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(Civil)
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**IN THE COURT OF THE XVIII ADDITIONAL CITY CIVIL JUDGE
AT BANGALORE CITY**

PRESENT: SRI PADMA PRASAD

**B.A.(Law) LL.B.,
XVIII Additional City Civil Judge.**

Dated this the 27th day of January 2023

ORIGINAL SUIT No.1346/2019

- PLAINTIFFS** 1. **Rowdywear Pvt. Ltd.,**
:
Plot No.555/A, Road No.28,
Jubilee Hills,
Hyderabad TG 500 033.
Represented by its authorized
signatory Mr. Sharath Chandra
Ankaraju.
2. **Mr. Vijaya Sai Deverkonda,**

[By Sri Chintan Chinnappa, Advocate]

/v e r s u s/

- DEFENDANTS:**
1. **Amazon Seller Services Pvt. Ltd.,** Amazon World Trade Center, Brigade Gateway, 8th floor, 26/1, Dr. Rajkumar Road, Malleshwaram (W), Bengaluru-560 055.
 2. **Amazon Development Center India Pvt. Ltd.,** 2nd Floor, Safina Towers, Opposite to J.P.Techno Park No.3, Ali Askar road, Bengaluru-560 052.
 3. **Amazon Retail India Pvt. Ltd.,** Ground Floor, Eros Plaza, Eros Corporate Centre, Nehru Place, New Delhi-110 019.
 4. **Amazon IT Services (India) Pvt. Ltd.,** Amazon World Trade Center, Brigade Gateway, 8th floor, 26/1, Dr.Rajkumar Road, Malleshwaram (W), Bengaluru-560 055.
 5. **Sri Ram Hosiery,** No.24-7-211/2, Near Kalinga Dhaba, NIT arga Road, Warangal, Telangana -506 004. Represented by its Proprietor, Mr. Agarwal Gopi Krishna.
 6. **Mr. Satish Kumar,**

D1 to 4 – By Sri VUR, Advocate
D5 – Exparte.

ORDERS ON IA NO. 1 AND 2

IA No.1 is filed by the plaintiff under Order XXXIX Rule 1, 2 & 10 R/W Section 94 and 151 of CPC to restrain the defendant or anybody claiming under them from passing off their goods as that of the plaintiffs by using the Rowdy trade mark till the disposal of the suit.

2. The said application is supported with affidavit of authorized representative namely Sharath Chandra Ankaraju wherein it is stated that the plaint as part and parcel of affidavit.

3. The case made out by the plaintiff in the plaint and affidavit filed in support of IA No.1 in nutshell is that, plaintiff no.1 is a company own and run a clothing line / brand under the name and style of 'Rowdy', the said clothing brand was the brainchild of the Indian Film Actor and also Director of Rowdywear Pvt. Ltd., Mr. Vijay Deverakonda who is renowned for his work in Telugu cinema, and he is a

celebrity, film actor and entrepreneur and won awards and had millions of followers in social media. The plaintiff company is manufacturing and marketing T-shirts, jackets, baseball shirts, trousers and other such styles under the brand name 'Rowdy'. The brand name has stylistically been adopted by the plaintiff into various forms / logos that has been depicted in the plaint and affidavit. The plaintiff-company started the using of website www.rowdyclub.in on 11/12/2017 for marketing of their products, and also launched the official Rowdy app in July 2018. The said app was listed as India's no.1 mobile app in the lifestyle category and has over one million downloads and the said app is available on both Google play store as well as apple app store. The plaintiff applied for the registration of aforementioned trade mark under various classes before the trade mark registry and that is pending for consideration. The cost of the products ranges from Rs.490 plus taxes for a basic T-shirt to Rs.1,990/- plus taxes for a trouser. The Rowdy brands are renowned in India and world over

for its unique designs. Since they are limited quantity and sold only once a week, they have attained distinctiveness, significance and substantial good will. The said brand name Rowdy and each trade mark / logo mentioned in the plaint is solely and exclusively associated with plaintiff's and exists in the minds of the general public. The plaintiff claims that in view of the limited supply of Rowdy products, there was a huge demand for Rowdy products in the open market and several counterfeit and/ or substandard products have made their way into the open market. On 20/12/2018, the plaintiff noticed that on the website www.amazon.in i.e., own, utilised, run and managed by defendant no.1 to 4 were selling and offering to sell several counterfeit T-shirts of the plaintiff under the name 'Generic' that replicates the plaintiff's T-shirt and each of the counterfeit T-shirts had the Rowdy trade marks printed on the front. The plaintiff claims that the 'Generic' name is either the user name of a certain distributor or is certain categorization by amazon owing to the fact the the distributor /

