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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 1st December, 2023

+ **CS(COMM) 858/2023, I.As. 23949/2023, 23950/2023, 23951/2023
& 23952/2023**

KOHLI SPORTS PRIVATE LIMITED Plaintiff
Through: Ms. Swathi Sukumar, Mr. Essenesse
Obhan, Ms. Yogita Rathore, Ms.
Anjali Swami, Mr. Pratyush Rao,
Mr. Rishubh Agarwal & Mr. Ritik
Raghuwanshi, Advs. (M.
9580680148).

versus

ASHI SPORTS Defendant
Through: Mr. Siddharth Bambha & Mr. Aman
Thukral, Advs. (M. 9891602513)

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

1. This hearing has been done through hybrid mode.

I.As. 23950/2023 & 23951/2023(for exemption)

2. This is an application filed by Plaintiff seeking exemption from filing original/certified/translated copies of documents with proper margins, etc.

3. Original documents shall be produced/filed at the time of Admission/Denial, if sought, strictly as per the provisions of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 (*hereinafter*, 'Commercial Courts Act, 2015') and the DHC (Original Side) Rules, 2018.

4. Exemption is allowed, subject to all just exceptions. Accordingly,



these applications are disposed of.

I.A.23952/2023 (for additional documents)

5. This is an application filed by the Plaintiff seeking leave to file additional documents under the Commercial Courts Act, 2015.

6. The Plaintiff, if it wishes to file additional documents at a later stage, shall do so strictly as per the provisions of the Commercial Courts Act, 2015 and the DHC (Original Side) Rules, 2018.

7. Accordingly, this application is disposed of.

CS(COMM) 858/2023

8. Let the plaint be registered as a suit.

9. Issue summons to the Defendant through all modes upon filing of the Process Fee.

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

11. Liberty is given to the Plaintiff to file the replication(s) within 15 days of the receipt of the written statement(s). Along with the replication(s), if any, filed by Plaintiff, an affidavit of admission/denial of documents of Defendant, be filed by 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.

12. List before the Joint Registrar for marking of exhibits on 9th February, 2024. It is made clear that any party unjustifiably denying documents would be liable to be burdened with costs. List before Court on



29th January, 2024.

I.A.23949/2023 (u/O XXXIX Rules 1 & 2 CPC)

13. Issue notice in the application.
14. The present suit raises an interesting question - whether the shape of a cricket helmet can be a trade mark?
15. The Plaintiff - M/s Kohli Sports Private Limited has filed the present suit seeking permanent injunction restraining passing off, infringement of copyright, unfair trade practice, rendition of accounts, damages, etc.
16. The Plaintiff claims to be a pioneer in the manufacture and sale of helmets for cricket players. The Plaintiff is registered in India and manufactures its helmets in Ludhiana. It also has an associate company called Kohli Sports U.K. Ltd. which is registered in England. According to the Plaintiff, it launched its cricket helmets with a distinctive shape in 2014 under the mark 'SHREY'. The said mark was derived from the name of one of the children of the Plaintiff's founder who demised in an unfortunate tragedy. There are two separate varieties of 'SHREY' helmets which are stated to be manufactured namely '*Shrey Master Class Air*' and '*Shrey Koroyd*'. The first helmet is manufactured using titanium and is rated as one of the lightest helmets in the world.
17. The case of the Plaintiff is that it's cricket helmets under the mark 'SHREY' have various distinctive features including the shape of the grill, shape of ear guards, the manner in which the grill protects the face of the cricketer etc.
18. As per the Plaintiff, the distinctive shape and configuration of its helmets have, over the last nine years achieved trademark status. Ms. Swati Sukumar, Id. Counsel appearing for the Plaintiff submits that the sheer



number of players who wear the Plaintiff's helmets is itself proof of the distinctiveness that the helmets have achieved. It is submitted that 80% of the IPL teams wear the Plaintiff's helmet. Even in the recent ICC World Cup, 2023 almost 70% of the players wore Plaintiff's helmet. The following table is extracted to show the same :

	
ICC Cricket World Cup 2023 Final India vs Australia held on 19.11.2023: Partnership between Virat Kohli and KL Rahul	ICC Cricket World Cup 2023 Semi-Final Australia vs South Africa held on 16.11.2023: David Miller's Century



