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IN THE HIGH COURT OF DELHI AT NEW DELHI
CS(COMM) 593/2018
THREE-N-PRODUCTS PVT LTD Plaintiff

Through: Mr. Daves Vashistha, Adv.

Versus

AYU:CARE

..... Defendant

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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03.04.2018

1. The counsel for the plaintiff states that costs imposed on 24th January, 2018 have been deposited.
2. The plaintiff instituted this suit for permanent injunction restraining the defendant from infringing the trade mark 'AYUR CARE' of the plaintiff by adopting the mark 'AYU:CARE' and from passing off its goods as that of the plaintiff and for ancillary reliefs.
3. The suit was entertained and summons thereof ordered to be issued, though no *ex parte* relief sought, granted.
4. The defendant contested the suit by filing a written statement and to which a replication was filed by the plaintiff. The defendant however stopped appearing with effect from 6th December, 2012 and was vide order dated 11th April, 2013 proceeded against *ex parte* and the plaintiff relegated to leading its *ex parte* evidence.
5. The counsel for the plaintiff, on 3rd September, 2013, stated that the registration in favour of the plaintiff of the label 'AYUR' had been cancelled at the instance of a person other than the defendant and the

challenge thereto by the plaintiff was pending consideration and in the light thereof, did not press the application for interim relief.

6. The plaintiff examined its Director Mr. Manminder Singh in its *ex parte* evidence and closed its evidence.

7. *Ex parte* arguments of the counsel for the plaintiff have been heard.

8. The counsel for the plaintiff on enquiry states that the challenge by the plaintiff to the order of the Intellectual Property Appellate Board (IPAB) cancelling the registration of the label mark 'AYUR' in favour of the plaintiff is still pending consideration and has not been disposed of.

9. The counsel for the plaintiff on further enquiry, whether the defendant is still using the mark qua which permanent injunction is sought, states that the website of the defendant is now not operational and the products of the defendant under the impugned mark are also not found in the online market.

10. The counsel for the plaintiff on yet further enquiry states that the plaintiff in its *ex parte* evidence has not led any evidence qua its claim for damages and the defendant used the impugned mark between the years 2004-2013, till when the defendant was contesting the suit.

11. The counsel for the plaintiff has cited ***Three-N-Products Pvt. Ltd. Vs. Holistic Health Care Pvt. Ltd.*** 2010 (43) PTC 311 (Del.) and ***Three-n-Products Pvt. Ltd. Vs. Yashwant*** 2002 (24) PTC 518 (Del).

12. The plaintiff, on the basis of its *ex parte* evidence, is found entitled to the relief of permanent injunction as claimed in prayer para no.39(a), (b), (c) and (d) of the plaint dated 20th April, 2011.

13. A decree is accordingly passed in favour of the plaintiff and against the defendant, of permanent injunction in terms of prayer para no.39 (a), (b), (c) and (d) of the plaint dated 20th April, 2011.

14. The parties to bear their own costs.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J

APRIL 03, 2018

‘gsr’..