manufacturer is unregistered with the defendant no.1 to 4. It is also stated that the manufacturer and distributor of the counterfeit products intentionally withhold their name to avoid in a civil and criminal liabilities. It is also stated that the counterfeit products are being sold at around Rs.300/- plus delivery charges which is far lower than the price of the T-shirt manufactured and sold by the plaintiff. The quality of the products used in various logos / trademarks of the T-shirt is of inferior quality, that the package contains the picture of plaintiff no.2, the invoice of the counterfeit / fake products had the name of the defendant no.5 and 6 i.e., Srirama Hosiery and Satish Kumar Saanvi Textiles with a PAN number and GST number. It is also claimed by the plaintiff that immediately plaintiff issued a legal notice dated 24/12/2018 to defendant no.1 to 4 seeking immediate take down of the offending URLs and future URLs and also directed them to cease and desist from using the plaintiff's trade mark. The defendant no.1 to 4 have not replied immediately.

Further, the defendant no.1 issued a reply refusing to take down the offending URLs unless the plaintiff obtains an order of the court. The plaintiff claims that counterfeit products have lowered the strong reputation and goodwill attached to the plaintiff. The act of the defendants is to deceive the people and people will purchase the products assuming that it is the product of plaintiffs. Accordingly the plaintiff claims that the defendants are passing off of the plaintiff's products. Accordingly, prayed for the reliefs claimed in IA.

4. The plaintiff also filed IA No.2 under Order XXXIX Rule 1, 2 & 10 r/w Section 94 and 151 of CPC to restrain the defendants or anybody claiming under them to take down the URLs stated in the IA. The said IA is also supported with authorised representative namely Sharath Chandra Ankaraju wherein also the said Sharath Chandra Ankaraju re-iterated the facts stated in the affidavit filed in support of IA No.1.

5. The defendant no.1 filed objections to IA No.1 and 2 by way of counter affidavit. The contents of

counter affidavit is more or less identical to the written statement contentions.

6. The case made out by the defendant no.1 in the objection is that, the defendant no.1 is the sole owner and operator of online market place which is the largest online market place in India where thousands of sellers and buyers interact and transact. The customers using the defendant no.1's online market place can choose from a range of close to 10 million products provided by thousands of registered sellers across a broad range of categories including books, computers, accessories, consumer products, personal care products, jewelries, luggage and bags etc., The defendant no.1 is an intermediary governed by the provisions of the Information Technology Act, 2000, and also claimed that the defendant no.1 has provided an online market place wherein it provided a platform where sellers may list products for sale and provides related services to the market place. As such, the defendant no. 1 does not actively participate in the transaction that occurred in its platform. The

defendant no.1 itself does not manufacture, procure, list, offer for sale, price or sell the products made available on its online market place. It is also claimed by defendant no.1 is that, mere display of marks on the platform does not amount to use of trade mark by defendant no.1 as the listings whereby the trade marks are displayed are uploaded entirely at the behest of third party sellers and as per Section 79 of the Information and Technology Act, 2000, the intermediary is not liable for the listing and sale of the impugned products. Further, the person who uploads the product with any trade mark by infringing or passing off of the registered or any trade mark or brand name liable for legal action as they are agreed with the terms and conditions of defendant no.1 to use the platform of defendant no.1. It is also stated that the defendant no.1 has also established a grievance redressal mechanism in accordance with Rule 6, sub rule 3 of the Intermediary Guidelines. It is also stated that, the police cannot take any legal action on the online market place, the defendant no.1

is not acting in concert with the defendant no.2 to 6 and the defendant no.1 is not liable for passing off, as well as privacy and publicity rights of plaintiff. It is also claimed by the defendant that the defendant no.1 is neither a necessary nor a proper party to the suit. The defendant also stated that defendant no.1 has taken down the allegedly infringing URLs. All other contentions are denied by the defendant no.1 and accordingly prayed for dismissal of IA.

7. The defendant no.2 to 4 filed separate objections and written statement. The main objection raised by the defendant no. 2 to 4 is that they are not the part of defendant no.1, defendant no.2 to 4 are doing separate business and they are not connected with defendant no.1. Accordingly claimed that defendant no.2 to 4 are the separate and independent legal entities, and they are not responsible for the activities of defendant no.1. The defendants also claimed that they have not violated any of the plaintiff's right and they are neither a necessary nor proper parties and also denied the contention raised

in affidavit filed in support of IA No.1 and 2 as well as
plaint averments, and prayed for dismissal of IAs.

8. Though the defendant no.5 and 6 served
with the suit summons, not chosen to appear before
the court, hence they have been placed *exparte*.

9. On the basis of the above, points for
consideration are:

1. Whether the plaintiff has made out *prima
facie* case in its favour?

2. Whether the plaintiff proves that
balance of convenience tilts in its favour?

3. Whether the plaintiff proves that if
temporary injunction is not granted, plaintiff
will be put to loss and hardship?

4. What order?

10. Heard the arguments. Perused the
materials on record. The learned advocate for the
plaintiff filed following citations:

1. Judgment dated 2/11/2018 passed by
the Hon'ble Delhi High Court in *Christian
Louboutin Sas Vs. Nakul Bajaj & others*
(MANU/DE/4019/2018).

