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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **CS(COMM) 21/2024 & I.A. 422/2024****Date of Decision: 04th November, 2024**

SPORTA TECHNOLOGIES PVT LTD AND ANR.Plaintiffs

Through: Mr. Rohan Krishna Seth and Ms.
Shilpi Sinha, Advs.

M: 9911167179

Email: litigation@fiduslawchambers.com

versus

JOHN DOE AND ORS.Defendants

Through: Dr. B. Ramaswamy, CGSC for D-2
(Through VC)**CORAM:****HON'BLE MS. JUSTICE MINI PUSHKARNA****MINI PUSHKARNA, J (ORAL)**

1. The present suit has been filed for permanent injunction restraining infringement of registered trademarks, passing off, infringement of copyright, rendition of accounts, damages and delivery up.

2. The case, as canvassed by the plaintiffs, is as follows:

2.1 The present suit has been filed by the plaintiff in relation to their registered trademarks as mentioned below:

S. No.	Trademark	Number	Classes	Date
1.	DREAM11	3802186	9, 16, 35, 41, 42	11 th April 2018
2.	DREAM11	3660/15	9, 16, 35, 41, 42	21 st October 2017



3.		3660717	9, 16, 35, 41, 42	21 st October 2017
4.		3660851	9, 16, 35, 41, 42	22 nd October 2017
5.		3660718	9, 16, 35, 41, 42	21 st October 2017
6.		3660720	9, 16, 35, 41, 42	21 st October 2017
7.		3802184	9,16,35, 41 & 42	11 th April, 2018
8.		3802185	9,16, 35, 41, 42	11 th April, 2018

S. No.	Trademark	Number	Class	Date
1.	DREAM11	4863621	9, 16, 18, 28, 35, 38, 42 & 45	25 th September, 2019
2.		1823011	38	28 th May, 2009
3.		1823015	41	28 th May, 2009

2.2 The defendant no.1 is John Doe and is the operator of the website www.dream11lotery.com, which is essentially a replica of the plaintiffs' official website 'www.dream11.com'. The present suit has been filed on account of adoption and use of the marks 'DREAM',



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the domain name ‘dream11lotery.com’, and the plaintiffs’ email address ‘admin@dream11.com’ by defendant no. 1, which amounts to infringement and passing off of the plaintiffs’ Dream 11 trademarks.

2.3 The defendant no.2 is the domain name registrant of the website ‘www.dream11lotery.com’ and is using the plaintiffs’ said marks as part of their domain name.

2.4 Plaintiff no. 1 was incorporated with a view to serve as a one stop provider of a number of online fantasy sport leagues. A fantasy sport league is an online multi-player game where participants draft virtual teams of real players of a professional sport. These virtual drafted teams get points based on the performance of the players in actual games. Each player playing on the fantasy sports platform has to create a team with a maximum budget of 100 credits. The team then earns points based on real life matches and then the team competes with other such teams in the various contests offered by the plaintiffs on the platform. For each real-life match, there are multiple contests which a fantasy player can join, and each contest has an entry fee. The top teams of each contest are then rewarded monetarily. The amount earned is credited to the fantasy player's bank account upon his/her withdrawal request.

2.5 The plaintiffs launched its hugely popular fantasy sports platform under the trademark Dream11 in 2012. Thereafter, and until the present date, the plaintiffs have been the official fantasy sports partner of the International Council of Cricket (ICC), The Campeonato Nacional de Liga de Primera Division (La Liga), Vivo Indian Premier League (IPL), KFC Big Bash



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League (BBL), Hero Caribbean Premier League (CPL) T20, National Basketball Association (NBA), Vivo Pro Kabaddi League (PKL), International Hockey Federation (FIH), Hero Indian Super League (ISL) and T20 Mumbai. The plaintiff has also acquired Official partner rights of Board of Control for Cricket in India (BCCI), international and domestic matches since 2019.

