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

+ CS(OS) 2021/2013

SANDISK LLC

..... Plaintiff

Through: Mr. Prithvi Singh, Advocate

versus

NITIN

..... Defendant

Through: Mr. Kazim Raza, Advocate

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

ORDER

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26.04.2017

I.A.5097/2017 (joint application u/O XXIII R 3 r/w S 151 CPC)

The present application has been jointly instituted on behalf of the parties to the suit under the provisions of Order XXIII Rule 3 read with Section 151 of the Code of Civil Procedure, 1908. The application is duly signed by the parties, as well as, their respective counsel and is supported by affidavits of the constituted attorney of the plaintiff, as well as, defendant.

The plaintiff and the defendant have settled their disputes on the following terms:-

- “a) The defendant acknowledges the plaintiff to be the proprietor of the trademarks ‘SanDisk’, logo and ‘Red Frame’ logo and ‘Cruzer Blade’ and the copyright holder in the artistic and literary work comprised in the plaintiff’s ‘Red Frame’ logo, ‘SanDisk’ product packaging, colour scheme, trade dress, product layout, text and product literature. The defendant acknowledges that the plaintiff’s trademark ‘SanDisk’ is a well-known mark.
- b) The defendant acknowledges that he has infringed the said trademarks of the plaintiff in the marks ‘SanDisk’, ‘SanDisk’ logo and ‘Red Frame’ logo and ‘Cruzer Blade’ and the copyright of the plaintiff in the plaintiff’s ‘Red Frame’ logo,

‘SanDisk’ product packaging, colour scheme, trade dress, product layout, text and product literature.

- c) The defendant acknowledges that the defendant, his partners, servants, agents, representatives etc. have been enjoined by this Hon’ble Court from advertising, directly or indirectly, dealing in such product that infringe the plaintiff’s trademarks ‘SanDisk’ and its ‘SanDisk’ logo and/or are identical or deceptively similar to the plaintiff’s product packaged and sold under the trademark ‘SanDisk’, ‘SanDisk’ logo and ‘Red Frame’ logo and ‘Cruzer Blade’.
- d) The defendant undertakes to suffer the said injunction permanently and undertake not to use, manufacture, sell, offer for sale such products that infringe any of the plaintiff’s trademarks either individually or through its partners, servants, agents, representatives etc.
- e) In furtherance of the above undertaking, the defendant agrees to hand over, to the authorized representative of the plaintiff, the counterfeit goods seized by the Local Commissioner, for erasure/destruction of the same at the time of recordal of the compromise.
- f) In view of the damages caused to the plaintiff’s goodwill and reputation, the defendants are also paying monetary compensation to the plaintiff amounting to Rs.80,000/-, which is being paid by the defendant to the plaintiff’s counsel in four installments of Rs.20,000/- each. Three installments of Rs.20,000/- each have been paid by the defendant via cheque and one instalment of Rs.20,000/- has been paid by the defendant via demand draft, drawn on Syndicate Bank, JTD Building branch, Chandani Chowk, Delhi-110006 towards settlement of the remaining instalments.
- g) Further to the above undertakings and statements by the defendants, the plaintiff agrees to waive its claims for damages, rendition of accounts and costs of the proceedings prayed for in the plaint in CS(OS) No.2021 of 2013. This waiver, however, shall not preclude the plaintiff from enforcing its claims in the event of a breach by the defendants

of the undertakings contained herein and the plaintiff expressly reserves its right of both past and future damages or claims should be defendants violate all or any of these terms.

- h) The parties agree that the terms of the present settlement shall be binding upon the defendant's representatives, affiliates, legal heirs, agents, servants, principals, officers, partners, successors, assignees and licensees in business.
- i) That further to the above undertaking the plaintiff seeks to withdraw CCP No.117 of 2013, being a contempt petition which was filed against the defendant.
- 4. Should the defendants or his representatives be found to be in breach of this settlement agreement at any date in the future, they will be liable to pay a sum of Rs.1,00,000/- (Rupees One Lakh) to the plaintiffs for each infringing article sold."

The agreement entered into between the parties herein is lawful and the same is hereby accepted leaving the parties to abide with their reciprocal obligations without demur.

In view of the foregoing, the application is allowed and disposed of accordingly.

CS(OS) 2021/2013

In terms of the order passed in I.A. 5097/2017, learned counsel appearing on behalf of the petitioner seeks leave to withdraw this suit.

Leave granted.

The suit is dismissed as withdrawn and disposed of accordingly. Pending applications also stands disposed of.

SIDDHARTH MRIDUL, J

APRIL 26, 2017
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