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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(COMM) 815/2016, IA No.15305/2016 (for condonation of 24 days delay in filing replication), IA No.8071/2016 (u/O 39 R-1&2 CPC), IA No.9794/2016 (u/O 39 R-4 CPC) & IA No.14697/2016 (u/O 39 R-2A CPC)

ALLIANZ SE

..... Plaintiff

Through: Ms. Prathiba M. Singh, Sr. Adv. with
Ms. Dahlia Sen Oberoi, Mr. Rohan
Rohatgi, Mr. Nilay Joshi, Mr.
Devanshu Khana, Mr. Ranjit Kumar,
Advs. with Mr. Tobias Unterguggen
Berger, Legal Director of the plaintiff.

Versus

MICHAEL NAZARETH

..... Defendant

Through: Mr. Kumar Sudeep & Mr. Ankit
Chaturvedi, Advs. with defendant in
person.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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14.12.2016

1. The case is taken up today as 12th December, 2016 was declared a holiday.
2. This order is in pursuance to the earlier order dated 21st November, 2016.
3. In pursuance thereto Mr. Tobias Unterguggen Berger, Legal Director of the plaintiff and the defendant in person are present in Court.
4. The senior counsel for the plaintiff at the outset states that the defendant is still in violation of the interim order. A printout of the website

page from the defendant's website stated to have been taken yesterday is handed over in the Court showing continued use by the defendant of the trademark "ALLIANZ HEALTH".

5. The counsel for the defendant states that the defendant has taken all measures to delete the said trademark from his website.

6. The matter was passed over to enable the parties / counsels to verify.

7. On passover, the counsel for the defendant states that the said trademark is appearing in a third party payment website linked to the website of the defendant and the defendant has immediately upon the same coming to his notice today, snapped the link. On enquiry, it is further stated that other similar links have also been snapped and the defendant is now in compliance of the order.

8. The senior counsel for the plaintiff has handed over the draft terms of settlement to the counsel for the defendant.

9. The matter was again passed over to enable the defendant and his counsel to consider the same.

10. The counsels under instructions from their respective clients now state that they have compromised all disputes and differences subject matter of this suit between them on the following term:

- (i) That the defendant acknowledges that the plaintiff's trademark "ALLIANZ" is a well known trademark.

That the defendant acknowledges the plaintiff's exclusive rights in the trademark "ALLIANZ" and agrees to abide by the order dated July 14, 2016 in this suit in letter and in spirit in perpetuity.

- (ii) That the defendant undertakes that he will never file any trademark application for the mark “ALLIANZ” or any other similar mark or register any domain name, which shall include or comprise of the trademark “ALLIANZ” or any other similar mark including but not limited to any translations of “ALLIANZ” such as Alliance.
- (iii) That the defendant agrees to withdraw trademark application No.3037918 in Class 35 for the trademark “AllianzHealth” filed before the Trade Marks Office, Delhi immediately. A copy of the request filed at the Trade Marks Office along with a copy of the filing receipt should be provided to the plaintiff;
- (iv) That the defendant agrees to withdraw any other trademark registration / application registered or filed which comprises of the word “ALLIANZ” immediately. A copy of the request filed at the Trade Marks Office along with a copy of the filing receipt should be provided to the plaintiff.
- (v) The defendant shall within four months of today transfer the domain name <http://allianzhealth.org> to such entity particulars whereof would be furnished by the counsel for the plaintiff to the counsel for the defendant within 10 days of today and at the cost and expenses of the plaintiff.

- (vi) That the defendant agrees to change all the details in the WHOIS of <http://aho.org.in> which refer to the trademark “ALLIANZ”.
- (vii) That the defendant undertakes to provide the plaintiff with the figures relating to remaining quantity of the stationery and other infringing material containing the trademark “ALLIANZ” and destroy the same within 15 days of this undertaking. The evidence relating to the destruction should also be provided to the plaintiff.
- (viii) That the defendant shall pay to the plaintiff a consolidated sum of Rs.50,000/- towards cost of the suit payable in four equal instalments commencing from 1st January, 2017 and ending on 31st December, 2017.
- (ix) That the defendant agrees to change the abbreviation AHO as a trademark, trade name and a domain name so as to avoid any reference to the trademark “ALLIANZ” within four months of today.
- (x) That in lieu of all the above, the plaintiff agrees to this suit being decreed as settled in terms of prayers from paragraph 66(i) to (v).

11. The aforesaid compromise arrived at between the parties is found to be lawful and is allowed.

12. The undertakings of the defendant as aforesaid are accepted and the defendant is ordered to be bound therewith and has been explained the consequences of breach of undertaking given to the Court.

13. A decree is passed in favour of the plaintiff and against the defendant in terms of prayer paragraphs 66(i) to (v) of the plaint and as modified by the compromise recorded above and in terms of this order.

Decree sheet be prepared.

RAJIV SAHAI ENDLAW, J

DECEMBER 14, 2016

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