2.6 The popularity of the fantasy sports played on the plaintiffs' platform Dream 11 is further evidenced by the various awards won by them such as the Red Herring Global 100 Award and the Red Herring Asia 100 Award. The plaintiff no. 1 is also the first Indian gaming company to become a unicorn in the year 2019. Additionally, the plaintiffs' have also won a Guinness World Record for the 'largest online fantasy cricket match' in the year 2019, when a total of 1,03,17,928 teams were created by users on the Dream 11 platform, during the IPL final between Mumbai Indians (MI) and the Chennai Super Kings (CSK).

2.7 The plaintiffs signed a Central Sponsorship contract with the Board of Control for Cricket in India (BCCI) for the Indian Premier League for four years starting with IPL 2019 season, which was widely publicized in the press. The plaintiffs were the title sponsors of IPL, 2020 which was played in UAE and apart from actively promoting their brand Dream11 on player jerseys and at the grounds, the plaintiffs' advertisements were broadcast in the breaks during the live matches. Apart from the above, television advertisements for Dream11 were broadcast throughout the 2019, 2020 and 2021 season of the IPL. In June, 2023, the plaintiffs became the official jersey sponsor of the Indian men's, women's and Under-19 cricket team. As a sponsor, the Dream11 logo is printed on the front of the jersey.



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2.8 The plaintiffs also have a long-term Official Fantasy Sports provider deal with the International Cricket Council for all the ICC tournaments. The said partnership also featured the ICC Men's Cricket World Cup 2019 with daily contests as well as season long fantasy league sports. Television advertisements for Dream11 were also broadcasted during the live telecast of all the World Cup matches.

2.9 As on date, the plaintiffs' mobile and online platform have over 20 crore users playing fantasy cricket football, hockey, kabaddi, baseball, handball and basketball, with more than 1,000 contests being organized on a daily basis.

2.10 Apart from the stand-alone registered trademark 'Dream11', the plaintiffs' Dream 11 trademarks have a distinctive character and are capable of distinguishing the services of the plaintiffs from others. Such exclusive and extensive use of the Dream 11 trademarks by the plaintiffs has ensured that the said trademarks are associated and connected with the plaintiffs alone.

2.11 The defendant no.1 seems to be the owner and operator of the impugned website and using the marks "DREAM11", "DREAM11LOTTERY", and including the domain name "dream11lotery.com" as also the email address "dream11lotery.com".

2.12 Defendant no.1 appears to be operating a mirror website, misrepresenting to the public at large that it is associated with the plaintiffs. In the month of December 2023, the plaintiffs came across the impugned website which was found to have replicated several unique and artistic features of the plaintiffs' official website www.dream11.com. A comparison



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of the impugned website along with plaintiffs' official website, is extracted below:

<p>PLAINTIFFS' WEBSITE</p>	<p>DEFENDANT NO.1'S WEBSITE</p>
<p>PLAINTIFFS' WEBSITE</p> <p>Official Partner</p>	<p>DEFENDANT NO.1'S WEBSITE</p> <p>Official Partner</p>
<p>PLAINTIFFS' WEBSITE</p> <p>Players & Staff</p>	<p>DEFENDANT NO.1'S WEBSITE</p>



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2.13 Accordingly, the present suit has come to be filed.

3. This Court notes that vide order dated 08th January, 2024, an interim injunction was passed in favour of the plaintiffs and against the defendant no.1, in the following manner:

“xxx xxx xxx

9. Accordingly, till the next date, the defendant No.1 and its principal officers, promoters, employees, associates, affiliates, agents et al. are restrained from using plaintiff's said marks or any other mark which is confusingly similar to plaintiff's said marks, in any form or manner as part of the domain names or as part of the content on the website.

10. Defendant No.2 is directed to ensure that infringing websites which are being used by defendant No.1 are accordingly suspended and locked till the next date of hearing. They are also directed to reveal and disclose the name, address and the details of the domain registrant of the said infringing website, before this Court through an affidavit.

11. Directions are issued to defendant Nos.3 and 4 (DOT and MEITY) to issue directions to ISPs to suspend access to the infringing website within a period of 48 hours of receiving the copy of this order.

xxx xxx xxx”

4. Subsequently, the defendant no.2, i.e., the Domain Name Registrar revealed the details of the Domain Name Registrant, and pursuant thereto, an amended Memo of Parties dated 16th February, 2024, was filed.

