

\$~3 (2020)

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of Decision: 21st March, 2022

+ **CS (COMM) 564/2020 & I.As. 12556-57/2020**
IMAGINE MARKETING PRIVATE LIMITED Plaintiff
Through: Mr. Devesh Ratan, Advocate
(M:9650271872)

versus


M/S GREEN ACCESSORIES THROUGH: ITS PROPRIETOR AND
ANR Defendants

Through: None.

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

2. The present suit relates to the trademark  (hereinafter, 'BOAT') which is used by the Plaintiff in respect of various electronic gadgets such as earphones, headphones, speakers, sound bars, travel chargers, premium rugged cables, etc. The Plaintiff owns the rights in the trademark 'BOAT' as also rights in the logo 'BOAT' which is stated to be an original artistic work in respect of the manner in which 'BOAT' is written. The various depictions of the Plaintiff's logos and its parts are extracted below:



3. It is noticed that Defendant Nos.1, 3 & 6 have not entered appearance despite service and despite being aware of the pendency of this suit. The remaining Defendants being Defendant Nos.2, 4 & 5 have already settled the dispute subject to payment of costs of Rs.50,000/-, and the suit has already been decreed *qua* the said Defendants, vide order dated 10th August, 2021. Accordingly, the Defendants Nos.1, 3 and 6 are proceeded against *ex parte*.

4. After perusing the record, vide order dated 24th December, 2020, the Court had restrained the Defendants, in the following terms:

“In the meanwhile, the defendants, their partners, proprietors, agents, distributors, and employees are restrained from manufacturing, selling and/or offering for sale, advertising, directly or indirectly, and dealing in products such as earphones, headphones, and other electronic gadgets under the impugned trademark or any other mark which is identical to or deceptively similar to the plaintiffs registered trademark 'boAt' and/or registered logo mark 'boAt'.”

5. Vide order dated 24th December, 2020, the Local Commissioners were also appointed for the seizure of the infringing products from the Defendants' premises. Pursuant thereto, the Local Commissions were executed.

6. Insofar as Defendant No.1 is concerned, the Local Commissioner who was appointed to visit the premises of Defendant No.1 has reported that she visited M/s. GREEN ACCESSORIES, Shop No. 166, MCD Market, Karol Bagh, New Delhi – 110005, and met one Mr. Suresh Kumar, who introduced himself as the owner of the premises. The court order dated 24th December, 2020 was explained to him. Various products bearing the mark 'BOAT' were identified. A total of 22 pieces of counterfeit products were

seized from the said premises.

7. Insofar as Defendant No.3 is concerned, the Local Commissioner visited the premises bearing the address Shop No.3, Basement, Hong Kong Plaza, New Delhi-110005, and met one Mr. Imran Ahmed, the proprietor of the Defendant No.3-Shop. The Local Commissioner reported that he did not find any infringing products. Paragraph 16 of the Local Commissioner's report is set out below:

“16. That despite carrying out a thorough search of the premises of Defendant No.3, I did not find any kind of infringing products/goods and/or any promotional material from the premises. That the counsel for the plaintiff assisted me in searching the premises of Defendant No.3.”

8. Insofar as Defendant No.6 is concerned, the Local Commissioner had visited the premises bearing the address M/s. Shree Balaji Accessories, Building No.2827, Ground Floor, Gali No.8, Opposite Max Plaza, Beadonpura, Karol Bagh, New Delhi-110005, and met a few employees, as also, Mr. Dinesh, who claim to be the Manager of the Defendant No.6-Shop. Various goods bearing the Plaintiff's mark 'BOAT' were found at the said premises. A total of more than 120 pieces of Bluetooth headsets, Wireless Headsets, Earphones, Wireless Earphones, Portable Speakers and packaging material were also found. The same were seized by the Local Commissioner.

9. From the Local Commissioners' reports, and the pleadings on record it is clear that the Defendants are engaged in manufacturing or selling or offering for sale various electronic or electric products bearing the mark 'BOAT' as also the logos thereof. The Defendants choose not to appear despite having knowledge of the proceedings which are pending before this

Court. The Local Commissioners' reports along with the evidence there of also clearly reveals that the Defendant Nos.1 and 6 were engaged in the sale of counterfeit products.

10. Under these circumstances, following the rationale of the judgment of a Id. Single of this Court 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 buta repetition of the contents of the plaint.”

11. Thus, the Plaintiff, being the owner of the registered trademark 'BOAT' in various forms, including the logo, is entitled to protection of its rights in the trade mark 'BOAT', as also device mark and the logos thereof. Accordingly, the present suit is decreed in terms of the reliefs sought in paragraph 30 (a), (b), and (c) of the amended plaint.

12. Since the Defendants have not appeared and rendered any accounts of profits, the said relief as sought in paragraph 30(d) is rejected. Insofar as the relief of delivering up as sought in paragraph 30(e) is concerned, the Plaintiff or a representative thereof, is permitted to visit the premises of Defendant No.1 and Defendant No.6, upon which the Defendant Nos.1 and 6 shall handover all the seized products to the representatives of the Plaintiff for the purpose of destruction.

13. Insofar as the relief of damages as sought in paragraph 30(f) is concerned, it is clear to this Court that the Defendants have blatantly infringed the trademark and logos as also the packaging of the Plaintiff's products. Considering the quantum of counterfeit products which was seized from Defendant No.1 and Defendant No.6, the suit is decreed against the Defendant No.1 for a sum of Rs. 5 lakhs, and against the Defendant No. 6 for a sum of Rs.10 lakhs. Since no products were found in the premises of Defendant No.3, no monetary damages are being imposed on the said Defendant. Let the said amounts be paid to the Plaintiff within two weeks.

14. No further orders are called for in this matter. All pending applications are also disposed of.

15. Decree sheet be drawn in the above terms.

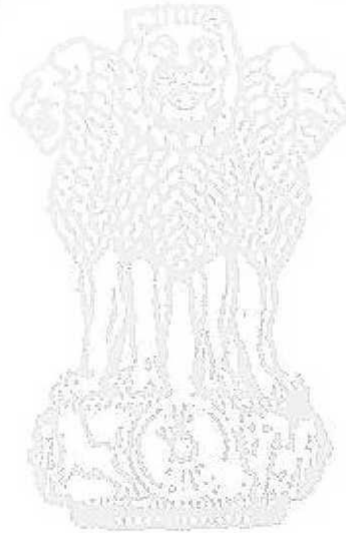
16. The digitally signed copy of this order, duly uploaded on the official website of the Delhi High Court, www.delhihighcourt.nic.in, shall be treated

as the certified copy of the order for the purpose of ensuring compliance. No physical copy of orders shall be insisted by any authority/entity or litigant.

**PRAITHIBA M. SINGH
JUDGE**

MARCH 21, 2022/aman/ad

HIGH COURT OF DELHI



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