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IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CS(COMM) 1234/2018

IRISH CONNEXION ACTIVE WEAR LTD. Plaintiff

Through: Mr. Sachin Gupta, Advocate with
Ms. Jasleen and Ms. Jyoti Mehra,
Advocates.

versus

SH. PRADEEP SINGHAL & ORS.

..... Defendants

Through: None.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

ORDER

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16.11.2018

I.A. 15587/2018 in CS(COMM) 1234/2018

Keeping in view the averments in the application, plaintiff is exempted from filing the original/ clear/typed and translated copies of the documents at this stage. The plaintiff is also permitted to file additional documents within thirty days.

Needless to say, this order is without prejudice to the rights and contentions of the parties.

Accordingly, present application stands disposed of.

CS(COMM) 1234/2018

Let the plaint be registered as a suit.

Issue summons in the suit to the defendants by all modes including

dasti, returnable for 19th December, 2018 before the Joint Registrar for completion of service and pleadings.

The summons to the defendants shall indicate that a written statement to the plaintiff shall be positively filed within four weeks of the receipt of the summons. Liberty is given to the plaintiff to file a replication within two weeks of the receipt of the advance copy of the written statement.

The parties shall file all original documents in support of their respective claims along with their respective pleadings. In case parties are placing reliance on a document which is not in their power and possession, its detail and source shall be mentioned in the list of reliance which shall be also filed with the pleadings.

Admission/denial of documents shall be filed on affidavit by the parties in accordance with the Delhi High Court Rules.

List the matter before Court on 09th January, 2019.

I.A.15588/2018 in CS(COMM) 1234/2018

Issue notice to defendants by all modes including *dasti*, returnable for 19th December, 2018 before the Joint Registrar.

It is pertinent to mention that present suit has been filed for permanent injunction restraining passing off, unfair competition, breach of trust, dilution, malicious falsehood and misrepresentation rendition of accounts of profits/damages, delivery up etc.

It is stated in the plaint that the plaintiff is a company incorporated under the Laws of Ireland with a group of companies in the Netherlands and India and has an extensive range of active clothing and fashion garments, which are exclusive in design, style, pattern, quality and standard.

It is stated in the plaint that the plaintiff company constantly innovates new designs and patterns to cater to changing needs and tastes of the consumers. It is stated that the plaintiff gives its designs to third parties to manufacture garments for them, which are then sold at third party stores. However, the rights with regards to the designs vest with the plaintiff and the garment manufacturer cannot claim any right over the plaintiff's art work, designs and patterns.

It is stated in the plaint that the plaintiff's in-house designers in 2010 and 2011 created The Dublin Stamp design and The Ireland Stamp design respectively and created the Dublin Photostar design in 2016, comprising of 3 pictorial images on famous tourist attractions within Dublin City, including Samuel Beckett Bridge, Ha'Penny Bridge and Grand Canal Bridge .

Learned counsel for the plaintiff states that the defendants are engaged in the business of manufacturing garments. He states that the defendant No.1 is the proprietor of the defendant No.3 and director of the defendant No.4-company and the defendant No.2 also works for the defendant No.4.

Learned counsel for the plaintiff states that from August 2015 till September 2017, the defendants No.1 and 3 worked as a third party manufacturers for the plaintiff company. He states that during this period the plaintiff gave its design to the defendants for manufacturing garments with them. However, there was a clear understanding that the defendants have no right over the designs.

Learned counsel for the plaintiff states that in September, 2017 differences arose between the plaintiff and the defendants on account of the

following reasons:

- a) Various quality issues
- b) Late deliveries
- c) Failure on the part of the defendants to follow the plaintiff's SOPs
- d) Refusal on the defendants to sign Supplier Agreement.

and the parties settled accounts and parted ways.

Learned counsel for the plaintiff states that in the third week of October, 2018, the plaintiff came to know that the defendants had approached a buyer in Dublin, namely Temple Bar Trading & Co. through its manager vide email dated 3rd October, 2018, claiming the plaintiff's design as their own. He states that the owner of the Temple Bar Trading & Co. was aware of the plaintiff's design claimed by the defendants as theirs and forwarded the email to plaintiff's representative. He states that the plaintiff was shocked to see that the defendants have reproduced the plaintiff's design/artwork and claimed it as theirs.

