

\$~18.

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(OS) No.578/2007 & IAs No.3692/2007 (u/O XXXIX R-1&2 CPC), 5179/2007 (u/O XXXIX R-4 CPC) & 14404/2009 (u/S 124&125 of Trademarks Act) & CC No.45/2009.

YASH ARORA

..... Plaintiff

Through: Mr. Vikas Mahajan, Mr. Vishal Mahajan and Mr. S.S. Rai, Advs.

versus

TUSHAR ENTERPRISES & ORS.

..... Defendants

Through: Mr. Rajiv Talwar, Ms. Gagandeep Kaur and Mr. Rohin Oza, Advs. For D-1&2 along with Mr. Tushar Parikh in person.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

%

06.03.2017

1. This order is in continuation of the orders dated 8th February, 2017, 16th February, 2017 and 28th February, 2017.
2. The counsel for the defendants no.1&2 has in Court handed over an affidavit of Mr. Tushar Bhupatrai Parekh, proprietor of defendant no.1 and accompanied with the Resolution of the Board of Directors of the defendant no.2 M/s. Shubh Dekors Pvt. Ltd. and a list of inventory of the goods bearing the impugned mark in stock with defendant no.1 M/s. Tushar Enterprises as on 1st March, 2017. The same is taken on record. A copy of the same has been handed over to the counsel for the plaintiff.
3. The counsel for the plaintiff after examining the said affidavit, on passover, states that the same is in order and a decree in favour of the plaintiff and against the defendants in terms of prayer (a) of the plaint dated

28th March, 2007 be passed. He also states that the defendant no.1 M/s. Tushar Enterprises has filed Opposition No.249521 to the application no.1387908 of the plaintiff for registration of the trademark and the defendant no.1 M/s. Tushar Enterprises should also immediately withdraw the said opposition. It is further stated that the defendant no.1 also holds registration being Trademark No.1258852 dated 1st January, 2004 in Class-6 and the same be also ordered to be revoked/removed from the Register of Trade Marks.

4. The counsel for the defendants no.1&2 is agreeable thereto and also states that the defendants no.1&2 withdraw their Counter Claim No.45/2009 to this suit. He however states that it be clarified that the defendant no.1 M/s. Tushar Enterprises shall be entitled to dispose of the stocks as per inventory appended to the affidavit handed over today, within a period of two years from today and that the decree for permanent injunction shall not come in the way of the defendants no.1&2 otherwise carrying on business in locks and hardware items under some other trade name/mark.

5. The aforesaid is agreeable to the counsel for the plaintiff.

6. The counsels state that the plaintiff Mr. Yash Arora and Mr. Tushar Bhupatrai Parekh proprietor of defendant no.1 M/s. Tushar Enterprises and Director of the defendant no.2 M/s Shubh Dekors Pvt. Ltd. are present in the Court.

7. Their proof of identity have been seen and photocopies thereof taken on record.

8. A decree is accordingly passed, in favour of the plaintiff and against the defendants,

- (i) of perpetual injunction restraining the defendants their servants, agents, representatives, dealers and all other persons on their behalf from manufacturing, selling or otherwise dealing in all kinds of locks and hardware items under the offending trademark “KEY MANN” or under any other trademark identical, phonetically and/or deceptively similar to the trademark “KEYMAN” of the plaintiff in respect of locks and hardware items;
- (ii) the said decree shall however not come in the way of the defendant no.1 M/s. Tushar Enterprises, on or before two years from today, disposing of the stock of goods bearing the trademark “KEY MANN” as disclosed in Annexure-II of the affidavit dated 6th March, 2017 of M/s. Mr. Tushar Bhupatrai Parekh proprietor of defendant no.1 M/s. Tushar Enterprises and Director of the defendant no.2 M/s Shubh Dekors Pvt. Ltd.; the defendants no.1&2, after the expiry of two years, even if have unsold stocks, shall not be entitled to sell the same;
- (iii) of mandatory injunction directing the defendant no.1 M/s. Tushar Enterprises to within one month of today withdraw the opposition to the application no.1387908 of the plaintiff for registration of the trademark; and,
- (iv) of mandatory injunction directing the Registrar of Trade Marks to, immediately, within one month of today remove from the Register of Trade Marks the trademark “KEY MANN” registration no.1258852 dated 1st January, 2004 in the name of

the Mr. Tushar Bhupatrai Parekh in Class-6;
leaving the parties to bear their own costs.

9. The Counter Claim is dismissed as withdrawn.
10. Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J

MARCH 06, 2017
'pp'..