

**IN THE COURT OF MS. ANURADHA SHUKLA:
DISTRICT JUDGE (COMMERCIAL COURT)-02,
SOUTH, SAKET, DELHI**

CS (COMM) 253/25

Wilson and Hughes India Pvt. Ltd.

.....Plaintiff

Versus

A and A S.a.r.l & Ors.

.... Defendants

28.05.2025

ORDER

1. An application u/o 39 rule 4 CPC has been filed by Defendants seeking setting aside of ad-interim ex-parte order dt.17.05.2025.
2. Brief facts are that the plaintiff Wilson & Hughes India Pvt. Ltd. approached the court claiming its rights over COX AND KINGS Trademark claiming to have purchased various trademarks owned by COX AND KINGS INDIA LTD. by a deed of assignment and sales certificates executed in June, 2024 after Cox & Kings India Ltd. was wound up. The ex-parte ad-interim injunction was granted on the application of plaintiff u/o 39 rule 1 & 2 CPC on 17.05.2025, which has been challenged by the defendants.

3. While the plaintiff claimed to be the oldest travel company in the world having a history back to 1758, the defendants have refuted the claim stating that it was defendants' predecessors in title who were the original owners of trademark COX AND KINGS.
4. As per application u/o 39 rule 4 CPC, the foundation of Cox and Kings legacy was laid in UK in 1758 by COX And Company, which initially operated as partnership concern in UK and was later incorporated as a limited company in London. Both the parties therefore, are claiming that their predecessor in title in fact was the original Cox and Kings. The plaintiff claimed that its predecessor in title was incorporated in India in 1939 while the defendant claimed that Cox and Shipping agency, the defendant's predecessor in title was incorporated earlier in UK in 1916 and its name was later changed to Cox and Kings Ltd. On 06.06.1963 and then to Cox and Kings Travel Ltd. on 31.12.1980. There are different documents relied by plaintiff and defendants while in one the name Cox's Shipping Agency (France) Ltd. has been shown to be the original name from 1916 till 1963, as per the document filed by defendants; as per the document from the same authority filed by the plaintiff the name of original company has been shown as J.A.Bishop Limited, which was changed to Cox and Kings Holding Ltd. in June, 1963.

5. While Ld.Counsels for the parties took the court to various documents in support of their respective contention of being earlier in time in having started to use the trademark Cox and Kings through their respective predecessors in title, the fact remains that neither of the parties can be called as a recent user of trademark in comparison to the other. While originally the two predecessors in title were working together with some of board members being same and common interest and thus not leading to any conflict; the two parted their ways when both the companies as it appears in view of arguments addressed so far, started facing difficulties in business, somewhere in 2016 to 2018. Admittedly, some of the trademarks having words Cox and Kings were registered in the name of plaintiff's predecessor in title in India while the same trademarks were registered in favour of defendants in other countries mentioned in the pleadings.

There are arguments and counter-arguments on which of the two successors in title got better rights in trademark as the case of plaintiff is that the defendants chose not to buy trademarks registered in India despite knowledge of the sale of same and thus lost the entitlement/protection of trademark registry in India; the claim of defendants is that the plaintiff had lost all the reputation while it was inoperative from 2019 till 2024 and therefore, purchase of trademark has not given any goodwill to the plaintiff, as none was existing on the date of purchase.

6. The dispute in this matter therefore, has to be looked into more from the angle of ownership rights of each party having been acquired from common ancestry rather than from the angle of trademark infringement; since indisputably both the parties had been using the trademark for a long long time since as back as 1900s. Therefore, a long user is to be read in favour of both the parties with it being difficult to pen down at this stage as to which out of two can be considered a better owner in respect of trademarks, which can fairly be decided after consideration of all the documents, some of which will need evidence to be led.
7. It was vehemently argued by Ld.Counsel for plaintiff that the defendants purchased trademark COX AND KINGS for different countries from its predecessor in title, however, despite knowing that as many as some odd 40 trademarks having COX AND KINGS were on sale in India (on account of the original company having gone in liquidation), it chose not to buy the trademarks and now wants to prevent the plaintiff from using these trademarks, who has bought them lawfully in India. It would not be out of context to mention at this stage that plaintiff claims that need to file present suit arose since the defendants were issuing 'cease and desist notice' to plaintiff and wanted to stop the plaintiff from using the trademarks having been lawfully purchased by it. Ld. Counsel for

defendants on the other hand argued that no need was felt to purchase these trademark as trademarks in India had lost their value because of the conduct of plaintiff's predecessor in title. It was vehemently argued that the plaintiff's predecessor in title were guilty of mismanagement, fraud etc. and were being investigated by various agencies leading to the company going into liquidation. While defendants' predecessor in title also went into some issues, however, it is the claim of defendants that the issues faced by defendants' predecessor were different and it was only administration issues, which led to the sale of trademarks to someone from whom the defendants ultimately purchased the trademarks.

