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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of Decision: 2nd August, 2023
 + **CS(COMM) 856/2022**
 WHITEHAT EDUCATION TECHNOLOGY PRIVATE
 LIMITED Plaintiff
 Through: Mr. Prithvi Singh, Mr. Rohan Seth,
 Ms. Archita Nigam, Advs.
 versus
 VINAY KUMAR SINGH Defendant
 Through: None.
CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

I.A. 14215/2023 (for exemption)

2. Allowed, subject to all just exceptions. Application is disposed of.

I.A. 14214/2023 (u/O XIII-A Rule 3 & 6(1)(a) CPC)

3. The present suit has been filed by the Plaintiff-Whitehat Education Technology Private Limited against the Defendant- Mr. Vinay Kumar Singh.

4. It is the Plaintiff's case that it runs an edu-tech startup that teaches coding to children, through its online platform. The Plaintiff develops the curriculum and also imparts lessons through live interactive online classes, offering flexibility for children to learn coding online. Moreover, the Plaintiff's online platform provides practice sessions for children, and the platform also encourages children to develop apps, games and animation.

5. The Plaintiff was originally established in 2018, and was acquired in August, 2020 by 'Think & Learn Pvt. Ltd.' for 300 million dollars, which is operated by online platform Byju's. It then expanded its business to offer



classes in music, art, animation, video, etc. The Plaintiff operates through domain name www.whitehatjr.com which was registered on 23rd May, 2018. The Plaintiff's revenues, in the peak of the COVID-19 pandemic, were stated to be over Rs.480 crores in 2020-21. The Plaintiff claims its popularity through its followers on social media platforms such as Instagram, YouTube, etc. where it boasts of lakhs of subscribers and followers.

6. Insofar as the mark 'WHITEHAT JR' is concerned, the Plaintiff has registrations for the said mark in several classes. The details of the same have been set out in para 14 of the plaint.

7. The Defendant is involved in providing services related to digital and online marketing, web development, and search engine optimization (SEO).




8. The case of the Plaintiff is that in October 2022, the Defendant started a domain name/website by the name www.whitehatsr.in and adopted the



logo . The registration of the domain name was obtained on 9th March, 2020 and the Defendant was also available on various social media platforms. According to the Plaintiff, the structural similarity of the 'W' logo used by the Defendant, with an arrow pointing upwards, to the Plaintiff's logo with a rocket launching upwards, indicates a deliberate design to deceive customers.

9. A comparative representation of the competing marks is set out below:



Plaintiff's 'WhiteHat Jr' trademarks	Defendant's marks
	
	

10. The Plaintiff, aggrieved by the adoption of the said impugned mark 'WHITEHAT SR', sent a legal notice dated 4th October 2022 to the Defendant, demanding them to stop using the impugned mark. Despite there being no response, the Plaintiff followed up with a reminder on 17th October 2022. The Defendant finally responded on 18th October 2022, refusing to halt the use of the impugned mark 'WHITEHAT SR'. The Defendant justified its use by claiming that their marks are distinct from the Plaintiffs' 'WHITEHAT JR' trademarks and are used for different services.



11. The Plaintiff then filed the present suit seeking an injunction. Vide order dated 12th December, 2022, this Court had granted an *ex parte ad interim* injunction in the following terms:

“28. In the prima facie opinion of the Court, the consumers will be misled that the defendant is in some manner associated/affiliated with the plaintiff or the services are connected to that of the plaintiff.

29. A prima facie case has been made out on behalf of the plaintiff. Balance of convenience is in favour of the plaintiff and against the defendant. Irreparable harm and injury would be caused to the goodwill and reputation of the plaintiff if the defendant is continued to use the



impugned marks. 30. Consequently, till the next date of hearing, the defendant, its agents, representatives and/or all other acting for and on its behalf are restrained from using the marks “WHITEHAT

SR”/  /  or any other deceptively similar variant thereof as a trademark, tradename, domain name, as a part of its email address/es or in any other manner which amounts to infringement of the plaintiff’s trademarks.

31. Godaddy.com LLC is directed to suspend access and operation of the impugned website/domain name, i.e., whitehatsr.in and take down the said domain name of the defendant. 32. Defendant is also directed to take down all social media pages including but not limited to Facebook, Instragram and LinkedIN which infringes the trademarks of the plaintiff.”

12. Subsequent to this order, the Defendant was served through e-mail, and repeated service has not elicited any appearance from the Defendant. The Defendant has in fact, replied to an e-mail of the Plaintiff sent on 13th December, 2022. The reply of the Defendant received on the same date is as follows:

*“Dear Sir,
Sir, for your information, let me tell you that all kinds of domain related work and work has stopped a long time ago. We want to inform you that you should check once again. You will be greatly pleased. We had taken the domain from GoDaddy. We bought it after spending Rs.1600. We are very small people. Even our 1600 rupees were wasted. but never mind. We have closed the domain anyway. You said, I was unaware and unknowingly bought the domain from Godeddy. If I had known that buying domains from Godaddy was wrong, I would have done it. **Please forgive me. I am not running any domain from godaddy like this anymore. You can***



check the website if you want. It's closed, sir. My English is a little poor. So sorry. Thank You!

