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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(COMM) 49/2017**
VEEKESY RUBBER INDUSTRIES PVT LTD Plaintiff
Through: Dr. Sheetal Vohra, Adv.
versus
DEEPAK GUPTA Defendant
Through: Mr. M. K. Miglani, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **19.03.2018**

1. The plaintiff has instituted this suit *inter alia* to restrain the defendant from passing off its goods as that of the plaintiff by adopting the mark 'VKG', claiming the same to be deceptively similar to the plaintiff's mark 'VKC', both in respect of footwear.
2. The suit was entertained but in view of the fact that the mark of the defendant was also registered and the plaintiff had already moved the Intellectual Property Appellate Board (IPAB) for removal of the defendant's mark from the Register, no *ex parte* order granted.
3. The defendant has contested the suit by filing written statement and to which a replication has been filed by the plaintiff.
4. Vide order dated 12th February, 2018, the application of the plaintiff for interim relief was allowed and the defendant, during the pendency of this suit, was restrained from using the mark 'VKG' or any other mark similar or deceptively similar to the plaintiff's mark 'VKC', in relation to footwear; the defendant was also directed to immediately suspend the domain name 'www.vkgpu.com'.

5. The defendant filed a Review Petition No. 122/2018 for review of the order allowing the application of the plaintiff for interim relief. The said application came up before this Court on 16th March, 2018, when the counsels for the plaintiff appeared on advance notice and after some hearing the possibility of settlement of dispute, subject matter of this suit, emerged and the proceedings were adjourned to today to enable the parties to consider and take instructions. The counsel for the defendant was also requested to bring to the Court today, an affidavit of the defendant disclosing the stocks of footwear bearing the mark 'VKG' in possession of the defendant.

6. The counsel for the defendant on 16th March, 2018 had proposed that subject to the plaintiff giving up its claim for damages, the defendant was willing to suffer the decree of permanent injunction and mandatory injunction as claimed in prayer paragraph 47 (i) to (iv) of the plaint dated 19th January, 2017, further subject to the defendant being granted three months time to dispose of the existing stocks of footwear with the mark 'VKG'.

7. The counsel for the plaintiff today states that the plaintiff is agreeable to the aforesaid proposal of the defendant.

8. The counsel for the defendant has today in Court handed over an affidavit dated 19th March, 2018 of the defendant disclosing the existing stocks of footwear with the mark 'VKG' and which is taken on record and a copy whereof has been handed over to the counsel for the plaintiff. The counsel for the plaintiff is satisfied therewith.

9. The counsel for the plaintiff further states that the defendant be also directed to cancel the Registration No. 2087581 in its favour.
10. The counsel for the defendant is agreeable thereto as well.
11. The counsel for the plaintiff also states that the Registrar of domain name inspite of intimation of the plaintiff, has not suspended the domain name which the Registrar was directed to do vide order dated 12th February, 2018.
12. The counsel for the defendant states that the domain name is non-operational now.
13. The counsel for the defendant, however, informs that it has come to his notice that there is another registration with No. 2092681 of mark 'VKG' and the defendant should not be accused of violation of the decree on account thereof.
14. The counsel for the plaintiff states that the plaintiff is aware of the same and has already filed for cancellation of the same.
15. The aforesaid compromise/settlement arrived at between the parties is found to be lawful.
16. A decree is accordingly passed, in favour of the plaintiff and against the defendant, (a) of permanent injunction in terms of prayer paragraph 47 (i), (ii) and (iii) of the plaint dated 19th January, 2017; (b) of mandatory injunction directing to cancel/change the domain name 'www.vkgpu.com'; (c) of mandatory injunction directing the defendant to apply for cancellation of Registration No. 2087581 in its favour within 15 days of today and the Registrar of Trademarks/ IPAB is directed to effect the said cancellation

within 15 days of receipt of the application, leaving the parties to bear their own costs.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J

MARCH 19, 2018
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