2. Judgment dated 8/7/2019 passed by
the Hon'ble Delhi High Court in *Amway India*

enterprises Pvt. Ltd., & Ors Vs. 1MG Technologies Pvt. Ltd., & Ors. (MANU/DE/2146/2019).

3. Lifestyle Equities C.V. Ors. Vs. Amazon Sellers Service Private Limited & Anr. In CS (COMM)1015/2018.

4. Shivaji Rao Gaikwad Vs. Varsha Productions in 2015(2) CTC 113.

5. Titan Industries Ltd., Vs. Ramkumar Jewellers in 2012 (50) PTC 486 (Del).

11. On the other hand, the learned advocate for the defendant no.1 filed following citations:

1. Judgment of the High Court of Karnataka in Kandula Raghava Rao & Anr. Vs. State of Karnataka & Anr CRL. P.NO. 6595 of 2022 dated 25th August 2022.

2. Amazon Seller Services Pvt. Ltd., Vs. Amway India Enterprises Pvt. Ltd., and Ors. [2020 SCC Online Del 454].

3. Clues Network Pvt. Ltd., Vs. L'OREAL [RFA (OS) (COMM) No.1 of 2019 order dated 14/1/2019, Delhi High Court].

4. Myspace Inc. Vs. Super Cassettes Industries Ltd., [2016 SCC Online Del 6382].

5. Kent RO Systems Ltd., & Anr. Vs. Amit Kotak & Ors. [2017 SCC Online Del 7201].

12. My findings on the above points are as under:

Point No.1: Partly in the affirmative;

Point No.2: Partly in the affirmative against defendant no.5 and 6 and partly in negative against defendant no.1 to 4;

Point No.3: Partly in the affirmative against defendant no.5 and 6 and partly in negative against defendant no.1 to 4;

Point No.4: As per final order; for the following:

REASONS

13. **POINT NO.1:** The plaintiff filed this suit with the specific claim that plaintiff no.1 has been manufacturing and marketing, T-shirts, jackets, trousers etc., under the brand name 'Rowdy' and the plaintiff no.2 who is the renowned Telugu actor and celebrity is the Director of defendant no.1. The plaintiffs claims that its brand 'Rowdy' has stylistically

adopted into various forms / logos, the plaintiff also claims that it is a renowned brand in India and all over the world, the plaintiff is owing exclusive right over the brand 'Rowdy' and sale of its products. The plaintiff adopted the unique style of selling by having its own app called 'Rowdy' that has been downloaded by millions of people and used to sell the product once in a week. In view of the popularity of the brand and as the plaintiff was selling the product once in a week through its web, the counterfeit products came to the market. Accordingly claimed that on 20/12/2018, the plaintiff noticed that on the website of defendant no.1, they found the T-shirts which are the replicas of the plaintiff's brand. On further investigation or search, they found that it is the defendant no.5 and 6 were uploaded the brand name 'Amazon' and they are selling the same through online. Accordingly on that basis, the plaintiff filed this suit to restrain the defendant no.1 to 4 in selling the products under the brand name 'Rowdy' as well as uploading of any products that replicates the plaintiff's product.

14. The plaintiff in support of its case, produced documents such as certificate of incorporation, screen shots of the website www.rowdyclub.in, online news report indicating the details of 'Rowdy' app, the applications filed by the plaintiff for the registration of trade mark along with other photographs to show the plaintiff's products. All these documents sufficiently shows that the plaintiff is in the manufacturing of T-shirts, trousers and such other clothes under the brand name 'Rowdy' and plaintiff no.2 is the Director of plaintiff no.1, the material produced before the court also shows that it had earned very good reputation all over the world and there is a demand for the product / clothes of the plaintiff under the brand name 'Rowdy'.

15. The plaintiff filed suit against defendant no.1 to 6. The first part of the plaint case is that, defendant no.1 to 4 are selling the counterfeit products of plaintiff's products under the brand name 'Rowdy' and also the picture of plaintiff no.2 also used in the packages. The defendant no.5 and 6 are selling

the counterfeit products. The documents produced by the plaintiff particularly PAN card details and GST numbers produced at document no.30 and 31 along with other documents at this juncture prima facie shows that it is the defendant no.5 and 6 are uploaded the counterfeit products which is deceptively similar to the plaintiff's products / clothes under the brand name 'Rowdy' in the online marketing platform of defendant no.1. The material on record clearly shows that the brand name 'Rowdy' is created and coined by the plaintiffs and they are extensively using the said brand name for their products and also they have adopted the different style of marketing / selling their products. The material on record also shows that the defendants 5 and 6 were copied the plaintiff's brand name 'Rowdy' for their products. As such, certainly defendant no.5 and 6 are to be restrained as prayed in IA No.1 from using the plaintiff's brand name deceptively for their inferior quality of products.

