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

+ **CS(COMM) 220/2017**

M/S BAYRISCHE MOTOREN WERK G (BMW GROUP).. Plaintiff
Through Mr.A.C.Mishra, Adv.

versus

JAGDISHLAL BATRA & ORS Defendant
Through Mr.Anshul Grover, Adv. for D-1
Mr.Kalyan Dutt, Adv. for D-2 & D-3
Mr.Shivam Sharma and Mr.Shobhit Srivastava,
Advs. for D-4

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

% **09.02.2018**

1. Present suit is filed by the plaintiff M/s.Bayrische Motoren Werk G (BMW Group) seeking a decree of perpetual injunction to restrain the defendant from selling, facilitating to sell, manufacturing etc. or directly or indirectly dealing in speedometers and other products of BMW in products and packaging, which is identically or deceptively similar to the original BMW Products etc. Other connected reliefs are also sought.
2. It has been pleaded by the plaintiff in the plaint that around April 2013 it came to their attention that counterfeits of BMW motorcycle speedometers are being offered for sale by defendant No.1 on the portal of defendant No.4. The plaintiff is said to have sent a Cease and desist Notices to defendant No.1 on 15.4.2013. It is further pleaded that while conducting a search on the portal of defendant No.4 it was observed that counterfeits/spurious BMW products are being offered for sale by

defendants No.2 and 3. Hence, the present suit.

3. Learned counsel appearing for defendants No.1 and 3 has pleaded that they have not sold any counterfeit products with the brand name BMW and also undertake to this Court that they shall in future not sell any product by using the brand name or mark BMW or any other mark deceptively similar to the trademark/brand name of the plaintiff.

4. Learned counsel appearing for defendant No.4 submits that it is an e-portal and can remove those listings which are shown but it cannot control the listings. He, however, submits relying upon interim order of this court dated 9.7.2014 that whenever the plaintiff brings to the notice of defendant No.4 in writing about any listing which is in infringement of the trademark or other such rights of the plaintiff, defendant No.4 would undertake immediate steps to have such listings removed within 36 hours. Learned counsel for defendant No.4 also undertakes on behalf of defendant No.4 that defendant No.4 would provide to the plaintiff details of listings by any other party using the trademark/brand name of the plaintiff BMW within two weeks from today.

5. As far as defendant No.2 is concerned, he was proceeded ex parte on 23.9.2015.

6. Learned counsel appearing for the plaintiff submits that in view of the submissions made by defendants No.1 and 3, a decree may be passed against the said defendants restraining them from using the trademark/brand name BMW. He further submits that this court may award some token damages against the said defendants for illegal use of the brand name and trademark of the plaintiff. He further submits that defendant No.4 should be bound to the statements made in court today. Regarding defendant No.2 he submits

that a decree may be passed under Order 8 Rule 10 CPC.

7. Learned counsel appearing for defendants No.1, 3 and 4 have no objection to the submissions of learned counsel for the plaintiff.

8. Accordingly, a decree under order 8 Rule 10 CPC is passed in favour of the plaintiff and against defendant No.2 in terms of paragraph 26A(i) of the plaint. A decree is also passed in favour of plaintiff and against defendants No.1 and 3 in terms of paragraph 26A(i) of the plaint.

9. Defendants No.1,2 and 3 shall also pay damages for a sum of Rs.50,000/- each respectively to the plaintiff. Accordingly, a decree is passed in favour of the plaintiff and against each of the defendants, namely, defendants No.1,2 and 3 separately for a sum of Rs.50,000/-. Plaintiff shall also be entitled to interest @ 12% per annum simple interest from the date of the decree till recovery w.e.f. one month after the date of decree. As far as defendant No.4 is concerned, defendant No.4 shall remain bound by the statements stated above.

10. Suit is disposed of in the above terms. All pending applications, if any, also stand disposed of.

11. A copy of this order be given *dasti* under the signatures of the court master.

JAYANT NATH, J.

FEBRUARY 09, 2018

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