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

\+ FAO (OS) COMM 135/2016

LUXEMBOURG BRANDS S.A.R.L. & ANR. ..... Appellants

Represented by: Mr.Sudhir Chandra and Mr.Sanjeev Sindhwani, Sr.Advocates instructed by Mr.Rajendra Kumar, Mr.Prashant Gupta, Ms.Taapsi Johri and Mr.Kanishk Kumar, Advocates

versus

G.M.PENS INTERNATIONAL PVT. LTD. ..... Respondent

Represented by: Mr.Sandeep Sethi, Sr.Advocate instructed by Ms.Rajeshwari H., Advocate

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE YOGESH KHANNA

O R D E R

% 29.11.2016

CM No.44369/2016

Allowed subject to just exceptions.

FAO (OS) Comm.135/2016

1. With respect to the undertaking given by the defendant before the learned Single Judge, we find that substantial grievance of the appellant concerning suit filed by it has been met.

2. The grievance in the appeal, is to the learned Single Judge permitting the defendant to manufacture the offending products (though not stated in the impugned order, but obviously intended to enable the raw stock to be exhausted) for a period of one week. The argument is that so blatant is the

infringement that not a second's indulgence ought to be granted.

3. The impugned order is dated November 17, 2016. One week came to an end on November 24, 2016. The undertaking containing the injunction suffered not to manufacture the goods under the offending trademarks in respect whereof defendant consented to cease and desist has obviously come into play on November 24, 2016 and thus the argument is hypothetical as of today.

4. Second grievance relates to six months time granted, on the undertaking by the defendant, to exhaust the infringed goods which have left the bounded warehouse of the defendant. The argument is the same as for the previous grievance. So patent is the infringement that no indulgence to sell the manufactured goods ought to have been granted.

5. It is the normal practice followed in this Court, to permit infringed goods to be sold and record thereof kept, for the reason destruction of the infringed goods would not only be a national loss, but would serve no purpose. Permitting sale of existing manufactured infringing goods can always be compensated in terms of damages to the plaintiff and for which sales record would be sufficient.

6. As regards the trademarks, in respect whereof the defendant litigates, we find that the learned Single Judge has fixed the next date to hear the arguments on December 15, 2016 and thus we refrain from expressing any opinion on said aspect. Docket explosion resulting in learned Judges on the Original Side of this Court, and if we may use the expression 'rationing time', are compelled to ration the time.

7. We note that in paragraph 3, to maintain transparency, the learned Single Judge has already directed that within two weeks the defendant shall

provide a statement of stocks lying with the distributors to the appellant.

8. We find no merit in the appeal which is dismissed in limine.

9. No costs.

CM No.44368/2016

Dismissed as infructuous.

PRADEEP NANDRAJOG, J.

YOGESH KHANNA, J.

NOVEMBER 29, 2016
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