ICC Cricket World Cup 2023
Semi-Final India vs New Zealand
held on 15.11.2023: Virat Kohli's
World Record of 50 ODI Centuries
beating Sachin Tendulkar's World
Record of 49 ODI Centuries



ICC Cricket World Cup 2023
Semi-Final India vs New
Zealand held on 15.11.2023:
Partnership between Shreyas
Iyer and Virat Kohli



ICC Cricket World Cup 2023
Afghanistan vs Australia held on
07.11.2023: Ibrahim Zadran's
Century



ICC Cricket World Cup 2023
New Zealand vs Pakistan held
on 04.11.2023: Fakhar Zaman's
Century



ICC Cricket World Cup 2023
Pakistan vs Sri Lanka held on
10.10.2023: Abdullah Shafique's
Century







ICC Cricket World Cup 2023
Australia vs Netherlands held
on 25.10.2023: Marnus
Labuschagne's knock of 62



	
<p>Super 11 Asia Cup 2023 Final India vs Sri Lanka held on 17.09.2023: Ishan Kishan batting</p>	<p>Super 11 Asia Cup 2023 India vs Sri Lanka held on 12.09.2023: KL Rahul and Ravindra Jadeja celebrating a wicket</p>
	
<p>Super 11 Asia Cup 2023 Bangladesh vs India held on 15.09.2023: Bangladesh Team celebrating wicket</p>	<p>Women's T20 World Cup India vs Australia held on 23.02.2023: Sneh Rana</p>
	
<p>Women's T20 World Cup India vs Ireland held on 20.02.2023: Smriti Mandana</p>	<p>Ashes 2023 Test England vs Australia held in July, 2023: Harry Brook</p>

19. Ms. Swati Sukumar, Id. Counsel further submits that the first invoice of the Plaintiff is of 2014. Ld. Counsel also emphasises that Defendant has copied the entire design of Plaintiff's cricket helmets. The comparison between the Plaintiff's helmet and Defendant's helmet is set out below:







PLAINTIFF'S SHAPE MARK 1	DEFENDANT'S INFRINGING HELMET 1
	
	

PLAINTIFF'S SHREY KOYORD HELMET	DEFENDANT'S INFRINGING HELMET 2
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 <p data-bbox="600 1305 879 1335">Curved side grill and ear guard</p>	 <p data-bbox="932 1319 1206 1368">Same curved side grill and ear guard</p>
 <p data-bbox="600 1619 879 1671">Hole for air ventiation on the top surface</p>	 <p data-bbox="919 1619 1214 1671">Identical hole for air ventiation on the top surface</p>
 <p data-bbox="600 1832 879 1906">Bolts for fastening and coth covering the sides of the name plate</p>	 <p data-bbox="911 1832 1222 1906">Identical bolt means for fastening and fabric covering on each side of the name plate</p>













20. Ld. Counsel further submits that the following distinctive elements have also been picked by the Defendant from the Plaintiff's helmet:

S. NO.	FEATURES	PLAINTIFF'S SHAPE MARK 2 SHREY MASTER CLASS AIR HELMETS	DEFENDANT'S INFRINGING HELMET ASHI HIGH CLASS (INFRINGING HELMET 1)
1.	Curved side grill		
2.	Ear Guard		



3.	Y shaped front grill		
4.	Gap between top and middle crossbars is less than gap between middle and bottom crossbars in the front grill		
5.	Center top button portion on the exterior surface		
6.	Identical holes for air ventilation on the top surface		



7.	Two exposed fastening means to attach brand name on both right and left sides		
8.	Fastening means includes identical bolt design		
9.	Fabric covering each sides of the name plates		
10.	Same color face guard assembly		
11.	Helmet Interior includes one back padding, two curved top paddings, and one front padding		

21. Ld. Counsel, also points out that the content of the website of the Plaintiff has also been copied by Defendant and it is uncanny that even the



spelling mistakes have been replicated. The comparative chart of the websites is set out below:-

