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

+ **CS(OS) 228/2015**

M/S G.K. TOBACCO INDUSTRIES PVT LTD & ANR..... Plaintiffs

Through: Mr. Shailen Bhatia with Ms. Jubli
Momalia & Ms. Priyanka Anand,
Advs.

versus

DINESH FRAGRANCE & ORS

..... Defendants

Through: Mr. N.K. Bhardwaj & Mr. Bikash
Ghorai, Advs. for D-1 to 3.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **01.08.2016**

1. The plaintiffs viz. M/s G.K. Tobacco Industries Pvt. Ltd. and Harish Modi instituted this suit for permanent injunction to restrain the four defendants viz. Dinesh Fragrance, Nand Kishore Malani, Dinesh Malani and Dinesh Fragrance Pvt. Ltd., Nepal from manufacturing, exporting, selling, advertising tobacco, supari, zarda, pan masala and other cognate and allied goods under the trade name 'ZAFRANI' or any other mark similar or deceptively similar to the plaintiffs registered trademark 'ZAFRI' and for ancillary reliefs.

2. Vide *ex parte* ad-interim order dated 28th January, 2015 while issuing summons of the suit and notice of the application for interim relief, the defendants were restrained from using or dealing with the trademark 'ZAFRANI' or any other mark identical or similar or deceptively similar to the plaintiff's registered trademark 'ZAFRI'. The said order has continued till now.

3. The suit is ripe for framing of issues and for hearing of the application for interim relief.
4. The counsel for the defendants no.1 to 3 states that the defendants no.1 to 3 are not the manufacturers of the goods bearing the infringing trademark and with respect to which the suit has been filed and are not even marketing the said goods. It is stated that according to the plaintiffs also the said goods were manufactured by defendant no.4 Dinesh Fragrance Pvt. Ltd., Nepal. It is stated that the defendants no.1 to 3 have nothing to do with the defendant no.4 Dinesh Fragrance Pvt. Ltd., Nepal or with the infringing goods with respect to which the suit has been instituted. It is however clarified that defendant no.1 Dinesh Fragrance of which defendants no.2 and 3 Nand Kishore Malani and Dinesh Malani are partners had given technical knowhow to the defendant no.1 Dinesh Fragrance Pvt. Ltd., Nepal in relation to the infringing goods but not related to trademark or packaging in relation to the infringing goods. It is yet further stated that the plaintiff having since given up the defendant no.4 Dinesh Fragrance Pvt. Ltd., Nepal and thus the suit does not survive.
5. The counsel for the defendants no.1 to 3 on specific question whether the defendants no.1 to 3 are involved in any manner whatsoever in the presence of the infringing goods in India except for having provided the technical knowhow as aforesaid, has answered in the negative.
6. It is argued that if the plaintiffs are aggrieved, they have to take action against the defendant no.4.
7. The counsel for the defendants no.1 to 3 further clarifies that the defendants no.1 to 3 are proposing to bring into the market goods with the

trade name / mark 'Dinesh Fragrance Zafrani' and have also applied for registration of the said trademark but on specific query again it is stated that the said goods have not been launched as yet and are not available in the market.

8. The counsel for the plaintiffs states that the defendant no.4 was given up owing to difficulties being faced in service of summons of the present suit on the defendant no.4 Dinesh Fragrance Pvt. Ltd., Nepal.

9. Both the counsels agree that the present suit be disposed of binding the defendants no. 1 to 3 to their statements aforesaid particularly as to not using the goods averring infringement qua which this suit was filed and with liberty to the plaintiffs to, as and when defendants no.1 to 3 launch any goods as they have disclosed they intend to launch and if have any cause of action qua them, take appropriate remedy with respect thereto.

10. It is ordered accordingly. The defendants no.1 to 3 are bound down to their statements as recorded herein and with the caution that if the defendants no.1 to 3 are found to be acting in contravention thereof they shall be liable as for violation of the order of the Court.

The parties are left to bear their own costs.

RAJIV SAHAI ENDLAW, J

AUGUST 01, 2016

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