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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(COMM) 237/2017 & IA No.3967/2017 (u/O XXXIX R-1&2 CPC)

OLX INDIA B.V. & ANR Plaintiffs
Through: Mr. Pravin Anand, Mr. Nishchal
Anand and Mr. Aman Taneja, Advs.

Versus

PRAFUL BABUBHAI ASODARIYA & ORS Defendants
Through: D-1 & D-2 in person.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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10.04.2017

1. The two plaintiffs namely OLX India B.V. and OLX India Private Ltd. have sued for permanent injunction to restrain the defendants viz. Mr. Praful Babubhai Asodariya, Mr. Bhavesh Savjibhai Bodar, Public Domain Registry and Hostgator.in from infringing the trade mark "OLX" of the plaintiffs by adopting the deceptively similar trade mark "OLXPLUS" or otherwise and by having the domain name www.olxplus.com registered.
2. The suit was entertained and vide *ex-parte* ad-interim order dated 29th March, 2017, the defendants were restrained from using the domain name www.olxplus.com and from using the mark "OLXPLUS" or any other mark similar to the plaintiffs' trade mark "OLX". The defendants were also restrained from transferring the said domain name to any other person.
3. Though the report of service of the defendants No.1 to 4 is awaited but the counsel for the plaintiffs has filed an affidavit of service of all the defendants.

4. The counsel for the plaintiffs has also handed over in the Court the *dasti* summons served on defendants No.1&2 and which are taken on record.
5. The counsel for the plaintiffs has also handed over an email received by the counsel for the plaintiffs on behalf of the defendants No.3&4 namely Public Domain Registry and Hostgator.in and which is also taken on record.
6. One gentleman who claims to be defendant No.1 appeared when the matter was called out and stated that the defendant No.2 Mr. Bhavesh Savjibhai Bodar is also present in the Court. Both, as proof of their identity, have handed over to the Court Master their Aadhar Cards. Photocopy of their Aadhar Cards have been made and kept on record and their original Aadhar Cards have been returned.
7. I have in Hindi language enquired from the defendants No.1&2, whether they want to contest the suit.
8. The defendant No.1 speaking for himself as well as defendant No.2 stated that the defendants do not want to contest.
9. The matter was passed over to enable the counsel for the plaintiffs to have a dialogue with the defendants No.1&2.
10. On passover, the counsel for the plaintiffs states that the defendants No.1&2 have agreed to suffer a decree for permanent injunction in terms of prayer paragraph 37(a) & (b) of the plaint and a decree for mandatory injunction in terms of prayer paragraph 37(d) of the plaint and to publish an apology and in view thereof, the plaintiffs are not pressing the other reliefs; however the plaintiffs seek relief of prayer paragraph 37(c) of the plaint of
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declaration of OLX,  and  as well known trademarks.

11. I have in Hindi language explained each of the reliefs to which the defendant No.1 are conceding and the defendant No.1 in consultation with defendant No.2 has confirmed that the defendants No.1&2 are agreeable thereto.

12. The counsel for the plaintiffs also states that the defendants No.3&4 have in their email aforesaid sought their deletion as defendants in this suit and have stated that they will abide by whatsoever direction is passed against them qua transfer of domain name. He, in view thereof, seeks deletion of the defendants No.3&4.

13. The compromise aforesaid arrived at between the plaintiffs on the one hand and the defendants No.1&2 on the other hand is found to be lawful and allowed.

14. The defendants No.3&4 namely Public Domain Registry and Hostgator.in are deleted from the array of defendants. An endorsement to the said effect be made by the Court Master today itself under his signatures on the memorandum of parties in the suit.

15. A decree is passed in favour of the plaintiffs namely OLX India B.V. and OLX India Private Ltd. and against the defendants No.1&2 namely Mr. Praful Babubhai Asodariya and Mr. Bhavesh Savjibhai Bodar jointly and severally:

- (I) of permanent injunction in terms of prayer paragraph 37(a) &
- (b) of the plaint;

(II) of mandatory injunction directing the defendants No.1&2 to, within two weeks, transfer the domain name www.olxplus.com to the plaintiffs (the defendant No.1 states that the functioning of the said website has already been stopped by the defendants No.3&4);

(III) Public Domain Registry and Hostgator.in are directed to effect the said transfer within 48 hours of receipt of request in that regard.

(IV) of mandatory injunction directing the defendants No.1&2 to, within one month, publish in a national English language daily newspaper and if the plaintiffs so desire on the website of the plaintiffs, a public notice of apology in such terms as the plaintiffs may desire; and,

(V) to within two weeks withdraw Trade Mark Application No.3328736.

16. Decree sheet be drawn up.

17. The parties are left to bear their own costs.

18. As far as the request of the plaintiffs for declaration of OLX,  and



as well known trademarks is concerned, though the counsel for the plaintiffs has drawn attention to Section 11(6) of the Trade Marks Act, 1999 and has also contended that the defendants in all the suits instituted by the plaintiffs concede to permanent injunction on the very first date and thereby the plaintiffs are deprived of an opportunity to prove their trademarks as well known trademarks but I am of the view that it would be appropriate if the plaintiffs press for the said relief in an appropriate case at a future point of time.

RAJIV SAHAI ENDLAW, J.

APRIL 10, 2017/‘bs’

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