

BY EMAIL/DoT Website

Government of India
Ministry of Communications
Department of Telecommunications
Sanchar Bhawan, 20, Ashoka Road, New Delhi - 110 001
(Data Services Cell)

No. 813-07/LM-33/2022-DS-II

08
Dated: 06-12-2022

To,

All Internet Service Licensees'

Subject: CS (Comm) No. 490 of 2022; Infiniti Retail Limited v/s M/s Croma Wholeseller & Ors. Before Hon'ble Delhi High Court.

In Continuation to Department of Telecommunications (DoT) even no. letter dated 23.08.2022; kindly find the enclosed Hon'ble Delhi High Court order dated 23rd November 2022 & 25th July, 2022 in the subject matter court case C.S. (Comm) No. 490 of 2022 for compliance with respect to two (2) infringing websites of defendant no. 12 as mentioned in para '4' of the court order dated 23.11.2022. DoT is respondent No. 6 in the case.

2. Hon'ble Court in order dated 25th July, 2022 has, inter alia, state that:

34. The defendant nos. 6 and 7 are directed to issue necessary instructions in this regard.

3. Further, Hon'ble Court in order dated 23rd November 2022 has, inter alia, state that:

I.A 17480/2022

4. By the application, being I.A. 17480/2022, the plaintiff prays for addition of the defendant no.12, which the plaintiff claims to be the infringing websites www.cromawholesellersltd.com and www.cromawholesellerltd.in as also, the telecom service provider for the mobile number listed on the above websites as defendant no.13; and the domain name registrar of the above websites as the defendant no.14.

IA 17482/2022 ...

15. This application has been filed by the plaintiff praying that anad interim ex parte order of injunction granted and directions issued vide order dated 25.07.2022 be also extended to the defendant no.12 and the other newly added defendants, which have been impleaded by the present order.

16. For the reasons that have already been recorded in the order dated 25.07.2022, and having considered the contents of the application, I find that the plaintiff has been able to make out a good prima facie case even against the defendant no.12. The balance of convenience is also in favour of the plaintiff and against the defendant no.12. The infringing act complained

of by the plaintiff is likely to cause damage not only to the plaintiff but also to the general public.

17. Accordingly, there shall be an ad interim ex parte order of injunction/direction in terms of the prayers made in the present application...

3. Accordingly, in view of the above, all the Internet Service licensees are hereby notified to take immediate necessary blocking action for compliance of the court order dated 23rd November 2022 read with order 25th July, 2022; with respect to two (2) infringing websites of defendant no. 12 as mentioned in para '4' of the court order dated 23.11.2022.

Director (DS-II)
Tel: 011-2303 6860
Email: dirds2-dot@nic.in

Encl: A/A

Copy to:

- i. Sh. V.Chinnasamy, Scientist E (chinnasamy.v@meity.gov.in), Electronics Niketan, Ministry of Electronics and Information Technology (MeitY) New Delhi for kind information and necessary action (Respondent no. 7 in the case)
- ii. Lawyer/advocate for the plaintiff for kind information.
- iii. DoT website.

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

+ CS(COMM) 490/2022 & I.As. 11214/2022, 11505/2022,
17479/2022, 17480/2022, 17481/2022, 17482/2022

INFINITI RETAIL LIMITED Plaintiff
Through: Ms. Kruttika Vijay, Adv.

versus

M/S CROMA WHOLESALER & ORS. Defendants
Through: Mr.Manish Mohan, CGSC for UOI.
Ms.Shweta Sahu, Mr.Brijesh
Ujjainwal, Advs. for D-4.
Mr.Prashant Choudhary, Adv. for D-
8.
Mr.Manish Mohan, CGSC with
Ms.Rupali Kapoor, GP.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

% **23.11.2022**

IA 17479/2022

1. By this application, the plaintiff prays for leave to file the additional documents on record. It is asserted that after the filing of the suit, the plaintiff has been informed of the other infringing websites www.cromawholesellersltd.com, and www.cromawholesellerltd.in. Accordingly, the plaintiff prays for leave to file the documents in relation to the said websites on record as additional documents.
2. As it is asserted that these documents were not in the power, possession, control or custody of the plaintiff at the time of filing of the suit,

the prayer made in the application is granted.

