

\$~1.

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

+ CS(COMM) 380/2016

SANDISK LLC

..... Plaintiff

Through: Mr. Utkarsh Joshi, Adv.

versus

SVADESH PANDEY

..... Defendant

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **08.12.2017**

1. The plaintiff has instituted this suit (i) for permanent injunction restraining infringement of trade mark "SanDisk", copyright and passing off and for ancillary reliefs of rendition of accounts and delivery and damages.
2. The suit was entertained and vide *ex parte ad interim* order dated 27th April, 2016, the defendant was restrained in terms of prayer (a) and (b) contained in para 13 of IA No.4770/2016 and a Court Commissioner appointed to seize the infringing goods.
3. Though subsequently a counsel appeared for the defendant but neither filed written statement nor appeared thereafter and the defendant was vide order dated 19th September, 2017 proceeded against *ex parte* and the *ex parte* order dated 27th April, 2016 confirmed and the plaintiff relegated to lead its *ex parte* evidence.
4. The plaintiff in its *ex parte* evidence has examined Mr. Vishal Vig Constituted Attorney of the plaintiff and closed its evidence.
5. I have perused the plaint and the *ex parte* evidence of the plaintiff.
6. The plaintiff is found entitled to the relief of permanent injunction as claimed in prayer paragraph 22 (a), (b) & (c) of the plaint dated 3rd October, CS(COMM) 380/2016

2016.

7. The counsel for the plaintiff on being asked, whether the plaintiff has proved any damage suffered by the plaintiff on account of impugned activities of the defendant, has drawn attention to the affidavit by way of examination-in-chief of its witness where the witness has deposed that on the basis of the seizure effected by the Court Commissioner, loss suffered by the plaintiff owing to the infringing activity of the defendant is to the tune of Rs.13,09,848/-. The counsel for the plaintiff on enquiry confirms that the amount of Rs.13,09,848/- is the loss of revenue to the plaintiff and not the loss of profit to the plaintiff. Out of the loss of said revenue, the cost incurred by the plaintiff in manufacturing, marketing, selling have to be deducted. Considering the same, the plaintiff is found entitled to damages which are assessed at Rs.5,00,000/-

8. The counsel for the plaintiff on enquiry, whether the seized goods would still be saleable, states that owing to change in technology, it may not be so. In this view of the matter, no mandatory injunction for deliver is deemed necessary.

9. A decree is accordingly passed in favour of the plaintiff and against the defendant (i) of permanent injunction in terms of prayer paragraph 22(a), (b)&(c) of the plaint; and, (ii) for recovery of damages in the sum of Rs.5,00,000/-.

10. The plaintiff is also awarded costs of the suit; Counsel's fee assessed at Rs.1,00,000/-.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J

DECEMBER 08, 2017/‘pp’..

CS(COMM) 380/2016

page 2 of 2