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

% *Date of Judgment: 03.11.2011*

\+ **F.A.O. No.470/2011 & CM No. 20016/2011**

PUMA AKTIENGESELLSCHAFT
RUDOLF DASSLER SPORT .....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 Puma Aktiengesechaft Rudolf Dassler Sport 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 the registered in various class of trademarks in the word mark 'PUMA' as also its logo ' ', including class 14 of the Trademark Rules, 2002; he is stated to have exclusive right to use all the said trademarks and logo with respect to its products including watches and clocks and parts of and fittings thereof, in a recent survey in the first week of May, 2011 he learnt that certain shopkeepers including the defendant are selling watches, clocks and parts of and fittings which bear word mark 'PUMA' as also logo ' '. His contention is that name and logo on the products by the defendant being deceptively similar have created confusion in the minds of original purchaser; ex-parte injunction as also the relief that a Local Commissioner be appointed to seize the infringing goods which would be found at

the disputed premises. As noted supra, both these prayers had been declined by the impugned order. Along with the suit, the documents filed by the plaintiff substantiate his case; his registered trademark which is in class 14 of the word mark 'PUMA' as also the logo ' ' is up to 27.07.2015; the photographs showing the impugned mark 'PUMA' as also its logo ' ' used on watches 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 defendant, its associates and agents, directors, officers, employees, distributors, franchisee, representatives and assigns are restrained from using the mark 'PUMA' as also the logo ' '.

4 The prayer made in the application under Order 26 Rule 9 of the Code is also allowed. Ms. Mukta Kapur, Advocate (Mobile No. 9810106154) 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 wrist watches, stripes and any other type of clock or any other material or any other goods bearing word 'PUMA' and its logo ' ',

(b) To seize packaging materials and all other material used in the manufacturing, sale and distribution of the counterfeit goods.

(c) She is also permitted to search the godown of the defendant and seized the machinery, packing machine and printing materials or any other material used in manufacturing of the counterfeit products of the defendant.

(d) The Local Commissioner is permitted to open the lock of the premises/godown, if any, where the defendant is keeping huge quantity of spurious and counterfeit products including wrist watches, strips and any other type of clock, bags, apparels, shoes

and packing bags or any other goods bearing work mark 'PUMA' as also its logo ' ',

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

(f) 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
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