3. The application is allowed and the documents are taken on record.

I.A 17480/2022

4. By the application, being I.A. 17480/2022, the plaintiff prays for addition of the defendant no.12, which the plaintiff claims to be the infringing websites www.cromawholesellersltd.com and www.cromawholesellerltd.in as also, the telecom service provider for the mobile number listed on the above websites as defendant no.13; and the domain name registrar of the above websites as the defendant no.14.

5. The plaintiff further asserts that based on the details provided by defendant nos.8, 9 and 10 and the National Internet Exchange of India (NIXI) pursuant to the order dated 25.07.2022 of this Court, the plaintiff seeks to substitute the defendant nos.1, 2 and 3 with the details as provided. The plaintiff further seeks to implead the banks where the accounts are being maintained by the infringing websites as defendants 15 to 19.

6. Having perused the contents of the application and as the suit is at the initial stage itself, the prayers made in the application are granted.

7. The application is allowed, and the amended memo of parties is taken on record.

IA No. 17481/2022

8. Based on the assertions recorded herein above, the plaintiff also seeks to make consequential amendments in the plaint.

9. As noted hereinabove, the suit is at the initial stage, additional parties have also been allowed to be impleaded, therefore, I see no reason to disallow the prayer made.

10. Accordingly, the prayers made by the plaintiff are granted. The application is allowed.

11. The learned counsel for the plaintiff submits that the amended plaint has been filed on 21.11.2022. The same be brought on record.

IA 17482/2022

12. Issue notice of this application to the defendants.

13. Notice is accepted by the learned counsels appearing for the parties mentioned above.

14. Let notices be served on the newly added defendants, through all modes, including electronically, returnable on 20th March, 2023 before the learned Joint Registrar (Judicial).

15. This application has been filed by the plaintiff praying that an *ad interim ex parte* order of injunction granted and directions issued vide order dated 25.07.2022 be also extended to the defendant no.12 and the other newly added defendants, which have been impleaded by the present order.

16. For the reasons that have already been recorded in the order dated 25.07.2022, and having considered the contents of the application, I find that the plaintiff has been able to make out a good *prima facie* case even against the defendant no.12. The balance of convenience is also in favour of the plaintiff and against the defendant no.12. The infringing act complained of by the plaintiff is likely to cause damage not only to the plaintiff but also to the general public.

17. Accordingly, there shall be an *ad interim ex parte* order of injunction/direction in terms of the prayers made in the present application. The disclosure to be made by the defendant nos.15 to 19 shall be in a sealed cover.

18. The learned counsel for the plaintiff points out that by inadvertence, a direction for disclosure of the domain name registrants was not issued to the defendant no.4 in the order dated 25.07.2022. Accordingly, defendant no.4 is also directed to disclose the details of the registrants of the impugned domain names to the plaintiff.

19. It is further clarified that in paragraph 34 of the order dated 24.07.2022, the defendant nos.4 and 5 have been directed to suspend and block the infringing domain names.

20. Compliance of Order XXXIX Rule 3 of the Code of Civil Procedure, 1908 be made within a period of one week from today.

CS(COMM) 490/2022 & IA 11214/2022

21. Issue summons to the newly added defendants, to be served through all modes, including electronically, returnable on 20th March, 2023 before the learned Joint Registrar (Judicial).

22. The summons to the defendants shall indicate that the written statement(s) to the Plaintiff shall be positively filed within a period of 30 days from the date of receipt of summons. Along with the written statement(s), the defendants shall also file the affidavit(s) of admission/denial of the documents of the plaintiff, without which the written statement(s) shall not be taken on record.

