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

+ **CS(COMM) 447/2020**

MATTEL INC.

..... Plaintiff

Represented by: Ms.Shwetasree Majumdar, Mr.Prithvi
Singh and Ms.Vasudhara Majithia,
Advocates.

versus

PRESENT ENTERPRISES & ORS.

.... Defendant

Represented by: Mr.Dheeraj Nair and Ms.Shruti,
Advocate for defendant No.4/Flipkart.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

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13.10.2020

The hearing has been conducted through Video Conferencing.

I.A. 9301/2020 (exemption)

1. Allowed, subject to all just exceptions.
2. Original documents, if any, be filed within two weeks of the resumption of the normal functioning of the Court.
3. Application is disposed of.

I.A. 9300/2020 (under Order XI Rule 1 (4) Commercial Courts Act)

1. Additional documents, if any, be filed within 30 days.
2. Application is disposed of.

I.A. 9302/2020 (seeking leave to file documents in sealed cover)

1. Learned counsel for the plaintiff seeks leave to place on record numbers of units sold and the sales figures relating to the sales in India in a sealed cover.
2. Documents be filed in a sealed cover within two weeks of the

resumption of the normal functioning of the Court.

3. Application is disposed of.

CS(COMM) 447/2020

I.A. 9299/2020 (under Order XXXIX Rule 1 and 2 CPC)

1. Complaint be registered as a suit.

2. Issue summons in the suit and notice in the application to the defendants.

3. Learned counsel for the defendant No.4 Flipkart Internet Pvt. Ltd accepts summons in the suit and notice in the application.

4. Summons in the suit and notice in the application be now issued to defendant Nos.1 to 3 and 5 on the plaintiff taking steps through email, SMS, whatsapp, Speed Post and Courier, returnable before this Court on 8th

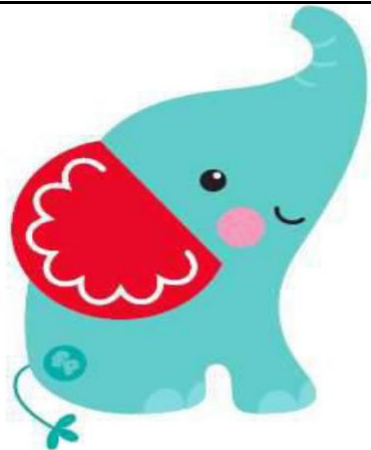


5. Written statement and reply affidavit along with affidavit of admission/denial be filed within 30 days of the receipt of summons in the suit and notice in the application.




6. Replication and rejoinder affidavit, along with affidavit of admission/denial, be filed within three weeks thereafter.

7. Present suit has been filed by the plaintiff which claims that it is into the business of selling games, toys etc. for children since the year 1945. In the year 1993 plaintiff merged with Fisher-Price and since then is one of the biggest manufacturer and seller of the children/toddler's toys world-over.

The plaintiff claims to have adopted the trademark 'KICK AND PLAY' for game and playthings in the year 2010 and started using the said trademark in India since 2012. In the year 2012 the plaintiff also designed and adopted a set of cartoon animal characters titled as 'Rainforest Family' which consists

of six characters namely:

Sl. No.	Art Work	Title of Work	Registration No.	Registration Date
1.		Rainforest Elephant	VA 1-939-121	09/12/2014
2.		Rainforest Lion	VA 1-939-208	09/12/2014
3.		Rainforest Giraffe	VA 1-939-190	09/12/2014

4.		Rainforest Girl Monkey	VA 1-939-254	09/12/2014
5.		Rainforest Parrot	VA 1-939-727	09/12/2014
6.		Rainforest Turtle	VA 1-939-728	09/12/2014

8. The plaintiff has been named as one of the Fortune Magazine's 100 Best Companies to work for the sixth year in row. Claim of the plaintiff is that in the year 2017 the plaintiff launched the 'Infant to Toddler Rocker' with 'Rainforest Family' characters featuring therein which products were launched in India in 2018. The plaintiff has spent a lot on promotion while launching its product abroad and in India and has won various awards for

the same. On 13th August, 2020 the plaintiff applied for registration of the trademark 'KICK AND PLAY' in Class-28 in India and on 9th September, 2020 applied for the registration of the shape mark of its 'KICK AND PLAY' baby gym in Class-28 in India. Thus, in the present suit the plaintiff claims infringement of its copyright in respect of its six characters of 'Rainforest Family', as also passing off the goods of the defendants as that of the plaintiff by using trademark 'KICK AND PLAY' as also the violation of the shape mark of its 'KICK AND PLAY' baby gym.

9. A bare perusal of the six characters shows that they have been uniquely prepared with the unique colour combination which is attractive and appealing to the children and by virtue of Section 40 of the Copyright Act, registrations in favour of the plaintiff in respect of six characters in USA would also extend to India in terms of International Copyright order notified in the Official Gazette on 24th March, 1999.

10. Grievance of the plaintiff is that since the plaintiff's products have lot of variety of colour combination and are appealing besides effectively useful, number of people including the defendant Nos.1, 2 and 3 are selling the products violating the copyright of the plaintiff in the six 'Rainforest Family' characters and also listing their products which are primarily baby gym with suffix and prefix using the trademark 'KICK AND PLAY' and also copying the shape of the product.

11. Considering that the plaintiff's copyright granted in USA in respect of the six characters of the 'Rainforest Family' would also extend to India in terms of Section 40 of the Copyright Act, this Court finds that the plaintiff has made out a prime facie case in its favour at this stage for grant of an ex-parte ad-interim injunction qua the copyright violation in relation thereto.

However, as respect the trademark violation of its word mark 'KICK AND PLAY' as also the design mark, this Court deems it fit to hear the defendants in the first instance before passing any ad-interim injunction.

12. Consequently, till the next date of hearing, an ex-parte ad-interim injunction is granted in favour of the plaintiff and against the defendants restraining defendant Nos.1, 2, 3 and the other defendants sought to be impleaded as John Doe as defendant No.5, their proprietors, successors, agents, associates, affiliates from in any manner violating the plaintiff's copyright in the six characters of the 'Rainforest Family' in any manner on their products till the next date of hearing.

13. In the meantime, on the plaintiff providing the URLs within three days, defendant No.4 will remove the listings from its platform which relate to the advertisement and sale of the products which violate the copyright of the plaintiff in the six characters of the 'Rainforest Family' within 48 hours.

14. Compliance under Order XXXIX Rule 3 CPC be made within one week.

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

MUKTA GUPTA, J.

OCTOBER 13, 2020

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