Ld.Counsel for the defendants could not answer the query of court as to when the trademark COX AND KINGS had lost all its goodwill in India on account of alleged misdeeds of plaintiff's predecessor in title, did the defendants also not face the same issue of loss of reputation in the same trademark COX AND KINGS, which it is claiming against plaintiff. Relevantly, no documents showing defendants business in India in last three-four years has been separately placed on record. The defendants are claiming that they have earned huge business revenue across the globe, however, which part of it was generated from India has not been specifically pleaded anywhere. It was relevant in view of claim of defendants regarding loss of reputation on account of misdeeds of plaintiff's predecessor in last 2-3 years. The

defendants were expected to have shown as to how they rebuilt the reputation in India in last 2-3 years and how much money did they generate from India during this time.

8. Thus, to my understanding the status of plaintiff and the defendants in so far as it concerns the goodwill in trademark COX AND KINGS in India is not any different. That conclusion takes us to the other aspect related to legal rights of the parties.

9. It would be relevant to take note of the argument of Ld. counsel for defendants regarding user having been recorded as proposed to be used basis in para 18 of the order. Ld. Counsel for the defendants has vehemently argued that defendants had wrongly presented before the court that the trademark applications in India were filed in 2022 on proposed to be used basis when in fact the user detail in the application has been given from 01.05.2022. Since the plaintiff has filed the relevant documents and had shown to the court these documents and has also mentioned at page 66 & 67 of the plaint that user details have been claimed from 01.05.2022, it appears that proposed to be used basis in para 18 of the order came as an inadvertent mistake, the user in fact having been pleaded everywhere from 1st May, 2022.

10. The plaintiff claims that it has purchased through assignment deed 228 trademarks from its predecessor,

some odd 40 have registration of words COX AND KINGS directly or in some form. The plaintiff has relied upon the judgment of Hon'ble Delhi High Court in **Ashland Licensing and Intellectual property LLC Vs. Savita Chemical Ltd., 2010 (44) PTC 220 (DEL)**. The Hon'ble Court in the cited judgment held that pendency of application before Registry notifying the assignment of trademarks would not preclude the party benefiting from the assignment deed to avail the rights emanating from the assignment, if such party wants to assert its right. The plaintiff therefore, would be considered owner of the trademark from the date they were existing on the register of trademark. Defendant as per para 8.30 of the application had applied for COX AND KINGS on 26.10.2022 claiming user since 01.05.2022, which registration was refused by registry in class 39 against which defendant has filed a review. The current status of this application therefore, is of refusal with a pending review. The defendants applied for this trademark on 26.10.2022 claiming user since 01.05.2022 in class 43 which application it claims has been accepted. The defendants have further filed three applications on 27.02.2025 claiming user since 27.02.2025. The defendants thus are claiming rights in India from 2022 and 2025. It is claimed that their predecessor in interest owned www.coxandkings.co.uk having purchased it on 02.12.1997 (the registration of this domain name has been separately applied for by the defendants).

11.The rights of plaintiff on the basis of register containing registration of trademarks, therefore, appear stronger than that of defendants as per Indian Trademark Registry. Ld. Counsel for the defendant vehemently argued that even in absence of registration of its trademark the defendants can maintain a plea of passing off of trademark against the plaintiff on the basis of user. The defendants, however, have not been able to show that they having no trademark registration in India had a better goodwill in India which developed for so long as would entitle them for a right of seeking passing off order against the plaintiff.

12.Ld. Counsel for the defendants argued that the defendants have right of passing off even if it is not owner of registered trademarks in India. As discussed hereinabove the predecessors in title of plaintiff and defendants both were using trademark for centuries in their own spheres without any apparent dispute. Right of passing off therefore, cannot be passed to defendants on the basis of prior user or on the basis of having a better goodwill.

13.Ld.Counsel for the plaintiff argued that the application has been signed by only one defendant i.e D-4, who is not the owner of trademark. Ld. Counsel for defendants today submitted that the defendant no.4 has license from D-1 to use the trademark. Vakalatnama has been filed on behalf of D-1 also. Summons has not been served upon D-1 so

far. Ld.Counsel, however, is representing all the defendants. There is thus no bar in hearing the application having been signed by representative of D-4 only.

14.Ld.Counsel for the plaintiff argued that the application u/o 39 rule 4 CPC cannot be decided in isolation and that both the applications u/o 39 rule 1 & 2 CPC and u/o 39 rule 4 CPC are to be decided together. In this regard he has relied upon the judgment of Hon'ble Delhi High Court in **Ganesh Plastic Vs. Lajpat Rai Sobti & Ors, 2001 (60) DRJ 390.**

As it appears from the reading of judgment, application u/o 39 rule 4 CPC was decided by the court granting injunction to the defendant of the said case in his application u/o 39 rule 4 CPC while keeping the application u/o 39 rule 1 & 2 CPC. In the instant matter the court vide its order dt.17.05.2025 itself had clarified that the defendants will be at liberty to apply for **modification** and vacation of order, if required. It cannot be said that order passed u/o 39 rule 1 & 2 CPC cannot be modified pending the final hearing on the applications, which may take longer time more so, in a case like this where three of the defendants are based out of India and the summons upon whom are yet to be served as per law.