23. Liberty is given to the plaintiff to file the replication within a period of 15 days of the receipt of the written statement(s). Along with the replication, if any, filed by the plaintiff, the affidavit of admission/denial of documents of the defendants 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.

NOVEMBER 23, 2022
RN

NAVIN CHAWLA, J

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

+ CS(COMM) 490/2022

INFINITI RETAIL LIMITED

..... Plaintiff

Through: Ms.Kruttika Vijay, Mr.Sauharo
Alung, Ms.Abhilasha Nautiyal, Advs.

versus

M/S CROMA WHOLESALER & ORS.

..... Defendants

Through: Mr.Manish Mohan, CGSC with
Ms.Rupali Kapoor, GP for D-6-7.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

25.07.2022

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IA 11219/2022(Exemption)

1. Allowed, subject to all just exceptions.

IA 11506/2022

2. By this application, the plaintiff prays for leave to amend the plaint.

3. As the suit is at an initial stage and that summons to the defendants have not been issued, the application is allowed. The amended plaint is taken on record.

IA 11505/2022

4. By this application, the plaintiff seeks leave to implead Cyber Police, Mumbai as the defendant no.11 in the suit.

5. As the suit is at an initial stage and that summons to the defendants have not been issued, the application is allowed and the Cyber Police, Mumbai is added as the defendant no.11. The amended memo of parties is taken on record.

6. This order would, however, be without prejudice to the rights and contentions of the defendant no.11 in the suit.

IA 11215/2022

7. This is an application seeking exemption from serving advance copy of the suit paper book to the defendant nos. 1 to 3.

8. For the reasons stated in the application, the same is allowed.

IA 11216/2022

9. This is an application seeking exemption from serving advance notice to the defendant nos. 6 and 7 under Section 80(2) of the Code of Civil Procedure, 1908.

10. For the reasons stated in the application, the same is allowed.

IA 11218/2022

11. This is an application filed on behalf of the plaintiff seeking leave to file additional documents which are not in the power, possession, control or custody of the plaintiff at the moment.

12. The plaintiff may file the additional documents strictly in accordance with the provisions of the law.

13. The application stands disposed of.

CS(COMM) 490/2022

14. Let the plaint be registered as a suit.

15. Issue summons to the defendants. Summons are accepted by Mr.Manish Mohan, the learned counsel appearing for the defendant nos.6 and 7.

16. Let summons be served on the remaining defendants through all modes, including electronically, returnable on 27th October, 2022.

17. The summons to the defendant(s) shall indicate that the written statement(s) to the plaint shall be positively filed within a period of 30 days from the date of receipt of summons. Along with the written statement(s), the defendant(s) shall also file the affidavit(s) of admission/denial of the documents of the plaintiff, without which the written statement(s) shall not be taken on record.


18. Liberty is given to the plaintiff to file replication(s) within a period of 15 days of the receipt of the written statement(s). Along with the replication(s), if any, filed by the plaintiff, the affidavit(s) of admission/denial of documents of the defendant(s) be filed by the plaintiff, without which the replication(s) 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.


IA 11214/2022 (Stay)



19. Issue notice. Notice is accepted by Ms.Manish Mohan, the learned counsel appearing for the defendant nos.6 and 7.

20. Let notice be served on the remaining defendants through all modes, including electronically, returnable on 27th October, 2022.

21. Reply, if any, be filed within a period of four weeks. Rejoinder be filed within a period four weeks thereafter.

22. It is the case of the plaintiff that the plaintiff is a company incorporated in the year 2005 under the Companies Act, 1956, operating its business under the mark  and other stylised variants. It further

claims that the mark  has been declared to be 'well-known' by the Registrar of Trade Marks under Rule 124 of the Trade Mark Rules, 2017 vide notification dated 24.02.2020.

