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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(COMM) No.790/2016 & IA No.7840/2016 (under Order XXXIX
Rules 1&2 CPC).

SAN DISK CORPORATION Plaintiff

Through: Mr. Prithvi Singh, Adv.

versus

AMOD RAI Defendant

Through: Mr. Tarun Diwan and Mr. Anshul
Grover, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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22.12.2016

IA No.14265/2016 (under Order VI Rule 17 read with Order XXII Rule 10 CPC).

1. The plaintiff by this application seeks to amend the plaint to change the name of the plaintiff from that stated to SanDisk LLC.
2. This application came up before the Joint Registrar on 19th December, 2016 when defendant was granted opportunity to file reply thereto and the matter posted before this Bench as already scheduled for today.
3. The counsel for the defendant today also seeks opportunity to file reply to the application.
4. It has been enquired from the counsel for the defendant as to what is the objection of the defendant to the application.
5. Mr. Anshul Grover, Advocate appearing for the defendant now states that he is not the main counsel and the main counsel is Mr. Tarun Diwan and he does not know of the objection if any.
6. The main counsel cannot avoid a hearing in this fashion.

7. The amendment is found to be necessary for adjudication of the matter in controversy and is allowed.

8. The application is disposed of.

CS(COMM) No.790/2016 & IA No.7840/2016 (under Order XXXIX Rules 1&2 CPC).

9. The amended plaint filed along with the application is taken on record.

10. Considering the nature of the amendment, the need for calling for a written statement to the amended plaint is not felt (the counsel for the plaintiff on enquiry states that save for changing the name in the amended plaint no other change has been made).

11. The counsel for the defendant does not oppose the application for interim relief.

12. Accordingly, the interim relief granted *ex parte* on 11th July, 2016 is made absolute till the decision of the suit.

13. IA No.7840/2016 is disposed of.

14. The file has been perused for the purposes of framing of issues.

15. The plaintiff has instituted this suit for permanent injunction to restrain the defendant from manufacturing, selling, offering for sale, advertising or dealing directly or indirectly in packaging that is identical or deceptively similar to the plaintiff's product packaging bearing the trademark "SanDisk", the "Red Frame Logo" and other insignia in a manner that amounts to an infringement of the plaintiff's trademarks or amounts to passing off the defendant's goods as those of the plaintiff and for ancillary reliefs, pleading (i) that the plaintiff creates transformational memory

products serving the mobile, computing and consumer electronics under its registered trademark “SanDisk” and its registered “SanDisk” logo and its registered “Red Frame Logo”; (ii) the memory cards manufactured and sold by the plaintiff are contained in a unique packaging style; and, (iii) that in June, 2016 the plaintiff received market intelligence that defendant was manufacturing and supplying counterfeit packaging bearing the plaintiff’s trademark to various infringers.

16. The suit as aforesaid was entertained and vide *ex parte ad interim* order the defendant restrained from manufacturing, selling, offering for sale, advertising and dealing directly or indirectly or in any manner in the packaging which is identical or deceptively similar to the plaintiff’s packaging and/or trade dress of the products bearing the trademark “San Disk” and bearing the “Red Frame Logo” and other insignia of the plaintiff. On an application of the plaintiff, a Court Commissioner was appointed to visit the premises of the defendant.

17. The Court Commissioner has reported having found three different types of cutting blocks for the purposes of cutting individual pieces of packaging similar to SanDisk Packaging and 1800 sheets having the name SanDisk printed on them and a computer having Coral Draw Software to design packaging similar to SanDisk packaging and lamination coating machine and all of which were seized and sealed by the Court Commissioner.

18. The defendant in its written statement has *inter alia* pleaded that it had received the Job Work from Mr. Masoom, proprietor of A.M. Graphics whose name is also printed on the alleged infringing material. It is further

pleaded that the defendant is running his business from a rented premises and was only doing a Job Work and not involved in any infringement.

19. At this stage, the counsel for the defendant has appeared and states that the defendant has no objection to a decree for permanent injunction in terms of prayer paragraph 20 (a), (b) and (c) being passed in favour of the plaintiff and a decree for delivery of all infringing material seized and sealed by the Court Commissioner being also passed in favour of the plaintiff in terms of prayer paragraph 20 (e).

20. Though the counsel for the plaintiff states that the plaintiff be permitted to prove damages and further states that the particulars of the person for whom the defendant claims to be doing Job Work did not yield any result but in my view no purpose will be served in keeping this suit pending for the purposes of granting an opportunity to the plaintiff to prove the claim for damages if any from the defendant.

21. A decree is passed in favour of the plaintiff and against the defendant in terms of prayer paragraph 20(a) to (c) and (e) of the plaint.

22. The counsel for the defendant states that out of the goods seized and sealed by the Court Commissioner, the laminating machine and the computer system of the defendant be returned to the defendant. He further states that the plaintiff can delete whatsoever the plaintiff deems to be infringing from the computer system.

23. Subject to the defendant paying costs of this suit of Rs.1,00,000/- to the plaintiff, the defendant shall be entitled to release of the lamination machine and the computer system of the defendant seized and sealed by Court Commissioner.

24 The representative/s of the plaintiff to visit the premises of the defendant on or before 7th January, 2017 with prior appointment and on which date subject to the defendant paying a sum of Rs.1,00,000/- to the plaintiff by Pay Order/Bank Draft in the name of Fidus Law Chambers, the representative/s of the plaintiff will open the seal put by the Court Commissioner, delete the infringing software and other material from the computer system and thereafter release the lamination machine and the computer system of the defendant to the defendant and take delivery of the other infringing materials seized by the Court Commissioner.

Decree sheet be prepared.

RAJIV SAHAI ENDLAW, J

DECEMBER 22, 2016

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