

## And 2 R/W Section 151 Of The Code Of Civil ... vs Crimzon Fashion Accessories Private ... on 23 December, 2022

**Author: Sanjeev Narula**

**Bench: Sanjeev Narula**

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IN THE HIGH COURT OF DELHI AT NEW DELHI

CS(COMM) 919/2022 & I.A. 22377/2022 (u/Order XXXIX Rule 13) and 2 r/w Section 151 of the Code of Civil Procedure, 1908

HERMES INTERNATIONAL & ANR.

Through: Mr. Pravin Anand, Ms. Rishabh Malhotra and Ms. Rishabh Malhotra Advocates.

versus

CRIMZON FASHION ACCESSORIES PRIVATE LIMITED

..... Defe

Through: Mr. Anirudh Bhatia and Ms. Shrey Sethi, Advocates with Ms. Sonali Anand Dalwani, Director.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA  
ORDER

% 23.12.2022 [This matter is listed before this Court upon directions of Hon'ble the Judge In-charge (Original Side) as the concerned Roster Bench is not holding court today] I.A. 22378/2022 (seeking leave to file additional documents)

1. This is an application seeking leave to file additional documents under the Commercial Courts Act, 2015.

2. Plaintiff, if it wishes to file additional documents at a later stage, shall do so strictly as per the provisions of the said Act.

3. Accordingly, the application stands disposed of.

I.A. 22379/2022 (seeking exemption from institution of pre-litigation mediation)

4. Having regard to facts of the present case and in light of the judgement of Division Bench of this Court in Chandra Kishore Chaurasia v. R.A. Perfumery Works Private Ltd.,<sup>1</sup> exemption from attempting pre- institution mediation is allowed.

5. Accordingly, the application stands disposed of.

I.A. 22380/2022 (seeking exemption from filing originals, clearer copies, translated copies and left side margins)

6. Exemption is granted, subject to all just exceptions.

7. The Plaintiff shall file legible and clearer copies of exempted documents, compliant with practice rules, before the next date of hearing.

8. Accordingly, the application stand disposed of.

I.A. 22381/2022 (seeking exemption from filing court fee)

9. Ms. Tusha Malhotra, Counsel for Plaintiff, states that court fee has been duly filed.

10. Taking her statement on record, the application is disposed of.

CS(COMM) 919/2022

11. Let the plaint be registered as a suit.

12. Issue summons. Summons are accepted by Mr. Anirudh Bhatia, counsel for Defendant.

13. Plaintiff No. 1, a French corporation, is the adopter and registered Neutral citation: 2022/DHC/004454.

proprietor of the well-known H ORAN trademark by virtue of which, Plaintiffs enjoy exclusive proprietary rights in the said shape for their products, including, inter alia, its range of luxury Oran sandals, Oasis sandals and Legend sandals ("Plaintiffs' footwear"). The mark has been granted international registration on September 8, 2016, under international registration no. 1325552 and International Registration Designating India No. 3485491, all in class 25.

14. Mr. Pravin Anand, counsel for the Plaintiff, states that since 1997, the Plaintiffs trademark has become a style icon and is treated as a fashion classic. Due to extensive use, advertising, and sales, the aforementioned trademark has been associated with the Plaintiffs alone. Recently, in the year 2022, the Plaintiffs celebrated a silver jubilee i.e. 25th anniversary of its signature Oran sandals. Printouts of articles indicating the popularity and desirability of Oran sandals in the global market are being filed with the present suit.

15. In the second week of December, 2022, Plaintiffs came across Defendant's products under the names, Spirit, Spirit Edge, Nigah, Amalfi and Caira, which are identical to / bear the Plaintiffs' trademark. On its website <<https://crimzonworld.com>>, Defendant provides addresses for its stockists across India, including in Delhi located in Hauz Khas, Khan Market, DLF Emporio etc. The

Defendant was also found to have an extensive online presence on several social media websites such as Facebook, Instagram and LinkedIn and on third-party e-commerce websites such as TataCliqluxury, Carmaonline, Azafashions, Amazon etc.

16. Accordingly, Plaintiff has filed the present suit seeking the following reliefs:

a. An order for permanent injunction restraining the Defendant, its principal officers, servants, agents, its affiliates, subsidiaries, distributors, and all others acting for and on its behalf from using, including manufacturing, advertising, exporting, offering for sale on its own website and on all third-party e-commerce websites, and / or at the offices, stockists and physical stores of the Defendant located pan and/or third parties, the infringing products with/ without texture, pattern, design or embellishments on their own which are identical, deceptively or confusingly similar to the registered trademark " H ORAN" of the Plaintiffs vide international registration number 1325552 and International Registration Designating India No. 3485491 in class 25 for any goods and services in relation to footwear, bags, wallets, clutches or any leather related goods or use the said Plaintiffs' trademarks in any manner whatsoever leading to infringement of Plaintiffs' trademark;

