

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

% *Date of Judgment: 03.11.2011*

+ **F.A.O. No.472/2011 & CM No. 20028/2011**

LEVI STRAUSS & COMPANY Appellant
Through: Mr. Pramod Kumar Singh,
Advocate.

Versus

NIZAMI GARMENTS Respondent
Through: Nemo.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

INDERMEET KAUR, J. (Oral)

1 Order impugned before this Court is the order dated 18.10.2011 whereby in a suit for infringement of trademark filed by the plaintiff company namely M/s Levi Strauss and Company the interim relief under Order 39 Rules 1 & 2 of the Code of Civil Procedure (hereinafter referred to as the 'Code') had not been granted; the prayer made in the application under Order 26 Rule

9 of the Code seeking appointment of a Local Commissioner had also been rejected.

2 Record shows that the present suit has been filed by the plaintiff company seeking a mandatory and permanent injunction for passing off, infringement of trademark and copyright, unfair competition, damages and rendition of accounts. The defendant is Nizami Garments, A/7022, Ashok Gali, Gandhi Nagar, Delhi. The plaintiff is stated to be engaged in the business of manufacture and marketing of clothing of all kinds, readymade garments and clothing and leisure shoes, spectacle glasses, sunglasses, bags and other accessories under the trademark "Levi's". The plaintiff is operating his business in various parts and is a well-known branded company. The plaintiff is stated to be the registered owner of several trademarks including "Levi's" which has been registered under different classes of Trademark Act and Rules. The plaintiff company also has the exclusive rights to the labels bearing the trade mark "Levi's" and "Levi's (Housemark)", "two horse logo" and the "arcuate stitching design" logos embossed/written on its products. In the last week of September, 2011 the plaintiff has learnt that the defendant is clandestinely manufacturing and supply T-shirts, shirts, shorts, jeans and other

apparels under the “Levi’s” and “Levi’s (Housemark)”, “two horse logo” which are deceptively similar to the logos of the plaintiff company; he is blatantly infringing the registered trademark of the plaintiff. His contention is that name and logo on the products by the defendant being deceptively similar have created confusion in the minds of ordinary purchaser; ex-parte injunction as also the relief that a Local Commissioner be appointed to seize the infringing goods from the disputed premises had been prayed for. As noted supra, both these prayers had been declined by the impugned order. Along with the suit, the documents filed by the plaintiff to substantiate his case i.e. his registered trademark as also the photographs showing the impugned mark “Levi’s” and “Levi’s (Housemark)”, “two horse logo” used on the T-shirts which are being sold by the defendant have also been placed on record. Prima-facie case has been made out by the plaintiff. In case an ex-parte injunction is not granted in his favour he will suffer an irreparable loss and injury; balance of convenience also lies in his favour. It is also imperative that a Local Commissioner be appointed ex-parte to seize the infringing goods; the impugned order is accordingly set aside.

3 Accordingly till the disposal of the suit, unless varied the

employees, distributors, franchisee, representatives and assigns are restrained from using the mark “Levi’s” and “Levi’s (Housemark)”, “two horse logo”.

4 The prayer made in the application under Order 26 Rule 9 of the Code is also allowed. Ms. Cauveri Birbal, Advocate (Mobile No. 9810017683) is hereby appointed as Local Commissioner to visit the site i.e. Nizami Garments, A/7022, Ashok Gali, Gandhi Nagar, Delhi to do the following:-

(a) To seize all infringing goods including all finished and unfinished materials like T-shirts, shirts, shorts, jeans and other apparels, labels, stickers, buttons, packaging materials etc. bearing any of the trademarks/logos “Levi’s” and “Levi’s (Housemark)”, “two horse logo” and the “arcuate stitching design” or any other marks/logos deceptively similar to the trademark of the plaintiff..

(b) The Local Commissioner is permitted to open the lock of the premises/godown, if any, where the defendant is keeping huge amount of spurious products and seize all finished and unfinished materials like T-shirts, shirts, shorts, jeans and other apparels, labels, stickers, buttons, packaging materials etc. bearing any of

the trademarks/logos “Levi’s” and “Levi’s (Housemark)”, “two horse logo” and the “arcuate stitching design” or any other marks/logos deceptively similar to the trademark of the plaintiff.

(c) She is also permitted to seize and sign the books of accounts, ledger, cash registers, stock registers, invoices, day books etc of the defendant.

(d) The Local Commissioner may take local police assistance in execution of this commission.

5 The fee of the Local Commissioner is fixed at Rs.70,000/- to be paid by the plaintiff; the Local Commissioner will visit the site within five days from today at a time to be fixed as per the convenience of the parties. The plaintiff or its authorized representative is permitted to accompany the Local Commissioner to visit the site.

6 Petition is disposed of in the above terms.

7 Orders dasti under the signatures of the Court Master.

INDERMEET KAUR, J

NOVEMBER 03, 2011, A