

\$~27

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

+ CS(COMM) 585/2016 & IAs No.6357/2016 (u/O XXXIX R-1&2 CPC), 7228/2016 (u/O XXXIX R-4 CPC), 7550/2016 (u/O XXXIX R-2A CPC), 4274/2017 (u/O XXXIX R-2A CPC)

DHARAMPAL SATYAPAL SONS PRIVATE LIMITED

& ANR

..... Plaintiffs

Through: Ms. Vaishali Mittal and Mr. Siddhant Chamola, Advs.

Versus

HITESH GHANSHYAMDAS SHAH & ANR

..... Defendants

Through: Ms. Rajeshwari H. and Mr. Tahir A.J., Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

%

30.05.2017

1. The two plaintiffs Dharampal Satyapal Sons Private Limited and DS Spiceco Private Limited instituted this suit to restrain the defendants Hitesh Ghanshyamdas Shah and Muktha Laboratories Private Limited from infringing the plaintiffs' trade mark 'CATCH' and the plaintiffs' 'CATCH' label mark and for ancillary reliefs.

2. The suit was entertained and vide *ex-parte* ad-interim order dated 19th May, 2016, the defendants were restrained from manufacturing, selling or using the trade mark 'CATCH' with respect to any household products including mosquito repellent. Vide order dated 1st June, 2016, the earlier *ex-parte* order was suspended on the statement of the defendants that the

defendants will use the trade mark which is a word mark 'CATCHE MUST-QUIT-O' as one word mark and trade mark as a whole with each of the alphabets in the trade mark appearing in the same size and the same colour and in a colour different from the colour used by the plaintiffs in their word mark 'CATCH'.

3. Issues were framed in the suit on 11th April, 2017.

4. Though prior to framing of issues attempts of settlement were made and which were unsuccessful but after framing of issues also steps have been taken for attempting amicable settlement and which have borne fruit today.

5. The counsel for the plaintiffs and the counsel for the defendants have in Court handed over a paper on which for identification Ex.P-1 in today's date has been put depicting the label mark as under:



and which mark will be used by the defendants with effect from goods manufactured hereinafter; the defendants shall however be entitled to exhaust the old stocks. The counsel for the defendants to however within one week communicate to the counsel for the plaintiffs the last batch number under which the goods were manufactured till now and the stocks of the goods manufactured till now in their custody.

6. I have enquired from the counsels, whether the mark which the defendants have now agreed to adopt, would fit on the carton of the defendants.

7. The counsels state that the alphabets of Ex.P-1 shall be reduced in size proportionately but would be in the same colour scheme as in Ex.P-1.
8. The defendants have also made Trade Mark Application No.2726816 for registration of a mark at pages 11 & 12 of the defendants' documents and to which the plaintiffs have preferred objections.
9. It has been agreed that the defendants will within one week apply for withdrawal of the said trade mark application with advance copy to the counsel for the plaintiff and take all further steps for having the Trade Mark Application No.2726816 withdrawn.
10. The defendants also hold Trade Mark No.1865799 as at page 1 of the defendants' documents.
11. The defendants to within one month take steps, either to have the said Trade Mark No.1865799 removed from the register or to if possible have the said registration amended to a different colour than depicted therein or have a new registration with the same placement of words, alphabets and symbols as in Trade Mark Application No.1865799 but without use of red colour.
12. The defendants have also made Trade Mark Application No.2726817 as at page 27 of the defendants' documents for use of the word mark 'CATCHE MUST-QUIT-O'.
13. It is agreed that the defendants will not use the trade mark so applied for registration in the colour scheme to which the plaintiffs have objection i.e. red colour. If the plaintiffs have any other objection, they will be entitled to oppose the said application.
14. The counsel for the plaintiffs seeks fixation of a time limit for disposal of the goods manufactured till now with the impugned trade mark.

15. Considering the facts, it is felt that no time limit can be fixed.

Copy of this order be given *dasti* under the signatures of the Court Master.

RAJIV SAHAI ENDLAW, J.

MAY 30, 2017

bs ..