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

+ **CS(OS) 2450/2015**

% ***Judgment dated 02nd November, 2016***

PRESIDENT & FELLOWS OF HARV AND COLLEGE

..... Plaintiff

Through : Ms. Parul Singh, Advocate

versus

SHRI RAJESH GOYAL

..... Defendant

Through : Mr. Pratap Singh and Mr. Anwedra
Singh, Advocates

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J (ORAL)

1. The plaintiff has filed the present suit for infringement and passing off of the mark 'Harvard' seeking a decree against the defendant restraining them from using the mark. The plaintiff is the 'President & Fellows of Harvard College' incorrectly mentioned as the 'President & Fellows of Harv and College'.
2. Despite service, the written statement has not been filed within the statutory period. The matter as passed over once and called second time to enable the counsels to take instructions in the matter. Counsel for the defendant submits that the defendant has no objection if the present suit is decreed in favour of the plaintiff and against the defendant, provided the plaintiff gives up the relief of damages and costs.
3. As per the plaint, Harvard College, was established in 1636 by vote of the Great and General Court of the Massachusetts Bay Colony and was named for its first benefactor, John Harvard of Charlestown, a young

minister who, upon his death in 1638, left his library and half of estate to the new institution. Harvard's first scholarship fund was created in 1643 with a gift from Ann Radcliffe, Lady Mowlson. During its early years, the College offered a classic academic course based on the English university model but consistent with the prevailing Puritan philosophy of the first colonists. Although many of its early graduates became ministers in Puritan congregations throughout New England, the College was never formally affiliated with a specific religious denomination.

4. Thereafter, on 09.06.1650, The Great and General Court of Massachusetts approved Harvard President Henry Dunster's Charter of Incorporation. The Charter of 1650 established the "President and Fellows of Harvard College", the plaintiff herein, a seven-member board that is the oldest Corporation in the Western Hemisphere. In 1708, John Leverett, who was not also a Clergiman, turned the Harvard College from Puritanism to intellectual independence. As the College grew in the 18th and 19th centuries, the curriculum was broadened and the College produced and attracted a long list of famous scholars, including Henry Wadsworth Longfellow, the elder Oliver Wendell Holms and Louis Agassiz.
5. As per the plaint, US President Charles W. Elliot (1869-1909) transformed the small Provincial College into a modern University. During this period the Law and Medical Schools were revitalized and Graduate Schools were established in Business, Dentistry, Arts and Science. Enrollment rose from 1000 to 3000 students. Faculty grew from 49 to 278 and the Endowment increased from us \$ 2.3 million to us \$ 22.5 million. Harvard currently enrolls more than 18000 Degree Candidates from more than 100 nations of the world, including U.S.A.,

employing some 9000 Administrative and Support staff members and nearly 3000 full time Faculty members.

6. Harvard University celebrated its 350th anniversary in 1986 and is the oldest institution of higher learning in the United States. Founded 16 years after the arrival of Pilgrims of Plymouth, the University has grown from nine students with a single master to an enrolment of more than 18,000 degree candidates, including undergraduates and students in 10 graduate and professional schools. An additional 13,000 students are enrolled in one or more courses in the Harvard Extension School. Over 14,000 people work at Harvard, including more than 2000 faculty. There are also 7,000 faculty appointments in affiliated teaching hospitals. Harvard's property includes more than 380 acres of land and over 400 buildings in Cambridge, Allston and Boston.
7. As per the plaint, the plaintiff has a tremendous standing amongst the public; which is evidenced from the honourable position is students have gone on to hold. Seven Presidents of the United States, namely John Adams, John Quincy Adams, Theodore and Franklin Delano Roosevelt, Rutherford B. Hayes, John Fitzgerald Kennedy and George W. Bush were graduates of Harvard. Its faculty has produced nearly 37 Nobel Laureates, 30 Pulitzer Prize winners and nearly 250,000 men and women are living alumni and alumnae. Harvard's property includes more than 380 acres of land and over 400 buildings in Cambridge, Allston and Boston
8. The plaintiff has an extremely diversified international student body. In 1998, there were 3,448 international students from 130 countries attending an undergraduate or graduate school of Harvard, as shown in the Harvard International Office Geographical Report, 2006. That over two-thirds of students at Harvard, including international students,

receive financial aid from the University in some form or the other. Some of this aid comes from the Harvard Trademark Programme. US News & World Report 1990-2015 and The Times Higher Education 'World Reputation Ranking' have consistently ranked Harvard as the top university in the United States.