23. The plaintiff owns and manages a national retail chain, which operates through numerous physical stores and also through its website www.croma.com for consumer electronics and durables under the trade mark/name CROMA and stylized CROMA marks including  and  and a series of CROMA formative marks including CROMA ZIP.

24. The plaintiff states that it has physical network of stores in more than 260 stores spread across length and breadth of the country. It also has a significant e-commerce business under the CROMA brand. The plaintiff in the plaint also discloses its promotional expenses for the years 2010 to 2021 as also the revenue earned in the years 2007 to 2018. It further claims that it has won many awards in various categories, details whereof have also been given in paragraph 17 of the plaint.

25. The plaintiff has further stated that it has obtained registration of approximately 130 CROMA trade marks including CROMA-formative marks, across classes, in relation to a wide range of goods and services, details whereof have been given in paragraph 24 of the plaint.

26. The plaintiff asserts that its website www.croma.com has noted a progressive rise in traffic over the past few years and the number of visitors on the same have increased to 9,63,82,224 in the year 2021.

27. The plaintiff also holds various registrations in its mark INFINITI RETAIL, across classes and in relation to a wide range of goods and services, details whereof are given by the plaintiff in paragraph 25 of its plaint.

28. The plaintiff is aggrieved of the websites www.cromawholeseller.in., www.cromawholesellers.in., www.cromawholesellers.com, and www.cromawholesale.in.

29. The plaintiff asserts that these websites have been registered in infringement of its trade mark rights in the trade mark CROMA. The plaintiff further asserts that these websites are not only infringing the trade mark rights of the plaintiff but are also used to defraud the unwary consumer with the purchases made therefrom not being delivered to the customer. The money is collected by these websites from unsuspecting customers through the UPI IDs cromainfinity@ybl, infitiretailtd@ybl, 8282876255@ybl and 6289128350@rbl.

30. The plaintiff claims to have made a complaint against the said defendants before the Cyber Police, Mumbai, however, these unscrupulous activities still continued.

31. Having heard the learned counsel for the plaintiff, and perused the plaint and the documents filed therewith, I am of the opinion that the plaintiff has been able to make out a good *prima facie* case in its favour and against the defendants. The balance of convenience is also in favour of the plaintiff and against the defendants.

32. The continued misuse of the plaintiff's trademark CROMA and UPI IDs by the defendant nos. 1 to 3 may not only cause irreparable damage to the plaintiff but also to the unwary consumer.

33. Accordingly, an *ad-interim* injunction in terms of prayers 'a' to 'c' of the present application is granted in favour of the plaintiff and against the defendant nos.1 to 3.

34. The defendant nos.4 and 5 are also directed to block the infringing domain names of the defendants 1 to 3 namely www.cromawholeseller.in., www.cromawholesellers.in., www.cromawholesellers.com, www.cromawholesale.in. The defendant nos. 6 and 7 are directed to issue necessary instructions in this regard.

35. As it is further claimed that the impugned domain names use the telephone numbers given in prayer 'f' of the application for their fraudulent activities, the defendant no.8 is directed to suspend and disconnect the service to these numbers as also provided the KYC details thereof.

36. The Defendant nos.9 and 10 are also directed to temporarily suspend the disable the UPI IDs infiniteRetailtd@ybl, cromainfinity@ybl, 8282876255@ybl and 6289128350@rbl and disclose the details of the bank accounts associated with the above mentioned IDs along with copies of KYC documents submitted by the account holders of these IDs and accounts.

37. The Cyber Police, Mumbai is directed to place on record the latest Status Report on the investigation conducted on the complaint filed by the plaintiff against the impugned domain names . Such Status Report be filed within a period of four weeks of receipt of summons and /notice of this application.

38. Compliance of Order XXXIX Rule 3 of the CPC be made within a week from today.

IA 11217/2022

39. In view of the order passed hereinabove, the said application is disposed of.

JULY 25, 2022
RN

NAVIN CHAWLA, J