingly, an *ad-interim* injunction in terms of paragraphs 45(i) to 45(iii) of the application is granted in favour of the plaintiff and against the defendants till the next date of hearing.

25. Compliance with Order XXXIX Rule 3 the Code of Civil Procedure, 1908, be made within a period of two weeks from today.

IA 12638/2022


26. Having considered the above submissions and averments, I am of the opinion that the plaintiff has been able to make out a case for an appointment of a Local Commissioner to visit the premises of the defendants, details whereof are, as under:

- (i) 95/26, Haleem Compound, Parade, Kanpur – 208001, Uttar Pradesh;
- (ii) 88/384, Apna Palace, Near Rupam Chauraha, Nala Road, Kanpur – 208001, Uttar Pradesh.

27. I appoint Ms. Deeksha Khurana, Advocate, X-3, Civil Wing, Tis Hazari Court Complex, New Delhi-110054 (Mobile-9811911222) as a Local Commissioner to visit the abovementioned premises of the defendants.

28. The Local Commissioner shall undertake the following activities:-

- a) Take stock of and inventorize all products, including labels, packing material, stationery, business cards, carry bags, price stickers, visiting cards, bill boards, brochures, promotional material, point of sale material, letter heads, cash memos, signage, sign posts, leaflets, cartons or any other item of whatsoever description and nature,

bearing the mark 'TUSHA' and the logos  and



and/ or any other marks/logos which may be

identical or deceptively or confusingly similar to the mark 'USHA'

and the logos  and ;

b) Confiscate and release on *superdaari* to the defendants all the products including labels, packing material, stationery, business cards, carry bags, price stickers, visiting cards, billboards, brochures, promotional material, point of sale material, letter heads, cash memos, signage, sign posts, leaflets, cartons or any other item of whatsoever description and nature, bearing the mark 'TUSHA' and the logos



c) Take copies of each and every page of the ledger books of accounts or any similar records maintained by the defendants in the ordinary course of business from the time the impugned acts arose;

d) Seize the hard-disk of any computer and prepare computer print outs if the defendants states that all accounts are being maintained and stored on the hard- disk of the computer;

e) Carry samples of the infringing material found at the premises of the defendants for submission before this Court;

f) Photograph/videograph the proceedings, herself or with the assistance of the representatives of the plaintiff, and prepare and submit an investigation report to this Court; and

g) Break open locks in case of resistance.

29. The Local Commissioner shall be at liberty to seek police assistance and protection, if required, to execute the order of this court, and the SHO of

the said area is directed to provide immediate assistance to the Local Commissioner upon request.

30. The fee of the Local Commissioner is fixed at Rs.1,50,000/- (Rupees One Lakh Fifty Thousand only) apart from the out of pocket expenses, to be paid by the plaintiff at this stage.

31. The application is allowed in the above terms.

32. This order may not be uploaded on the website of the High Court of Delhi for a period of ten days.

33. *Dasti.*

NAVIN CHAWLA, J

AUGUST 8, 2022

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