13. Ld. Counsel for the Plaintiff has now moved an application under Order XIII-A CPC for summary judgment in view of the clear stand of the Defendant that he does not wish to use the mark and has already stopped use of the mark 'WHITEHAT SR'. The website of the Defendant is also stated to be non-operational.

14. Heard. The present application under Order XIII-A of the CPC seeks summary judgment. In so far as the prayer for summary judgment is concerned, as per the Commercial Courts Act, 2015 read with the Delhi High Court (Original Side) Rules, 2018 (hereinafter, '*Original Side Rules*') and Rule 27 of the IPD Rules, summary judgment can be passed under Order XIII A of the CPC, if the Defendant has no real prospect of succeeding in the matter. Rule 27 of the IPD Rules read as under:

"27. Summary Adjudication

In cases before the IPD, the Court may pass summary judgment, without the requirement of filing a specific application seeking summary judgment on principles akin to those contained in Order XIII A, Code of Civil Procedure, 1908 as applicable to commercial suits under the Commercial Courts Act, 2015."

15. In *Mallcom (India) Limited v. Rakesh Kumar, [CS(COMM) 480/2016, dated 19th March, 2019]* the ld. Single Judge of this Court has observed :

"24. The test for summary judgment, as prescribed in Rule 3 of Order XIII A of the CPC as applicable to Commercial Courts Act is, that "the defendant has no real prospect of successfully defending the claim" and that "there is no other compelling reason why the claim should not be disposed of before recording the oral





evidence". Rule 1 of Chapter XA of the Delhi High Court (Original Side) Rules merely provides that "At the time of Case Management hearing, a Court, may of its own, decide a claim pertaining to any dispute, by a summary judgment, without recording oral evidence" and Rule 3 therein reiterates the language aforesaid of Rule 3 of Order XIII A qua grounds for summary judgment."

16. The mark 'WHITEHAT JR' is a registered trademark which has acquired enormous reputation owing to the extensive use which has been done over a short period of time. The impugned mark of the Defendant is 'WHITEHAT SR', which is almost identical to the Plaintiff's mark. In fact, the writing style of the letter 'W' is also identical to the Plaintiff's writing style. The mark is a registered trademark of the Plaintiff.

17. Considering these facts, the Defendant cannot be permitted to use the impugned mark 'WHITEHAT SR' either in physical or in online platforms in any manner whatsoever. The application under Order XIII-A CPC has attached the correspondence with the Defendant which also shows that the Defendant is not interested in contesting the matter.

18. Under such circumstances, this is a fit case for passing of a decree under Order XIII-A CPC for summary judgment, as prayed for by the Plaintiff.

19. The Defendant is accordingly restrained by a permanent injunction

from using the mark 'WHITEHAT SR' and logos  ,  or any mark or name which is either identical or deceptively similar variant of the Plaintiff's trademark and tradename 'WHITEHAT JR' either as a part of the its trademark, trading style or domain name or even in e-mail addresses which would result in violation of the Plaintiff's statutory and common law



rights.

20. A decree is also granted directing Godaddy.com to transfer the domain name www.whitehatsr.in upon payment of requisite charges, if any.

21. The Supreme Court *Uflex Ltd. v. Government of Tamil Nadu [Civil Appeal Nos. .4862-4863 OF 2021, Judgement dated 17th September 2021]* has categorically held that award of costs should ordinarily follow in commercial matters, and should serve the purpose of curbing frivolous and vexatious litigation. The relevant portion of the said judgment is as follows:

“53. We may note that the common thread running through all these three cases is the reiteration of salutary principles: (i) costs should ordinarily follow the event; (ii) realistic costs ought to be awarded keeping in view the ever increasing litigation expenses; and (iii) the cost should serve the purpose of curbing frivolous and vexatious litigation.

...

*56. We have set forth the aforesaid so that there is appreciation of the principles that in carrying on commercial litigation, **parties must weigh the commercial interests, which would include the consequences of the matter not receiving favourable consideration by the courts. Mindless appeals should not be the rule. We are conscious that in the given facts of the case the respondents have succeeded before the Division Bench though they failed before the learned single Judge. Suffice to say that all the parties before us are financially strong and took a commercial decision to carry this legal battle right up to this Court.** They must, thus, face the consequences and costs of success or failure in the present proceedings.*

....

59. We have scrutinised the bill of fee and costs. We are inclined to allow actual costs. However, we have modulated the costs insofar as appellant is concerned to the extent of the indicated amount of the Advocate-on-



Record and allow 50% of the same.”

22. This Court in *Cross Fit LLC v. RTB Gym and Fitness Centre [CS (COMM) 543/2021, decision dated 6th September 2022]* has also followed the above principle of granting actual costs as laid down in *Uflex Ltd. (supra)*.

23. Due to the fact that the Defendant has not contested the matter, but compelled the Plaintiff to file the present suit, by not agreeing to give up the infringing mark, despite being put to notice, the Plaintiff is entitled to receive actual costs.

24. The bill of actual costs, placed on record as a part of the present application, shows that the actual costs amount to Rs.9,24,000/-. Accordingly, a decree is granted in favour of the Plaintiff for the sum of Rs.9,24,000/-.

25. Let the decree sheet be drawn-up accordingly.

26. The present suit is disposed of. All pending applications are also disposed of.

27. Next date of hearing stands cancelled.

PRATHIBA M. SINGH
JUDGE

AUGUST 2, 2023

Rahul/dn