16. In the case on hand, the defendant no.1 has taken specific contention that it is the

intermediary and protected under the provisions of Information Technology Act, 2000. The Hon'ble Apex Court in the **case of Shreya Singal** observed that intermediary is not liable for any infringement. Apart from that, condition no.6 in the user agreement of the online marketing platform of defendant no.1 shows that the seller who uses the defendant no.1's online platform for selling its products is liable for infringement of any Copyrights. The said fact is evident from the documents produced by the defendant no.1 at document no.2. Further, the defendant no.1 also made out a case that it has established the grievance redressal mechanism in accordance with Rule 6 (3) of Intermediary Guidelines. The said fact is also not in dispute. Apart from that, the defendant no.1 also claimed that they have already removed certain URLs used by the sellers on their online platform infringing / passing off of the plaintiff's brand name.

17. In the case on hand, the defendant no.2 to 4 claimed that they are totally separate entity and

they are not liable for the acts of defendant no.1. In the case on hand, the plaintiff has failed to establish any nexus between defendant no.1 with defendant no.2 to 4. The plaintiff also not produced any material on record to show that the defendant no. 2 to 4 have posted / allowed defendant no.5 and 6 to upload any of the products that are either similar or deceptively similar to the plaintiff's products. As such, certainly the defendant no.2 to 4 are not liable for any interim order against them.

18. In the case on hand, the defendant no.1 made out a case that they are liable to remove any URL which is infringing the Copyright of plaintiff, then such URLs can be removed by the order of court as per the principle laid down by Apex Court in ***Shreya Singal's case***. The said fact is also not in dispute. As such, it is just and necessary to direct the defendant no.1 to remove the URLs claimed in IA No.2 and it is also necessary to direct the defendant no.1 to remove any URLs that infringes the plaintiff's Copyright. In view of these facts, this court is of the humble

opinion that the plaintiff has made out a prima facie case against defendant no.5 and 6 and failed to make out such case against defendant no.1 to 4. Accordingly, this point is answered **partly in affirmative.**

19. **POINT NO.2 & 3:** When the plaintiff failed to make out prima facie case against defendant no.1 to 4, certainly balance of convenience and irreparable loss and injury will not lie in favour of the plaintiff against defendant no.1 to 4, however the plaintiffs have prima facie proved that it is the defendant no.5 and 6 were passing off of the plaintiffs brand name 'Rowdy'. Hence, if temporary injunction is not issued against them, certainly plaintiffs will be put to irreparable loss and injuries, and also balance of convenience tilts in favour of the plaintiff. Accordingly, these two points are answered **partly in affirmative against defendant no.5 and 6, partly in negative against defendant no. 1 to 4.**

20. **POINT NO.4:** In view of my findings on the above points, I proceed to pass the following:

ORDER

- IA No. 1 and 2 filed by the plaintiff under Order XXXIX Rule 1, 2 & 10 r/w Section 94 and 151 of CPC are hereby partly allowed against defendant no.5 and 6. Consequently the defendant no.5 and 6 are hereby restrained from passing off of the plaintiff's brand / trade name 'Rowdy' in any manner till the disposal of the suit.
- The IA No.1 and 2 are hereby dismissed against defendant no.1 to 4 with the condition that the defendant no.1 shall remove all the URLs stated in IA No.1 with further direction to the defendant no.1 to remove the URLs that infringes the right of plaintiff over the brand name 'Rowdy' on informing the same to the defendant no.1.

* * *

[Dictated to the Judgment Writer directly on computer, *Script* corrected, signed and then pronounced by me, in the Open Court on this the 27th day of January 2023.]

[PADMA PRASAD]
XVIII Additional City Civil Judge.
BANGALORE.

...Order pronounced in the Open Court.... (Vide separate detailed order..)

- IA No. 1 and 2 filed by the plaintiff under Order XXXIX Rule 1, 2 & 10 r/w Section 94 and 151 of CPC are hereby partly allowed against defendant no.5 and 6. Consequently the defendant no.5 and 6 are hereby restrained from passing off of the plaintiff's brand / trade name 'Rowdy' in any manner till the disposal of the suit.

- The IA No.1 and 2 are hereby dismissed against defendant no.1 to 4 with the condition that the defendant no.1 shall remove all the URLs stated in IA No.1 with further direction to the defendant no.1 to remove the URLs that infringes the right of plaintiff over the brand name 'Rowdy' on informing the same to the defendant no.1.
- For Issues by 27/2/2023.

[PADMA PRASAD]
XVIII Additional City Civil Judge.
BANGALORE.

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