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

Date of Decision: 19th January, 2024

+ CS(COMM) 838/2022 & I.As. 20435/2022, 863/2023

INFINITI RETAIL LIMITED Plaintiff

Through: Ms. Kruttika Vijay and Mr. Sauhard
Alung, Advocates.

versus

M/S CROMA -SHARE & ORS. Defendants

Through: Mr. Ashwini C., Advocate for D-8.
Mr. Kishan Rawat, Advocate for D-
13.
Mr. Piyush Singhal, Advocate for D-
14.
Mr. P.S. Sudheer and Ms. Anne
Mathew, Advocates for D-15.
Mr. Mayank Mikhail Mukherjee,
Advocate for D-16.
Mr. Manish Mohan, CGSC for UOI.
Defendants No. 1 to 4 proceeded *ex-
parte*.

**CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA**

JUDGMENT


SANJEEV NARULA, J. (Oral):

1. In the present suit, the Plaintiff has sought substantive reliefs against Defendants No. 1 to 4. As per the affidavit of service of summons, Defendants No. 1 to 3 stand served. Defendant No. 4 is unidentified and thus, is impleaded as Ashok Kumar. Despite service, the said Defendants have not entered appearance to contest the matter. The permissible time

limit for filing written statement(s) has also expired. Accordingly, Defendants No. 1 to 4 are proceeded *ex-parte*.

2. Insofar as the remaining Defendants are concerned, Defendants No. 8, 9, 13, 14, 15, 16, 18 and 20 have filed written statement/ affidavits of compliance with the directions issued by this Court on 05th December, 2022. Ms. Kruttika Vijay, counsel for Plaintiff, submits that Defendant No. 17 has issued an e-mail communication to the Plaintiff, stating that they have implemented the Court directions. The Court is informed that Defendant No. 5, a Chinese entity, has refused to submit to this Court's jurisdiction and abide by its directives. In view of the above, Ms. Vijay requests that the suit proceedings be closed and a final decree may be passed.

The Plaintiff's case


3. The instant suit concerns infringement and passing off of Plaintiff's registered trademarks "CROMA", "", "INFINITI RETAIL",



"" and their formative variants,¹ by Defendants No. 1 to 4.

4. Plaintiff, a wholly owned subsidiary of Tata Sons Pvt. Ltd., and a part of the TATA Group, owns and manages a nation-wide retail chain, under the CROMA marks. They offer a wide range of electronics, consumer products, household and kitchen appliances, mobile phones, computers, audio and video products, cameras, grooming and wellness products etc. at more than 260 stores spread across India as well as through their website



“www.croma.com”. Since their first launch in 2006, the Plaintiff’s goods and services have garnered significant goodwill. The mark “” has been declared as a well-known trademark by the Trademarks Registry on 24th February, 2020.

5. The mark “CROMA” is a coined term, and does not have a dictionary meaning. Plaintiff has expended substantial amounts and resources towards building their brand under the CROMA marks. Paragraph No. 14(c) of the plaint sets out the Plaintiff’s promotional expenses between the years 2010 to 2021. That apart, Plaintiff also maintains active social media profiles to advertise their goods. Owing to such extensive publicity and continuous use of the CROMA marks, the Plaintiff’s revenue figures ranged up to 3759 crores in 2018. Plaintiff has also won many awards for their services.

6. Defendants No. 1 to 4 are owners of domain names/ websites “www.croma-share.com”, “www.croma-2.com”, “www.croma-1.com”, and “www.croma-3.com”, respectively.² In November, 2022, upon receipt of several complaints, Plaintiff discovered that Defendants No. 1 to 4 are operating the impugned websites for defrauding people by taking money under the pretext of recruiting them for part-time jobs with Croma/ Infiniti Retail Ltd., the Plaintiff, using the mark “CROMA”. According to an aggrieved consumer, Defendant No. 1 approached them using the mobile phone numbers +63 998 142 7361 and +63 998 141 2574, offering them a part-time job with the Plaintiff. The job description communicated to the consumer reads as follows:

¹ Collectively, “CROMA marks”.

² Collectively, “impugned websites”.

