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

+ **CS(COMM) No.936/2016**

LANCOME PARFUMS ET BEAUTE & CIE Plaintiff

Through: Mr. Ajay Amitabh Suman and Mr.
Vinay Kumar Shukla, Advs for Mr.
S.K. Bansal, Adv.

Versus

ALCOME PERFUMES & COSMETICS PVT. LTD. .. Defendant

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **17.11.2016**

1. The plaintiff instituted this suit for permanent injunction to restrain the defendant from infringing the trademark and trade name 'LANCOME' of the plaintiff by adopting the trademark 'ALCOME' in relation to the same goods i.e. cosmetics and perfumes and for ancillary reliefs.
2. The suit was entertained and vide *ex parte ad interim* order dated 24th November, 2008 the defendant was restrained from manufacturing, marketing, selling, offering for sale, advertising the goods with respect to which the plaintiff had registration under the name 'ALCOME' or under any other name similar or deceptively similar to the plaintiff's mark 'LANCOME'. The defendant however for the time being was permitted to continue using the company name 'ALCOME PERFUMES & COSMETICS PVT. LTD.'
3. The plaintiff filed IA No.88/2009 under Order XXXIX Rule 2A of the Code of Civil Procedure, 1908 (CPC) and which was disposed of vide order

dated 7th January, 2009 accepting the undertaking of the defendant to remove the mark 'ALCOME' from the website of the defendant.

4. The defendant filed written statement and to which replication was filed by the plaintiff.

5. On the pleadings of the parties, on 24th August, 2009, the following issues were framed:-

- “ 1. Whether the use by the Defendant of the trademark 'Alcome' constitutes an infringement of the trademark and label 'Lancome' of the Plaintiff? OPP*
- 2. Whether the Defendant is passing off (sic) its goods as that of the Plaintiff by using the trademark and trade name 'Alcome'? OPP*
- 3. In the event of the Plaintiff succeeding in Issue Nos.1 and/or 2, is the Plaintiff entitled to relief of damages as prayed for? OPP*
- 4. In the event of the Plaintiff succeeding in Issues No.1 and/or 2 , is the Plaintiff entitled to an order of delivery of finished and unfinished material bearing the trademark 'Alcome' or any other deceptive mark similar to 'Lancome'? OPP*
- 5. In the event of Plaintiff succeeding in Issues 1 and/or 2, whether the Plaintiff is entitled to an order of rendition of accounts of profits earned by the Defendant by using the impugned mark? OPP*
- 6. Relief.”*

6. Vide order dated 24th November, 2010 the following additional issue was framed in the suit:-

“Whether the plaint has been signed, verified and filed by a duly authorized person? OPP

7. Vide order dated 28th March, 2011 on the application of the defendant under Order XXV Rule 1 of the CPC, the plaintiff was directed to furnish security for recovery of the costs to the extent of Rs.1,00,000/-.
8. The plaintiff filed FAO(OS) No.432/2011 against the order aforesaid but withdrew the same on 9th September, 2011 on it being clarified that the order directing it to furnish security was not stigmatic.
9. The testimony of PW-1 was recorded on 18th October, 2011 and he was discharged after cross-examination by the defendant.
10. Thereafter the matter was adjourned from time to time on the ground of the parties attempting settlement.
11. The plaintiff tendered affidavit by way of examination of PW-2 on 20th February, 2013 and the suit was adjourned from time to time for cross-examination by the defendant. The defendant thereafter stopped appearing w.e.f. 29th January, 2014 and was vide order dated 30th September, 2014 proceeded against *ex parte* and the plaintiff closed its evidence.
12. I have enquired from the counsel for the plaintiff whether the plaintiff has furnished security in the sum of Rs.1,00,000/- in terms of orders aforesaid.
13. The counsel for the plaintiff states that he is not in the know and will have to enquire.
14. The Court Master on perusal of the file informs that no such security has been furnished.
15. I have heard the counsel for the plaintiff.
16. On enquiry, whether the product of the defendant under the impugned trademark from which the plaintiff was aggrieved is still in the market, the

counsel for the plaintiff states that after the order of interim injunction and which has continued in force till now, the product is not in the market.

17. The plaintiff, on the basis of its *ex parte* unrebutted evidence has made out a case for grant of relief of permanent injunction as claimed.

18. The plaintiff having not complied with the order of furnishing security, is not entitled to the discretionary relief of damages. Even otherwise, a perusal of the *ex parte* evidence of the plaintiff does not show the plaintiff to have established the claim for recovery of any damages.

19. Accordingly, a decree is passed in favour of the plaintiff and against the defendant in terms of prayer paragraph 39(a) of the plaint.

20. The plaintiff shall also be entitled to costs of this suit.

Decree sheet be prepared.

RAJIV SAHAI ENDLAW, J

NOVEMBER 17, 2016

‘pp’..