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

+ CS(COMM) 244/2022

HULM ENTERTAINMENT PVT. LTD. & ORS.....Plaintiffs

Through: Mr. Sandeep Sethi, Senior Advocate
with Mr. Sudeep Chatterjee, Mr. Tejveer Singh
Bhatia, Ms. Shifa Nagar, Mr. Kiratraj Sadana and
Ms. Tanya Arora, Advocates.

versus

FANTASY SPORTS MYFAB11 PVT. LTD. & ORS. Defendants

Through:

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

13.04.2022

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I.A. 5897/2022(exemption)

1. Subject to the Plaintiffs filing originals, clearer copies and documents with proper margins, which they may seek to place reliance on, within four weeks from today, exemption is granted.

2. Application is allowed and disposed of.

I.A. 5898/2022(additional documents)

3. Present application has been preferred on behalf of the Plaintiffs seeking leave to file additional documents under Order 11 Rule 1(4) CPC.

4. Plaintiffs, if they wish to file additional documents at a later stage, shall do so strictly as per the provisions of the Commercial Courts Act, 2015.

5. Application is allowed and disposed of.

I.A. 5899/2022(exemption from advance service)

6. Since there is an urgency in the matter and the matter is being heard today, Plaintiffs are exempted from serving the Defendants with advance notice.

7. For the reasons stated in the application, the same is allowed and disposed of.

I.A. 5900/2022(exemption from filing court fees)

8. For the reasons stated in the application, Plaintiffs are permitted to file requisite Court Fees within two weeks from today.

9. Application is allowed and disposed of.

I.A. 5901/2022 (exemption from pre-institution mediation)

10. For the reasons stated in the application, the requirement of pre-institution mediation is dispensed with.

11. Application is allowed and disposed of.

CS(COMM) 244/2022

12. Let plaint be registered as a suit.

13. Upon filing of process fee, issue summons to the Defendants, through all permissible modes, returnable on 01.08.2022. Summons shall state that the written statement shall be filed by the Defendants within 30 days from the receipt of summons. Along with the written statement, Defendants shall also file an affidavit of admission/denial of the documents of the Plaintiffs.

14. Replication be filed by the Plaintiffs within 15 days of the receipt of the written statement. Along with the replication, an affidavit of admission/denial of documents filed by the Defendants, shall be filed by the Plaintiffs.

15. If any of the parties wish to seek inspection of any documents, the same shall be sought and given within the timelines.

16. List before the Joint Registrar on 01.08.2022.

17. List before the Court on 22.09.2022.

I.A. 5896/2022(under Order 39 Rules 1 and 2 CPC)

18. Present application has been preferred by the Plaintiffs under Order 39 Rules 1 and 2 read with Section 151 of the Code of Civil Procedure 1908 for grant of *ex-parte ad-interim* injunction.

19. Issue notice to the Defendants through all prescribed modes, returnable on 22.09.2022.

20. It is the case of the Plaintiffs, that the Plaintiffs are developers and operators of the Fantasy Sports Mobile Application ('App') named EXCHANGE22, which has been recognized as a start up by Start Up India, an initiative under the Government of India which assists entrepreneurship platforms to network, access free tools and resources and participate in programs and challenges.

21. It is averred that Plaintiff No. 2 first came up with the unique idea of integrating the features of a Fantasy Sports League and the Stock Market in the year 2010. Over the years, Plaintiffs No. 2 and 3, with hard work and toil, developed their idea into something tangible and finally launched the beta version of their application in August, 2019 to test the mobile App on its website <https://exchange22.com/>. Plaintiff No. 1 Company was incorporated on 16.09.2019 and on 21.11.2019, EXCHANGE22 mobile App was officially launched.

22. It is averred that Plaintiffs' fantasy sports game is registered under the Copyright Act, 1957. Plaintiff No.2 applied for registration in the work

named EXCHANGE-22 and applied for registration on 12.11.2019, being a Literary/Dramatic work. Plaintiffs' registered copyright work includes detailed working of the fantasy game viz. "Object of the Game" and the "Components" which explain every step that a user experiences on its mobile application, such as the components of the "Home Page", "My Portfolio Page", "My Balance Page" etc.

