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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 11th October, 2023
+ **CS(COMM) 720/2023, I.A. 20046/2023, 20047/2023, 20048/2023,**
20049/2023, 20050/2023, 20051/2023, 20052/2023 & 20053/2023

JAPAN PATENT OFFICE

..... Plaintiff

Through: Mr. Pravin Anand, Mr. Dhruv Anand, Ms. Udit M. Patro, Ms. Sampurnaa Sanyal & Ms. Nimrat Singh, Advocates (Mob. No. 9313399860)

versus

MS. A2Z GLASS AND GLAZING CO. & ORS. Defendants

Through: None.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

I.A. 20049/2023 (for exemption)

2. This is an application filed by the Plaintiff seeking exemption from filing originals/better copies/translated copies of documents with proper margins, etc. Original documents shall be produced/filed at the time of Admission/Denial, if sought, strictly as per the provisions of the Commercial Courts Act, 2015 and the DHC (Original Side) Rules, 2018.

3. Exemption is allowed, subject to all just exceptions. Accordingly, the application is disposed of.

I.A. 20048/2023 (for additional documents)

4. This is an application filed by the Plaintiff seeking leave to file additional documents under the Commercial Courts, Commercial Division



and Commercial Appellate Division of High Courts Act, 2015 (hereinafter, 'Commercial Courts Act'). 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 and the DHC (Original Side) Rules, 2018.

5. Application is disposed of.

I.A. 20053/2023 (exemption from advance service to the Defendants)

6. In view of the fact that the Plaintiff has sought an urgent *ex parte ad-interim* injunction along with the appointment of the Local Commissioner, the exemption from advance service to the Defendants is granted.

7. Application is disposed of.

I.A. 20051/2023 (u/S 12A of the Commercial Courts Act)

8. This is an application filed by the Plaintiff seeking exemption instituting pre-litigation mediation. Since the Plaintiff seeks urgent interim orders as also appointment of Local Commissioners, in view of the orders passed in *Chandra Kishore Chaurasia v. R A Perfumery Works Private Ltd, 2022/DHC/004454*, the application is allowed and disposed of.

I.A. 20050/2023 (for court fee)

9. This is an application seeking extension of time for filing the court fee. For the reasons stated in the application, the time to file the court is extended. Let the court fee now be filed within a period of one week. Application is disposed of.

I.A. 20047/2023 (for discovery)

10. The present application is for seeking discovery, production and inspection of the Defendants' documents.

11. Issue notice in this application returnable on 8th April, 2024.



I.A. 20052/2023 (for local commissioner)

12. This is an application for appointment of a local commissioner. Ld. counsel for the Plaintiff does not wish to press this application at this stage. Accordingly, the present application is disposed of as not pressed.

CS(COMM) 720/2023

13. Let the plaint be registered as a suit.

14. Issue summons to the Defendants through all modes upon filing of Process Fee.

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

16. Liberty is given to the Plaintiff to file the replication within 15 days of the receipt of the written statement. Along with the replication, if any, filed by the Plaintiff, an affidavit of admission/denial of documents of the Defendants, be filed by the Plaintiff, without which the replication 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.

17. List before the Joint Registrar for marking of exhibits on 22nd November, 2023. It is made clear that any party unjustifiably denying documents would be liable to be burdened with costs.

18. List before Court on 8th April, 2024.

I.A. 20046/2023 (u/O XXXIX Rules 1 & 2 CPC)

19. Issue notice in the application.

20. The Plaintiff- Japan Patent Office (*hereinafter* 'JPO') has filed the



present suit - in a rather piquant situation where its 'JPO' logo has been sought to be appropriated by the Defendants i.e., M/s. A2Z Glass & Glazing Co. (Defendant No.1), M/s. Future Architectural Glass Fitting (Defendant No.2) and M/s. Future Overseas (Defendant No.3), who are using an identical logo for manufacture and sale of tools and kits.

21. The JPO is a Japanese governmental agency which is in charge of the Industrial Property Rights affairs in Japan. It functions under the Ministry of Economy, Trade and Industry, Japan. The JPO's office is located in Kasumigaseki, Chiyoda, Tokyo.

