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

% **Date of Decision: 28.11.2017**

+ **CS(OS) 234/2014**

ROCKFURD EDUCATION PVT. LTD. & ORS. Plaintiffs

Through **Mr. M.K.Miglani and Mr. Gaurav
Miglani, Advs.**

versus

LUV KUSH INFRASTRUCTURE PVT. LTD. Defendant

Through **None.**

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

1. Arguments have been heard in the suit. Despite service none has appeared on behalf of Defendants. Since, Defendant did not appear, nor written statement was filed, they were proceeded ex parte vide order dated 15.04.2014.

2. The plaintiffs have filed the present suit seeking a decree of permanent injunction against the defendant for infringement of the registered Trade Marks/labels of the plaintiffs 'SHEMROCK' and 'SHEMFORD' and for claiming rights in their registered Trade Mark. Other connected reliefs are also sought.

3. It is the contention of the plaintiffs that they provide services relating to education and training through running schools under the trademarks SHEMROCK and SHEMFORD for the past several years. It is stated that

the Plaintiff no. 1 and 3 are companies registered under the Companies Act, 1956 and are alleged to have rights to use and license the trademarks SHEMROCK and SHEMFORD respectively. The Plaintiff no. 4 who is one of the Directors of the Plaintiff no. 1 and 3 is stated to be the registered owner and proprietor of the trademark SHEMFORD, while the Plaintiff no. 2 is the registered owner and proprietor of trademark SHEMROCK.

4. It is stated that the Plaintiff no. 2 and her family members laid down the foundation of SHEMROCK pre-schools in 1989, and the Plaintiff's schools under the said trademark are now spread all over India with over 250 branches, both self-owned and franchised. It is stated that over 150,000 children have received the foundation of their success in their SHEMROCK pre-schools since 1989 and Plaintiff no. 2 has been conferred with several awards for revolutionizing the pre-school education in India. The Plaintiffs further state that in 2007, so as to expand their educational activities from a pre-school curriculum to a full-fledged school, the Plaintiff no. 4, who is also the son of Plaintiff no. 2 adopted the trademark SHEMFORD and started to use the same.

5. The Plaintiff no. 2 is stated to be registered proprietor of trademark (device) SHEMROCK under no. 1243533 in Class 41, in respect of services, *inter alia*, education and training, while the Plaintiff no. 4 is the registered proprietor of trademark SHEMFORD under no. 1697134 in Class 41, in respect of services, *inter alia*, education and training, and as such the Plaintiffs have an exclusive right to use the said trademarks. It is further stated that the Plaintiff no. 2 has created an artistic logo (flower design) of SHEMROCK copyrights which has been registered by the said Plaintiff under no. A-103530/2013, and as such the Plaintiff no. 2 has exclusive rights

to reproduce the said logo.

6. It is stated that the said trademarks have been alleged to have been continuously and extensively used, and the Plaintiffs have furnished their revenue figures under the respective trademarks details of which are mentioned in Para 15 of the Plaint. It is further stated that the said trademarks have been widely advertised through various modes of publicity, including print media and the expenses incurred on promotion of said trademarks run into several lakhs of rupees. The Plaintiffs urge that trademarks SHEMROCK and SHEMFORD are inherently distinctive and have even otherwise acquired distinctiveness through prolonged, continuous and extensive use, and as such the said trademarks have come to be associated with the Plaintiffs. It is further urged by the Plaintiffs that their group of schools has been featured in Limca Book of World Record for having launched most schools in the shortest time and the same is indicative of the widespread recognition and goodwill of the Plaintiffs' said trademarks.

7. Defendant is stated to be an ex-master franchisee of the Plaintiff no. 1 who was associated with the Plaintiff no. 1 till January 08, 2013, when the Master Franchise Agreement executed between the Defendant and the Plaintiff no. 1 on January 08, 2010, expired by the efflux of time. It is stated that the Defendant was appointed as a Master Franchisee for the state of the Gujarat by virtue of the said Agreement dated January 08, 2010 and the Defendant was under an obligation to introduce potential franchisees to the Plaintiffs and help them set up schools under the said trademarks SHEMROCK and SHEMFORD in Gujarat.

8. The Plaintiffs state that in the month of January 2014 they were

surprised to learn from one of their proposed franchisee in the region that the Defendant had itself started operating a school under the name SHEMROCK AND SHEMFORD SCHOOL. It is stated that the Plaintiff in the second week of January, 2014 made inquiries which confirmed the above activities of the Defendant. It is stated that the said activity of the Defendant is not only in violation of the Franchise Agreement executed between the Plaintiff no. 1 and the Defendant, but the same is also in violation of the statutory and common law rights of the Plaintiffs in the said trademark SHEMROCK and SHEMFORD and the use of the said trademarks by the Defendant is likely to cause confusion and deception in the minds of public who recognize and avail the services of the Plaintiffs under their renowned trademarks and in all circumstances are bound to be confused by use of identical trademarks by the Defendant.

9. The Plaintiffs further contends that Defendant is using an identical logo “Shemrock Flower Device” as that of the Plaintiff and as such the Defendant is liable for trademark infringement, infringement of copyright and passing-off.

10. Sh. Amol Arora, Plaintiff no. 4, has led evidence as PW-1. He has exhibited a list as **Ex. PW-1/6** which is a computer print out of the list of SHEMROCK and SHEMFORD schools of the Plaintiffs. He also tendered the registration certificate of trademark (device) SHEMROCK as **Ex. PW-1/7** and the registration certificates of the mark SHEMFORD as **Ex. PW-1/8 (Colly) and Ex. PW-1/9 (Colly)**. **Exhibit PW-1/10** are copies of copyright registration certificates issued to the Plaintiffs. Various invoices issued by the Plaintiffs under the said trademark have been exhibited as **Ex. PW-1/11 (Colly)**. He has further tendered various advertisements issued by the

Plaintiff as **Ex. PW-1/13 (Colly)**. The certificate issued by Limca Book of World Record in favor of Plaintiff's group is exhibited as **Ex. PW-1/15**.

11. In view of the averments made in the plaint and the un-rebutted evidence filed by the Plaintiffs, the Plaintiffs have established that they are the registered owners of the said trademarks SHEMROCK and SHEMFORD, and copyrights in the Shemrock Flower Device logo thus they have a statutory right to the exclusive use of the same.

12. The Defendant is running and operating a school under the name SHEMROCK and SHEMFORD school causing infringement and passing off of Plaintiffs trademarks which may not only damage the goodwill and reputation of the plaintiffs, but shall also adversely affect the interest of common public. The act of the Defendant lacks bonafide.

13. Accordingly, a decree is passed in favour of the plaintiffs and against the defendant in terms of Para 33(i), (ii) and (iii) of the prayer clause of the plaint.

14. The Plaintiffs shall be entitled to costs of the suit. Suit stands disposed of accordingly. All pending applications, if any, stands disposed of.

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JAYANT NATH, J

NOVEMBER 28, 2017/Sar