

M/S. Blue Heaven Cosmetics Private ... vs Bhcosmetics Llc on 8 January, 2021

Author: Manoj Kumar Ohri

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ CS(COMM) 11/2021
M/S. BLUE HEAVEN COSMETICS PRIVATE LIMITED Plaintiff
Through: Mr. C.M. Lal, Sr. Advocate with Mr. Sanjay Aggarwal, Mr. Partha J Deka, Ms. Palak Arora and Ms. Radhika Arora, Advocates.

Versus
BHCOSMETICS LLC Defendant
Through: None.

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

(VIA VIDEO CONFERENCING)

ORDER

% 08.01.2021
I.A. 319/2021 (Exemption)

1. The exemption is allowed, subject to the plaintiff filing the true translated copies of the documents within 30 days.

2. The application is disposed of.

I.A. 320/2021 (Under Order XI Rule 4 CPC read with Section 151 CPC)

1. The exemption is allowed, subject to the plaintiff filing the additional documents within 30 days.

2. The application is disposed of.

I.A. 321/2021 (Under Section 151 CPC read with Order XI Rule 6(3) of the Commercial Courts Act, 2015)

1. The exemption is allowed, subject to the plaintiff filing the original documents within 30 days.

2. The application is disposed of.

CS (COMM) 11/2021 and I.A. 318/2021 (Under Order XXXIX Rules 1 & 2 CPC)

1. Plaintiff be registered as a suit.

2. Issue summons in the suit and notice in the application to the defendant on the plaintiff taking steps through all permissible modes including speed post, courier, WhatsApp and E-mail returnable before the learned Joint Registrar on 23.02.2021 for completion of service, pleadings and admission/denial of the documents.

3. The summons shall indicate that the written statement to the suit and reply affidavit to the application must be filed by the defendant within thirty days from the date of receipt of the summons. The defendant shall also file affidavit of admission/denial of the documents filed by the plaintiff, failing which the written statement shall not be taken on record.

4. The plaintiff is at liberty to file a replication and rejoinder affidavit thereto within three weeks after filing of the written statement. The replication shall be accompanied by affidavit of admission/denial in respect of the documents filed by the defendant, failing which the replication shall not be taken on record.

5. List the suit and the application before Court on 29.04.2021.

6. The present suit has been filed seeking permanent injunction, rendition of accounts of profits and recovery of damages.

7. Mr C.M. Lal, learned Senior Counsel for the plaintiff submits that the present case concerns plaintiff's trademark and copyright rights in Cosmetic products.

8. It is the plaintiff's case that the suit has been filed against violation of plaintiff's registered trademark rights in "BH" logo/label and "BLUE HEAVEN" label/logo/device as mentioned in the plaint. The trademarks/copyrights under "BLUE HEAVEN" (word/logo/label/device) were applied for/registered in the name of Mr. Gurnam Singh, sole proprietor of M/s. G.C. Laboratories since 1972. In the year 2019, the trademarks/copyrights were assigned to/the business was transferred from the sole proprietorship firm and other concerns/companies in the name of the plaintiff company i.e. M/s. Blue Heaven Cosmetics Private Limited vide Assignment Deed dated 27.03.2019. The request for change in the name of subsequent proprietor i.e., the plaintiff was filed in all the registered trademarks and copyrights and the same has already been allowed by the Trade Marks Registry. The plaintiff had started using the trademark " " and " " since 1972 and 1986 respectively. The plaintiff company is also the legal owner and legitimate registered proprietor of the artistic works entitled "BLUE HEAVEN" (word/logo/label/device), which are duly registered under the provisions of The Copyright Act, 1957.

9. It is also submitted that the plaintiff's trademark is registered in India and abroad, the details of which are given in the plaint/application. The trademark " ", "BLUE HEAVEN", " " and " " are distinctive of plaintiff's goods.

10. It is the case of the plaintiff that during the market survey conducted on 07.12.2020, the plaintiff came to know that the defendant had been selling its products through e-commerce portals like www.amazon.in, www.flipkart.in by illegally adopting the trademarks " "

" " and "BHCosmetics", which are identical with and/or deceptively similar with the plaintiff's trademark. The defendant is also selling its products from its official website.

11. Keeping in view the averments made in the plaint and the application and the documents filed, this Court is of the opinion that a prima facie case is made out in favour of the plaintiff. The balance of convenience also lies in favour of the plaintiff and irreparable harm or injury would be caused to the plaintiffs if an ad-interim injunction order is not passed.

12. Accordingly, till the next date of hearing, the defendant, its principal officers, directors, partners, agents, franchisees, servants, licensees and all others acting for and on their behalf, are restrained from making, selling, offering for sale, advertising and in any manner dealing in "Non-Medicated Cosmetics Nail Enamel Remover/Nail Polish Remover/Thinner and Toiletry Preparations; Non-Medicated Dentifrices; Perfumery, Essential Oils; Bleaching Preparations and other substances for laundry use; cleaning, polishing, lipsticks, foundation, eye liner, face powder, kajal, maskara, sindoor, nail polish, nail polish remover, all type of cream, Vaseline, hair oil, eau de perfume, body spray, deodorant, bindi, kumkum, facial kits, rose water, cleaning milk, moistening lotion, hair remover, eye shadow, blusher, pen cake, pen stick, lip gloss, massage gel, hair gel, hair color, heena, lip liner, talc powder, face wash, scrub, make up brush, soap, included in class- 03 and services thereof in class-35" or any goods using the trade dress/colour combination/writing style/packaging/copyright " ", " " and "BHCosmetics" or any other trademark/trade dress/ colour combination/writing style/packaging/get-up which is identical or deceptively similar to the plaintiff's registered trademark and from doing any other thing, whereby directly or indirectly infringing the plaintiff's registered trademark/trade dress/colour combination/writing style/packaging/copyright, " ", "BLUE HEAVEN", " " and " ", whereby directly or indirectly passing off its goods as and for the goods of the plaintiff.

13. Compliance of Order XXXIX Rule 3 CPC be done within one week from today.

14. Copy of this order be uploaded.

MANOJ KUMAR OHRI, J JANUARY 08, 2021 ga