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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 22nd August, 2023

+ **CS(COMM) 583/2023 and I.A. 15884/2023-15889/2023**

CHRISTIAN LOUBOUTIN SAS & ANR. Plaintiffs

Through: Mr. Pravin Anand, Mr. Dhruv Anand,
Ms. Udit Patro & Ms. Nimrat Singh,
Advocates.

versus

M/S THE SHOE BOUTIQUE – SHUTIQ Defendant

Through: Mr. Amit Verma, Mr. Siddhartha
Luthra, Advocates along with Mr.
Kunal Makkar.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUDGMENT

1. This hearing has been done through hybrid mode.

I.A. 15887/2023 (for exemption)

2. This is an application seeking exemption from filing originals/cleared/translated copies of documents, left side margins, *etc.* Original documents shall be produced/filed at the time of Admission/Denial, if sought, strictly as per the provisions of the Commercial Courts Act and the DHC (Original Side) Rules, 2018.

3. Exemption is allowed, subject to all just exceptions.

I.A. 15886/2023 (for additional documents)

4. This is an application 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 Plaintiffs, if it wishes to file additional documents at a later stage, shall



do so strictly as per the provisions of the Commercial Courts Act and the DHC (Original Side) Rules, 2018.

5. Application is disposed of.

6. Accordingly, application is disposed of.

I.A. 15889/2023 (u/S 12A of the Commercial Courts Act)

7. This is an application seeking exemption from instituting pre-litigation mediation. In view of the fact that ex-parte urgent orders are sought and in terms of orders passed in *Chandra Kishore Chaurasia v. R A Perfumery Works Private Ltd, 2022/DHC/004454*, the application is allowed and disposed of.

I.A. 15888/2023 (u/S 149 r/w Section 151 CPC)

8. This is an application under Section 149 CPC filed by the Plaintiffs seeking further time to pay the entire court fees. Let the court fees be filed within one week.

9. Application is disposed of.

CS(COMM) 583/2023 & and I.A. 15884/2023 (for stay), and I.A. 15885/2023 (for discovery),

10. Let the plaint be registered as a suit.

11. Issue summons and notice to the Defendant.

12. Ld. counsel for the Defendant accepts summons and notice.

13. The present suit has been filed by Plaintiff No.1- Christian Louboutin SAS and Plaintiff No.2- Clermon ET Associes, France against the Defendant- M/s Shoe Boutique (Shutiq), a partnership firm which is involved in the manufacture and sale of shoes.

14. The case of the Plaintiffs is that they are entities existing in France. The first shop of the Plaintiffs is stated to have opened in 1991 in Paris. The



Plaintiffs are known for the well-known 'RED SOLE' shoes which are manufactured and sold by them. The manner in which the rights in intellectual property of Christian Louboutin, the founder was transferred to Plaintiff No. 2 - Clermon ET Associes, a trust holding all the IPR, is explained in paras 4 and 5 of the plaint. Plaintiff No.2- Christian Louboutin SAS is the exclusive licensee of all the IP from Plaintiff No.1. The 'RED SOLE' on heeled shoes is a signature design of the Plaintiffs which is also registered as a trademark. Some very well-known celebrities have endorsed the Plaintiffs' products as detailed in the plaint. The shoes of the Plaintiffs have been depicted in well-known TV series and films including 'Sex and the City Part-I & II', 'Devil Wears Prada' and 'The Proposal'.

15. The case of the Plaintiffs is that their shoes have acquired enormous reputation and goodwill not only globally but also in India. Various Indian and international magazines have depicted the Plaintiffs' shoes and advertisements. A perusal of the same would show that the mark has been extensively used across the world. The details of the trademark registration of the Plaintiffs are set out below:

TRADEMARK	REG. NO.	DATE	CLASSES
	1922048	15.02.2010	25



	2341893	01.06.2012	18
	2341894	01.06.2012	25

16. In India, the Plaintiffs' products with the unique designs have been sold since February, 2012. The Plaintiffs have in view of the extensive reputation enjoyed by the Plaintiffs' designs have also started a "Stopfake" program by which consumers or anyone interested could provide details of either counterfeit or look alike products which would then be looked into by the Plaintiffs.

