

\$~12

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CS(COMM) 227/2021**

RED BULL AG

..... Plaintiff

Through: Mr. Anirudh Bakhru, Advocate with
Mr. Himanshu Deora, Mr. Shashwat
Rakshit and Mr. Abhishek Singh,
Advocates.

versus

BAKEWELL BISCUITS PRIVATE LIMITED

..... Defendant

Through: None.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

% **18.05.2021**

[VIA VIDEO CONFERENCING]

CS(COMM) 227/2021

1. Let the plaint be registered as a suit.
2. Upon filing of process fee, issue summons to the Defendant by all permissible modes. Summons shall state that the written statement shall be filed by the Defendant within 30 days from the date of receipt of summons. Along with the written statement, the Defendant shall also file an affidavit of admission/denial of the documents of the Plaintiff, without which the written statement shall not be taken on record.
3. Liberty is given to the Plaintiff to file a replication within 15 days of the receipt of the written statement. Along with the replication, if any, filed by the Plaintiff, an affidavit of admission/denial of documents of the

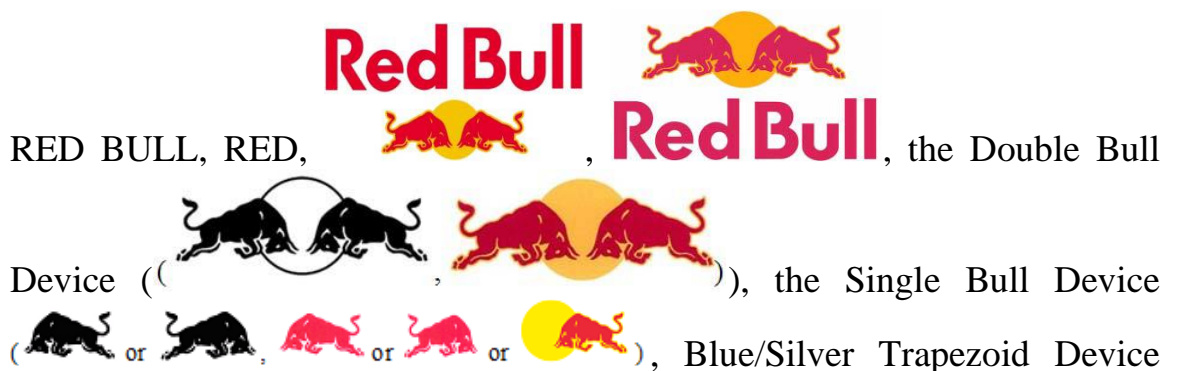
Defendant, be filed by the Plaintiff, without which the replication shall not be taken on record. If any of the parties wish to seek inspection of any documents, the same shall be sought and given within the timelines.

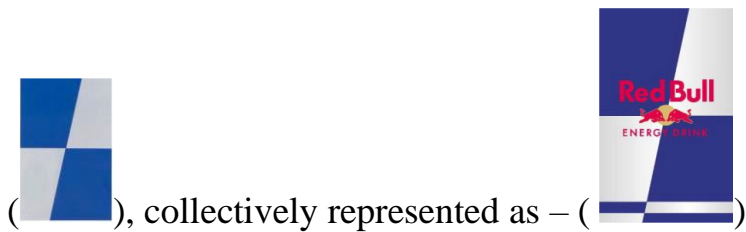
4. List before the Joint Registrar for marking of exhibits on 22nd July, 2021. It is made clear that any party unjustifiably denying documents would be liable to be burdened with costs.

5. List before the Court on 1st September, 2021 for framing of issues thereafter.

I.A. No. 6434/2021 (u/O XXXIX Rule 1 and 2 r/w Section 151 of Code of Civil Procedure Code, 1908 for seeking ex-parte and/or ad-interim reliefs/interim injunction against the Defendant)

6. The case of the Plaintiff as set out in the plaint is that it is a company organized and incorporated under the laws of Switzerland. It is a wholly owned subsidiary of Red Bull GmbH, an internationally reputed, well-established, and well-known manufacturer and marketer of energy drinks sold under the Red Bull marks, including the trademarks given as under: -










7. In India, Plaintiff’s trademark “RED BULL” is specifically recorded as a well-known trademark in the list of well-known marks maintained by the Trade Marks Registry. Plaintiff’s trademark the Double Bull Device



declared as well-known trademarks by this Court in *Red Bull AG Vs. C. Eswari & Ors.*¹. Red Bull has acquired various trademark registrations in India and some such Indian registrations are given as under: -

