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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(OS) 2028/2011 & I.A.13225/2011 (u/O XXXIX R-1 & 2 CPC)**
THE BRAINY CO. LLC Plaintiff
Through: Mr. Utkarsh, Advocate
Versus
EAGLE HOME ENTERTAINMENT PVT. LTD.
AND ORS Defendants
Through: None.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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05.02.2018

1. The plaintiff, The Brainy Co. LLC instituted the suit against defendants No.1 to 4 namely (i) Eagle Home Entertainment Pvt. Ltd.; (ii) Siddharth Optical Disc Pvt. Ltd.; (iii) Soft Talk Technologies Ltd.; and (iv) M/s Mercury Audio Video, for permanent injunction restraining infringement of trademark and for ancillary reliefs.
2. The suit was entertained though no ex-parte order granted.
3. The counsel for the plaintiff, on enquiry states that there is no interim order in favour of the plaintiff till now.
4. The defendant No.1 Eagle Home Entertainment Pvt. Ltd. contested the suit by filing a written statement and to which replication was filed by the plaintiff. The defendant No.3 was proceeded against ex-parte on 21st September, 2011.
5. The defendants No.2 & 4, though appeared and sought time to file written statement, did not file the written statement and also stopped appearing. Ultimately, even the defendant No.1 stopped appearing and vide

order dated 9th May, 2016 all the defendants were proceeded against ex-parte and the plaintiff relegated to leading ex-parte evidence.

6. The plaintiff has not led ex-parte evidence in the last over one and a half years. The counsel for the plaintiff today states that though the plaintiff has filed affidavit by way of examination-in-chief of its sole witness but the same has not come on record owing to the plaintiff having not deposited costs imposed on 12th September, 2017. Adjournment is sought to deposit the costs.

7. The counsel for the plaintiff, on being asked to explain the controversy, has informed (i) that the plaintiff is the registered proprietor of the wordmark 'Brainy Baby' in classes 9, 28 and 16 as per registration certificates, copies of which are filed at pages 36 to 38 of the Part-III file; (ii) that the said registrations are still valid; (iii) that the defendant No.1 contested the suit pleading use of the trade mark under license from GAIAM International; (iv) that the plaintiff had entered into an agreement with GAIAM International allowing GAIAM International to use of the trademarks; (v) GAIAM International had in turn entered into an agreement with defendant No.1; (vi) that the agreement between plaintiff and GAIAM International came to an end on 31st December, 2009; (vii) though GAIAM International asked defendant no.1 to stop using the trademarks of the plaintiff but the defendant No.1 continued to do so; (viii) the defendant No.1 also filed CS(OS) 777/2010 against GAIAM International pleading that the term of the contract between GAIAM International and the defendant No.1 was not over; (ix) CS(OS) 777/2010 was also at times being taken up along with this suit; and, (x) the time, for which the defendant No.1 pleaded the CS(OS) 2028/2011

agreement with GAIAM International to be in force, also expired and thereafter the defendant No.1 did not pursue CS(OS) 777/2010 and which was disposed of and thereafter defendant No.1 stopped appearing in this suit also.

8. On enquiry, whether the defendants or any of them are still using the trademarks of the plaintiff subject matter of this suit, the counsel for the plaintiff replies in the negative.

9. In the aforesaid state of affairs, on perusal of the documents filed by the plaintiff, the need to relegate the plaintiff to ex-parte evidence is not felt and the plaintiff is found entitled to the relief of permanent injunction as claimed. In the facts aforesaid, the plaintiff is not found entitled to the relief of delivery or damages. The plaintiff shall however be entitled to costs from the defendant No.1.

10. A decree is accordingly passed in favour of the plaintiff and jointly and severally against the defendants, of permanent injunction in terms of prayer paragraph 37 A and C of the plaint dated 16th August, 2011. The plaintiff shall also be entitled to costs of the suit from the defendant No.1. Counsel's fee assessed at Rs.2 lakh.

11. This order and decree be released to the plaintiff only after plaintiff has furnished proof of deposit of costs in terms of order dated 12th September, 2017.

12. Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J.

FEBRUARY 05, 2018

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