17. Apart from the 'RED SOLE' shoe, the Plaintiffs are stated to have also adopted and created a new unique 'SPIKED SHOE STYLE' with spike patterns. The spike patterns are created on both men and women shoes. The Plaintiffs are stated to have adopted the 'SPIKED SHOE STYLE' in around



2010. The claim of the Plaintiffs is that the ‘SPIKED SHOE STYLE’ is inherently distinctive and the same can be instantly recognised as emanating from the Plaintiffs alone.

18. The sales figure of the Plaintiffs for 2022 in India is approximately Rs.22 crores. The Plaintiffs have filed the present suit being aggrieved by the Defendant’s manufacture and sale of identical spike design shoes and footwear. The Defendants operate in various malls including Select Citywalk Mall, Saket from where the spike footwear has been picked up by the Plaintiffs’ investigators.

19. The case of the Plaintiffs is that the Defendant firm is a partnership firm of the Makkar family and that the Defendant is manufacturing identically designed shoes with the same get up. Purchases were made by the Plaintiffs both in Delhi, Hyderabad and other cities where the Defendant is located. It is the case of the Plaintiffs a comparison of the shoes shows that the Defendant has identically copied the shoe designs. For the sake of comparison, the same is set out below:

#	SHOE STYLES COPIED BY SHUTIQ	PLAINTIFFS’ ORIGINAL SHOE STYLES	DATE OF FIRST USE	DATE OF BAILIFF REPORT
1.	 <p>SHUTIQ - ARROWHEAD CROCO SNEAKERS</p>	 <p>CHRISTIAN LOUBOUTIN - PIK BOAT VELOURS BLACK (Spring-Summer 2013 Collection)</p>	27 th May 2012	18 th June, 2012



2.	 <p>SHUTIQ - ARROWHEAD CROCO SNEAKERS</p>	 <p>CHRISTIAN LOUBOUTIN - PIK BOAT PYTHON BLACK (Fall-Winter 2018 Collection)</p>	27 th May 2012	19 th December, 2017
3.	 <p>SHUTIQ - ARROWHEAD CROCO SNEAKERS</p>	 <p>CHRISTIAN LOUBOUTIN - PIK BOAT PYTHON WHITE (Spring-Summer 2013 Collection)</p>	27 th May 2012	18 th June, 2012
4.	 <p>SHUTIQ - PARDUS ARROWHEAD</p>	 <p>CHRISTIAN LOUBOUTIN - PIK BOAT PYTHON ROCCIA (Spring-Summer 2020 Collection)</p>	27 th May 2012	19 th July, 2019
5.	 <p>SHUTIQ - GOLD STAIN ARROWHEAD</p>	 <p>CHRISTIAN LOUBOUTIN - PIK BOAT PONY LEOPARD (Fall-Winter 2018 Collection)</p>	27 th May 2012	19 th December, 2017



6.	 <p>SHUTIQ - POISEE SNEAKERS</p>	 <p>CHRISTIAN LOUBOUTIN - BOAT STRASS (Spring-Summer 2020 Collection)</p>	27 th May 2012	19 th July, 2019
7.	 <p>SHUTIQ - POISEE RAINBOW</p>	 <p>CHRISTIAN LOUBOUTIN - DANDELION STRASS (Fall-Winter 2017 Collection)</p>	21 st November 2016	1 st December, 2016
8.	 <p>SHUTIQ - POISEE GOLD</p>	 <p>CHRISTIAN LOUBOUTIN - DANDELION STRASS (Fall- Winter 2018 Collection)</p>	21 st November 2016	19 th December, 2017
9.	 <p>SHUTIQ - POISEE STERLING</p>	 <p>CHRISTIAN LOUBOUTIN - DANDELION STRASS (Fall- Winter 2017 Collection)</p>	21 st November 2016	1 st December, 2016



10.	 <p>SHUTIQ - ARIA COAL GOLD STUDED</p>	 <p>CHRISTIAN LOUBOUTIN - ROLLERBOY SPIKES SILVER (Fall-Winter 2010 Collection)</p>	30 th November 2009	8 th February, 2010
11.	 <p>SHUTIQ - ARIA SAPPHIRE STERLING STUDED</p>	 <p>CHRISTIAN LOUBOUTIN - ROLLERBOY SPIKES SILVER (Fall-Winter 2010 Collection)</p>	30 th November 2009	8 th February, 2010
12.	 <p>SHUTIQ - ARIA COAL STUDED</p>	 <p>CHRISTIAN LOUBOUTIN - ROLLERBOY SPIKES BLACK (Spring-Summer 2013 Collection)</p>	30 th November 2009	18 th June 2012