23. It is averred that Plaintiffs have devised a first of its kind fantasy league gaming platform for cricket, football, basketball and kabaddi. Its distinguishing feature is that the users play it like a real game *albiet* virtually, the Plaintiffs' EXCHANGE22 incorporates the unique traits of share market trading which allows the user to buy/sell the players in the same manner that one would buy and sell shares. In the Plaintiffs' App EXCHANGE22, the user can buy any number of shares of a player, maximum up to 22 players in one match going on anywhere across the world. Prior to the match starting in real time, the user can trade the shares of the players in a manner similar to stock exchange market, that is buy and sell a player. On account of its several distinguishing features from other fantasy sports, which includes the Points System, the App is an amalgamation of the features of Fantasy Sports Leagues and Stock Market Trading.

24. It is averred in the plaint that the Plaintiffs have developed an attractive Graphical User Interface with unique programme structure and placement of information with lots of hard work and investment of huge sums of money. Plaintiff No.1 is the copyright owner of the interface of its mobile App EXCHANGE22. Plaintiffs have also applied for a patent registration for their invention which relates to a system and a method of

trading a value of at least one player by a user in an online environment. The App is easily available for download on their website for Android phones and on the App Store for iPhones.



25. It is further averred that Plaintiffs have expended huge sums of money on product development, advertising and media costs in developing its brand name and EXCHANGE22 App. Since its launch, for the period 2019-2022, the expenditure incurred on software development and maintenance cost was Rs.96,00,912/- and with respect to advertising etc., Plaintiffs have incurred a cost of Rs. 7,79,56,657/-. Plaintiffs are earning huge revenues from the platform fees paid by the users, as mentioned in the plaint, which for the year 2021-2022 is Rs.138,112,327/-.

26. It is averred that Plaintiffs' App has 4,57,911 users as of today and new users keep getting added every day, with about 32,000 daily active users at any given point of time, of an average engagement of 1.10 hours. In a short span of three years, Plaintiffs have carved a distinct niche for themselves in the world of fantasy gaming leagues. The game is the exclusive property of the Plaintiffs and deserves protection under law from unlawful use by others. Plaintiffs' App EXCHANGE22 has a rating of 4.2 out of 5 on Apple's App Store.

27. It is the pleaded case of the Plaintiffs that the Defendants own and operate another fantasy league sporting app called MYFAB11. A day before the launch of the Indian Premier Leagues' first match on 26.03.2022, the Defendants on 25.03.2022 launched a new version of their MYFAB11 App, wherein they fraudulently launched an updated version of the game, identical to that of Plaintiffs' EXCHANGE22 game. Defendants not only copied the user interface of the Plaintiffs but also the data as well as the

advertising style of the Plaintiffs.

28. It is averred that the concept, expression and the user interface of the new update is a substantial reproduction of Plaintiffs' registered copyright. Defendants have copied the concept, workings, features, and execution of the Plaintiffs' Buy/Sell interface. User interface of the Plaintiffs' and the Defendants' is scanned and placed below:

PLAINTIFF'S INTERFACE	DEFENDANT'S INTERFACE
HOMEPAGE	
	

29. It is averred that Defendants' illegal activities are evident on comparing the Buy/Sell price of a Player. Plaintiffs' make their Buy/Sell portal available for their users 24 hours before the actual match is scheduled. The modus operandi of Defendants is that they change the match statistics on their App a few hours after the Plaintiffs, during which time they copy the Buy/Sell rate, which is as per the analysis of the Plaintiffs' analytical team. As soon as the Plaintiffs update the data pertaining to the players, the

Defendants thereafter update the data pertaining to the corresponding players on their own App according to the set standard pattern which requires no application of mind. In order to demonstrate the unauthorised commercialisation of the Plaintiffs' data, tabular representations of the alleged data theft has been furnished by the Plaintiffs which is as under:

	Buy	Sell
Batsmen	8 + (Plaintiff's price)	6 + (Plaintiff's price)
Bowler	12 + (Plaintiff's price)	8 + (Plaintiff's price)
All Rounder	12 + (Plaintiff's price)	8 + (Plaintiff's price)
Wicket Keeper	8 + (Plaintiff's price)	6 + (Plaintiff's price)

