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

+ **CS(COMM) 414/2017**

CLOUDTAIL INDIA PRIVATE LIMITED Plaintiff

Through: Mr.Pravin Anand, Mr. Nishchal
Anand & Mr. Aman Taneja,
Advocates

versus

EXCEL TELESONIC INDIA PRIVATE LIMITED Defendant

Through: Mr. Ajay Sahni, Mr. Ankur Sangal
and Mr. Naranjan A, Advocates

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

ORDER

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31.05.2017

Caveat No. 563/2017

Since the Caveator has put in appearance, the Caveat stands disposed of.

CS(COMM) 414/2017 & I.As.6975-6977/2017

Present suit has been filed for permanent injunction restraining infringement of trade mark, delivery of damages etc. The prayer Clause in the plaint is re-produced herein below:-

“a. A decree of permanent injunction restraining the Defendant, its directors, officers, servants and agents and all others acting for and on their behalf from using, depicting, displaying in any manner whatsoever, the trademark/trade name CLOUDTELE or any other deceptively similar trademark, as a part of their trading name/company name, or using the said trademark/trade name or any other deceptively similar trademark or any services emanating from them to the public and on any

study and advertising material, labels, stationery articles, website or any other documentation in any manner whatsoever, thereby amounting to infringement of the Plaintiff's registered trademark CLOUDTAIL.

b. A decree of permanent injunction restraining the Defendant, its directors, officers, servants and agents and all others acting for and on their behalf from using, depicting, displaying in any manner whatsoever, the trademark/trade name CLOUDTELE or any other deceptively similar trademark, as a part of their trading name/company name, or using the said trademark/trade name or any other deceptively similar trademark on any services emanating from them to the public and on any study and advertising material, labels, stationery articles, website or any other documentation in any manner whatsoever, thereby amounting to dilution of the Plaintiff's registered trademark CLOUDTAIL.

c. An order for delivery up of all printed matter, including packaging, stationery, dyes, blocks, cartons, labels, etc. bearing the impugned trademark as mentioned in the Complaint to the authorized representative of the Plaintiffs for the purpose of destruction and transfer of the domain name www.cloudtele.in.

d. An order for rendition of accounts of profits made by the Defendant on account of use of the impugned trademark and a decree for the amount so found due may be passed in favour of the Plaintiff.

e. An order declaring CLOUDTAIL to be a well known mark.

f. A decree for damages of Rs.1,00,00,500/- may be passed in favour of the Plaintiff and against the Defendant.

g. Costs of the suit may be awarded to the Plaintiffs."

Mr. Sahni, learned counsel for the defendant who appears on Caveat undertakes to this Court that after four months, the defendant shall stop using the mark CLOUDTELE or CLOUDTAIL or any other deceptive or similar mark.

Mr. Sahni also undertakes to withdraw the applications already filed by the defendant for registration of the impugned marks as also the oppositions filed against the plaintiff's mark.

Mr. Sahni however states that the defendant would like to use the generic mark CLOUD with a suffix or prefix, which is completely different from that of the plaintiff's mark. He assures this Court that the new mark which the defendant shall adopt shall not be deceptively similar in any manner to the plaintiff's mark, except to the extent that it contains the word CLOUD. Mr. Sahni undertakes to withdraw the domain name registration of the mark CLOUDTELE.

In view of the aforesaid statement, Mr. Praveen Anand, learned counsel for the plaintiff gives up the relief for damages, delivery up, rendition of accounts and costs. He clarifies that the plaintiff has no objection to the logo that is being used currently by the defendant after excluding the mark CLOUDTELE.

The statement, assurance and undertaking given by the learned counsel for the defendant is accepted by this Court and the defendant is held bound by the same and the suit is decreed in terms thereof.

MANMOHAN, J

MAY 31, 2017/P