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

+ **CS(OS) 366/2015 & IA No.2885/2015 (u/O 39 R-1&2 CPC)**

YKK CORPORATION & ANR Plaintiffs

Through: Mr. Pravin Anand, Mr. Saif Khan and
Mr. Shobhit Agrawal, Advs.

Versus

ZUBI KHAN & ORS Defendants

Through: Mr. Raj Kumar Bhartiya and Ms.
Nargish Jahan, Advs. for D-5&6.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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05.08.2016

1. The two plaintiffs YKK Corporation and YKK India Pvt. Ltd. have instituted this suit to restrain the defendants No.1 to 6 namely Mr. Zubi Khan, Z.K. Traders, Mr. Vikas Garg, Shree Shyam Enterprises, Mr. Ashutosh Arora and Arora Zippers from manufacturing, selling, offering for sale, distributing or in any other manner trading or marketing zippers and sliders or any other products bearing the artistic works comprised in the representation of 'YKK' amounting to infringement of the plaintiffs trademark and copyright in the same and for ancillary reliefs.

2. The suit was entertained and vide *ex-parte* ad-interim order dated 10th February, 2015 which continues to be in force, the defendants were restrained from marketing any goods bearing the trademark 'YKK' or any other mark deceptively similar thereto or bearing the artistic works comprised in the representation of 'YKK'. Court Commissioners were also appointed to visit the premises of the defendants.

3. The counsel for the plaintiffs states that defendants No.1 to 4 though appeared in response to summons of the suit but did not file written statement and their right to file written statement was closed on 18th April, 2016. It is further stated that though the defendants No.5&6 have filed a written statement but of bare denial.
4. The counsel earlier appearing for defendants No.5&6 states that he has not been receiving instructions from the said defendants and has already informed them that he will be seeking discharge. He seeks discharge from appearance.
5. Mr. Raj Kumar Bhartiya, Advocate earlier appearing for the defendants No.5&6 is discharged from appearing for the defendants No.5&6.
6. None appears for the defendants.
7. The defendants are proceeded against *ex-parte*.
8. The plaintiffs, on the basis of the pleadings and the documents filed therewith and the reports of the Court Commissioners, have made out a case for grant of the reliefs as sought in prayer paragraph No.38 (a) to (c) of the plaint.
9. For the reasons stated by me in ***Indian Performing Rights Society Vs. Gauhati Town Club*** (2013) 134 DRJ 732 (Del), need to relegate the plaintiffs to lead *ex-parte* evidence is not felt for granting the relief insofar as for permanent injunction.
10. Accordingly, the suit is decreed in favour of plaintiffs and against the defendants in terms of prayer paragraph 38(a) to (c) of the plaint.

11. The counsel for the plaintiffs has drawn attention to the report of the Court Commissioners to contend that over 1100 pieces of counterfeit zippers were recovered from the defendants.

12. In this light of the matter, it is deemed appropriate to also decree the suit for destruction of the counterfeit goods seized by the Court Commissioners and delivered on *superdari* to the representatives of the defendants by directing the defendants to, within fifteen days of service by the plaintiffs of the copy of this order on the defendants, in the presence of the representative/s of the plaintiffs destroy the subject goods.

13. The plaintiffs are also awarded costs of this suit, taking into account the court fees, the legal expenses and the fees of the Court Commissioners, of Rs.5 lakhs recoverable from the defendants jointly and severally.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J.

AUGUST 05, 2016

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