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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(OS) No.721/2015, IA No.5548/2015 (u/O 39 R-1&2 CPC) and IA
No.17856/2015 (u/O 39 R-4 CPC).
YONEX CO LTD. & ANR. Plaintiffs

Through: Mr. R.K. Aggarwal, Ms. Parul Singh and
Ms. Shilpa Dutta, Advs.

versus

T & T INTERNATIONAL & ANR. Defendants

Through: Mr. Arvind Jain, Adv. for D-1.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **25.07.2016**

1. The plaintiff has sued the two defendants for permanent injunction restraining the defendants from marketing Badminton Racquets having same colour combination/pattern/get up as that of the plaintiffs' racquets and for ancillary reliefs.
2. The suit was entertained and vide *ex parte ad interim* order dated 18th March, 2015 which continues in force, the defendants were restrained from importing and selling or otherwise marketing the badminton racquets having the same colour combination/pattern or any other deceptively similar colour combination/pattern under the plaintiffs' trademarks "SabreLi, Nanotube Zig Zag Speed II, Z-Ziggler" and "Finapi 77 II" so as to pass off their goods as those of the plaintiffs'.
3. None appeared for the defendant no.2 M/s. Shri Krishna Anand Sales, Pitampura, New Delhi despite service and the defendant no.2 was vide order dated 9th July, 2015 proceeded against *ex parte*.

4. The defendant no.1 has filed a written statement and to which a replication has been filed by the plaintiffs and the suit is ripe for framing of issues if any and for hearing of the application for interim relief.
5. The counsel for the defendant no.1 states that the defendant no.1 is importing the goods with respect to which the suit is filed and the plaintiffs have not chosen to take any action against the manufacturer of the said goods. The counsel for the defendant no.1 further states that the defendant no.1 as importer and marketeer of the goods is willing to suffer a permanent injunction in terms of para 42(i) and (ii) of the plaint.
6. That leaves the relief of delivery of infringing goods and for damages, also claimed in the plaint.
7. The defendant no.1 as aforesaid for the last over one year stands restrained from importing the goods with respect to which the suit has been filed. The counsel for the defendant no.1 states that the defendant no.1 is not left with any of the goods qua which the relief of delivery can be given.
8. Though the counsel for the plaintiffs has contended that the plaintiffs should be allowed to proceed with their case for recovery of damages claimed from the defendants but I am of the view that in the facts and circumstances of the present case the need to put the said claim to trial does not arise as the defendants on the very first date when the suit is ripe for framing of issues have agreed to suffer the decree for permanent injunction.
9. As far as the defendant no.2 which is already *ex parte*, I do not feel the need for the plaintiffs to lead *ex parte* evidence. The plaint is already supported by an affidavit on behalf of the plaintiffs and no purpose is served by directing *ex parte* evidence to be led.

10. Thus the decree insofar as for the relief of injunction can be passed against the defendant no.2 as well.

11. The suit is therefore decreed in favour of the plaintiffs and against the defendants for permanent injunction in terms of para 42(i) and (ii) of the plaint.

12. The parties are left to bear their own costs.

Decree sheet be prepared.

RAJIV SAHAI ENDLAW, J

JULY 25, 2016

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