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

+ **CS(COMM) 683/2016**

**YONKER SKATES PVT LTD**

..... Plaintiff

Through: Mr. Sanjeev Singh and Mr. D.K.  
Yadav, Advs.

versus

**I - BOTS & ANR**

..... Defendants

Through: Mr. Angad Dayal and Ms. Deepa  
Trigunayat, Advs.

**CORAM:**

**HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

**ORDER**

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**11.12.2017**

1. The plaintiff namely Yonker Skates Pvt. Ltd. instituted this suit against the two defendants namely (i) I-Bots and (ii) Flipkart Internet Private Ltd. (a) for permanent injunction restraining infringement of its trademark 'YONKER'; (b) passing off; and, (c) for ancillary reliefs of delivery, rendition of accounts and recovery of damages.
2. The suit was entertained and vide *ex parte ad interim* order dated 31<sup>st</sup> May, 2016, while issuing summons of the suit and notice of the application for interim relief the defendants were restrained in terms of prayer made in IA No.7019/2016.
3. None appeared for the defendants despite service and both the defendants, vide order dated 30<sup>th</sup> March, 2017 were proceeded against *ex parte* and the earlier *ex parte* order dated 31<sup>st</sup> May, 2016 made absolute and the plaintiff relegated to *ex parte* evidence.
4. The plaintiff in its *ex parte* evidence has partly examined its Director Mr. Virender Nagpal.
5. IA No.9971/2017 and IA No.9972/2017 have been filed by the

defendant no.2 for setting aside of the order proceeding *ex parte* against the defendant no.2 and for condonation of delay in applying therefor. Notice of the said applications was ordered to be issued. The counsel for the plaintiff and the counsel for the defendant no.2 have been heard.

6. The counsel for the defendant no.2 states that the defendant no.2 is only an intermediary and is not liable for damages and is willing to abide by the orders of the Court including of disclosing to the plaintiff the particulars of the person selling the impugned goods on the portal of the defendant no.2.

7. Subject to the aforesaid, the delay of 33 days in filing the application for setting aside of the *ex parte* order is condoned and the order dated 30<sup>th</sup> March, 2017 proceeding *ex parte* against the defendant no.2 is set aside.

8. However, in view of the aforesaid the need for the defendant no.2 to file written statement or for the plaintiff to lead any evidence against the defendant no.2 does not arise.

9. I have considered the need for *ex parte* evidence of the plaintiff qua the defendant no.1.

10. The plaintiff on the basis of the pleadings and the documents filed has made out a case for grant of a decree for permanent injunction in terms of prayer paragraph 38(A) of the plaint.

11. The need to relegate the plaintiff to lead *ex parte* evidence against the defendant no.1 against whom only the plaintiff has confined the relief of recovery of damages is not felt in view of ***Satya Infrastructure Ltd. Vs. Satya Infra & Estates Pvt. Ltd.*** 2013 SCC OnLine Del 508.

12. The counsel for the plaintiff on enquiry states that the defendants sold the goods under the impugned mark only for one or two months prior to the

institution of the suit as the suit was filed immediately thereafter.

13. The counsel for the plaintiff on further enquiry states that the product in question is skates for the purposes of sports and while the price of the goods of the plaintiff varies from Rs.3,000/- to Rs.25,000/-, the defendants were selling their skates under the impugned mark at Rs.19,500/-.

14. Considering the aforesaid facts, nominal damages to which the plaintiff is found entitled to from the defendant no.1 is assessed at Rs.1,00,000/-.

15. Accordingly, a decree is passed in favour of the plaintiff and

- I. against the defendant no.1 I-Bots, (i) of permanent injunction in terms of prayer paragraph 38(A) of the plaint; and, (ii) for recovery of Rs.1,00,000/- towards damages. The plaintiffs shall also be entitled to costs of the suit; counsel's fee assessed at Rs.50,000/-, and,
- II. against the defendant no.2 Flipkart Internet Private Ltd., of permanent injunction restraining the defendant no.2 from selling the skates or allowing sale on its portal of skates for the purposes of sports with the trademark 'YONKER' and of mandatory injunction directing the defendant no.2 to, within one month of today, furnish to the plaintiff all the particulars in its power and possession of the person/s selling the skates for sports under the name 'YONKER' on its portal.

Decree sheet be prepared.

**RAJIV SAHAI ENDLAW, J**

**DECEMBER 11, 2017**

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*CS(COMM) 683/2016*

*page 3 of 3*