

Email by Registry- IPD

IN THE HIGH COURT OF DELHI AT NEW DELHI

No.....4672-1.....DHC/Orgl./IPD

Dated.....17/02/24.....

From:

The Registrar General
Delhi High Court
New Delhi.

To:

OFFICE OF THE
CONTROLLER GENERAL OF PATENTS ,DESIGNS
& TRADEMARKS OF INDIA
Email: llc-ipo@gov.in , legal-tmrd@gov.in

C.O. (COMM.IPD – CR) 1/2024

HMD MOBILE INDIA PRIVATE LIMITED

.....PETITIONER(S)

Vs

MR RAJAN AGGARWAL & ANR.

.....RESPONDENT(S)

Sir,

Please find enclosed copy of order dated **09.02.2024** passed by Hon'ble MR. **JUSTICE ANISH DAYAL** of this Court for information and necessary compliance in terms of order passed by Hon'ble Ms. Justice Prathiba M. Singh dated 23.11.2023 in case C.O.(COMM.IPD-TM) 154/2021. The relevant part of the same reads as under:-

“The office of CGPDTM shall take steps to ensure that in future, whenever cancellation petitions are filed and notice is being issued by the High Court, the same is duly reflected in the website of the IPO.”


Admn. Officer (J.) (IPD)
for Registrar General
KD

Encl. : 1) Copy of the order dt: 09.02.2024.
2) ~~Copy of order dt: 23.11.23~~



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ C.O.(COMM.IPD-CR) 1/2024 & I.A. 3142/2024 I.A. 3143/2024
I.A. 3147/2024

HMD MOBILE INDIA PRIVATE LIMITED Petitioner

Through: Mr. Sagar Chandra, Ms. Shubhie
Wahi, Ms. Ankita Seth & Ms. Kriti
Ramudamu, Advs.

versus

MR RAJAN AGGARWAL & ANR. Respondents

Through: Mr. Harish Vaidyanathan
Shankar, CGSC with Mr. Sirish
Kumar Mishra, Mr. Sagar Mehlawat,
Mr. Alexander Mathai Paikaday &
Mr. Krishnan V., Advs. for R-2

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

ORDER
% **09.02.2024**

I.A. 3144/2024 (seeking leave to file additional documents)

1. The present application has been filed on behalf of the plaintiff under Order XI Rule 1(4) of the Code of Civil Procedure, 1908 (CPC) as applicable to commercial suits under the Commercial Courts Act, 2015 read with Section 151 of CPC, seeking to place on record additional documents.
2. The plaintiff, if wishes to file additional documents at a later stage, shall do so strictly as per the provisions of the Commercial Courts Act, 2015 and the DHC (Original Side) Rules, 2018.
3. Accordingly, the present application is disposed of.



I.A. 3145/2024 & I.A. 3146/2024 (exemption from filing certified copies and typed copies of annexures)

1. Exemptions are granted, subject to all just exceptions.
2. Applicant shall file legible, clear, and original copies of the documents on which the applicant may seek to place reliance within four weeks from today or before the next date of hearing, whichever is earlier.
3. Accordingly, both these applications are disposed of.

I.A. 3147/2024 (seeking leave to file documents in pen drive)

1. This application has been filed under Section 151 of the Civil Code of Procedure, 1908 (CPC) by the petitioner seeking permission to place on record a pen drive containing advertisements /videos which are in question.
2. The application is allowed.
3. The pen drive be taken on record.
4. Application stands disposed of accordingly.

C.O.(COMM.IPD-CR) 1/2024 & I.A. 3142/2024 (under Order XXXIX Rule 1 & 2 read with Section 151 of CPC) and I.A. 3143/2024 (under Order XI Rule 12 for discovery of documents in possession of respondent no.2)

1. This petition has been filed under section 50 of the Copyright Act,1957 read with Rule 71 of the Copyrights Rules,2013 for expunging the copyright registration bearing No. L-63365/2016 titled “*Advertisement*” in favour of respondent No.1, Mr. Rajan Aggarwal.
2. Petitioner is a company incorporated in India and is the subsidiary of a Finnish Company ‘*HMD Group Oy*’, which has the licence from Nokia Corporation *inter alia* for use of brand name ‘*NOKIA*’ in relation to mobile



phones and other related accessories.

3. The issue arose in relation to its advertisement /promotion for launch of Nokia products through a small clip stating 'Coming Soon', followed by the Nokia mark and the tune which has been associated with that mark. However, in this respect, respondent filed a suit CS (COMM) No.213/2022 before the District Court, Karkardooma claiming the right in the subject registration. The registration which is relied upon by the respondent no.1, is reproduced below:

*"Name of the Title: Advertisement
Author: Rajan Aggarwal
Diary No: 7755/2015-CO/L*

*The work "Advertisement" has been created by me (Rajan).
In this advertisement, icons used by me (Rajan) are "COMING SOON" and companies logo (name). It will be presented like, icon "COMING SOON" on the black screen or paper either on television or newspaper and the name of the company will be seen either corner or centre of that black screen or paper. In the past, icon "COMING SOON" always used as when the product or the movie or the serial is coming. But I have tried it to use in a different way of promoting a product. I will don't use it in the same manner as when it is coming. I will use it as "WHAT" is coming in the nearer future.*

Benefits

The benefit to the company is that they can capture the market in a different form. It can create a pressure on competitors. This idea is an initiative by the company which can increase their market value and brand value (by site visit). This idea can creates a curiosity in customers and competitors about the product or services which the company is going to launch.