13.	 <p>SHUTIQ - DANNY GOLD</p>	 <p>CHRISTIAN LOUBOUTIN - SPOOKY (Spring-Summer 2016 Collection)</p>	28 th November 2011	9 th June, 2015
14.	 <p>SHUTIQ - BESPOKE 11</p>	 <p>CHRISTIAN LOUBOUTIN - SPOOKY (Fall-Winter 2012 Collection)</p>	28 th November 2011	28 th March, 2012
15.	 <p>SHUTIQ - DANNY COAL</p>	 <p>CHRISTIAN LOUBOUTIN - DYNODENT (Fall-Winter 2016 Collection)</p>	23 rd November 2015	10 th December, 2015
16.	 <p>SHUTIQ - TYSON COAL</p>	 <p>CHRISTIAN LOUBOUTIN - DANDY PIK PIK BLACK (Spring-Summer 2013 Collection)</p>	30 th July, 2012	27 th July, 2012



17.	 <p>SHUTIQ - TYSON COAL</p>	 <p>CHRISTIAN LOUBOUTIN - DANDY PIK PIK MULTI (Spring-Summer 2016 Collection)</p>	30 th July, 2012	8 th June, 2015
18.	 <p>SHUTIQ - LEOPARD PONYHAIR ARROWHEAD</p>	 <p>CHRISTIAN LOUBOUTIN - CASANOPUMP (Fall-Winter 2013 Collection)</p>	26 th January, 2015	13 th March 2013
19.	 <p>SHUTIQ - ZEBRA ARROWHEAD</p>	 <p>CHRISTIAN LOUBOUTIN - CASANOBOY (Fall-Winter 2019 Collection)</p>	16 th November 2018	28 th November, 2018
20.	 <p>SHUTIQ - PONYHAIR GOLD ARROWHEAD</p>	 <p>CHRISTIAN LOUBOUTIN - CASANOBOY (Fall-Winter 2019 Collection)</p>	16 th November 2018	28 th November, 2018



21.	 <p>SHUTIQ - PATENT ARROWHEAD</p>	 <p>CHRISTIAN LOUBOUTIN - CASANOBOY (Fall-Winter 2019 Collection)</p>	16 th November 2018	28 th November, 2018
22.	 <p>SHUTIQ - KAZAR TAN</p>	 <p>CHRISTIAN LOUBOUTIN - MELOUBICLOU (Fall-Winter 2020 Collection)</p>	15 th November, 2019	29 th November, 2019
23.	 <p>SHUTIQ - GOLD STUDED SLIDES</p>	 <p>CHRISTIAN LOUBOUTIN - POOL FUN (Spring-Summer 2020 Collection)</p>	15 th July, 2019	19 th July, 2019
24.	 <p>SHUTIQ - BLACK STUDED SLIDE</p>	 <p>CHRISTIAN LOUBOUTIN - POOL FUN (Spring-Summer 2020 Collection)</p>	15 th July, 2019	19 th July, 2019



25.	 <p style="text-align: center;">SHUTIQ - ARROWHEAD CUMMERBUND</p>	 <p style="text-align: center;">CHRISTIAN LOUBOUTIN - NIT NIGHT (Spring-Summer 2021 Collection)</p>	5 th June, 2020	12 th June, 2020
26.	 <p style="text-align: center;">SHUTIQ - SHIMMER BOOTS</p>	 <p style="text-align: center;">CHRISTIAN LOUBOUTIN - HUSTON (Fall-Winter 2017 Collection)</p>	26 th January, 2017	10 th February, 2017

