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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(COMM) 1037/2016**
IMS LEARNING RESOURCES PVT LTD Plaintiff

Through: Mr.Vaibhav Vutts, Adv.

versus

M/S ELEVE Defendant

Through:

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

% **22.11.2017**

1. The present suit is filed seeking permanent injunction to restrain the infringement of the registered trademark IMS and infringement of copyright of the plaintiff, and passing off of the trademark IMS, damages and rendition of accounts of profits etc.

2. It is the case of the plaintiff that he adopted the trademark IMS in the year 1977 in relation to education related courses, materials and products and has used it consistently, extensively and exclusively since then all over India. He also urged that the plaintiff holds registrations for the trademark IMS in numerous classes including in class 9, class 16, class 35 and class 41 etc. In para 12 of the plaint, the income/expenses of the plaintiff have been stated.

3. It is further stated that the plaintiff and the defendant entered into a Business Partner Agreement dated 01.04.2010 whereby the defendant represented that he had necessary infrastructure and support services for training students for preparatory exams in Trivandrum in the State of Kerala. Based on this agreement, the plaintiff had permitted the use of the well known trademark IMS to the defendant on the terms and conditions agreed

upon. The said agreement expired on 01.04.2013. The plaintiff renewed the said agreement for a period of one year, i.e. from 01.04.2013 to 31.03.2014 only. The said agreement again expired on 31.03.2014. In July, 2014, the plaintiff become aware that the defendant was still using the said trademark IMS. It is urged that this was a grave threat to the image, reputation and goodwill enjoyed by the plaintiff through their trademark IMS. Hence, the present suit.

4. Despite service none has appeared for the defendant. On 13.01.2015 the defendant was proceeded *ex-parte*.

5. The plaintiff has filed the evidence of Sh.Ashutosh Kumar as PW1. Sh.Ashutosh Kumar PW1, Regional Accountants, New Delhi has exhibited 29 documents from PW1/1 to PW1/29. He has reiterated the averments in the plaint that defendant despite expiry of the agreement has misused the license by using the trademark IMS on its centres alongwith other materials and assigns. He also reiterated that this act of the defendant is a grave threat to the image, reputation and goodwill enjoyed by the plaintiff.

6. I have heard the learned counsel for the plaintiff.

7. Apart from reiterating the above averments, the plaintiff has relied upon the judgment of this court in the case ***Cartier International AG & Ors. v. Gaurav Bhatia & Ors., 226 (2016) DLT 662*** to stress that the plaintiff is entitled to the punitive damages.

8. It is quite clear from the plaint and documents placed on record that the plaintiff is the registered proprietor of the trademark IMS and the defendant has misused their agreement and has wrongly used the said trademark IMS, which is identical to the plaintiff's trademark.

9. Accordingly, I pass a decree in favour of the plaintiff and against the

defendant in terms of the prayer para 35(a), (b), (c) and (d) of the present suit.

10. So far as the damages are concerned, reference may be had to the judgment in the case ***Cartier International AG & Ors. v. Gaurav Bhatia & Ors.***(supra), where the court held as follows:

“52. It is established on record that the defendants were found in custody of thousands and thousands of counterfeit products including those bearing the suit trademarks. Over 730 watches were recovered from the defendants' premises and around one third of these depicted the suit trademarks. The average price quoted for counterfeit watches bearing the suit trademarks being offered for sale on the defendants' website www.digaaz.com was Rs. 75,000 and it therefore stands to reason that the defendants were found in possession of approximately 1.82 crore worth of counterfeit watches alone under the suit trademarks on a single day.

53. It is stated that the above computing methods reveal that the defendants have amassed several crores of rupees worth of profits by unauthorizedly using the suit trademarks on their website www.digaaz.com and by selling counterfeit products under the suit trademarks through the said website. The defendants on account of sale of counterfeit products bearing the plaintiffs' trademarks are also representative of the loss of sales of the plaintiffs.

54. The defendants were selling their counterfeit products at relatively exorbitant prices which is indicated by the average price quoted by the defendants for the products available on their website under the suit trademarks which is approximately Rs. 63,000/-. It is alleged that the consumers who have been duped into purchasing counterfeit products from the defendants' website have the financial capacity to purchase the original luxury products sold by the plaintiffs and would have done so had they not purchased the counterfeit products from the defendants' website.

55. It appears from the conduct of the defendants who have deliberately stayed away from the present proceedings with the result that an enquiry into their accounts for determination of damages could not take place.

56. It is well settled that damages in such cases must be awarded and a defendant, who chooses to stay away from the proceedings of the Court, should not be permitted to enjoy the benefits of evasion of court proceedings. Any view to the contrary would result in a situation where the defendant who appears in Court and submits its account books would be liable for damages, while a party which chooses to stay away from court proceedings would escape the liability on account of failure of the availability of account books.

57. A party who chooses not to participate in court proceedings and stay away must, thus, suffer the consequences of damages as stated and set out by the plaintiffs as the Court in the present case are dealing with counterfeiting products. It is rank case of dishonesty where the piracy committed by the defendants is apparent on the face of the record. It is just like printing of duplicate currency. The counterfeiter can never be allowed to do such illegal activities. Cheating can never be condoned by the Court unless the accused is punished.”

11. Accordingly, I pass a decree for damages of Rs.10 lacs in favour of the plaintiff and against the defendant on account of damages. The plaintiff shall also be entitled to cost. The suit is decreed as above. All the pending applications, if any, also disposed of accordingly.

JAYANT NATH, J.

NOVEMBER 22, 2017/v