S.No.	Trademark	Reg. No.	Appl. Date	Class
1.	RED	2765945	01/07/2014	32
2.		1203998	04/06/2003	30
3.		1203994	04/06/2003	32
4.	Red Bull 	1375801	04/02/2004	30 (among others)
5.	Red Bull	3273897	03/08/2015	30 (among others)
6.	RED BULL	780143	28/11/1997	32
7.	RED BULL ENERGY DRINK	3263852	19/05/2016	32

¹ CS (COMM) 1062/2018

8.		780142	28/11/1997	32
9.		1375073	29/07/2005	32

8. The Plaintiff is aggrieved with the offending use of marks “Red Horse” and Blue/Silver Trapezoid Red Horse Label, by the Defendant, which according to the Plaintiff, is identical and/or deceptively similar to Plaintiff’s prior, well-known and registered Red Bull marks.

9. Mr. Anirudh Bakhru, learned counsel for the Plaintiff submits that the impugned marks, are mala fide copy and offending use of the Plaintiff’s mark. The Defendant has adopted an identical and/or deceptively similar mark Red Horse and Red Horse Label incorporating the Blue/Silver Trapezoid Device and the device of two animals in charging position with a yellow backdrop/ sun disk. The font, stylization and colour combination of the impugned marks is identical to the Plaintiff’s RED BULL marks. The representations of Plaintiff’s prior and well-known RED BULL marks as well as the representations of the Defendants impugned marks, appear as under: -

Plaintiff’s well-known and famous Red Bull Marks	Defendant’s impugned marks
--	----------------------------



10. In the plaint, the Plaintiff has further set out, the details of the registration of its trademarks including the Blue/Silver Trapezoid. Mr. Bakhru also draws the attention of this Court to the sales figures of the Red

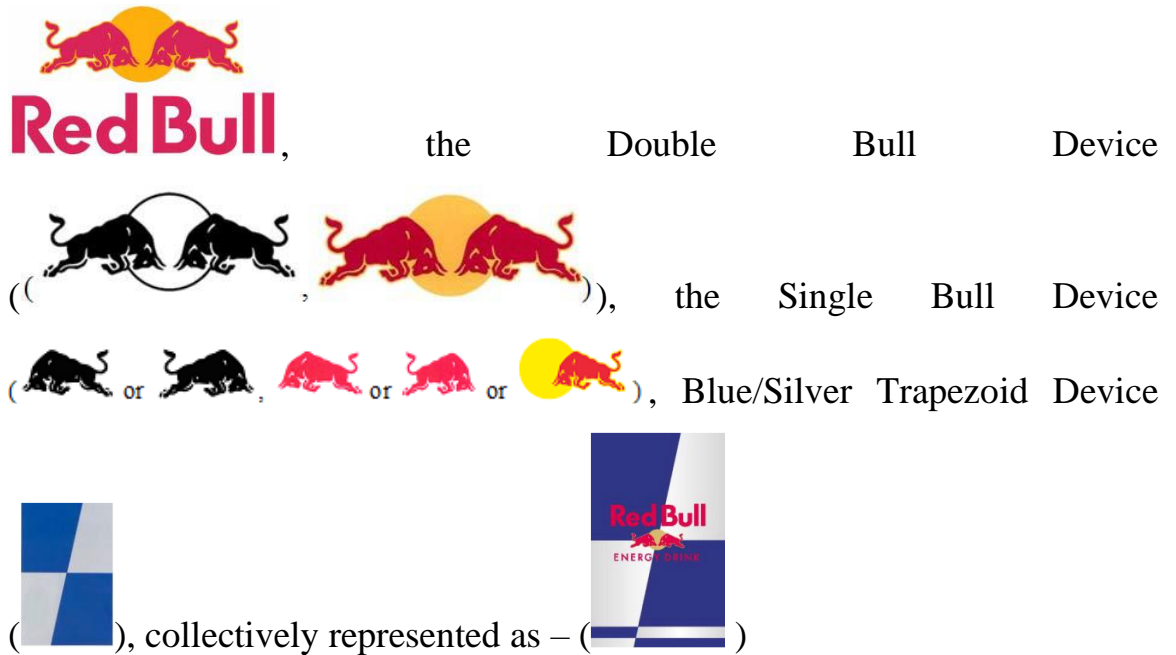
Bull Energy Drink, the market share and the details in the expenses incurred by the Plaintiff towards advertising. He submits that the Plaintiff, through its internet investigation team, was made aware of the availability of candies manufactured by the Defendant under the impugned mark – “Red Horse”. A perusal of the website www.bakewellbiscuits.co.in reveals that the Defendant is prominently displaying the impugned marks on the said website and is inviting queries from users all over India including Delhi. Further, in this regard the Plaintiff through its counsel issued a cease-and-desist notice to the Defendant, to which there was no written response. The Defendant, however, through their counsel contacted the Plaintiff, but eventually no steps were taken to comply with the cease-and-desist notice. The Plaintiff has also objected and filed an opposition against the Defendant’s application [Application No. 4327842 in Class 30] for registration with respect to the mark – “Red Horse”.

