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IN THE HIGH COURT OF DELHI AT NEW DELHI

CORAM: HON'BLE MS. JUSTICE JYOTI SINGH

CS(COMM) 152/2022; 08.03.2022

AKTIEBOLAGET VOLVO & ORS. versus LAMINA SUSPENSION PRODUCTS LIMITED

Plaintiffs Through: Mr. Pravin Anand, Ms. Vaishali Mittal, Mr. Siddhant Chamola and Mr. Karan Kamra, Advocates.

ORDER

I.A. 3744/2022 (Exemption) & I.A. 3747/2022 (Exemption from institution of pre-litigation)

1. Allowed subject to all just exceptions.
2. Applications stand disposed of.

I.A. 3743/2022 (U/O XI R I (4) CPC)

3. Present application has been preferred on behalf of the Plaintiffs seeking leave to file additional documents.
4. Plaintiffs, if they wish to file additional documents at a later stage, shall do so strictly as per the provisions of the Commercial Courts Act, 2015 within a period of 30 days.
5. Application is disposed of.

I.A. 3745/2022 (U/O 26 R-9 R/W S. 151 CPC)

6. Mr. Anand, Learned Counsel for the Plaintiffs states that he does not wish to press this application.
7. Application is disposed of.

I.A. 3746/2022 (Exemption from advance service to the Defendant)

8. Since there is an urgency in the matter and the matter is heard today, Plaintiffs are exempted from serving Defendant with advance notice.
9. Application is disposed of.

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10. Let the plaint be registered as a suit.
11. Upon filing of process fee, issue summons to the Defendant, through all permissible modes, returnable on 31.03.2022. Summons shall state that the written statement shall be filed by the Defendant within 30 days from the receipt of summons. Along with the written statement, the Defendant shall also file an affidavit of admission/denial of the documents of the Plaintiffs.
12. Replication be filed by the Plaintiffs within 15 days of the receipt of the written statement. Along with the replication, an affidavit of admission/denial of documents filed by the Defendant, shall be filed by the Plaintiffs. If any of the parties wish to seek

inspection of any documents, the same shall be sought and given within the timelines.

13. List before the Joint Registrar for marking of exhibits on 31.03.2022.

I.A. No.3742 of 2022

14. Issue notice to the Defendant through all prescribed modes, returnable on 31.03.2022, before the Joint Registrar.

15. Present application has been preferred by the Plaintiffs under Order XXXIX Rules 1 and 2 read with Section 151 of the Code of Civil Procedure 1908 for grant of *ex parte ad interim* injunction restraining the Defendant, its subsidiaries, affiliates, franchisees, proprietors, officers, servants, agents, distributors, stockists, representatives and anyone acting for or on its behalf from using the Plaintiffs' name/trademarks 'VOLVO' and 'FMX' and/or any name/mark confusingly or deceptively similar thereto, in relation to leaf springs and other parts used in the Plaintiffs' heavy vehicles or any other goods or services, in any manner, including on its websites including www.laminasprings.com and www.laminasuspension.com, social media accounts, third party websites including but not limited to www.indiamart.com or any representation made online by the Defendant, its affiliates, subsidiaries and anyone acting for or on its behalf amounting to infringement and dilution of the Plaintiffs' registered trademarks 'VOLVO', 'FMX' of the Plaintiff and from passing off its products as emanating from the Plaintiffs.

16. The present suit is filed for permanent injunction restraining infringement of trademark, passing off, damages, delivery, etc. It is prayed in the plaint that a decree of permanent injunction be passed to restrain the Defendants, etc. from using the mark/name 'VOLVO' and 'FMX' or any other mark/name deceptively similar to the Plaintiff's registered trademarks 'VOLVO' and 'FMX' which would infringe Plaintiffs' registered trademark nos. 361886, 1404133, 1930763, 3249588, 3251273, 763280, 1384891, 1466300, 1759085, 1759086, 1759087, 1759088, 1759089, 2119694 and 1870312 and other trademark registrations. Other connected reliefs are also sought.

17. Learned counsel appearing on behalf of the Plaintiffs submits that Plaintiff No. 1 adopted the trade mark/name VOLVO in 1915 and is an international automotive and transport vehicle group. The Plaintiffs offer a wide spectrum of transportation related products and services with a strong foothold in luxury buses and related services, with superior quality and high standards of safety and environmental care, to customers in selected segments. Today, Plaintiff No. 1 is a world leader in heavy commercial vehicles such as trucks, buses and construction equipment, as well as in drive systems for marine and industrial applications while Plaintiff No. 3 occupies a prominent position as producer and distributor of a premium range of cars that includes sedans, wagons, sports wagons, cross country cars and SUVs. Plaintiff Nos. 1 and 3 manufacture goods and provide related services throughout the world under the trade mark/name 'VOLVO'.

