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

+ CS(COMM) 1108/2016

M/S GM MODULAR PVT LTD Plaintiff
Through Mr.Kapil Kumar Giri and Mr.Ajay
Amitabh Suma, Advs. for Mr.S.K. Bansal.

versus

PARBAT SINGH Defendant
Through

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

% **11.12.2017**

1. The present suit is filed seeking a decree of permanent injunction to restrain the defendant, etc. from using, selling, etc. goods with the trade mark GM Star either by itself or any other mark deceptively similar to the trade mark/trade name of the plaintiff GM. Other connected reliefs are also sought.
2. It is the case of the plaintiff that it is the registered trade mark owner of the trade name GM details of which are given in para 5 of the plaint. It is also stated that the GM Logo/device and formative trademarks are original artistic works and the plaintiff is the owner of the copyright therein. It is stated that the plaintiff is engaged in the business of manufacture and trade of the electrical goods, electrical switches, accessories, appliances, etc.
3. It is further stated that the plaintiff bonafidely adopted the said trade mark/ label GM in the year 1999. Ever since its adoption in 1999, the plaintiff has been continuously, exclusively and uninterruptedly using the

said trade mark as its proprietor.

4. It is contended that the plaintiff has been carrying on business under the said trade mark GM using the domain name and Email id viz www.gmmodular.com; infor@gmmodular.com, respectively. It is also contended that the plaintiff has already built up a valuable trade under the said trademark GM and conducted handsome business there under.

5. It is further contended that the plaintiff has regularly and continuously been promoting its said distinctive Trademark/ label/ trade-name GM and the goods and business thereunder through extensive advertisements, publicities, promotions and marketing research and has been spending enormous amounts of money, efforts, skills and time thereon. It is also stated that the plaintiff's trademark GM is a well known trade mark within the meaning of Section 2(1)(zg) of the Trade Mark Act.

6. It is stated that the plaintiff is renowned for its International quality and has its customers all around the world including WAL-MART, TATA, CHROMA, SPENCER'S, XCITE RELIANCE-RETAIL, FUTURE GROUP, METRO, CASH & CARRY, HYPER CITY, TOTAL GROUP and many more.

7. As per the plaint, the defendant is engaged in the same trade and business as that of the plaintiff and has adopted the mark GM Star word per se. It is stated that the plaintiff learnt about the impugned adoption of the defendant in the first week of January, 2014 when it came across the impugned Trade Mark Application no. 2250403 of the defendant during a search of the website of the Trade Marks Registry and immediately filed an objection thereto. The impugned trade mark used by the defendant is said to be identical/ deceptively similar to the plaintiff's trade mark GM in each and

every aspect. The goods and the business being done by the defendant is also similar/allied/cognate in nature as that of the plaintiff. Hence, it is urged that the acts of the defendant amount to infringing the registered trade mark, registered copyright also involve a case of passing off.

8. The defendant was ordered to be served by substituted services. Despite service, none appeared for the defendant and the defendant was proceeded ex parte on 20.11.2015.

9. In my opinion, under Order VIII Rule 10 CPC, a decree can be passed in favour of the plaintiff.

10. Even otherwise the plaintiff has led the evidence of Mr.Divyang Jain-PW-1, Mr. Abhinandan, Officer from MHRD, Copy Right Office, New Delhi and Mr. Vinay Kumar, Data Entry Operator, IPO Building, Dwarka being PW-2 and PW-3 respectively. Mr. Divyang Jain-PW-1 has exhibited his documents as PW-1/1 to PW-1/22. The plaintiff has proved his case about the registered trade mark as noted above. He has also proved that the acts of the defendant tantamount to infringing the rights of the plaintiff.

11. In view of the averments in the plaint and un-rebutted evidence filed by the plaintiff, the plaintiff has established that they are the registered proprietor of the said trademark "GM", thus they have a statutory right to the exclusive use of the same. The mark "GM STAR" used by the defendant is structurally, visually, phonetically and deceptively identical to the registered trade mark of the plaintiff. It is also clear that the plaintiff has been using the said trade mark since 1999.

12. Accordingly, a decree is passed in favour of the plaintiff and against the defendant in terms of prayer clause 30(a) of the plaint. The plaintiff shall also be entitled to costs. Keeping in view the actions of the defendant are

deliberate and mala fide, damages of Rs. 5 lakhs are also awarded in favour of the plaintiff.

13. The suit stands disposed of.

JAYANT NATH, J

DECEMBER 11, 2017

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