Considering the nature of the dispute in this matter more time would be required to go through the factual pleadings of parties in so far as they relate to the right of parties; origins thereof, the actual ownership rights etc., however, pending such decision, to allow the plaintiff to

have benefit of ex-parte order passed in absence of defendants by declining the plea of modification in view of the facts brought up by the defendants, would be unjust.

15.Ld.Counsel for defendants has relied upon the judgment of Hon'ble Delhi High Court in **2023, SCC Online Delhi 5824, Dabur India Ltd. Vs. Emami Ltd.** In the cited judgment Hon'ble High Court stated that products of defendant was introduced in May, 2023 and injunction was granted on 07.08.2023, the Ld. Single Judge should have afforded opportunity to defendant to oppose the application.

Though the facts in the instant case are slightly different since defendants are claiming their rights through their predecessor in title, nevertheless the court is considering the plea of defendants for suspension of stay order.

16.Ld. Counsel for defendants has taken objection to the matter having not been sent for pre-litigation mediation as required under Commercial Courts Act to seek rejection of suit and has in this regard relied upon the judgment in **M/s. Dhanbad Fuels Pvt. Ltd. Vs. Union of India & Ors. Civil Appeal No. 6846/2025 and HQ Lamps manufacturing Company Pvt. Ltd. Vs. Everlight Electronics India Pvt. Ltd. RFA (COMM) 2018/2023.** The cited judgments were in respect of suits for recovery. The present suit was primarily seeking ex-parte injunction. As per settled law

irrespective of whether injunction in such cases is granted or not the parties are considered entitled for exemption from following mandatory provision of section 12A of Commercial Courts. The application of plaintiff in this regard was allowed by this court rightly or wrongly. The argument of Ld.Counsel for defendants therefore, does not hold good.

17.Ld. Counsel for the plaintiff has relied upon several judgments where the concept of identical goods in similar market, concepts of anti-dissection rules etc. were considered. As discussed hereinabove, both the parties in the instant matter had been using trademark “ COX AND KINGS” through their respective predecessor in title since very long time and therefore, at this stage it is not possible for the court to comment as to who can be considered a prior user in time. The parties will have to lead evidence to show how the acquired right by them from their respective predecessor in title gave them better right in the trademark than the other party and this would require considering the law of ownership, transfer of titles, limited purchase, purchase of trademark having concurrent user in different jurisdictions etc. in addition to mere rule of prior user in time.

18.After consideration of the arguments and the judgments filed on behalf of both the parties, it is clear that both the parties are owner of trademark COX AND KINGS in their

respective jurisdictions having obtained the same through legal process.

19. The practical difficulty in the matter, however, is that the parties are in such business, which runs Online and which invariably gets carried to the jurisdiction of other party. For instance a customer of plaintiff in India may want to travel within India but at the same time a big chunk of Indian population goes to travel out of India. The defendants are claiming their rights in several countries by virtue of trademark registration that they own. Ld. Counsel for the plaintiff was not willing to make a statement that the plaintiff would not use trademark COX AND KINGS outside India specially in the jurisdictions where the defendants have registration when the services are booked by plaintiff for the people in India visiting such countries. Applying the same situation to defendants, even if the defendants are restrained from booking the tourists from India, the tourists that they book within the other countries will still travel in India and to provide them services the defendants will use their trademark much like plaintiff. Ld. Counsel for plaintiff has filed judgments stating that the domain name Coxandkings.co.uk is also violative of trademark of plaintiff. It has been held hereinabove that neither of the party as of now can be considered as exclusive owner of trademark COX AND KINGS and thus there cannot be a complete restraint on defendants from

using trademark COX AND KINGS or website coxandkings.co.uk within the territory of India.

20.The order dt.17.05.2025 therefore, is modified to the extent that defendants in view of the discussion on legal rights of parties within the territory of India, shall not take the bookings of customers from the territory of India using trademark COX AND KINGS **till further orders**. The defendants, however, shall be entitled to use the trademark owned by them for the customers booked by them from any other country. In so far as possible and in their own interest also (since defendants consider themselves as better service provider than plaintiff), the defendants shall use COX AND KINGS (UK) while serving their abovesaid customers within the territory of India.

21.Further arguments on application u/o 39 rule 4 CPC and u/o 39 rule 1 & 2 CPC on merit shall be heard after written statement has been filed by the defendants.

(ANURADHA SHUKLA)
District Judge (Commercial Court)-02
South, Saket/Delhi/28.05.2025