<p>PLAINTIFF'S 'ABOUT US' SECTION</p> <p>(as available on https://kohli-sports-pvt-ltd.business.site/#summary)</p>	<p>DEFENDANT'S 'ABOUT US' SECTION</p> <p>(as available on http://www.ashihelmet.com/about/)</p>
<p>The Shrey Cricket Helmets brand is a market leader and most sort</p>	<p>The Ashi Cricket Helmet brand is a market leader and most sort with the</p>

<p>after with Top Class International Cricket Players. By the leading manufacturers of world class cricket helmets, "Shrey Helmets" as the name suggests, was a range of helmets launched in 2013 in the memory of the youngest member Shrey, of the Kohli family.</p> <p>Since then, SHREY has managed to ascend to the place it holds in the market. The intellect that is behind Shrey being a preferred choice of Leading International players is the helmet's matchless comfort and safety. Shrey is dedicated to stay at the leading edge of innovation and achieve value oriented growth. It is a fact that no player has ever been paid to wear the Shrey helmet, although our competitors pay for the prerogative of having professional players wear their helmet.</p> <p>The products can only come to life if they are produced with the same care and integrity with which they were designed. Shrey Cricket Helmets are developed with cutting edge technology delivering paramount invulnerability for best performance. It is by far the Lightest and Strongest Cricket Helmet on the market. SHREY can only be successful if we are able to meet the needs of our customers and this very desire of being successful drives everyone at the company to serve our customers to the best of our ability. You Can now buy Shrey Cricket Helmets and Teamwear online at http://shreysports.com.</p>	<p>citizens. By the leading manufacturers of world class cricket helmets, "Ashi Cricket Helmaer" as the name suggests, was a range of helmets launched in 2014 in the name of daughter, of the Namdev family.</p> <p>Since then, Ashi Cricket Helmet has managed to ascend to the place it holds in the market. The intellect that is behind Ashi Cricket Helmet being a selected choice of young generation as well as majority of India, is the helmet's matchless comfort and safety. Ashi Cricket Helmet is dedicated to stay at the leading edge of innovation and achieve value oriented growth.</p> <p>The products can only come to life if they are produced with the same care and integrity with which they were designed. Ashi Cricket Helmets are developed with cutting edge technology delivering paramount invulnerability for better performance. It is by far the Lightest Cricket Helmet on the market. Ashi Cricket Helmaer can only be successful if we are able to meet the needs of our customers and this very desire of being successful drives everyone at the company to serve our customers to the best of our ability.</p>
<p>PRODUCT DESCRIPTIONS</p>	<p>PRODUCT DESCRIPTIONS</p>



<ul style="list-style-type: none">• SHREY PRO GUARD AIR STAINLESS STEEL• Newly launched ICC approved budget stainless steel helmet.• Weighs approximately 920gms.• High grade ABS composite shell.• EPS liner for increased safety.• Stainless steel with natural finish helps in better visibility.• Advanced air flow system.• Rear retention system with velcro straps and pads helps in getting the desired fit and comfort.• New improved fixed grille with increased facial and side protection.• Removable and washable swoppa band.• Extended at the back for increased safety.• Conforms to latest ICC/BS 2013 safety standards with both 4 3/4 and 5 1/2 OZ ball.	<ul style="list-style-type: none">• ASHI HIGH CLASS GUARD STAINLESS STEEL• Weighs approximately 930gms.• High grade ABS composite shell.• EPS liner for increased safety.• Grade-2 stainless steel with natural finish helps in better visibility.• Advanced air flow system.• Rear retention system with Velcro straps and pads helps in getting the desired fit and comfort.• New improved fixed grille with increased facial and side protection.• Removable and washable sweatband.• Extended at the back for increased safety.
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22. Ld. Counsel for Defendant, submits that Plaintiff's cricket helmet was launched only in 2020 and there are various other cricket helmets which have similar features. Thus, Plaintiff's cricket helmets have not achieved the distinctiveness that the Plaintiff claims. He further submits that insofar as the website is concerned, Defendant is willing to change the content of its website.

23. In response, Ms. Sukumar, ld. Counsel submits that the 2020 launch is



was only of a separate series of the Plaintiff's helmets known as Koroyd helmets which are made of a different material. She has referred to the www.espncricinfo.com website printout to show that the Plaintiff's helmet was in use even as of 2015.

