

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-31/2022-DS-II

Dated:10-08-2022

To,

All Internet Service Licensees'

Subject: CS (Comm) No. 531 of 2022; New Balance Athletic Inc. V/s Ashok Kumar Trading as www.myshoeshop.in Before Hon'ble Delhi High Court.

Kindly find the enclosed Hon'ble Delhi High Court order dated 03rd August, 2022 in the subject matter court case C.S. (Comm) No. 531 of 2022 for compliance with respect to website of defendant no.1 (www.myshoeshop.in) as mentioned in the court order.

2. Hon'ble Court vide order dated 03rd August, 2022 has, inter alia, directed that:

22. Having perused the contents of the website, prima facie it is clear that the defendant no. 1 is not only violating the trade mark rights of the plaintiff, but other well-known brands as well. Accordingly, the defendant no. 2 is directed to provide contact details/addresses of the proprietor/registrants of the website www.myshoeshop.in. It is further directed to de-activate/block the said website till further orders. The defendant nos. 7 and 8 are also directed to issue necessary directions for blocking of the said website forthwith.

3. Accordingly, in view of the above, all the Internet Service licensees are hereby notified/instructed to take immediate necessary blocking action for compliance of the court order dated 03rd August, 2022 with respect to website of defendant no.1 (www.myshoeshop.in) as mentioned in the court order immediately.

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

Encl: A/A

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

+ **CS(COMM) 531/2022**

NEW BALANCE ATHLETICS INC. Plaintiff

Through: Mr.Dushyant K. Mahant, Mr.Urfee
Roomi, Ms.Janki Arun and Mr.Ritesh
Kumar, Advs.

versus

**ASHOK KUMAR TRADING AS WWW.MYSHOESHOP. IN
& ORS. Defendants**

Through: Mr.Arnab Kumar, CGSC with
Mr.Gurudas Khurana, Advs. for D-7.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

% **03.08.2022**

I.A.12207/2022 (Exemption)

1. Allowed, subject to all just exception.

I.A.12206/2022

2. 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.

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

4. The application stands disposed of.

CS(COMM) 531//2022

5. Let the plaint be registered as a suit.

6. Issue summons to the defendants to be served through all permitted modes.

7. Mr.Arn timer, the learned CGSC accepts summons on behalf of the defendant no.7.

8. 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.

9. Liberty is given to the plaintiff to file the 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.

10. List before the Court on 9th November, 2022.

I.A.12205/2022

11. Issue notice. On the plaintiff taking steps, let notice be served on the defendants through all permissible modes, including electronically, returnable on 9th November, 2022.

12. Mr.Arn timer, the learned CGSC accepts notice on behalf of the defendant no.7

13. Let reply(ies) to the application be filed by the defendants within a period of 30 days of receipt of notice. Rejoinder(s) thereto, if any, be filed within a period of 15 days thereafter.

14. It is the case of the plaintiff that it is a company incorporated under the laws of the State of Massachusetts, the United States of America (in short, 'USA') and is engaged in the design, manufacture, marketing, and sale of footwear since the year 1906 in the USA, including in the mark "**NEW BALANCE**", "**NB Device Mark**" and the "**N Device Mark**", which are shown below:



15. The plaintiff further asserts that they first used the letter "**N**" on the footwear in the year 1970 and a combination "**NB**" as a trade mark on footwear also began in the 1970s. The plaintiff's products are sold in more than 120 countries, including in India, through retail stores owned and/or operated by the plaintiff, through franchisees, department stores, and e-commerce sites. With respect to India, it used the "**New Balance**" mark and the "**N Device**" mark on the footwear first in the year 1986, while the "**NB Device**" mark was first used on the footwear in the year 1987. The plaintiff has also given the net revenue figure for the period of 2013 to 2020 as also the advertising expenditure for the same period. It has also given details of the social media accounts that it operates.

16. The plaintiff asserts that it has incorporated subsidiary companies in India as '*New Balance IT Services India Private Limited*' (incorporated in the year 2007) and '*New Balance India Private Limited*' (incorporated on

January 17, 2022). It has also entered into a franchisee agreement with a leading Indian party and its stores are operating in various places in India. It has also given details of previous litigations where its marks have been protected.

17. The plaintiff further asserts that it has obtained registration for various marks in India, the details whereof have been given in paragraph 36 of the plaint.

