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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(COMM) No.966/2016, IA No.8970/2016 (u/O 39 R-1&2 CPC),
IA No.8971/2016 (u/O 11 R-1(4) CPC).

ADOBE SYSTEMS INCORPORATED Plaintiff

Through: Ms. Shwetasree Majumder, Ms.
Tanya Varma and Mr. Utkarsh Joshi,
Advs.

versus

THRINAINA INFORMATICS LTD Defendant

Through: Mr. Mohan Vidhani, Mr. Venkat
Ramanna, Mr. Rahul Vidhani and Mr.
Ashish Singh, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **29.07.2016**

IA No.8972/2016 (for exemption).

1. Allowed, subject to just exceptions.
2. The application is disposed of.

CS(COMM) No.966/2016, IA No.8970/2016 (u/O 39 R-1&2 CPC), IA No.8971/2016 (u/O 11 R-1(4) CPC).

2. The plaintiff has sued for permanent injunction to restrain the defendant from infringing the trademark  of the plaintiff by using

the trademark/logo  and for ancillary reliefs.

3. Mr. Mohan Vidhani, Advocate, though not on caveat, appears for the defendant.
4. Issue summons of the suit and notice of the application for interim

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relief.

5. Summons/notice is accepted by Mr. Vidhani, Advocate.

6. On perusal of the plaint and the documents filed therewith, the plaintiff has made out a case for grant of *ad interim* injunction.

7. The counsel for the defendant opposes the same by contending that the defendant has been using the impugned mark/logo since the year 2000. He has in this regard handed over in the Court letter dated 19th December, 2001 of the defendant to the CSO Hqrs., Ministry of Defence, 33 Corps bearing the acknowledgement of the said office. He contends that the user by the defendant of the impugned logo is of over 16 years; the plaintiff claims user since 1993 and it is yet to be established whether the user by the plaintiff is from a date prior to the user by the defendant and if it is so, the defendant will have a viable defence of *bona fide* concurrent user and the suit will fail.

8. I am of the view that once the mark of the plaintiff is a registered one, the aforesaid defence at least at this stage would be of no avail. Option has been given to the counsel for the defendant to, if so desires, avail of reasonable time to effect the change; else *ex parte* injunction with immediate effect shall follow.

9. The counsel for the defendant, after receiving instructions, states that the defendant be given six months time to effect the change.

10. On further enquiry it is informed that Mr. C.S.N. Mohan, Managing Director of the defendant, as identified by the counsel for the defendant, is present in Court.

11. The counsel for the plaintiff has been heard.

12. It has been agreed that the defendant will not use the impugned trademark/logo w.e.f. 1st January, 2017.

13. In view of the aforesaid, it is not deemed appropriate to keep the suit pending for the other ancillary reliefs claimed, of rendition of accounts and of recovery of damages.

14. The suit is decreed in terms of prayer paragraphs 30. (a), (b) & (c) of the plaint but with the clarification that the plaintiff has no objection to the use by the defendant of the word 'THRINAINA' in any new trademark.

15. However the said injunction will come into force w.e.f. 1st January, 2017 and till which time the defendant would be entitled to use the

impugned mark/logo  either alone or in conjunction with its proposed mark but on the condition and on the undertaking of Mr. C.S.N. Mohan, Managing Director of the defendant present in Court that the defendant shall on or before 10th August, 2016 withdraw its trademark application no.2800871, in Class-9, with respect to the impugned trademark.

16. The undertaking of Mr. C.S.N. Mohan, Managing Director is accepted and he is ordered to be bound thereby and has been made aware of the consequences of breach of undertaking given to the Court.

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

Decree sheet be prepared.

RAJIV SAHAI ENDLAW, J

JULY 29, 2016

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