22. The JPO's legacy shows that it has been associated with the founding date of Patent Law in Japan, on 18th April, 1885, which is the date when the Patent Monopoly Act of Japan was enacted. The said day is to this date, celebrated as the **Invention Day** in Japan to raise public awareness of the industrial property rights system including patent system. JPO is one of the five largest five patent offices in the world along with the European Patent Office (EPO), Korean Intellectual Property Office (KIPO), China National Intellectual Property Administration (CNIPA) and the United States Patent and Trademark Office (USPTO).

23. It provides services to intellectual property owners for registration of patent utility models, designs and trademarks. It is headed by a Commissioner. Th JPO has had a large number of collaborations internationally in various organizations including World Intellectual Property Organization (WIPO) and Asia Pacific Industrial Property (AIPC), etc.

24. In India, the JPO has a history of holding training programs and seminars in the field of Intellectual Property since 1996. In 2006, an MoU was entered into between JPO and Controller General of Patents, Designs and



Trademarks, India (CGPD TM) for cooperation in the area of Intellectual Property. The Memorandum of Cooperation on Industrial Property, 2015 recognizes the cooperation between JPO and CGPD TM for speedy processing and disposal of IP applications while ensuring quality of Intellectual Property Rights. As per the plaint, in paragraph 11 the JPO's further enhanced new Action Plan contemplates training courses for new Patent Examiners of CGPD TM or sending JPO officials who are well-versed with the Patent Prosecution highway (PPH) to India.

25. The various initiatives taken by the JPO in India have been set out in the plaint. Japan was the first country with which India established a Patent Prosecution Highway in 2019. This clearly shows that JPO has had recognition and goodwill even within India for the last several years.

26. The JPO's logo is stated to have been adopted in 2011 to commemorate the 125th anniversary of the Industrial Property Rights System in Japan. Ld. counsel for the Plaintiff has pointed out that the said logo was adopted after a competition held for the JPO's logo. The significance of the logo as explained on the JPO's website is set out below:



“New JPO Logo



What the logo represents

Within the new logo can be seen the letters “JPO” in a design that conveys familiarity and trust.

The letter “j” represents a “person” and stands for the JOP’s philosophy to deliver user-oriented, high-quality service. This “jumping” person shows how the JPO will be tackling various IP-related challenges toward the next generation and making a leap forward for continuous evolution.

The “blue oval” symbolized the intellect and the development of a global intellectual property system, and the JPO’s efforts to implement diversified IP measures and policies timely and effectively are implied in this figure.”

27. The Defendant No.1 i.e. A2Z Glass and Glazing Co. is a proprietorship firm owned and managed by one Mr. Ramesh Sharma. As per paragraph 21 of the Plaint, the Defendant is engaged in the business of manufacturing and supply of glass connector and glass door handles. The company is also



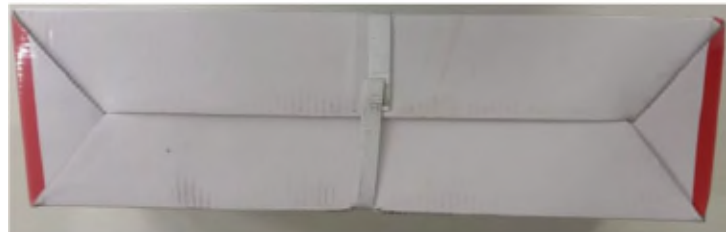
engaged in the trading business of architectural glass fittings, shower handles, shower hinges, etc. of third-party companies under their respective brand names. Defendant No.2- M/s. Future Architectural Glass Fitting and Defendant No.3- M/s Future Overseas are sister concerns of Defendant No.1 entity, all managed and owned by Mr. Ramesh Sharma.

28. The case of the Plaintiff is that the Defendants' have blatantly copied Plaintiff's 'JPO' mark/logo, for manufacturing and selling of their products in India. The Defendants' have also filed for trademark registration of their mark 'JPO PLATINUM' bearing number 4645875 in class 6, which is opposed by the Plaintiff.