18. Mr. Anand further submits that in addition to their core business in the transportation and automotive sector, Plaintiffs' use of the VOLVO mark also extends

to a wide range of ancillary products, services, and businesses. Illustratively, the Plaintiffs have created a diverse range of VOLVO merchandise goods which include stationery, bags, watches, clothing and a range of other accessories which further enhances the brand visibility of the Plaintiffs' trade mark, name and house mark VOLVO. The Plaintiffs' trade mark 'Volvo' has been declared as a well-known mark as defined under Section 2(l)(zg) of the Trade Marks Act, 1999 by a Division Bench of the Bombay High Court in an appeal titled ***Aktiebolaget Volvo of Sweden vs. Volvo Steels Ltd. of Gujarat (India), 1998 PTC (18) 47***. Pursuant to this, the well-known status of the Plaintiffs trade mark VOLVO in India was recognized by the Trade Marks Registry and the VOLVO trade mark has been inserted in the list of well-known marks.

19. Mr. Anand submits that as a result, Plaintiffs' VOLVO trade mark is entitled to the high degree of protection conferred under law, across all Classes, including against disparate products and services. The status of the Plaintiffs' VOLVO trade mark has been recognized by this Court on several occasions and Plaintiffs have been granted injunction orders restraining third parties from using the trade mark VOLVO or a deceptively similar mark in relation to a wide range of products/services including wallets, bags, belts and buckles, buses, etc. Plaintiff No.4 is one of the largest medium to heavyduty truck brands in the world. The said vehicles are stated to be sold and serviced in more than 130 countries all over the world. It also provides specific offers and aftermarket products and services in relation to the same. The trucks of the Plaintiff No.4 are assembled in 13 countries across the globe. The models of the trucks being provided worldwide by it include: Volvo FH16, Volvo FH, Volvo FM, Volvo FMX, Volvo FE and Volvo FL. Plaintiff No. 4 uses the trademark 'FMX' in relation to their renowned 'VOLVO FMX' trucks. It is pleaded that the term 'FMX' denotes 'Forward Control Medium Extreme'. The FMX trucks are stated to be multi-purpose trucks which cater to duties of construction, distribution and highway/offhighway transport. The said trademark is registered in favour of the Plaintiffs in Class 12 for 'Trucks and their Integral Parts' and a copy of the trademark registration details are at page nos. 251- 252 of the list of documents filed with the Plaint.

20. Mr. Anand further pleads that the Plaintiffs became aware of the Defendant's activities during July, 2021, through credible market sources that the said Defendant is engaged in manufacturing, selling, dealing, supplying and exporting a wide array of leaf springs and automobile leaf springs under the name/marks 'VOLVO' and 'FMX' identical to the registered trademarks of the Plaintiffs. Further investigations revealed that the Defendants were supplying their infringing goods under the mark 'VOLVO' and 'FMX' across India via direct orders and also through e-commerce portal IndiaMart.

21. The investigators of the Plaintiffs thereafter contacted the Defendant for ordering the infringing goods bearing the marks 'VOLVO' and 'FMX' and, pursuant to telephonic conversations and email correspondence, were successful in placing an order of the said infringing goods. The said infringing goods are stated to have been duly delivered in Delhi on 8th November, 2021 and were confirmed on inspection to

be non-genuine products which do not emanate from the Plaintiffs. The Plaintiffs have a strong apprehension that the Defendant's products are inferior in quality in comparison to the original products manufactured by the Plaintiffs.

22. The act of the Defendant in using an identical mark as the Plaintiffs' registered trademarks 'VOLVO' and 'FMX' *prima facie* tantamounts to infringing the statutory and common law rights of the Plaintiffs.

23. The Plaintiffs have made out a *prima facie* case. Balance of convenience lies in favour of the Plaintiffs and they are likely to suffer irreparable harm in case the injunction, as prayed for, is not granted.

24. Accordingly, as an ex parte ad interim injunction, Defendant, its subsidiaries, affiliates, franchisees, proprietors, officers, servants, agents, distributors, stockists, representatives and anyone acting for or on its behalf are restrained from using the Plaintiffs' name/trademarks 'VOLVO' and 'FMX' and/or any name/mark confusingly or deceptively similar thereto, in relation to leaf springs and other parts used in the Plaintiffs' heavy vehicles or any other goods or services, in any manner, including on its websites including www.laminasprings.com and www.laminasuspension.com, social media accounts, third party websites including but not limited to www.indiamart.com or any representation made online by the Defendant, its affiliates, subsidiaries and anyone acting for or on its behalf, till the next date of hearing.

25. Defendant is further directed to file a statement of accounts and assets on affidavit within a period of 2 weeks from service of notice of the present application. Defendant is also restrained from disposing of or dealing with its assets in a manner which may adversely affect the Plaintiffs' ability to recover damages (as may be computable), costs or other pecuniary remedies.

26. Plaintiffs shall comply with provisions of Order XXXIX Rule 3 CPC within one week from today.

27. A copy of this order be given dasti to the learned counsel for the Plaintiffs.