Learned counsel for the plaintiff states that the defendants have unlawfully and dishonestly adopted plaintiff's design as theirs. A pictorial representation of the plaintiff's design of the IRELAND Stamp and the DUBLIN Stamp and the defendants' design is shown hereinbelow:-

Plaintiffs Design 1

DUBLIN STAMP 988
ICX ORIGINAL DESIGN & PRINT
ARTWORK DATE 02/02/2010



IRELAND STAMP 1916
ICX ORIGINAL DESIGN & PRINT
ARTWORK DATE 29/11/2011



Defendants Design 1

COPY FROM
SHREE JEE KNITWEAR PVT. LTD.
FORMERLY TRADING AS SHREE JEE IN

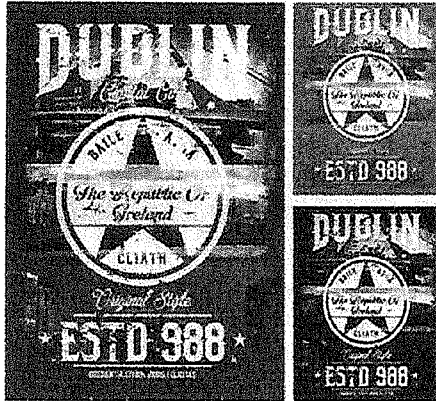


Learned counsel for the plaintiff states the defendants have copied the plaintiff's design with regard to the use of the font and placements of the different elements, the similarities qua which is enumerated below:-

- i. IRELAND : The font used is the same;
- ii. 1829 : The font used is the same as 1916;
- iii. CENTRE STAMP : This stamp was originally created in 2010 for the Dublin design at first then converted in Ireland in 2011;
- iv. REPUBLIC: Font, width and height is a copy and paste of plaintiff's original design.

A pictorial representation of the plaintiff's design 'Dublin Photostar' and defendants' design is reproduced hereinbelow:-

Plaintiffs Design 2



ORIGINAL

Defendants Design 2



COPY

He further states that the defendants have copied the plaintiff's Dublin Photostar design i.e. the overall concept. He also states that the sizing and the placement of every single component is exactly the same. The similarities, as pointed out in the plaint, are given hereinunder:

- i. DUBLIN : Font and are lower wrap of the font is the same;
- ii. EIGHTEEN TWENTY NINE: Writing the date has been copied from the Plaintiff's other designs, which plaintiff did for Ireland, Cork, Kilkenny, St. Patrick, Australia, Melbourne, Sydney and Perth Photostar Design, which is as under:-



- iii. STAR IN ROUND CENTRE STAMP : The limited vintage edition is clearly the same in font and placement as all the other designs previously mentioned;
- iv. ORIGINAL STYLE : Same font, placement and distressed effect;
- v. ESTD: Same font and distressed effect;
- vi. 1829: Font is the same;
- vii. WORLD HERITAGE CITY: Copy and paste from Cork, Belfast, Kilkenny, Melbourn, Sydney and Perth Photostar Design;
- viii. BACKGROUND PICTURES : The concept of having 3 images aligned in a vertical row and the effect around them is the same;
- ix. BOTTOM PICTURE: The bottom picture used on Defendant's design is clearly the second middle picture on Plaintiff's design mirrored flip.

Learned counsel for the plaintiff states that the defendants are dealing in garments with designs being obvious and fraudulent imitation of the plaintiff's designs and are engaged in the illegal acts of imitating the unique designs, pattern and art works of the plaintiff and applying the same in various permutations and combinations on their products for sale.

Learned counsel for plaintiff states that a Full Bench of this Court in *Mohan Lal, Proprietor of Mourya Industries Vs. Sona Paint & Hardwares, 200 (2013) DLT 322 (FB)* has held that "an action for passing off of a design requires firstly that the design be used as a mark and such design/mark identify the plaintiff as the source of goods supplied or services

offered as the plaintiff in the present matter has claimed that the design used by them as a mark which is associated by the public and the same have unique goodwill and reputation; the same is not disputed by the other side."

Keeping in view the aforesaid, this Court is of the opinion that a *prima facie* case of passing off is made out in favour of the plaintiff and balance of convenience is also in its favour. Further, irreparable harm or injury would be caused to the plaintiff if an interim injunction order is not passed.

Consequently, till further orders, this Court restrains the defendants, their proprietors, partners or directors, as the case may be, their assignees in business, licensees, franchisees, distributors and dealers from manufacturing, selling, offering for sale, advertising directly or indirectly dealing in clothing and fashion garments under the plaintiff's design including the Ireland Stamp Design and Dublin Photostar Design and/or any other designs, which may be a colourable and slavish imitation and reproduction of plaintiff's design in any manner whatsoever.

Let the provisions of Order XXXIX Rule 3 CPC be complied within a period of two weeks.

Order dasti under signature of Court Master.

NOVEMBER 16, 2018

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Barb's
17/11/2018
Court Master
High Court of Delhi
New Delhi

MANMOHAN, J