

\$~8

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of Decision: 19th October, 2022
+ **CS(COMM) 680/2021**

AERO CLUB Plaintiff
Through: Mr. Prithvi Singh, Mr. Prithvi Gulati
and Mr. Krishna Gambhir, Advocates.
(M:9899320646, 8802958896)

versus

BHAWNA TRADING CO. & ANR. Defendants
Through: Mr. Rakesh Kumar and Mr. Birender
Bhatt, Advocates for D-2.
(M:9650479069)

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

1. This hearing has been done through hybrid mode.
2. The present suit has been filed by the Plaintiff - Aero Club seeking permanent injunction restraining the infringement of trademark and copyright, passing off, damages, rendition of accounts of profit, delivery up, costs and other reliefs. The Plaintiff claims to be the proprietor of the following mark 'WOODLAND' and its variants, used in respect of belts and wallets manufactured, marketed and sold by the Plaintiff. The marks which are the subject matter of the present suit (*hereinafter, "impugned marks"*) are depicted below:

- i. **WOODLAND (Word Mark)**



- ii. **(Tree Device)**

iii.



(Woodland Label)

3. On the other hand, the Defendant No.1 - M/s. Bhawna Belt Co. and Defendant No.2 - M/s. Gun Gun Belt House are wholesalers of belts and wallets located in Sadar Bazar, Delhi. The case of the Plaintiff is that the Defendants were engaged in the sale of counterfeit products under the Plaintiff's mark 'WOODLAND'.

4. Vide order dated 21st December, 2021, an *ex-parte ad interim* injunction was granted in the present suit, in the following terms:

“22. This Court has given its careful thought to the submissions advanced by the plaintiff and gone through the plaint and other material placed on record and is prima facie satisfied that a ease for grant of ex-parte ad-interim stay in favour of plaintiff and against the defendants is made out.

23. Accordingly, till further orders, the defendants and their proprietors, principal officers, partners, servants, representatives, affiliates, franchises, stockists, sister concerns, dealers and agents or any other persona claiming under or through them or acting in concert with

them are restrained from manufacturing, offering for sale, selling, advertising, directly or indirectly dealing in, in any manner bearing the registered trademarks Woodland (word mark), the 'Tree

Device'



and the 'Woodland Label'



or any similar trademark amounting to an infringement of plaintiff's registered trademarks, as also passing off of their goods as emanating from the plaintiff."

5. Thereafter, vide order dated 29th March, 2022, the Plaintiff and Defendant No.2 were referred to mediation under the aegis of the Delhi High Court Mediation and Conciliation Centre.

6. Today, it is submitted by Id. Counsels for the parties that the disputes have been resolved. Settlement agreement dated 20th September, 2022, between the Plaintiff and Defendant No.2 - Gun Gun Belt House, has been placed before the Court. The said settlement agreement also mentions the name of Defendant No.1 - Bhawna Trading Co., however, the parties are clear that the settlement is only between the Plaintiff and Defendant No.2.

7. This Court has perused the settlement agreement dated 20th September, 2022 between the Plaintiff and Defendant No.2. The terms of settlement are set out in paragraph 5(i) to 5(xi) of the said settlement agreement. As per the said terms, the Defendant No.2 acknowledges the rights and ownership of the Plaintiff in the impugned marks. The Defendant No.2 is also willing to suffer a permanent injunction restraining the use of the impugned marks, as also, the original artistic work of the Plaintiff. The settlement agreement further records that all the products bearing the impugned marks, seized by the Local Commissioner, were handed over to the Plaintiff. A sum of Rs.70,000/- has been paid as damages to the Plaintiff in the form of demand draft, which has been encashed.

8. This Court is of the opinion that the terms of settlement are lawful and there is no impediment in recording the same. The Plaintiff and Defendant No.2, and all others acting for or on its behalf shall be bound by the terms of settlement. In view of the settlement between the Plaintiff and Defendant No.2, the present suit is decreed *qua* Defendant No.2, in terms of paragraphs 5(i) to 5(xi) of the settlement agreement dated 20th September, 2022.

9. Insofar as the Defendant No.1 is concerned, summons have been issued in the matter, vide order dated 21st December, 2021. A perusal of the report of the process server shows that the summons were served on one Mr. Rajesh by the process server.

10. After the grant of the *ex-parte ad interim* injunction vide order dated 21st December, 2021, a Local Commissioner was appointed to visit the premises of the Defendant No.1. The Local Commission was duly executed at the premises of the Defendant No.1. A perusal of the report of the Local Commissioner dated 11th January, 2022, shows that a seizure of 34 products bearing Plaintiff's mark 'WOODLAND' was made. The same were handed over to the Defendant No.1 on *superdari*. Clearly, the Defendant No.1 had complete knowledge of the present proceedings and has been duly served, in accordance with law.