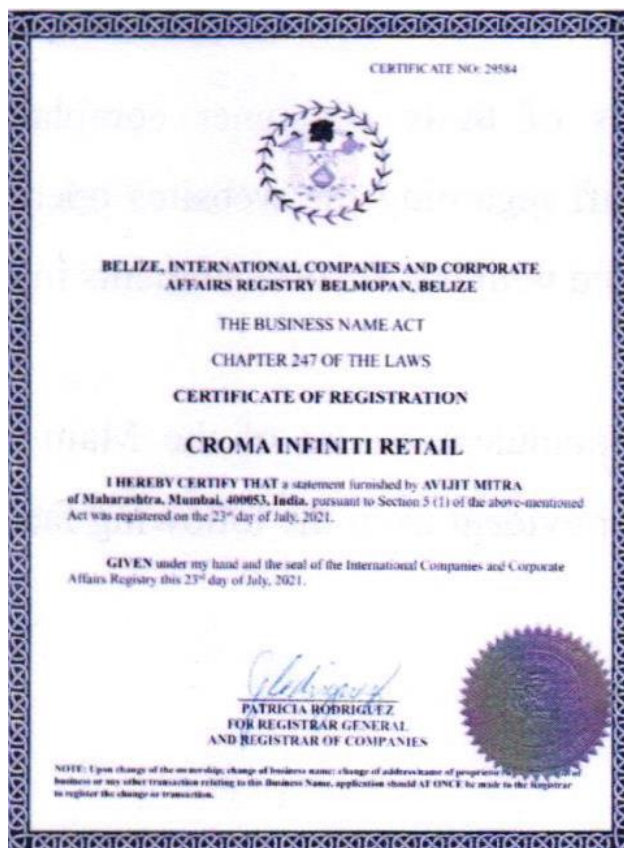


*“Let me explain to you how to make money here CROMA
Your job here is to shop online, the merchant will give you the specified
goods, you just need to pay the amount of the order, then the merchant will
return your money right away with the commission up to *50,000* that
you earned for helping them increase their sales. The whole process only
takes a few minutes!*

*but you need to use your own money to recharge your account to shop and
complete the task. Minimum *208rs* and you can earn already”*

7. The above explained process is divided into different levels, requiring the customers to pay increasing amounts of money for each subsequent level, from Rs. 180/- to Rs. 42,000/-. The *modus operandi* of Defendants No. 1 to 3 is identical. According to account of another consumer who fell prey to the scam, a phone call was received by them from the number +63 998 143 6864 and +63 949 807 0068 with the same job offer. The said consumer had suffered a loss of about Rs. 1,65,000/- due to the scam by Defendant No. 1. A similar complaint was lodged by a consumer who paid around Rs. 1,50,000/- to Defendant No. 3. Although no formal complaints have been received against the website operated by Defendant No. 4, the visual scheme of the website being identical to the websites owned by Defendants No. 1 to 3, the Plaintiff apprehends that Defendant No. 4 is also engaged in similar infringing activities.

8. When the consumers ask for proof of authenticity, Defendants No. 1 to 4 supplied false and fabricated employee IDs, corporate registration in Belize, communications bearing Plaintiff-company’s letterheads purportedly signed by Plaintiff’s CEO, Mr. Avijit Mitra. For instance, the following documents were shared with the complainants/consumers:






Interim order

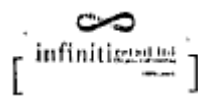
9. On 05th December, 2022, while issuing summons, an *ex-parte* ad-interim injunction restraining Defendants No. 1 to 4 from infringing Plaintiff's CROMA marks was issued in following terms:

"22. Accordingly, following directions are being issued;

22.1 Till the next date of hearing, Defendants No. 1 to 4 or their partners, parties, or any such person acting for and on their behalf are restrained from:

a. offering for sale, advertising or in any manner dealing in goods/

products under Plaintiffs registered marks viz. "CROMA"  and/or "INFINITI RETAIL LIMITED - The future of retailing"

 or any other mark/ name which is identical to or deceptively similar to Plaintiff's registered marks that would amount to passing off or cause detriment to Plaintiffs reputation or misrepresent Defendants No. 1 to 4's services as those of or associated with the Plaintiff, or would result in dilution of Plaintiff's registered marks.

b. using or registering corporate names, domain names, including the impugned websites viz. www.croma-share.com, www.croma-2.com, www.croma-1.com and www.croma-3.com or listings on social media websites or e-commerce sites or doing any other act amounting to infringement of Plaintiff's registered marks and its copyright.

22.2 Defendant No. 5 shall, during the pendency of the proceedings, lock and suspend operation of infringing websites/ domain names hosted



by it, that contain Plaintiff's registered marks "CROMA" and "INFINITI RETAIL LTD." or any essential or deceptively similar features thereof, including, www.croma-share.com, www.croma-2.com, www.croma-1.com, and www.croma-3.com.

22.3 Defendant No. 5 shall also provide details of registration, including contact information, payment details and any other information, in its power and possession that would aid in disclosure of identity of registrants of impugned websites. Further, Defendant No. 5 shall also provide a list of all domain names registered in the names of Defendant Nos. 1 to 4 or owners of the impugned websites.