The ways to present

If we use this on the television the name of the company appears on black screen with sound effect playing in the background or any 3D visual effects. That can compliment the idea and after



that with any animated effect the phrase “COMING SOON” replaces the logo of the company.

The other way to present it in newspaper by using this phrase “COMING SOON” written with white color in the black portion of the newspaper. On the first day the advertisement will be on the last page of newspaper and till the launch of product or services the advertisement will shift from last to first page with decreasing countdown of days and increasing the size of the advertisement only if company wants.”

4. Counsel for the petitioner states that initially they were not a party to the said suit, however, they have moved an application under Order I Rule 10 CPC to be impleaded in the suit, since the original defendant was Nokia Solutions & Networks India Pvt. Ltd. and another party.

5. Surprised with the registration being given for the above statement titled as an “*Advertisement*”, the petitioner carried out a search and sought to verify the legitimacy of the said copyright registration by applying for inspection of documents and further, also visited the Copyright office on 22nd December, 2023. Upon inspection, a digital record was shown to the petitioner’s representatives, of a discrepancy report dated 19th November, 2015 (*Discrepancy Report*) where the Deputy Registrar of Copyrights had raised an objection calling upon the applicant / respondent no.1 to clarify ‘how an idea can be copyrighted.’ However, there was no subsequent communication which was shown or evident from the inspection to bear out that there was a response filed by the applicant/ respondent no.1 to the *Discrepancy Report*.

6. Counsel for the petitioner has stressed that *ex facie* the said statement titled as “*Advertisement*” cannot possibly be an original work and does not pass muster the standards of originality, as laid down in the Copyright Act.



The said registration is also evidently an idea, at best, which is also apparent from the statement which was about the concept of promotion relating to “*Coming Soon*”, which could be potentially used by any company for its launch. It is stated as part of the registered statement that, “*this idea can create a curiosity in customers and competitors about the product or services which the company is going to launch*”.

7. Reference is also made to the part of the *Discrepancy Report* of respondent no.2 which states as under:

“This idea is an initiative by the company -which can increase their market value and brand value... This idea can creates a curiosity in customers and competitors about the product or services... sound effect playing in the backend or any visual effects, that can compliment the idea...”

8. This Court is of the *prima facie* opinion that there is infirmity in grant of the said copyright on various grounds including lack of originality, creativity and the fact that it is obviously an idea and not an expression of a literary work. However, these are only *prima facie* observations and the matter will be considered pursuant to the respondent no.1 responding to the notice.

9. Advance notice was served on the counsel appearing for respondent no.1 in the suit in the District Court, however, no one has appeared.

10. On petitioner taking steps through all permissible modes, notice of this petition along with the aforementioned applications be issued to respondent no.1 returnable before this Court on the next date.

11. Mr. Harish Vaidyanathan, CGSC accepts notice on behalf of respondent no.2 who shall file brief submissions in respect of the same within a period of 2 weeks. He shall also file the records of Registrar of Copyrights and all documents in relation to the impugned registration including



Discrepancy Report and any subsequent filing thereafter, along with his submissions.

12. Counsel for the petitioner informs that the next date of hearing in the suit before the Additional District Judge (ADJ), Karkardooma in the suit is 12th February, 2024. The ADJ is therefore, requested to reschedule the said date, to a date after the next date fixed before this Court.

13. List on 28th February, 2024.

14. Copy of order be given *dasti* under the signature of Court Master.

15. Order be uploaded on the website of this Court.

ANISH DAYAL, J

FEBRUARY 9, 2024/sm/na



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**IN THE HIGH COURT OF DELHI AT NEW DELHI
C.O. (COMM.IPD-TM) 154/2021**

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GSK CONSUMER HEALTHCARE S.A. Petitioner
Through: **Mr. Ranjan Narula, Adv.**
versus

CELEBRITY BIOPHARMA LTD. AND ANR. Respondents
Through: **Mr. Sandeep Kumar & Mr. Anil
Kumar Yadav, Advs. R-1 (M.
9693130048)
Mr. Harish Vaidyanathan
Shankar, CGSC, with Mr. Srish
Kumar Mishra, Mr. Alexander
Mathai Paikaday & Mr. Krishnan
V. Advs. (M. 9810788606)**

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

% 23.11.2023

1. This hearing has been done through hybrid mode.
2. An adjournment is sought on behalf of the Id. Counsel for Respondent No. 1 on the ground that the counsel is engaged recently. Reply on behalf of Respondent No.1 has already been taken on record, as costs have been deposited as per the order dated 27th September, 2023 of the Joint Registrar. Fresh written submissions be filed by both the parties.
3. Mr. Narula, Id. Counsel for the Petitioner has brought to the notice of this Court that whenever cancellations/rectifications are filed before the Registrar of Trademarks, the same is reflected on the portal of the Registrar of Trademarks qua the said registered mark. However, when cancellations/rectifications are filed before the High Court, the said updation



of the status is not done by the office of CGPDTM, showing the status that the rectification has been filed.

4. The office of CGPDTM shall take steps to ensure that in future, whenever cancellation petitions are filed and notice is being issued by the High Court, the same is duly reflected in the website of the IPO. Registry is also directed that whenever notices are issued in petitions *i.e.*, C.O., relating to any of the IPR property, a copy of the said order, ought to be automatically transmitted to the office of CGPTDM on the e-mail: llc-ipo@gov.in & legal-tmrd@gov.in.

5. Mr. Harish Vaidyanathan, Id. CGSC shall communicate this order to the office of the CGPTDM. If any clarification is needed, the Id. Counsel shall file an appropriate application.

6. List on 22nd March, 2024.

PRATHIBA M. SINGH, J.

NOVEMBER 23, 2023/dk/ks