11. Despite having full knowledge of the present suit proceedings, the Defendant No.1 has not entered appearance. Accordingly, the Defendant No.1 is proceeded against *ex-parte*.

12. Following the judgment in *Disney Enterprises Inc. & Anr. v. Balraj Muttneja & Ors. [CS (OS) 3466/2012 decided on 20th February, 2014]*, no *ex-parte* evidence would be required in this matter. The same has been reiterated by the Court in *S. Oliver Bernd Freier GMBH & CO. KG v.*

Jaikara Apparels and Ors. [210 (2014) DLT 381], as also, in *United Coffee House v. Raghav Kalra and Ors. [2013 (55) PTC 414 (Del)]*. The relevant observations from the judgment in *Disney Enterprises Inc. (supra)*, are as under:

“3. Though the defendants entered appearance through their counsel on 01.02.2013 but remained unrepresented thereafter and failed to file a written statement as well. The defendants were thus directed to be proceeded ex parte vide order dated 04.10.2013 and the plaintiffs permitted to file affidavits by way of ex-parte evidence.

4. The plaintiffs, despite having been granted sufficient time and several opportunities, have failed to get their affidavits for leading ex-parte evidence on record. However, it is not deemed expedient to further await the same and allow this matter to languish, for the reason that I have in Indian Performing Rights Society Ltd. Vs. Gauhati Town Club MANU/DE/0582/2013 held that where the defendant is ex parte and the material before the Court is sufficient to allow the claim of the plaintiff, the time of the Court should not be wasted in directing ex parte evidence to be recorded and which mostly is nothing but a repetition of the contents of the plaint.”

13. The report of the Local Commissioner, in the present case, clearly reveals that the Defendant No.1 was involved in the sale of counterfeit ‘WOODLAND’ products. In this regard, the report of the Local Commissioner records as under:

“Accordingly, the undersigned visited the premises of defendant No.1 along with Mr. Prithvi Gulati, Mr. Devinder Singh and Mr. Satish Singh Yadav at about 1.45 p.m. where one Mr. Varun was working. On enquiry, the undersigned was told that Mr. Ashish is the Proprietor of defendant No.1

who was called. He joined the Commission. The undersigned apprised him the purpose of visit and serve the copy of the plaint, IA and the order. He has permitted the undersigned undersigned to search the premises. Accordingly, the premises was searched in the presence of the above-mentioned persons and the representative/Proprietor of defendant No.1. On searching the premises, no infringed articles except empty purse boxed 17 in numbers, purses 5 and belt buckles 12 in numbers. It was pointed out by Ld. Counsel for the plaintiff that one sealed carton was lying there. However, on carton, the name of Mr. Naveen was mentioned but the Proprietor / respondent permitted us to open the carton which was opened and no infringed goods with the trademark Woodland was found there. The Proprietor of defendant No.1 was asked not to open the seized goods or not to sell, purchase the infringed goods with the trademark Woodland in any manner. On being enquired, he said, he has not any sale proceeds or bill books for the sale. These goods were seized and handed over to the defendant No.1, Proprietor on superdari. Original spot proceedings, list of inventory, vakalatnama and the photographs taken are enclosed for kind perusal of the Hon'ble Court. ”

14. The above report of the Local Commissioner can be read in evidence in terms of Order XXVI Rule 8 CPC. The Defendant No.1 having been involved in infringing activities, this Court is of the opinion that a permanent injunction is liable to be granted against the Defendant No.1, in terms of reliefs as sought in paragraph 30 (i) to (iii) of the Plaint. Accordingly, the Defendant No.1, and all others acting for or on its behalf, are permanently restrained from manufacturing, selling, offering for sale any products under

the word mark 'WOODLAND', the 'WOODLAND' label, the 'WOODLAND' tree device mark, or any other mark which is deceptively/confusingly similar to the Plaintiff's mark 'WOODLAND'.

15. Insofar as the relief of rendition of accounts and damages as sought in paragraph 30 (v) and (vi) of the Plaint is concerned, considering the quantum of infringing products which was seized by the Local Commissioner, as also, the costs which have been incurred by the Plaintiff in the present proceedings, including the court fee, the fee of the Local Commissioner, litigation costs, etc., the Defendant No.1 shall pay a sum of Rs.5 lakhs to the Plaintiff. The said amount shall be paid by the Defendant No.1 within three months, failing which, the Plaintiff is permitted to avail of its remedies, in accordance with law. No other reliefs are pressed.

16. Decree sheet be drawn in the above terms. All pending applications are also disposed of.

**PRATHIBA M. SINGH
JUDGE**

OCTOBER 19, 2022/dk/ad

भारतमेव जयते