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IN THE HIGH COURT OF DELHI AT NEW DELHI

CS(COMM) 690/2016 & IA.No.7101/2016 (u/O XXXIX Rules 1 & 2CPC & IA.No.7102/2016(u/O XI R1(4) CPC)

DHARAMPAL SATYAPAL SONS PVT LTD Plaintiff

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

versus

M/S K S FOODS

..... Defendant

Through: Mr. C.M. Ankolekar, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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28.04.2017

1. The plaintiff has sued the defendant K.S. Foods, a sole proprietary of Snehal Pravin Chandra Sheth, Ahmedabad, for injunction restraining the defendant from using the mark PLUSH or any other name which is deceptively or confusingly similar to the trademark PULSE of the plaintiff and from passing off its candy as that of the plaintiff by adopting the packaging, getup, layout of the plaintiff's candy PULSE and from infringing the copyright of the plaintiff and for ancillary reliefs.

2. The suit was entertained and vide *ex parte* order dated 31st May, 2016, while issuing summons of the suit, the defendant was restrained from in any manner passing off its goods as that of the plaintiff by using of any colour scheme which the plaintiff uses with

respect to its product of raw mango flavoured candy including copying the trade dress and packaging of the colour scheme of green and black.

3. The defendant has filed a written statement and an application under Order 7 Rule 11 of the CPC for rejection of the plaint but which application was dismissed vide order dated 14th September, 2016.

4. The suit is ripe for framing of issues.

5. The counsel for the defendant states that the defendant has complied with the ex parte order and does not want to contest the suit and is willing to suffer a decree for permanent injunction in terms of prayer paragraph 39 (a) (b) and (c) of the plaint.

6. The counsel for the plaintiff states that the plaintiff will not press for other reliefs, subject to the defendant paying to the plaintiff the amount of Rs.1,00,100/- paid by the plaintiff towards court fee.

7. The counsel for the defendant is agreeable thereto.

8. The counsel for the plaintiff states that though in the title of the plaint the suit is described also for infringement of copyright and averments regarding infringement of copyright have been made in para 16 of the plaint but in the prayer paragraph the word “copyright” has erroneously remained to be mentioned.

9. The omission is found to be clerical and is permitted to be rectified by allowing the counsel for the plaintiff to, in her hand, in today’s date and under her signature, make correction in para 39(b) of the plaint.

10. Accordingly, a decree is passed in favour of the plaintiff and against the defendant of permanent injunction in terms of prayer paragraph 39(a), (b) and (c) of the plaint and for recovery of Rs.1,00,100/- payable to the plaintiff within one month of today failing which it shall incur interest at the rate of 12% per annum till the date of payment.

Decree sheet be prepared.

RAJIV SAHAI ENDLAW, J

APRIL 28, 2017
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