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

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Date of Decision: 03.03.2015

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CS(OS) 1518 of 2005

THE TIMBERLAND COMPANY Plaintiff

Through: Mr. Raunaq Kamath, Adv.

versus

HOUSE OF FASHION & ORS.

..... Defendants

Through: Nemo.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. The present suit has been filed by the plaintiff for permanent injunction restraining infringement of trademark, passing off, damages, rendition of accounts, delivery up, etc. against the defendants. The plaintiff's case is that the defendants have violated their trademark 'TIMBERLAND', which is registered in India since the year 1988 in Class 25. Additionally, the trademark 'TREE DEVICE' has also been registered in India. The learned counsel for the plaintiff submits that the trademarks of the plaintiff viz. 'TIMBERLAND', 'TIMBERLAND PRO' & 'TIMBERLAND DEVICE' are well-known trademarks and have been so recognised by this Court in CS (OS) No.2158/2007 titled ***Timberland Company v. Rohit Bajaj & Ors.*** decided on 04.09.2014. It is submitted that the trademark of the plaintiff

‘TIMBERLAND’ and ‘TREE DEVICE’ are registered in 123 countries all over the world. The plaintiff claims to have 70 retail stores world-wide and have expended large sums of money towards advertising and publicity of the said trademarks between 1993 and 2003. A copy of the global annual sales and the expenditure incurred towards advertising and publicity has been reproduced in para 9 of the plaint, which shows that in the years 2002 & 2003 the advertising expenses were to a tune of USD 3,99,73,000/- & USD 4,46,61,000/-. Correspondingly, the sales turnover for the said years were USD 1,19,08,96,000/- and USD 1,34,21,23,000/-. Plaintiff No.1 is an entity registered in the United States of America and has sought protection against misuse, infringement and passing off of its trademark.

2. The learned counsel for the plaintiff submits that on receiving information that the defendants were infringing the said trademarks, an independent investigator commissioned by the plaintiff purchased counterfeit TIMBERLAND products from the defendants. Invoices were issued for the purchases. The products and invoices were admitted by the defendants during admission/denial of documents. The Local Commissioners appointed by this Court visited the premises of the defendants where large quantities of the plaintiff's products were recovered. Subsequently, defendant Nos.1, 3 & 4 were proceeded *ex parte*. Defendant No.2 settled the matter with the plaintiff. The plaintiff's evidence led by Col. (Retd.) J.K. Sharma/PW1, reiterates the aforesaid claim.

3. According to the report of the Local Commissioner goods infringing the aforesaid trademarks were recovered from the premises of defendant No.1 who subsequently stated that the goods had been purchased from defendant No.3. Defendant No.4 is stated to be the manufacturing unit of defendant No.1. The Local Commissioner's report dated 28.11.2005 records that he visited House of Fashion/defendant No.1 on 28.10.2005 and on inspection of the abovesaid premises, 312 shirts bearing the trademark TIMBERLAND and TREE DEVICE were recovered. The shirts were spurious as they bore the mark 'TIMBERLAND' and this was further admitted by Mr. Khemu Harzani, who had represented himself as the person in-charge of the place. All the shirts were packed in eight (8) cartons and handed over to the said person upon an undertaking not to sell, transfer or part with them. The Local Commissioner did not find any offending goods at the premises of defendant No.4. This Court is of the view that since the claim against defendant No.3 infringing the plaintiffs' trademark is based on the statement made by defendant No.1 and furthermore since the plaintiff has brought nothing on record to substantiate any such claim against defendant No.3; therefore, no case would lie or relief could be sought against defendant No.3.
4. There is no controversion of the plaintiff's version of the case nor any denial of its claim. They have proved their case through evidence. Since the infringing goods have been found in the premises of defendant No.1, the suit is decreed against them, as prayed for in terms of prayers (a), (b) & (c) of the plaint. There is

no computation or justification shown for grant of damages of Rs.20,01,000/- sought in the suit. However, as defendant No.1 has been found to be infringing the trademark of the plaintiff, punitive damages of Rs.1.00 lac is imposed on the said defendant along with costs towards the suit as well as costs towards the Local Commissioners.

5. The suit is accordingly decreed along with the aforesaid costs.
6. The decree sheet be drawn up accordingly.

MARCH 03, 2015
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NAJMI WAZIRI, J.