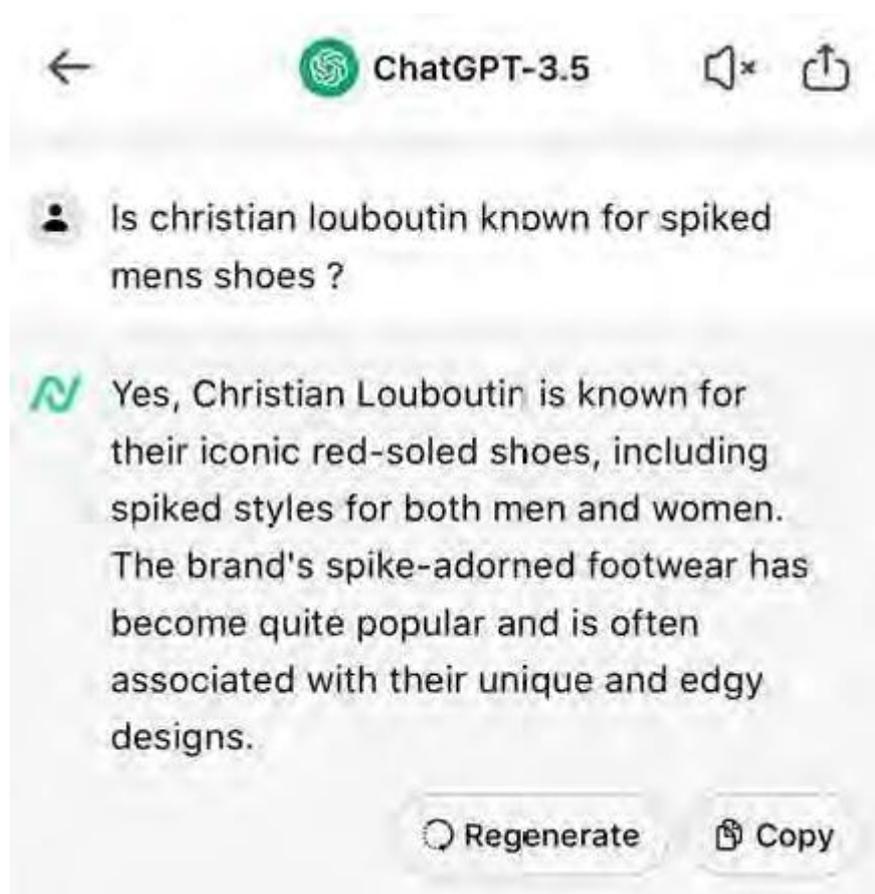
20. Some of the shoes have also been produced before the Court today which shows that the shape and size of the spikes are also identical. As per the Plaintiffs by virtue of the unique and distinctive style and combination of factors such as extensive advertising, long and continuous use, the Plaintiffs have established goodwill in the said designs.

21. The 'RED SOLE' mark of the Plaintiffs has already been declared to be a well-known mark under Section 11(6) of the Trade Marks Act, 1999 by



this Court in *Christian Louboutin SAS v. Mr. Pawan Kumar [CS(COMM) 714/2016, order dated 12th December, 2017]*.

22. It is the submission of Mr. Pravin Anand, Id. Counsel that the reputation that the Plaintiffs have garnered can also be evaluated on the basis of a chat GPT query which was put on behalf of the Plaintiffs which is extracted herein under:



23. Mr. Anand, Id. Counsel further submits that the 'RED SOLE SHOE' is a registered trademark in India. The Id. Counsel also refers to the date of first use of each of the designs/get up and also the first sale made in India which is set out in the table above. Id. Counsel for the Plaintiffs has further brought it to the attention of the Court that the Defendant is using



photographs of various Bollywood celebrities on its social media handles and pages.

24. On the strength of the above facts, it is submitted that the Defendant deserves to be injuncted.

25. Advance copy of the suit was served upon the Defendant and Mr. Amit Verma, Id. Counsel has entered appearance. In additional, Mr. Kunal Makkar, one of the partners of the Defendant is also present in Court.

26. Statement of Mr. Kunal Makkar has been recorded to the effect that the shoe designs were used on a 'made to order' basis when the customer requested for the same. He further has given an undertaking on behalf of his firm and his family members that the Defendant would not in future imitate or copy, manufacture or sell any shoes which are imitative of the Plaintiffs' designs which are subject matter of the present suit. The statement having been recorded today, the Defendant has clearly given an undertaking that it does not intend to use the Plaintiffs' designs.

