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

+ **CS(COMM) 204/2016**

SHOPPERS STOP LTD Plaintiff

Through: Mr. Sagar Chandra, Advocate with
Ms. Surabhi Iyer and Ms. Shubhie
Wahi, Advocates.

versus

SOFTOBELL INC. & ORS Defendants

Through: Ms. Savni Dutt, Advocate with
Ms. Gitanjali Mathew, Advocate for
defendant No.3.
Ms. Nupur Lamba and Ms. Surbhi
Singh, Advocates for defendant
No.4.

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Date of Decision: 01st November, 2018

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J: (Oral)

I.A. 14807/2018

Present application has been filed seeking impleadment of Aeora
Solutions Pvt. Ltd. as defendant No.6.

Since the party sought to be impleaded has been served and none appears for it, the present application is allowed. Plaintiff is permitted to re-file the amended memo of parties during the course of the day.

CS(COMM) 204/2016 & I.As. 6941/2015, 17211/2015 AND 1136/2016

1. Present suit has been filed for permanent injunction restraining infringement of trade mark, passing off, dilution, unfair competition, delivery up, rendition of accounts, damages etc. The prayer clause is reproduced hereinbelow:

“28. It is therefore respectfully prayed before this Hon’ble Court that it may be pleased to grant the following orders in favour of the Plaintiff and against the Defendants:

a. A Decree for permanent injunction restraining the Defendants their directors, executives, partners, proprietors, as the case may be, their officers, servants and agents or anyone acting for and on their behalf from manufacturing, marketing, selling, offering for sale on the websites, e-commerce or otherwise, advertising or in any manner dealing in any goods and/or services including but not limited to apparels under the trademark “VETTERN FRATTINI”, or from adopting any other mark which is identical or deceptively similar to the Plaintiff’s trade mark “VETTORIO FRATINI” amounting to infringement of the Plaintiff’s registered trademarks as provided in Para 8 of the Plaint;

b. A Decree for permanent injunction restraining the Defendants their directors, executives, partners, proprietors, as the case may be, their officers, servants and agents or anyone acting for and on their behalf from manufacturing, marketing, selling, offering for sale on the websites, e-commerce or otherwise, advertising or in any manner dealing in any goods and/or services including

but not limited to apparels under the trademark “VETTERN FRATTINI” and/or from adopting any other mark which is identical or deceptively similar to the Plaintiff’s trade mark “VETTORIO FRATINI” amounting to passing off or doing any other thing which will lead to passing off of the goods and services of the Defendants as those of the Plaintiff;

c. A Decree for permanent injunction restraining the Defendants their directors, executives, partners, proprietors, as the case may be, their officers, servants and agents or anyone acting for and on their behalf from manufacturing, marketing, offering for sale on the websites, e-commerce or otherwise, advertising or in any manner dealing in any goods and/or services including but not limited to apparels under the name “VETTERN FRATTINI”, or from adopting any other trade mark which is identical or deceptively similar to the trade mark “VETTORIO FRATINI” thus amounting to dilution of the Plaintiff’s trademark;

d. A Decree for delivery up of all the products, goods, labels, cartons, brochures, advertising material and any other document bearing the mark “VETTERN FRATTINI” or any other mark the use of which may amount to Passing Off or Infringement of Trade Marks of the Plaintiff to the authorized representative of the Plaintiff for the purpose of destruction/erasure;

e. A Decree for rendition of accounts of profits illegally earned by the Defendants on account of the sale of the products bearing the marks which are identical and/or deceptively similar to the Plaintiff’s trademarks “VETTORIO FRATINI” and a decree for the amount so found due be passed in favour of the Plaintiff;

f. A decree for damages to be determined by this Hon’ble Court in its discretion be passed against the Defendants and in favour of the Plaintiff;

g. An order for costs of the proceedings;

And/or any further order as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case."

2. Today, learned counsel for the plaintiff gives up prayers (d), (e) and (f) of the prayer clause to the suit. The statement made by learned counsel for plaintiff is accepted by this Court and plaintiff is held bound by the same.

3. Vide order dated 08th February, 2015 this Court granted an *ex parte ad interim* injunction against the defendant. Relevant portion of the *ex parte ad interim* injunction is reproduced hereinbelow:

"In my view the plaintiff has made out a prima facie case in its favour inasmuch as the impugned mark of the defendant is clearly phonetically and visually similar to the mark of the plaintiff. Balance of convenience is also in favour of the plaintiff. The defendants are restrained by an ex parte ad interim injunction from manufacturing, selling or dealing with the trade mark "VETTERN FRATTINI" or any other mark which is deceptively similar to the plaintiff's trade mark "VETTORIO FRATINI" till further orders. The plaintiff to comply with order 39 Rule 3 CPC within three days from today"

4. Since none appeared on behalf of defendants No.1, 2 and 5 despite service, the defendant nos. 1 and 2 were proceeded *ex-parte* on 11th July, 2016 and the defendant no.5 was proceeded *ex parte* on 17th January, 2017. Today, since none appeared on behalf of defendant No.6 despite service, defendant No.6 is proceeded *ex parte*.

