

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****NOTICE OF MOTION NO.967 OF 2014****IN****SUIT NO.438 OF 2014**

Benzer Retail Pvt. Ltd. ... Plaintiff

Versus

Benzer and Ors. ... Defendants

Mr. Suresh Kumar for Plaintiff.

Ms Bijal Trivedi for Defendant Nos. 1,2 &3.

CORAM: S.J.KATHAWALLA, J.

DATE: 9TH JUNE 2015

P.C.:

1. The Defendant Nos. 2 and 3 are partners of Defendant No.1.

On instructions, the Defendants Advocate states that the Defendants are not desirous of using the name BENZAR. The Defendant will adopt the Trade Mark JAGSON in place of BENZAR, the Plaintiff is agreeable to the change. The Defendants have no objection if a decree is passed in terms of prayer clauses (a) and (b) of the Plaint.

In view thereof , the following order is passed :

- (i) The Suit is decreed in terms of prayer clauses (a) and (b) which reads as under:

(a)The Defendants by themselves, their partners, proprietors, agents, servants, licensees, franchisees, representatives and employees or anyone claiming under them, directly or indirectly, be restrained by a permanent injunction of this Hon'ble Court from in any manner using the Trade Mark BENZAR or any other confusingly/deceptively similar Trade Mark in respect of their services, business and goods so as to infringe the Plaintiff's registered Trade Mark BENZER;

(b)The Defendants, their partners, proprietors, agents, servants, licensees, franchisees, representatives, employees or any one claiming under them be restrained by a permanent injunction of this Hon'ble Court from directly or indirectly in any manner using BENZAR so as to pass off or enable others to pass off Defendants services, business and goods as or for the services , business and goods of the Plaintiff;

(ii) In view of this order, the Plaintiff is not pressing for any costs and / or damages against the Defendant.

(iii) The Suit is accordingly disposed of.

(iv) Refund of Court Fees, if any, as per rules.

(v) The Notice of Motion No.967 of 2014 also stands disposed of.

2. The Defendants will comply with the order and make these changes by 1st September 2015. Mr. Suresh Kumar, Advocate for the Plaintiff agrees that during that time the Plaintiffs will not seek to enforce the order of 9th June 2015, including by way of contempt or other proceedings. This, however, is not to be construed as abandonment by the Plaintiffs of their rights, but is only an indulgence to the Defendants to enable them to comply with the injunction and make permanent changes.

(S.J.KATHAWALLA, J.)