b. An order for permanent injunction restraining the Defendant, its principal officers, servants, agents, its affiliates, subsidiaries, distributors, and all others acting for and on its behalf from using, including manufacturing, advertising, exporting, offering for sale on its own website and on all third-party ecommerce websites, and / or at the offices, stockists and physical stores of the Defendant located pan and/or third parties, the infringing products with/ without texture, pattern, design or embellishments, on their own, which are identical, deceptively or confusingly similar to the registered trademark "HORAN" of the Plaintiffs for any goods and services in relation to footwear, bags, wallets, clutches or any leather related goods or use the said Plaintiffs' trademark in any manner whatsoever so as to cause confusion or deception leading to passing off of the Plaintiffs' trademark.;

c. An order for permanent injunction restraining the Defendant, its principal officers, servants, agents, its affiliates, subsidiaries, distributors, and all others acting for and on its behalf from all others acting for and on its behalf from using, including manufacturing, advertising, exporting, offering for sale on its own website and on all third-party e-commerce websites, and/ or at the offices, stockists and physical stores of the Defendant located pan and/or third parties, the infringing products with/ without texture, pattern, design or embellishments, which are identical, deceptively or confusingly similar to the registered trademark "H ORAN".....of the Plaintiffs for any goods and services in relation to footwear, bags, wallets, clutches or any leather related goods or use the said Plaintiffs' trademark in any manner whatsoever leading to unfair competition and dilution and tamishment of Plaintiffs' trademark;

d. An order for permanent injunction directing the Defendant, its principal officers, servants, agents, its affiliates, subsidiaries, distributors, and all others acting for and on its behalf to take down all the listings on the Defendant's own website <https://crimzonworld.com/women-shoes/haute-flats/> and <https://crimzonworld.com/women-shoes/poetry/> and take steps for taking down all listings on third-party e-commerce websites including <https://www.facebook.com/CrimzonWorld/>, <https://www.instagram.com/p/CgMe9KcjsFP/>, <https://www.linkedin.com/company/crimzonworld>, <https://aashniandco.com/designers/crimzon-world.html>, <https://www.nykaafashion.com/designers/crimzon/c/3746?q=crimzon&searchType=Manual&internalSearchTerm=crimzon&p=4> <https://www.carmaonlineishop.com/designer/crimzon>, <https://www.azafashions.com/designers/crimzon/123> <https://www.perniaspopupshop.com/catalogsearch/result?q=crimzon> or any other third party websites, of the infringing products with/ without texture, pattern, design or embellishments on their own which are identical, deceptively or confusingly similar to the registered trademark "H ORAN"

of the Plaintiffs, leading to infringement of Plaintiffs' trademark;

e. An order of declaration under Section 11 (6) of the Trademarks Act, 1999 declaring the Plaintiffs' trademark "HORAN" to be a well-known mark;

f. An order of rendition of accounts of profit illegally earned by the Defendant on account of use of the Plaintiffs' trademark by the Defendant and a decree be passed in favour of the Plaintiffs of the amount so ascertained g. An order of delivery up by the Defendant of all catalogues, brochures, publicity material, stickers, and all other material bearing the infringing product for the purposes of destruction by the Plaintiffs of the same.

h. An order directing the Defendant to pay a sum of Rs. 2,00,00,500/- towards damages which is the estimated loss of revenue by the Plaintiffs as also the loss of reputation and goodwill owing to the illegal activities of the Defendant.

17. Mr. Anirudh Bhatia, Advocate, appears on behalf of Defendant on advance notice, and has handed over a copy of vakalatnama executed in his favour by Ms. Sonali Anand Dalwani, Director of the Defendant-company who has joined the proceedings through video conferencing and confirms the instructions given to the afore-noted counsels. The vakalatnama is taken on record.

18. Mr. Bhatia, in presence of his client, has stated that the Defendant does not intend to use the Plaintiff's registered trademark "H ORAN"

. He further states, on instructions, that he has no objection to the suit being decreed in terms of prayers (a) to (d). He says that no prior cease and desist notice was given to the Defendant and if that had been done, Defendant would have, on their own, voluntarily discontinued use of the impugned marks. Further, considering the fact that the Defendant has not opposed the suit, no damages are payable.

19. Mr. Anand, on the other hand, argues that since the Defendant has blatantly copied Plaintiff's registered trademarks, consequences must follow. However, he will take instructions on the question of damages.

20. Further, on a query of the Court, Ms. Dalwani agrees to share books of accounts relating to sales of the impugned products. Defendant shall file an affidavit to this effect, with copy thereof to the Plaintiffs' counsel.

21. In view of the foregoing, suit is decreed in favour of the Plaintiff and against the Defendant in terms of prayers (a) to (d) as extracted above. Decree sheet be drawn up.

22. Upon request by counsel for Defendant, two weeks' time is given to the Defendant to take down the infringing listings on Defendant's website in terms of prayer (d).

23. On the next date of hearing, Court will also hear Mr. Anand's submission with respect to prayer (e).

24. List before the Roster Bench on 16th January, 2023.

SANJEEV NARULA, J DECEMBER 23, 2022 as