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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SUIT (L) NO. 988 OF 2015
WITH
NOTICE OF MOTION (L) NO. 2634 OF 2015**

Ball Aerocan Europe SAS	...Plaintiff
<i>Versus</i>	
Aerocans India Private Limited	...Defendant

Dr. V. Tulzapurkar, Senior Advocate, with Mr. R.H. Gajria & Mr. C.A. Brijesh, i/b Ms/s. Gajria & Co., for the Plaintiff.
Mr. S. Parikh, with Ms. S. Kapadia, Ms. S. Maniar, i/b M/s. Solomon & Co., for the Defendant.

CORAM: G.S. PATEL, J
DATED: 26th October 2015

PC:-

1. Parties are agreed on the following order as a final order in the Suit itself. Accordingly, the Suit is called out by consent and taken up for final disposal. I must note that there was an ad-interim order that was slightly varied. All these orders now stand substituted by the present order, which will be a decree in the Suit.

2. By consent, the Suit stands decreed in terms of prayer clauses (a) and (b), which read as follows:

“(a) That the Defendant by themselves, their agents and servants, be restrained by a permanent/perpetual injunction of this Hon’ble Court from infringing or causing infringement of the copyright of Plaintiff vested in the original artistic work/logo AeroCAN by reproducing the same in any material form or publishing the same or exposing for sale or using the same or copying/reproducing or causing reproduction of the same in any packaging or literature or any colourable imitation or substantial reproduction thereof in any manner whatsoever;

(b) That the Defendant by themselves, their agents and servants, be restrained by a permanent/perpetual injunction of this Hon’ble Court from using the mark/name AERO CANS/AEROCANS and/or any mark identical with or similar to the Plaintiff’s trade mark/name/artwork AEROCAN/AeroCAN singularly or in conjunction with any other word or monogram/logo as a trade mark, service mark, house mark, tradename, trading style, corporate name, website, domain name, e-mail address or otherwise in any manner whatsoever including for export purposes so as to pass off or enable others to pass off their products or services as that of the Plaintiff or in some manner connected with the Plaintiff;”

3. It is clarified that till 30th June 2016, the Defendants will be at liberty to use the name “**AERO CANS India Private Limited**”, it being clarified that between the words AERO and CANS, there will be a visible and perceptible space to distinguish that name from the Plaintiffs’ mark. Further the size and font in the entire name shall be common, i.e., the Defendants will not use one font for the words **AERO** and **CANS** and another for the remaining text “**India Private Limited**”.

4. By 30th June 2016 the Plaintiffs will make the necessary arrangements to completely change their corporate name, corporate communications, web addresses and email addresses as well. They will, on or after that date, completely cease all use of the words AERO and CANS together.

5. The Defendants will have till 16th November 2015 to ensure that all their stationery, brochures, fliers, company seal and other daily use requirements comply with this order.

6. The Defendants’ Advocates also state on instructions that they will withdraw the two trade mark registrations bearing Nos. 2263848 in Class 06 and 2263849 in Class 35 within a period of eight weeks from today. In any event, the Prothonotary & Senior Master is directed to communicate an authenticated copy of this order by courier and email to the Registrar of Trade Marks to effect the necessary withdrawal / de-registrations of these two marks irrespective of whether or not a formal application is made. This will not affect the Defendants’ right under the grace period provided in the preceding clause.

7. The Suit is disposed of in these terms with no order as to costs. Refund of court fee, if any, in accordance with the Rules.
8. Drawn up decree is dispensed with.
9. Certified copy expedited.
10. Liberty to the parties to apply, should the need arise.
11. In view of this, the Notice of Motion does not survive and disposed of as such.

(G. S. PATEL, J.)