9. As per the plaint, India has also been one of the beneficiaries of education and other facilities provided by Harvard University. The career graphs of all the Harvard Business School alumni in India show high degree of advancement, leadership, achievement and contribution to their respective vocations, professions, business, industry and government. Some such successful and well-known personalities, who have made a Mark on the Indian commercial, industrial and legal scene, to mention a few, are Bajaj, Godrej, Peramal, Tata, Mahindra, Mukand, Deveshwar, Subbiah, Tandon, Khaitan, Kasliwal, Pruthi, Mafatlal, Bharat Ram, Sriram, Dalmia, Haksar, Padamsee, Kapil Sibal, Nina Lal, the first Indian woman to have come out of the Harvard Business School Alumni, with flying colours. All these captains of industry and luminaries, with their management skills and training acquired at Harvard, have helped India in no small measure to attain the heights in every field. The Harvard Alumni Club has been functioning in India for the last more than 20 years.
10. As per the plaint, the plaintiff has additionally raised substantial revenue by licensing its name/trademark 'Harvard' in respect of numerous goods worldwide including India. The plaintiff's trademark programme was established in 1989 in order to protect and control the use of their trademark throughout the world, which oversees worldwide registration of plaintiff's various trademarks, manages the world wide portfolios, monitors and guards against the unauthorized third party use

of the plaintiff's trademarks throughout the world. The plaintiff grants licenses to qualified manufacturers throughout the world who pay royalty for licensing rights. The plaintiff submits that the licensing includes apparels and readymade garments. It has detailed the licenses granted to various entities across the globe including India in paragraph 31 of the plaint

11. As per the plaint, the plaintiff's mark 'Harvard' has its presence in India during the last many decades in India in various ways. The plaintiff has been receiving many inquiries from Indian business houses, specially engaged in the field of readymade garments and apparels, which are keen to get proper licenses from the plaintiff for use of the said mark on their products; including the MCC Group (India). Plaintiff's goods, like Harvard Apparatus syringes (under license), books (Harvard Classics), and Harvard Graphics Software are openly available in India. Plaintiff's magazine, 'Harvard Business Review', which has a worldwide circulation, is also available in India for many decades. The Harvard Business School (HBS) has recently announced opening of its Research Centre in India. In addition to the research, the Centre would also have selected executive education courses, conducted by HBS faculty.
12. As per the plaint, the plaintiff has also licensed the mark 'Harvard' to various companies, who have been manufacturing various kinds of goods, including apparels, clothing and garments, medical and pharmaceuticals products, stationery products, publications, software, key chains, watches, clocks, jewelry, mugs, glass-ware, leather goods, bags, back-packs, etc. Some of the apparels sold by various licensees under the plaintiff's brand 'Harvard' include shirts, towels, caps, sweatshirts, hats, polos, jerseys, shorts, sports dresses, jackets, sweat

pants, scarves, t-shirts, socks, shoes, slippers, sandals, coats, boxer shorts, underwear, ties, vests, children's bibs, etc.

13. It is further averred that the plaintiff has also started the The Harvard Center For Textile And Apparel Research in 1990 and is focused on the competitive dynamics of the retail-apparel-textile channel, in particular, how technological innovations are transforming the way retailers plan and order merchandise, and in turn, the way manufacturers forecast demand, plan production, and manufacture and distribute apparel products. Researchers at the Center have created models for evaluating the impact of lead times on channel profitability, critical to the development of new planning and sourcing strategies. In addition, they have developed advanced computing techniques for automatic marker making and undertaken research on the use of robotics in apparel manufacturing.
14. Accordingly, the plaintiff submits that it has acquired common law rights in the mark 'Harvard' by virtue of extensive use and enjoying wide recognition amongst the public. Further, in order to acquire statutory rights, the plaintiff has also registered the mark 'Harvard' or marks having the word 'Harvard' in India; the details of which are as under:

- a. *Application No. 824285 'HARVARD BUSINESS REVIEW' in Class 16;*
- b. *Application No. 01241785 'HARVARD BUSINESS SCHOOL', in Class 42;*
- c. *Application No. 1301756 'HARVARD' in Class 41;*
- d. *Application No. 1303894 'HARVARD' in Class 9;*
- e. *Application No. 01302475 'HARVARD VERITAS SHIELD DESIGN' in Class 41;*
- f. *Application No. 01241786 'Harvard Medical International & Line Design (Logo) in class 42;*
- g. *Application No. 2424866 'Harvard Law Review' in class 99 (multi class application);*