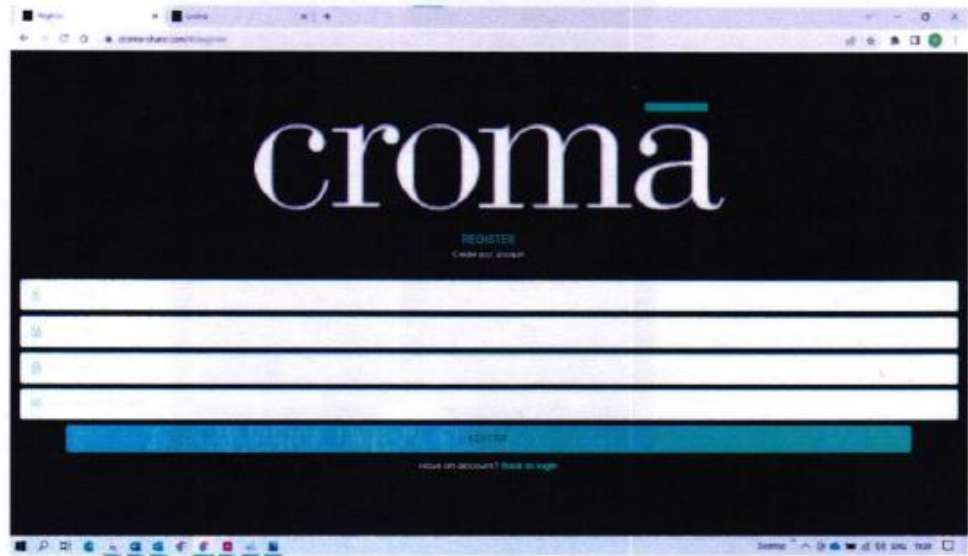
22.4 Defendant No. 6 - Department of Telecommunications, Ministry of Communications, Union of India and Defendant No. 7 - Ministry of Electronics and Information Technology, Union of India shall block access to the impugned websites [www.croma-share.com, www.croma-2.com, www.croma-1.com, and www.croma-3.com], during the pendency of the proceedings.

22.5 Defendants No. 17, 18, 19 and 20 [telecom service providers] shall temporarily suspend and disable the mobile numbers mentioned in paragraph 39 of the plaint. They shall also disclose the details of persons in whose names the said numbers are registered. KYC documents of such persons shall be filed in a sealed cover before the Court within a period of four weeks from today.

22.6 Defendants No. 8, 9, 10, 11, 12, 13, 14, 15 and 16 [financial service providers] shall temporarily suspend and disable the UPI IDs mentioned in paragraph 38 of the plaint. They shall also disclose the details of holders of bank accounts associated with said UPI IDs. KYC documents of such persons shall be filed in a sealed cover before the Court within a period of four weeks from today."

Analysis and directions

10. The Court has considered the afore-noted submissions and examined the record. Extracts from the impugned websites, which are identically designed, are reproduced below:





11. From the above images, it is evident that Defendants No. 1 to 4 are using the Plaintiff's CROMA mark to create a misperception of association with the Plaintiff. Through the impugned websites, Defendants No. 1 to 4 are soliciting personal information and money from the consumers. The said Defendants approach an unsuspecting consumer with a lucrative job offer, requiring them to purchase goods from the impugned websites with a promise to return the amount with an added component of commission. As the impugned domain names wholly incorporate Plaintiff's "CROMA" mark, the public, under the mistaken belief that they are procuring a job at the Plaintiff-company, fall prey to Defendants No. 1 to 4's ploy. The likelihood of confusion is evident. Defendants No. 1 to 4's activities amount to infringement and passing off of Plaintiff's CROMA marks. Ms. Vijay further informs that the impugned websites also emulate the terms and conditions of use, privacy policy etc. displayed on the Plaintiff's website



[www.croma.com], which amounts to passing off of Plaintiff's copyright vested therein.

12. Given the Plaintiff's standing in the market as evidenced by their annual revenue and promotional figures as well as the well-known status of the CROMA marks, the Court is of the opinion that impugned activities are causing irreparable loss to their goodwill and reputation. Thus, they are entitled to a permanent injunction as sought. As discussed hereinabove, Defendants No. 1 to 4 have not filed any defence to contest the suit. In the opinion of the Court, no purpose would be served by directing Plaintiff to lead *ex-parte* evidence as the pleadings and accompanying documents prove that the said Defendants are misusing the Plaintiff's CROMA marks,³ entitling Plaintiff to protection. Therefore, the Court, in exercise of its power under Order VIII Rule 10 of the Code of Civil Procedure, 1908, is inclined to issue a decree in favour of the Plaintiff.

Relief

13. Ms. Vijay, on instructions, states that Plaintiff is only pressing for prayers entailed in paragraph No. 62(a) to (d) and (h) to (j) of the plaint.

14. Accordingly, the suit is decreed in favour of the Plaintiff and against Defendants No. 1 to 4 in terms of paragraph No. 62(a) to (d) of the plaint.

15. Defendants No. 5 to 7 are directed to permanently block access to the impugned websites namely, "www.coma-share.com", "www.croma-2.com" and "www.croma-1.com".

³ See: *Disney Enterprises Inc. and Anr. v. Balraj Muttneja and Ors.*, 2014 SCC OnLine Del 781, *Cross Fit LLC v. RTB Gym and Fitness Centre*, 2022 SCC OnLine Del 2788, and *The Indian Performing Right Society Ltd. v. Gauhati Town Club*, 2013 (134) DRJ 732.



16. Defendants No. 8 to 16 shall permanently suspend and disable the UPI IDs mentioned in paragraph No. 62(i) of plaint.
17. Defendants No. 17 to 20 is directed to permanently suspend and disable the mobile numbers mentioned in paragraph No. 62(j) of the plaint.
18. Decree sheet be drawn up in the above terms.
19. Suit and pending applications are accordingly disposed of.

SANJEEV NARULA, J

JANUARY 19, 2024

as