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

+ CS(OS) 1859/2012 & I.A.No. 11595/2012(stay) & I.A.No.
18425/2012 (U/o 39 R-4 CPC)

HERMES INTERNATIONAL AND ANR

..... Plaintiffs

Through: Mr. Sudhir Chandra, Sr. Adv. with
Mr. Pravin Anand, Ms. Tusha
Malhotra and Mr. Kshitij Parashar,
Advocates.

versus

SAHIL MALIK AND ANR

..... Defendants

Through: Mr. Sandeep Sethi, Sr. Adv. with Mr.
K.K.Khurana, Mr. A.K.Mehta, Mr.
Rohit Khurana and Mr. Vivek
Aggarwal, Advocates.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

ORDER

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16.05.2016

1. I have heard the counsel for the parties at great length on 26.4.2016, 11.5.2016 and today on 16.5.2016. I am happy to note that learned senior counsel for the parties as also the advocates on record have taken a pragmatic stand so that the present litigation itself comes to an end.

2. It is agreed and the suit itself is disposed of in terms of the following consent order:-

(i) Plaintiffs are the owners of a trademark being the ladies handbag called by the plaintiffs as the 'Birkin' bag. The issue in this suit is with respect to the claim of plaintiffs of infringement and passing off by the defendants with respect to manufacturing and selling of the defendants' ladies handbag. Whereas the plaintiffs' bag is sold under the trademark 'Hermes', the defendants' bag is sold under the trademark 'Da Milano'.

(ii) It is agreed that both the parties will continue to manufacture the respective bags except to the fact that to avoid any deceptive similarity or any confusion for a customer, the defendants when manufacturing the ladies handbag will ensure that ornamental or decorative part of the plaintiffs handbag viz a horizontal belt and flap having three protruding lobes will not be shown by the defendants in their bag, and which ornamental aspect is shown in the bag of the plaintiffs bearing trademark registration no.1715604. However, defendants can manufacture its bags minus this horizontal belt and three protruding lobes.

(iii) Plaintiffs do not press any other relief as claimed in the present suit and the suit would stand disposed of in terms of the aforesaid directions

leaving to manufacture their own bags but defendants will manufacture and sell their bags using its trademark 'Da Milano'.

(iv) Since it is the case of the defendants in their own pleadings that they are not using the letter 'H' with respect to its bags, this statement will bind the defendants.

(v) It is agreed that none of the parties will publicize the present order.

(vi) Proceedings between the parties pending before IPAB will also be got disposed of in terms of the present order.

3. Suit and all pending applications are disposed of accordingly.

VALMIKI J. MEHTA, J

MAY 16, 2016

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