5. Order dated 12th August, 2024 records that defendant no.1 was served via E-mails on 09th April, 2024. However, despite lapse of statutory period,



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no written statement has been filed. Likewise, defendant nos. 2 to 4, were also served respectively, on 03rd February, 2024 and 01st February, 2024. However, no written statements have been filed on their behalf, despite lapse of the statutory period.

6. Accordingly, the right to file written statements by the defendants, already stands closed. In view thereof, the defendants are proceeded *ex-parte*.

7. Learned counsel appearing for the plaintiffs submits that his main prayer is only against the defendant no.1, who indulged in infringing the registered trademarks of the plaintiffs and the related logos and also the defendants' marks/ trade dress Dream11 and Dream11 lottery. Further, the defendants' marks/ trade dress Dream11 and Dream11 lottery, are deceptively similar to that of the plaintiffs.

8. Since no written statement has been filed on behalf of defendant no.1, which is the party against whom the prayer is sought in the plaint, this Court is empowered to and thus exercises its power under Order VIII Rule 10 of Code of Civil Procedure, 1908 ("CPC").

9. This Court notes that no useful purpose shall be served in putting the matter to trial as no defense has come forward on behalf of defendant no.1.

10. Holding that the time of court should not be wasted in directing *ex-parte* evidence to be led when no written statement has come to be filed, this Court in *Cross Fit LLC versus RTB Gym and Fitness Centre*¹, has held as follows:

“xxx xxx xxx

10. It is noticed that, despite service, the Defendant has chosen not to appear. As recorded in order dated 15th February, 2022, the affidavit

¹ 2022 SCC OnLine Del 2788



of service dated 14th December, 2021 has been filed by the Plaintiff which shows that the Defendant has been served by speed post, as also, by email. Accordingly, the Defendant was proceeded against ex parte on the said date. In addition, it is noted that the Registry has also issued summons to the Defendant.

11. In view of the above, following the judgment in Disney Enterprises Inc. v. Balraj Muttneja [CS (OS) 3466/2012 decided on 20th February, 2014], this Court is of the opinion that 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 [(2014) 210 DLT 381], as also, in United Coffee House v. Raghav Kalra [(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. v. Gauhati Town Club 2013 SCC OnLine Del 382 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 but a repetition of the contents of the plaint.**”

xxx xxx xxx”

(Emphasis Supplied)

11. On a perusal of the submissions and the documents placed on record, it is evident that the plaintiffs are the registered proprietor of the trademark “DREAM 11”. The documents on record clearly manifest that the look and feel of the defendant no.1’s website, is identical to the plaintiffs’ website.



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The *mala fide* of defendant no.1 is apparent from a perusal of the impugned website, the contents of which are a replica of the plaintiffs' website. The defendant no.1 has replicated the contents, color scheme, look and feel, and the 'Dream 11' trademarks from the plaintiffs' website.

12. This Court also notes the submission of the plaintiffs that the defendant no.1 has adopted marks that are identical to the plaintiffs' mark 'Dream 11', and is operating website that appears to be facilitating a lottery game. These unlawful activities and blatant infringement by the defendant no.1, clearly shows that the defendant is trying to confuse and mislead the general public into believing that there is an association or nexus between the plaintiffs and the defendants. Thus, it is apparent that the defendant no.1 is not only guilty of infringing the plaintiffs' registered trademarks, but also of passing off their services, as those associated, endorsed or related to the plaintiffs.

13. Hence, there is likelihood that the present and future members of the relevant class of consumers, will be misled that the defendant no.1 is associated/affiliated with the plaintiffs and the services provided by them are in furtherance of that of the plaintiffs.

14. This Court further notes that the defendant no.1, despite service has failed to contest the case by not filing a written statement and no plausible defense has been taken by defendant no.1.

