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

+ **CS(COMM) 61/2017**

FILA LUXEMBOURG S.A.R.L.

..... Plaintiff

Represented by: Mr. Dhruv Nayar and Ms.
Kripa Pandit, Advocates.

versus

DEEPAK GARG

..... Defendant

Represented by: Mr. Mukesh Gupta, Advocate
with defendant in person.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

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27.09.2017

I.A. No. 11494/2017 (under Order XXIII Rule 3 CPC)

1. By this joint application the parties seek disposal of the suit in terms of the settlement.
2. Application is disposed of decreeing the suit as per the settlement arrived at between the parties.

CS(COMM) 61/2017

1. Parties have settled the matter on the following terms and conditions.

(A) *The Defendant acknowledges the Plaintiff to be the owner of the well-known trade marks **FILA** and **F**. The Defendant undertakes never to challenge, or to aid or abet any other person or entity in challenging the Plaintiff's intellectual property rights in the aforementioned trade marks, at any time in the future anywhere in the world, including India, on any grounds whatsoever.*

(B) *The Defendant undertakes to this Hon'ble Court that the Defendant including their, agents, distributors, suppliers, affiliates, licensees, representatives and assigns shall refrain from:*

- (i) *Manufacturing, or authorizing the manufacturing, distributing, exporting, selling, offering for sale, advertising, promoting, displaying and/or using in any manner whatsoever, the trade marks FILA,  and  and/or any other mark/name which is similar in any manner to the aforementioned trade marks of the Plaintiff for any goods/services.*
- (ii) *Exporting any product that violates any of the foregoing, including providing such product to another party it known or should reasonably know to export such product.*
- (iii) *Reproducing, printing, publishing and/or using the labels/packaging/catalogues/brochures or any other promotional materials, bearing the well-known trade marks FILA,  and  and/or any other mark/name which is similar in any manner to the aforementioned trade marks of the Plaintiff.*

(C) *The Defendant undertakes to withdraw the trade mark application for the impugned mark  bearing application number 2789926 in class 11, within 15 days of signing of the present application, under initiation to the Counsel of the Plaintiff, if not withdrawn earlier.*

(D) *The Defendant further states that the Defendant has no other pending application/ registration for a mark which is identical or similar to trade marks FILA,  and  of the Plaintiff.*

(E) *The Defendant states before this Hon'ble Court that the Defendant does not have any stocks including finished/unfinished products bearing the impugned mark and/or any other mark which is similar in any manner to well-known trade marks FILA,  and .*

2. The defendant has further undertaken to pay to the plaintiff a sum of ₹20,000/- towards costs which amount has been handed over to learned counsel for plaintiff in Court today. Learned counsel for the plaintiff further states that in view of the cost received, plaintiff foregoes its claim for rendition of accounts and profit and damages against the defendant as agreed between the parties, however, in case the defendant is found to be in breach of the present settlement agreement or found using the trademark of the plaintiff again or any other mark deceptively similar to the plaintiff's mark for defendant's goods and services, the defendant would be liable to pay a further sum of ₹10 lakhs which fact is affirmed by learned counsel for defendant on instructions.

3. Application is duly supported by the affidavit of Ms. Jennifer O. Estabrook, the authorized representative of the plaintiff, who also filed the plaint and authorization in whose favour is at page 578 of the documents file. The settlement agreement is also signed by the defendant Deepak Garg.

4. Since the parties have arrived at the settlement of their own free will, volition and without any coercion, the suit is decreed in terms of the settlement.

5. Decree sheet will incorporate the terms of the settlement.

6. Court fees returned to the plaintiff under Section 16A of the Court Fee Act.

I.A. No. 1047/2017 (under Order XXXIX Rule 1 and 2 CPC)

Disposed of as infructuous.

MUKTA GUPTA, J.

SEPTEMBER 27, 2017

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