- h. *Application No. 1493806 'Harvard Business Review South Asia' in class 16;*
- i. *Application No. 1493805 'Harvard Business School Publishing corporation' class 16;*
- j. *Application No. 1241787 'Harvard Medical International' in class 41;*
- k. *Application No. 1221606 'Harvard Medical International' in class 16;*
- l. *Application No.1241784 'Veritas' and device mark in class 42;*
- m. *Application No.1544348 'Veritas Harvard' with logo in class 99 (multi class);*
- n. *Application No.1544349 'Harvard' in class 99 (multiclass application); and*
- o. *Application No.1378489 'Harvard Graphics' in class 9.*

15. In addition to the foregoing, the following applications for registration are pending:

- a. *Application No.1940351 'Harvard' in Class 25;*
- b. *Application No.1940352 'Harvard University' Class 25;*
- c. *Application No.1940353 'Harvard Veritas' shield design in class 25;*
- d. *Application No.1426603 'Harvard Dental International' in class 41;*
- e. *Application No.1426604 'Harvard Dental International' in class 42;*
- f. *Application No.2381317 'Harvard X' class 41; and*
- g. *Application No.2430093 'Harvard Apparatus' in class 10.*

16. As per the plaint, the plaintiff had also got published advertisement in leading Indian papers, the Economic Times and The Times of India, declaring their rights in the 'Harvard' and inviting public to obtain legal trademark license from them to manufacture and market their goods under the Harvard mark, if they so desired, in conformity with the rules of plaintiff's trademark programme.

17. It is the case of the plaintiff that in June 2013 it learnt from the

Trademark Registry website, that the defendant had moved an application, being Application No. 1368816 in class 25 for registration of the trademark 'Harvard' in respect of readymade garments in India. Accordingly, the plaintiff got served a cease and desist notice dated 06.06.2013 on the defendant, bringing to his notice that the plaintiffs were the true and legal owners of the mark 'Harvard' which stands registered not only in the USA and other countries of the world but also in India for their goods and services, and calling upon him to immediately cease and desist using the said mark for his goods as that act amounts to passing off and infringement of the plaintiff's mark. The defendant failed to reply to the legal notice. Another cease and desist notice dated 04.09.2013 was served, but again the defendant did not pay any heed or reply to the legal notices.

18. The plaintiff submits that when the notices dated 06.06.2013 and 04.09.2013 were issued, there were no goods being sold under the said marks. This fact was also specifically mentioned in the said notices. It was only around June, 2015 that the plaintiff learnt that the defendant had started selling readymade garments under the mark. Upon investigation, the plaintiff found goods being sold under the said mark in Sarojini Nagar, Delhi. Photographs of the alleged infringing products are on record as Annexure – 12 of the plaintiff's documents.
19. I have heard learned counsel for the plaintiff and also examined the plaint and the documents filed along with the plaint, which are duly supported by an affidavit of the plaintiff.
20. It may be noticed that the defendant had been served on 01.09.2016; but no written statement was filed. Accordingly, on 26.10.2016, this court had observed that no written statement was filed despite the expiry of the statutory period of 30 days. Even today, no written

statement is on record; the counsel for the defendant as taken the stand that the defendant is ready to suffer a decree provided the plaintiff does not press for damages.

21. In view of the stand taken by the defendant and as no written statement has been filed, the averments made in the plaint supported by documents remain unrebutted. The present suit is decreed in favour of the plaintiff and against the defendant in terms of prayers (i), (ii) and (iii) of the plaint. The plaintiff gives up the relief as prayed in para (vi) of prayers of the plaint. The defendant undertakes that all infringing goods (readymade garments), labels, tags, materials, garments of all types, brochures and all other offending materials containing the mark 'Harvard' have been destroyed and, if not destroyed, will be destroyed within two weeks from today.
22. Since the matter has been resolved at the initial stage and through mediation of the Court, the plaintiff would be entitled to refund of court fee as per Section 16 of the Court Fee Act.

I.A. 16857/2015 (O XXXIX R 1 & 2 CPC)

23. Application stands disposed of in view of the order passed in the suit.

G.S.SISTANI, J

NOVEMBER 02, 2016

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