11. In view of the above, the Plaintiff has established a *prima facie* case in its favour. The balance of convenience also lies in favour of the Plaintiff and irreparable loss would be caused to the Plaintiff, in case *ex-parte* interim injunction is not granted.

12. Accordingly, till the next date of hearing, the Defendant, its Director, partners, principals, employees, agents, distributors, franchisees, representatives, assigns and all those connected with it in its business are restrained from using the impugned marks or any other mark, device, logo, domain name or trade name which are deceptively or confusingly similar to



the Plaintiff’s registered trademarks - RED BULL, RED,



in respect of any goods *inter alia* candy and confectionary items or in any manner whatsoever without the permission, consent, or licence of the Plaintiff thereby causing infringement or passing of the Plaintiffs afore-noted trademarks.

13. Let the provisions of Order XXXIX Rule 3 of Civil Procedure Code, 1908 (in short ‘CPC’) be complied with within a period of one week.

I.A. No. 6435/2021 (for appointment of a Local Commissioner)

14. Mr. Bakhru, learned counsel for the Plaintiff on instructions submits that in view of the prevailing lockdown restrictions imposed by the Govt. of NCT of Delhi, as well as other States, and the prevailing situation on account of COVID-19 pandemic, the Plaintiff, at this stage, is not insisting on the appointment of a Local Commissioner. He, however, submits that the present application be kept pending till the next date of hearing.

I.A. No. 6436/2021 (u/O XI Rule 2(1), Order XI Rule 5(1) of CPC for Interrogatories and Discovery of document)

15. Issue notice to the Defendant by all permissible modes upon filing of process fee by the Plaintiff, returnable on the next date of hearing.

I.A. No. 6437/2021 (under Order XI Rule 1(4) read with Section 151 of CPC for filing additional documents)

16. This is an application seeking leave to file additional documents under the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 (in short the '*Commercial Courts Act*').

17. The Plaintiff, if they wish to file additional documents at a later stage, shall do so strictly as per the provisions of the Commercial Courts Act.

18. Accordingly, the application stands disposed of.

I.A. No. 6438/2021(for exemption from filing sworn/affirmed affidavit(s), pleadings with proper margins, original documents/certified copies, typed copies/documents with appropriate margin and English translation)

19. The present application on behalf of the Plaintiff seeks exemption from filing sworn/affirmed affidavit(s), pleadings with proper margins, original documents/certified copies, typed copies/documents with appropriate margin and English translation.

20. The application is allowed, subject to the Plaintiff filing the exempted documents within two weeks from the day the lockdown restrictions imposed by the Government of NCT of Delhi are lifted and the facility for attestation of affidavits/ pleadings/ sale of stamps is resumed.

21. The application stands disposed of.

I.A. No. 6439/2021 (u/S 151 of the CPC, 1908 for exemption from serving advance suit papers on the Defendant)

22. The Plaintiff contends that the Defendant is violating valuable rights of the Plaintiff in a blatant and dishonest manner. The Plaintiff had also sought an appointment of a Local Commissioner in the present suit. Keeping in view the nature of relief sought, the Plaintiff contends that in case notice is given to the Defendant, some of the reliefs sought in the suit, may become futile. In these circumstances, the Plaintiff seeks exemption from effecting advance service of the suit on the Defendant and to seek *ex parte ad interim* reliefs.

23. Keeping in view the averments made in the application and the nature of reliefs sought in the interim application, the Plaintiff is exempted from effecting advance service of the suit papers on the Defendant.

24. The application is disposed of.

I.A. No. 6440/2021 (for seeking liberty for subsequent filing of relevant Court fee)

25. The present application u/Section 149 r/w Section 151 of CPC on behalf of the Plaintiff seeks liberty for subsequent filing of relevant court fee.

26. The Plaintiff submits that due to the current COVID-19 pandemic and resultant restrictions, they are unable to arrange to procure the necessary court fee stamps. Due to the urgency of matter, Plaintiff has filed the subject suit without the court fee.

27. The application is allowed, subject to the Plaintiff filing the subsequent Court fee within two weeks from the day the lockdown restrictions imposed by the Government of NCT of Delhi are lifted and the facility for issuance of court fee stamps is resumed.

28. The application stands disposed of.

SANJEEV NARULA, J

MAY 18, 2021

nd