24. The Court has heard ld. Counsels for the parties and has perused the record.

25. In the case of a shape trade mark the threshold of distinctiveness that is required to be achieved is much higher than a mere device or word trade mark. In such a case, the shape has to be so distinctive that it should be capable of being associated with the entity, even without any name or mark being present on the product.

26. A perusal of the documents which has been placed on record does show that almost all the famous Indian cricketing stars are wearing the Plaintiff's helmet and the preference for the said helmet is, therefore, not doubted. Further, one of the online articles relating to helmets describes the Plaintiff's helmet in the following manner:



BEST LIGHTWEIGHT CRICKET HELMET

SHREY MASTERCLASS AIR**2.0 HELMET****FEATURES**

- Advanced Air Flow System
- Improved rear retention system
- Improved fixed grille
- Increased facial and side protection
- Removable sweatband
- Complimentary neck guard

[CHECK PRICE - AMAZON](#)

The Shrey Masterclass Air 2.0 Titanium Cricket Helmet is currently the lightest helmet on the market that certifies with the latest British safety standards. The reason this helmet is the go to for any professional is purely because of the weight alone. We felt this helmet was considerably lighter than any other helmet we tested.

Another feature we liked was the strong titanium grille attached to the helmet. We felt the grille has fantastic coverage and extended nicely to cover additional areas such as the jaw. The space between the grille and the helmet peak ensures that no stray balls can squeeze through to the head. We also had no issues when it came to visibility.

The back of the helmet is designed in a way that tapers down, which slightly increases the area that the neck is protected by. This is a unique feature which we haven't seen added to any other helmets.

We really liked the comfortable padding on the inside of the helmet. With the stock padding that was fitted in the helmet, we felt that the fit was slightly snug. Shrey provide additional padding which can tighten or loosen the fit.

Future improvements we hope to see are the ventilation and the overall finish. By adding more ventilation vents, a batsman could stay slightly cooler. The overall helmet could be finished to a higher standard.

All though this helmet sits at the top end of the market for price, we still think the helmet offers excellent value for money. Not only are there heavier titanium helmets on the market that are more expensive. Shrey include an added neck guard and helmet bag which other manufacturers don't include. If you are after the lightest helmet in the game, this helmet is the one to add to your kit bag.

The question as to whether the Plaintiff's helmet has attained such a level of distinctiveness to be protected as a shape trade mark would have to be considered and adjudicated by the Court.

27. At this stage, Id. Counsel for the Defendant submits that the Defendant is willing to explore mediation in this matter and effect some changes so as to ensure that the design/shape of its cricket helmets is not



identical to that of the Plaintiff's helmet. This submission is without prejudice to the Defendant's stand that the design itself cannot be monopolised by the Plaintiff.

28. In view of the above submissions, the following directions are issues:

- i) The Defendant shall take down its website within 48 hours and ensure that any new website which is put up does not have any content from the Plaintiff's website.
- ii) The parties are referred to mediation in order to enable the Defendant to suggest some options for change in the design of its helmet so as to ensure that the Plaintiff's grievance is duly addressed.
- iii) The above shall be without prejudice to the rights and contents of both parties.

29. Considering the nature of the matter, the matter is referred to mediation before **Justice Nageswara Rao (Retd), Judge, Supreme Court.** The Ld. Mediator shall be paid a fee of Rs.3,00,000/-. The same shall be shared equally by both parties.

30. Let the first meeting before the ld. Mediator be held on 6th December, 2023 at 11 am, Sector 15A, Noida. The contact details of the Ld. Mediator are: lnrao.office@gmail.com and Ms. Nikita, Advocate (8800127168).

31. Let the reply to the injunction application be filed within four weeks. Rejoinder, thereto, within two weeks.

32. If there is no settlement, the matter shall be heard on the next date of hearing.

33. List before the Joint Registrar on 9th February, 2024.



2023 : DHC : 8644



34. List before the Court on 29th January, 2024.

**PRATHIBA M. SINGH
JUDGE**

DECEMBER 01, 2023

dj/kt