29. Mr. Anand, Id. Counsel for the Plaintiff has highlighted the fact that the Defendants have copied the logo identically in the same colour combination and is also printing/embossing the same on the products. The impugned logo is extracted herein below:



30. Some of the product images of the Defendants are set out below:







31. Heard the Id. Counsel for the Plaintiff and perused the record.
32. The suit presents a rather ironic situation, like a *theft being committed in a police station*. The JPO which itself protects and grants registrations to Intellectual Property owners, finds that its own mark/logo has been illegally adopted by the Defendants.
33. The use of an identical colour combination and an identical logo by the Defendants leaves no manner of doubt that the same is a complete imitation and copy of the JPO's logo. The Defendants can have no explanation whatsoever for adopting this logo. The logo is an original artistic work and is entitled to copyright protection, as since the date of its creation, Japan is a WTO country. Under Section 14 of the Copyright Act, 1957, JPO would have the exclusive rights to use this logo.
34. The JPO does not have a registered trade mark or copyright in its favour. It is but natural that the JPO could have never imagined that its logo



would have been imitated by anyone. Thus, the non-filing of any trademark application for registration by the JPO is fully explicable. The Defendants have filed their trademark application bearing number 4645875 in class 6 for



the registration of the logo claiming user since 2020. The said application has been opposed by the Plaintiff.

35. This is a case where the Intellectual property office of Japan has found itself at the receiving end of infringement and imitation by an unscrupulous Defendants. The Defendants' use of the identical mark and logo would be violative of the Plaintiff's goodwill and brand equity. Such misuse would cause dilution to the Plaintiff's logo and mark. In any event, the same would also be infringement of the copyright in the Plaintiff's logo.

36. In *Laxmikant V. Patel v. Chetanbhai Shah & Ors.*, *MANU/SC/0763/2001*, the Supreme Court categorically observed that in cases where passing off is made out, the Court ought to grant an immediate *ex-parte* injunction and also appoint Local Commissioners to ensure that the infringing products are not permitted to be sold. The relevant extract of the order is set out below:

“14. [.....Once a case of passing off is made out the practice is generally to grant a prompt ex-parte injunction followed by appointment of local Commissioner, if necessary....]”

17. We are conscious of the law that this Court would not ordinarily interfere with the exercise of discretion in the matter of grant of temporary injunction by the High Court and the Trial Court and substitute its own discretion therefore except where the discretion has been shown to have been exercised arbitrarily or capriciously or



*perversely or where the order of the Court under scrutiny ignores the settled principles of law regulating grant or refusal of interlocutory injunction. An appeal against exercise of discretion is said to be an appeal on principle. Appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion [(see Wander Ltd. v. Ant ox India P. Ltd. MANU/SC/0595/1990 and N.R. Dongre v. Whirlpool Corporation and Anr.: MANU/SC/1223/1996 : (1996)5SCC714 . However, the present one is a case falling within the well accepted exceptions. **Neither the Trial Court nor the High Court have kept in view and applied their mind to the relevant settled principles of law governing the grant or refusal of interlocutory injunction in trade mark and trade name disputes. A refusal to grant an injunction in spite of the availability of facts, which are prima facie established by overwhelming evidence and material available on record justifying the grant thereof, occasion a failure of justice and such injury to the plaintiff as would not be capable of being undone at a latter stage.** The discretion exercised by the Trial Court and the High Court against the plaintiff, is neither reasonable nor judicious. The grant of interlocutory injunction to the plaintiff could not have been refused, therefore, it becomes obligatory on the part of this Court to interfere.”*

37. Thus, in terms of the decision in *Laxmikant Patel (supra)*, it is clear that in cases relating to trade mark violations and passing off, if the evidence establishes a *prima facie* case, even at the *ex-parte* stage, injunction ought to be granted.



38. Considering the overall facts, this Court is convinced that the Plaintiff makes out a *prima facie* case for grant of an *ex parte* injunction. Balance of convenience also lies in favour of the Plaintiff considering that it is a well reputed patent office in the world, which grants and protects rights of other Intellectual Property Right owners. If an injunction is not granted in the present case, it will lead to irreparable loss/harm to the Plaintiff's reputation and goodwill as also lead to Dilution of its brand equity. This is a fit case for grant of an *ex parte* injunction.

39. Accordingly, the Defendants and all others acting for or on their behalf



are restrained from using the impugned JPO mark, JPO logo, as well as the impugned word mark 'JPO PLATINUM', or any other mark identical or similar to the JPO mark and logo, in respect of any products or services with immediate effect.

40. Reply to the application be filed within four weeks from the service of the present order, along with the paper book.

41. Compliance of Order XXXIX Rule 3 CPC be made within a period of one week.

42. List on 8th April, 2024.

**PRATHIBA M. SINGH
JUDGE**

OCTOBER 11, 2023

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