5. It is pertinent to mention that on 09th May, 2018, the intermediaries, i.e. the defendants No.3 and 4 were directed to disclose the sales made by the defendants No. 1,2 and 5 on the online sales portals of defendant nos. 3 and 4 under the mark 'VETTERN FRATTINI' as well as revenue generated by such sales. The defendants No.3 and 4 have disclosed on their online sale portals the sales made by defendants No.1, 2 and 5 under the mark VETTERN FRATTINI as well as the revenue generated by such sales.

6. Learned counsel for defendant nos.3 and 4 undertake before this Court that they will not list the products of defendants No.1, 2, 5 and 6 bearing the mark VETTERN FRATTINI on their online portals. Learned counsel for defendants nos.3 and 4 also state that in the event they are informed by the plaintiff of any alleged illegal listing of its products, the said defendants shall disclose the details of the sellers of the infringing products in response to the plaintiff's request within forty-eight working hours.

7. The undertakings given by the learned counsel for defendants No.3 and 4 are accepted by this Court and the said parties are held bound by the same. Registry is directed to prepare a decree sheet against defendant nos. 3 and 4 accordingly

8. Learned counsel for plaintiff prays that in view of the judgment of this Court in ***Satya Infrastructure Ltd. &Ors. Vs. Satya Infra & Estates Pvt. Ltd., 2013 SCC OnLine Del 508***, the present suit be decreed qua the defendants No.1, 2 , 5 and 6 in terms of para 28(a), (b) and (c) of the prayer clause of the suit along with actual costs. The

portion of the said judgment relied upon by learned counsel for the plaintiffs is reproduced hereinbelow:-

“I am of the opinion that no purpose will be served in such cases by directing the plaintiffs to lead ex parte evidence in the form of affidavit by way of examination-in-chief and which invariably is a repetition of the contents of the plaint. The plaint otherwise, as per the amended CPC, besides being verified, is also supported by affidavits of the plaintiffs. I fail to fathom any reason for according any additional sanctity to the affidavit by way of examination-in-chief than to the affidavit in support of the plaint or to any exhibit marks being put on the documents which have been filed by the plaintiffs and are already on record. I have therefore heard the counsel for the plaintiffs on merits qua the relief of injunction.”

9. The relevant facts of the present case are that the plaintiff was established in 1997 and is engaged in the marketing of various consumer and household goods including cosmetics, textiles, readymade garments, footwear, gift items, jewelry, electric and electronic items, lighting, etc.

10. It is stated in the plaint that one of the leading fashion brands of the plaintiff is “VETTORIO FRATINI” for men’s apparels such as pens, wallets, footwear, belts, sunglasses etc. It is stated that the plaintiff adopted the mark VETTORIO FRATINI in 2003 and has been using it continuously since.

11. It is the case of the plaintiff that sales for the goods under the mark VETTORIO FRATINI in the financial year 2013-2014 was INR 13,95,36,000. It is also stated that the plaintiff has spent large amount on advertisement and promotion of its mark VETTORIO FRATINI

12. It is stated that the plaintiff owns registration for the mark VETTORIO FRATINI under various classes of the Trade Mark Act, 1999.

13. Learned Counsel for the plaintiff states that in August 2014, the plaintiff's representative came across goods being sold under the mark 'VETTERN FRATTINI'. He states that the plaintiff conducted further investigations which revealed that the products bearing the impugned marks were available on the defendant No.3's website bearing the packaging of the defendant No.2 under the name and address of the defendant no.1.

14. Learned counsel of the plaintiff states that the plaintiff addressed cease and desist notices dated 21st October, 2014 to defendants No.1, 3 and 4. He states that the defendant no.1 did not reply to the same. He further states that defendants No.3 and 4 replied to the cease and desist notice stating that they have removed the goods bearing the impugned mark. However, he states that at the time of filling of the suit the plaintiff came across the goods bearing the impugned mark on defendants No.2 and 3's website.

15. In the opinion of this Court, the defendant nos.1, 2, 5 and 6 have no real prospect of defending the claim. In view of the aforesaid, the suit is decreed in favour of the plaintiffs and against the defendants No.1, 2, 5 and 6 in accordance with paragraph 28(a), (b), and (c) of the plaint along with the actual costs. The costs shall amongst others include the lawyers' fees. The plaintiff is given liberty to place on record the exact cost incurred by it in adjudication of the present suit, if not already filed.

16. Registry is directed to prepare a decree sheet qua the remaining defendants accordingly.

17. Consequently, the present suit and pending applications stand disposed of.

MANMOHAN, J

NOVEMBER 01, 2018

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