18. The plaintiff further asserts that the defendant no. 1 openly proclaims on its website, **www.myshoeshop.in** that what is being sold are the “first copy” shoes. The website, apart from selling the counterfeits/fakes of the plaintiff’s footwear, also offers for sale/sells goods of other well-known brands such as Adidas, Louis Vuitton, Nike etc. at highly discounted prices.

19. The plaintiff further asserts that orders of protection against similar activities have been earlier passed in favour of the plaintiff. In this regard, the learned counsel for the plaintiff has drawn the attention of this Court to the order dated 20.01.2022 passed by a Co-ordinate Bench of this Court in CS (COMM) 48/2022, titled *PUMA SE v. Ashok Kumar Trading as SastaJoota & Ors.*, as also the order of this Court dated 20.05.2022 in CS(COMM) 339/2022, titled *New Balance Athletics Inc. v. Ashok Kumar Trading as www.sastajoota.com & Ors.*

20. Having considered the averments made in the plaint, perused the documents filed alongwith the plaint, and also the submissions made by the learned counsel for the plaintiff, I am of the view that the plaintiff has made out a *prima facie* case for grant of an injunction. The balance of convenience also lies in the favour of the plaintiff and against the defendant no. 1. An irreparable loss would be caused to the plaintiff and also to the consumers in

case the defendant no. 1 is not restrained by an *ad-interim* order from continuing with their web portal.

21. Accordingly, there shall be an *ad-interim* order of injunction against the defendant no. 1 in terms of prayer (a) and (b) of the application.

22. Having perused the contents of the website, *prima facie* it is clear that the defendant no. 1 is not only violating the trade mark rights of the plaintiff, but other well-known brands as well. Accordingly, the defendant no. 2 is directed to provide contact details/addresses of the proprietor/registrants of the website www.myshoeshop.in. It is further directed to de-activate/block the said website till further orders. The defendant nos. 7 and 8 are also directed to issue necessary directions for blocking of the said website forthwith.

23. The plaintiff further submits that the defendant no. 1 is offering the goods in question not only through the website but also through its mobile numbers (+91) 9033690991, (+91) 8849618529 and (+91) 9328788075. The defendant nos. 4 and 5 are directed to provide details of the subscribers of these telephone numbers along with the KYC documents.

24. Defendant no. 6 is also directed to suspend/block the Instagram page, @myshoeshop_, and to provide details of the owner of the said page.

25. Compliance of Order XXXIX Rule 3 of the Code of Civil Procedure, 1908 be made within a period of two days from today.

26. *Dasti.*

NAVIN CHAWLA, J

AUGUST 3, 2022/Arya

United States of America

Email: abuse@godaddy.com

... Defendant No. 2

HDFC Bank Limited

Rader Brand

Through its Branch Manager

UG 8 to 12, Divya Darshan SOC

Rushabh Char Rasta

Rander Road, Rader

Near Rushabh Tower

Surat, Gujarat – 395009

Phone: +912268461208

Email: support@hdfcbank.com

... Defendant No. 3

Bharti Airtel Limited

Airtel Center

Plot No. 16, Udyog Vihar

Phase IV Gurgaon, Haryana

Phone: +91-124-4222222

Email: compliance.officer@bharti.in

... Defendant No. 4

Reliance Jio Infocomm Limited

Office -101, Saffron Near. Centre Point

Panchwati 5 Rasta, Ambawadi

Ahmedabad, Gujarat – 380006

Email: jyoti.jain@ril.com

... Defendant No. 5

Meta Platforms Inc.
One Hacker Way
Menlo Park, California 94025
United States of America
Phone: (650) 543-4800
Email: press@fb.com ... Defendant No. 6

Department of Telecommunications
Through Secretary
Ministry of Communications and IT
20, Sanchar Bhawan, Ashoka Road
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Email: secy-dot@nic.in; dirds2-dot@nic.in ... Defendant No. 7

Ministry of Electronics and Information Technology
Through the Director General (DIT) Cyber Laws & E-security)
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Email: cyberlaw@meity.gov.in; gccyberlaws@meity.gov.in;
pkumar@meity.gov.in; sathya.s@meity.gov.in ... Defendant No. 8

National Internet Exchange of India
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PLACE: New Delhi
DATE: July 30, 2022

Defendant No. 1 is main contesting defendant.