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

+ CS(OS) 2534/2015 & IA No.17645/2015 (u/O 39 R-1&2 CPC)

M/S SUPERON SCHWEISSTECHNIK INDIA LIMITED ...Plaintiff

Through: Mr. Sanjeev Singh and Mr. D.K.
Yadav, Advs.

Versus

M/S VARUN ELETRODES PVT LTD

..... Defendant

Through: Mr. Ankit Sahni and Ms. Kritika
Sahni, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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21.07.2016

1. The plaintiff has sued the defendant for permanent injunction restraining the defendant from infringing the trade dress 'VAC-PAC' with unique colour scheme and colour combination of the plaintiff and from passing off its goods as that of the plaintiff.

2. The suit was entertained and vide *ex-parte* ad-interim order dated 31st August, 2015, the defendant was restrained from manufacturing, selling, offering for sale or advertising its products, welding electrodes and other allied / cognate goods, under the impugned trademark / label / packaging / trade dress 'VAC-PAC' with the colour scheme and colour combination of mustard yellow with black lettering, which is identical/deceptively similar to the plaintiff's trademark / label / packaging / trade dress 'VAC-PAC'.

3. Thereafter on 13th January, 2016, the following order was passed:

“I.A. No.17645/2015

After some arguments, it is agreed by counsels, on instructions, that the defendant shall be free to use “VAC PAC” in respect of its product i.e. electrodes. However, the defendant shall not use “VAC PAC” with a hyphen, i.e. “VAC-PAC”. The defendant also states that the defendant shall not use the same colour scheme as is claimed by the plaintiff at page-1 of the documents filed by the plaintiff. The defendant shall also not enclose the mark “VAC PAC” in a rectangular box as has been shown by the plaintiff.

In view of the aforesaid statement and undertaking given by the defendant, which shall bind the defendant, the injunction order dated 31.08.2015 stands vacated. The defendant shall file an affidavit of one of the Directors of the defendant company on the aforesaid lines within two weeks.

CS(OS) 2534/2015

The plaintiff shall take instructions whether the plaintiff is agreeable to the undertaking given by the defendant being incorporated in the decree, and the suit be disposed of in terms of the interim order passed by this court.

List on 03.02.2016.”

4. The counsels for the parties state that the defendant has since filed an affidavit of its Director and the plaintiff is satisfied therewith.
5. The counsel for the plaintiff also states that the plaintiff is agreeable to the disposal of the suit in terms of the order dated 13th January, 2016, subject of course to the undertaking given in the affidavit aforesaid of Mr. Varun Kapoor of the defendant being accepted by this Court and the defendants and said Mr. Varun Kapoor being ordered to be bound thereby.
6. The compromise aforesaid arrived at between the parties is found to be lawful.

7. The undertaking given by Mr. Varun Kapoor and as contained in his affidavit verified on 15th January, 2016 is accepted by this Court and the defendant and Mr. Varun Kapoor are ordered to be bound thereby. Mr. Varun Kapoor through the Advocate for the defendant is informed of the consequences of breach of undertaking given to the Court.

8. Accordingly, the suit is decreed in terms of this order and the affidavit dated 15th January, 2016 of Mr. Varun Kapoor, which shall form part of the decree sheet and leaving the parties to bear their own costs.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J.

JULY 21, 2016

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