27. This is however not to say that the Court recognises a monopoly in favour of the Plaintiff for all Spiked shoes or coloured soles. The impugned products ought to be a colourable or a slavish imitation of the Plaintiff's get-up and designs for an injunction to be granted. In fact when two different questions are put on CHAT GPT, the following answers emerged:



Default (GPT-3.5)

Is there any brand known for manufacturing & selling shoes with spikes and studs on the outer body?

Yes, there are several brands known for manufacturing and selling shoes with spikes and studs on the outer body. One of the most well-known brands in this category is "Christian Louboutin." They are particularly famous for their high-end luxury shoes with red lacquered soles and often incorporate spikes and studs in their designs.

Another brand is "Jeffrey Campbell," which offers a range of unique and edgy footwear styles, including shoes with spikes and studs. "Demonia" is another brand that specializes in alternative and gothic footwear, often featuring spikes and studs as part of their design elements.

Keep in mind that fashion trends and brands can change over time, so it's a good idea to search online or visit fashion retailers to find the most current options for shoes with spikes and studs.



Default (GPT-3.5)

Give a list of brands that make shoes with spikes and studs on the outer body of the shoe

Sure, here are some brands that are known for producing shoes with spikes and studs on the outer body:   

1. Christian Louboutin
2. Valentino
3. Alexander McQueen
4. Jeffrey Campbell
5. Ash
6. Sam Edelman
7. Steve Madden
8. Giuseppe Zanotti
9. Demonia
10. Iron Fist

Please note that the availability of specific styles and designs may vary over time, and new brands or collections may have emerged since my last knowledge update in September 2021. Always check the latest offerings from these brands to find the most up-to-date options.

 Regenerate

28. The above responses from ChatGPT as also the one relied upon by the Plaintiffs shows that the said tool cannot be the basis of adjudication of legal or factual issues in a court of law. The response of a Large Language Model (LLM) based chatbots such as ChatGPT, which is sought to be relied upon by Id. Counsel for the Plaintiff, depends upon a host of factors including the nature and structure of query put by the user, the training data etc. Further, there are possibilities of incorrect responses, fictional case laws, imaginative data etc. generated by AI chatbots. Accuracy and reliability of AI generated data is still in the grey area. There is no doubt in the mind of the Court that,



at the present stage of technological development, AI cannot substitute either the human intelligence or the humane element in the adjudicatory process. At best the tool could be utilised for a preliminary understanding or for preliminary research and nothing more.

29. Upon perusing the shoes of the parties and the comparative chart of a large variety of product designs which have been imitated by the Defendant that this Court arrives at the conclusion that there has been a clear intention to imitate and gain monetarily on the strength of the reputation and goodwill of the Plaintiffs. This Court has no doubt that the products of the Defendant are knock-offs or look-alikes of the Plaintiffs' distinctive shoes and footwear. The Defendant has copied all the essential features of the Plaintiff's footwear such as 'RED SOLE', 'SPIKED SHOE STYLE', as also the prints. The imitation is not of one or two designs but of a large number of designs as the chart above indicates. The acts of the Defendant are nothing more but an attempt to pass off its own goods as the goods of the Plaintiffs.

30. Under such circumstances, the suit itself deserves to be decreed in terms of paragraph 65 (a) and (b) of the plaint.

31. Insofar as the prayer for damages is concerned, since the Defendant has agreed to give an undertaking on the very first day when the suit has been listed before this Court, it is directed that the Defendant shall abide by the undertaking that it shall not copy or imitate any of the designs of the Plaintiffs' shoes. If any breach of this undertaking is found, the Defendant would be liable to pay a lump sum amount of Rs.25 lakhs as damages to the Plaintiffs immediately upon such evidence coming to notice of the Plaintiffs.

32. In addition, considering the fact that the Defendant is also using the pictures of well-known Bollywood celebrities on its Instagram account, etc.,



and also has displayed/ sold the shoes in high end malls, it is directed that the Defendant shall pay a sum of Rs.2 lakhs as costs to the Plaintiffs within four weeks.

33. The suit is decreed in the above terms. Decree sheet be drawn up after payment of the court fees. No further orders as to costs.

34. The Plaintiffs are also given a refund of 50% of Court fees.

35. All pending applications are also disposed of.

PRATHIBA M. SINGH
JUDGE

AUGUST 22, 2023/Rahul/sk