15. Thus, holding that Courts can invoke the provisions of Order VIII Rule 10 CPC, to curb dilatory tactics by the defendant in not filing the written statement and pronounce judgment against the defendant, a



Coordinate Bench of this Court, in *Nirog Pharma Pvt. Ltd. versus Umesh Gupta & Anr.*², has held as follows:

“xxx xxx xxx

11. Order VIII Rule 10 has been inserted by the legislature to expedite the process of justice. The courts can invoke its provisions to curb dilatory tactic, often resorted to by defendants, by not filing the written statement by pronouncing judgment against it. At the same time, the courts must be cautious and judge the contents of the plaint and documents on record as being of an unimpeachable character, not requiring any evidence to be led to prove its contents. The Supreme Court in C.N Ramappa Gowda v. C.C. Chandregowda, (2012) 5 SCC 265 had held as under:

“25. We find sufficient assistance from the apt observations of this Court extracted hereinabove which has held that the effect [Ed. : It would seem that it is the purpose of the procedure contemplated under Order 8 Rule 10 CPC upon non-filing of the written statement to expedite the trial and not penalise the defendant.] of non-filing of the written statement and proceeding to try the suit is clearly to expedite the disposal of the suit and is not penal in nature wherein the defendant has to be penalised for non-filing of the written statement by trying the suit in a mechanical manner by passing a decree. We wish to reiterate that in a case where written statement has not been filed, the court should be a little more cautious in proceeding under Order 8 Rule 10 CPC and before passing a judgment, it must ensure that even if the facts set out in the plaint are treated to have been admitted, a judgment and decree could not possibly be passed without requiring him to prove the facts pleaded in the plaint.

26. It is only when the court for recorded reasons is fully satisfied that there is no fact which needs to be proved at the instance of the plaintiff in view of the deemed admission by the defendant, the court can conveniently pass a judgment and decree against the defendant who has not filed the written statement. But, if the plaint itself indicates that there are disputed questions of fact involved in the case arising from the plaint itself giving rise to two versions, it would not be safe for the court to record an ex parte judgment without directing the plaintiff to prove the facts so

² 2016 SCC OnLine Del 5961



as to settle the factual controversy. In that event, the *ex parte* judgment although may appear to have decided the suit expeditiously, it ultimately gives rise to several layers of appeal after appeal which ultimately compounds the delay in finally disposing of the suit giving rise to multiplicity of proceedings which hardly promotes the cause of speedy trial.

27. **However, if the court is clearly of the view that the plaintiff's case even without any evidence is prima facie unimpeachable and the defendant's approach is clearly a dilatory tactic to delay the passing of a decree, it would be justified in appropriate cases to pass even an uncontested decree.** What would be the nature of such a case ultimately will have to be left to the wisdom and just exercise of discretion by the trial court who is seized of the trial of the suit.”

(Emphasis Supplied)

xxx xxx xxx

28. **The present suit is also a commercial suit within the definition of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 and it was the clear intention of the legislature that such cases should be decided expeditiously and should not be allowed to linger on. Accordingly, if the defendant fails to pursue his case or does so in a lackadaisical manner by not filing his written statement, the courts should invoke the provisions of Order VIII Rule 10 to decree such cases.**

xxx xxx xxx”

(Emphasis Supplied)

16. Learned counsel appearing for the plaintiffs submits that he may be granted actual cost.
17. Considering the submissions made before this Court, this Court is of the view that nominal cost can be awarded in favour of the plaintiffs.
18. Accordingly, in the facts and circumstances of the present case, the following directions are passed:
 - i. The suit is decreed in favour of the plaintiffs and against the defendant no.1 in terms of paragraph 40 (a) to (c).



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ii. Nominal cost of ₹ 1 lac is awarded in favour of the plaintiffs to be payable by defendant no.1, within a period of eight weeks from today.

19. Suit is decreed in the aforesaid terms. Registry is directed to draw up the decree sheet.

20. With the aforesaid directions, the present suit, along with the pending application, stands disposed of.

MINI PUSHKARNA, J

NOVEMBER 4, 2024/kr