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

+ CS(COMM) 888/2016 & IAs No.8487/2016 (u/O 39 R-1&2 CPC),
8488/2016 (for filing additional documents) & 12103/2016 (u/O 39
R-2A CPC)

DR. ING. H.C.F PORSCHE AG Plaintiff
Through: Mr. Sumit Wadhwa and Mr. Yatin
Grover, Advs.

Versus

UDAY RAJ GAUTAM & ANR Defendants
Through: Mr. Ashok K. Sharma, Adv. with D-1
in person.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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08.12.2016

1. The plaintiff has instituted this suit for permanent injunction to restrain the defendant No.2 Porche Products Private Limited, of which the defendant No.1 Mr. Uday Raj Gautam is a Director, from infringing the trademark of the plaintiff by adopting and using the mark 'PORCHE' in its trade name and as a trademark for its products and for ancillary reliefs.

2. Vide *ex-parte* ad-interim order dated 21st July, 2016, the defendants were restrained from launching any product in the name of 'PORCHE' or in any other name or trademark similar or deceptively similar to the plaintiff's mark 'PORSCHE' and also directed to within fifteen days of service of notice, initiate process for changing the name Porche Products Private

Limited to some other name having no similarity or deceptive similarity to the plaintiff's mark 'PORSCHE' and to stop using the domain name www.porcheproducts.com.

3. The counsel for the defendants appeared before the Joint Registrar on 1st September, 2016 and were directed to file written statement within the prescribed time.

4. The plaintiff filed IA No.12103/2016 under Order XXXIX Rule 2A of Code of Civil Procedure, 1908 with the grievance that the defendants had not removed the name 'PORCHE' from their website.

5. The counsel for the defendants appeared before the Court on 28th September, 2016 when the aforesaid application came up and accepted notice thereof and was directed to within fifteen days comply with the order, failing which the personal presence of the defendant No.1 was directed for today.

6. The defendants did not file written statement inspite of another opportunity taken from the Joint Registrar on 21st November, 2016. Thereafter, on 2nd December, 2016, none appeared for the defendants before the Joint Registrar.

7. No written statement has been filed till date.

8. The counsel for the defendants today though seeks adjournment to file written statement but states (i) that the defendants have not carried on any business for the last three years and have not filed any returns with the Registrar of Companies since 2012-2013 for which year return was field last; (ii) that the defendants have stopped using the website www.porcheproducts.com, the validity of the domain name whereof is till

2018; (iii) that the defendants are willing to transfer the said website to the plaintiff at the cost and expense of the plaintiff; (iv) that the defendants do not intend to keep alive the defendant No.2 Porche Products Private Limited and intend to wind up the said company and have its name struck off from the Registrar of Companies; (v) that there are no creditors of the defendant No.2 Porche Products Private Limited; (vi) that the defendant No.1 is now employed with Handwyn India Inc., B-101, Mayapuri Industrial Area, Phase-I, New Delhi and not carrying on any business; (vii) that the defendants have already applied for withdrawal of trademark application No.2115473 for the mark 'PORCHE' and no other trademark application / registration containing the word 'PORCHE/PORSCHE' or any other word similar to the plaintiff's trademark 'PORSCHE'; (viii) that the defendants have no labels, advertising material or any other literature, signboard etc. bearing the mark 'PORCHE'; and ix) the defendants do not intend to use the trade mark 'PORCHE' or the word 'PORCHE' as part of their trade name or domain name or IP address or in any other manner.

9. The defendant No.1 is present in Court and the aforesaid statements have been made under his instructions and in his presence.

10. In the aforesaid circumstances, the need to keep this suit pending is not felt. The plaintiff is found entitled to a decree for permanent injunction, as claimed.

11. The counsel for the plaintiff states that subject to a decree being passed today, plaintiff will not insist upon the other reliefs claimed in the suit.

12. A decree is accordingly passed in favour of the plaintiff and against the defendants jointly and severally in terms of prayer paragraph 37(a) of the plaint.

13. A decree is also passed in favour of the plaintiff and against the defendants jointly and severally directing the defendants to transfer the domain name www.porcheproducts.com in favour of the plaintiff at the cost and expense of the plaintiff within one month of today.

14. A decree is also passed in favour of the plaintiff and against the defendants jointly and severally directing the defendants to complete the process of withdrawal of trademark application No.215473 for the mark 'PORCHE' and any other trademark application/s filed for registration of the mark 'PORCHE' or 'PORSCHE' or any other mark deceptively similar thereto.

15. A decree is also passed in favour of the plaintiff and against the defendants jointly and severally directing and mandating the defendants to on or before 31st March, 2017 have the name of the defendant No.2 Porche Products Private Limited struck off from the Registrar of Companies, Delhi.

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

17. Decree sheet be drawn up.

18. The defendant No.1 Mr. Uday Raj Gautam to sign this order on all pages and the counsel for the defendants to also identify the said signatures of the defendant No.1.

RAJIV SAHAI ENDLAW, J.

DECEMBER 08, 2016

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