30. Mr. Sandeep Sethi, learned Senior Counsel appearing on behalf of the Plaintiffs submits that the Defendants are exploiting the success, goodwill and reputation of the Plaintiffs and misleading the general public into believing that the business of the Defendants' websites is associated with that of the Plaintiffs. Mr. Sethi explains that Plaintiffs incur huge expenditure on a daily basis to engage highly qualified team of dedicated analysts and software maintenance persons to keep the App in the best working conditions while the Defendants are stealing the data and analysis by merely changing it according to the flat figures. As an illustration from the screenshots, it is pointed out that where the Plaintiffs gave Rs.44/- as the buying price for a batsman Rishabh Pant, Defendants flatly added Rs.8/- and listed the batsman at Rs.52/-. Similarly, where the selling price given by the Plaintiffs was Rs. 40/-, Defendants listed the selling price at Rs.48/-. Screenshot of the Plaintiffs' and the Defendants' user interface is as under:

PLAINTIFF'S INTERFACE	USER	DEFENDANT'S INTERFACE	USER
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PLAYERS LISTING



31. It is further submitted that the Plaintiffs sent a cease and desist notice to the Defendants on 26.03.2022, attaching along with the email a video showing the similarities between the Plaintiffs' and the Defendants' Mobile Apps with respect to concept and user interface. However, the Defendants simply denied the allegations and instead of discontinuing the infringing actions, introduced a new update on 02.04.2022 infringing the Plaintiffs' registered copyright.

32. Mr. Sethi contends that Plaintiffs' Fantasy Sports Game, being registered under the Copyrights Act, 1957, entitles them to protection in law and the Defendants' App MYFAB11, wherein the content of the Plaintiffs App EXCHANGE22 is copied, is an infringement. Defendants are exploiting and encashing on the success, goodwill and reputation of the Plaintiffs and misleading the public into believing that their websites have a connection or association with the Plaintiffs, causing a likelihood of confusion in the minds of the public and a consequential monetary damage and loss of revenue as well as reputation to the Plaintiffs. The act of the Defendants violates the common law rights of the Plaintiffs and amounts to passing off.

33. Having heard learned Senior Counsel for the Plaintiffs, this Court is of the view that Plaintiffs have made out a *prima facie* case for grant of *ex parte ad-interim* injunction. Balance of convenience lies in favour of the Plaintiffs and they are likely to suffer irreparable harm in case the injunction, as prayed for, is not granted.

34. Accordingly, Defendants, their Directors, Assignees, Partners or anyone acting for or on their behalf, *inter alia* are restrained from making available for downloads or in any manner unauthorizedly using the

Plaintiffs' copyrighted works through the MYFAB11 App or through any other similar App using the impugned application/computer program on Smart Phones, Tablets, Smart TVs, Laptops, Computers or any other digital gadgets or any other application, so as to result in infringement of Plaintiff's copyrighted works.

35. Defendants their subsidiaries, agents, distributors, advertising agencies, developers, partners, acting for or on their behalf are further restrained from making available to the public for downloading the copyrighted content of the Plaintiffs on all electronic medium including App Store, on any electronic devices through any medium or download via any applications like "software update" (i.e. Defendant's partner app) or through any social media like youtube.com, facebook.com, Instagram, Telegram etc. so as to result in acts of infringement of the Plaintiffs' copyright.

36. Defendant No. 6 its subsidiaries, agents, distributors, advertising agencies, developers, partners, acting for or on their behalf are restrained from making available to the public for downloading the copyrighted content of the Plaintiffs on all electronic medium including on any electronic devices through any medium, or download via any applications like "software update" (i.e. Defendant's partner app) or through any social media like youtube.com, facebook.com, Instagram, Telegram or through their Web Hosting Services including the cloud, etc. so as to result in acts of infringement of the Plaintiffs' copyright.

37. Defendants No. 4, its directors, partners, proprietors, officers, affiliates, servants, employees, and all others in capacity of principal or agent acting for and, on its behalf, or anyone claiming through, by or under it, are directed to suspend the domain name registration of myfab11.com

which infringe the Plaintiffs' exclusive rights.

38. Defendants No. 5 its directors, partners, proprietors, officers, affiliates, servants, employees, and all others in capacity of principal or agent acting for and, on their behalf, or anyone claiming through, by or under it are directed to remove Defendant No. 1's mobile App MYFAB11 from its listings.

39. Plaintiffs shall comply with the provisions of Order 39 Rule 3 CPC within five days from today.

JYOTI SINGH, J

APRIL 13, 2022/st

