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

+ **CS(COMM) 673/2016**

THE POLO/LAUREN COMPANY L P Plaintiff

Through **Mr. Ajay Amitabh Suman, Mr.
Pankaj Kumar, Mr. Kapil
Kumar Giri, Mr. Vinay Kumar
Shukla, Advocates.**

versus

M/S VARSHA & CO AND ANR Defendants

Through **Ex-Parte**

% **Date of Decision: 23rd March, 2018**

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J: (Oral)

1. Present suit has been filed for permanent injunction restraining infringement, passing off, damages, delivery up, rendition of accounts etc. against the defendants. The prayer clause in the present suit is reproduced hereinbelow:-

“43. That under the facts and circumstances of the present case the Plaintiff most respectfully prays that this Hon’ble Court may kindly be pleased to:

(a) Pass a decree of permanent injunction restraining the Defendant No.1 and 2 by themselves as also through their individual proprietors/partners/principles, agents, representatives, distributors, assigns, heirs, successors, stockiest and all others acting for and on their behalf from using, selling, soliciting, exporting, displaying,

advertising or by any other mode or manner dealing in or using the impugned Trade Mark/Label POLO with or without the device of POLO player and impugned domain name namely www.varshaa.com for that purpose or any other word/mark/trade Mark/Label/Domain Names which may be identical with and/or deceptively similar to the Plaintiff's said Trade Mark/Label/Domain Names in relation to their impugned goods and business of readymade garments and accessories and allied and cognate products and from doing any other acts or deeds amounting to or likely to:

- (i) Infringement of Plaintiff's registered Trade Mark/Label [POLO'POLO WITH DEVICE OR POLO PLAYER and/or other POLO formative trademarks and/or DEVICE OF POLO PLAYER] as mentioned in Para No.7 of the plaint.*
 - (ii) Passing off and violating of the plaintiff's rights in the Plaintiff's said Trade Mark/Label [POLO, POLO WITH DEVICE OF POLO PLAYER and/or other POLO formative trademarks and/or DEVICE OF POLO PLAYER].*
 - (iii) Infringement of Plaintiff's copyrights in artwork of said Trade Mark/Label [POLO; POLO WITH DEVICE OF POLO PLAYER and/or other POLO formative trademarks and/or DEVICE OF POLO PLAYER].*
- (b) Restraining the Defendant no.1 and 2 from disposing of or dealing with their asset including their premises at the address mentioned in the Memo of Parties and their stocks-in-trade or any other assets as may be brought to the notice of the Hon'ble court during the course of the proceedings and on the Defendant's disclosure thereof and which the Defendant is called upon to disclose and/or on its ascertainment by the Plaintiff as the Plaintiff is not aware of the same as per Section 135(2)(c) of the Trade Marks Act, 1999 as it could*

adversely affect the Plaintiff's ability to recover the costs and pecuniary reliefs thereon.

- (c) For an order for deliver up of all the impugned finished and unfinished materials bearing the impugned and violative impugned Trade Mark/Label or any other word/mark which may be identical with or deceptively similar to the Plaintiff's said Trade Mark/Label including its blocks, labels, display boards, sign boards, trade literatures and goods etc. to the plaintiff for the purposes of destruction and erasure.*
- (d) For an order for rendition of accounts of profits earned by the Defendant no.1 and 2 by their impugned illegal trade activities and a decree for the amount so found in favour of the plaintiff on such rendition of accounts.*
- (e) Or, in the alternative to the rendition of accounts, for a decree of Rs.20,01,000/- (Rupees Twenty Lakh and One Thousand Only) on account of damages sustained by the plaintiff due to the impugned acts of the Defendant no.1 and 2.*
- (f) Pass an order directing Defendant No.3 (Department of Telecommunications, Government of India) and Defendant No.4 (Department of Electronics & Information Technology) to secure blocking of the Web Pages/URL(s)/Listings mentioned in Schedule 'A' filed along with the documents.*
- (g) Pass an order directing Defendant No.3 (Department of Telecommunications, Government of India) and Defendant No.4 (Department of Electronics & Information Technology) to secure blocking of any future Web Pages/URL(s)/Listings brought up by the defendant Nos. 1 & 2 on their impugned website which infringe the rights of the plaintiff, as informed by the Plaintiff to the Defendants No.3&4 through written communication.*

(h) For an order for cost of proceedings, and

(i) For such other and further order as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case."

2. Vide order dated 28th September, 2015, an *ad-interim* injunction order was passed and defendant nos. 3 and 4 were deleted from the array of parties. The relevant portion of the order dated 28th September, 2015 is reproduced hereinbelow:-

"...Accordingly, till further orders, defendant nos. 1 & 2, their partners, proprietors, agents, representatives, distributors, assigns, heirs, successors and stockists are restrained from using, selling, soliciting, exporting, displaying, advertising or by any other mode or manner dealing in or using the impugned trade mark/label POLO with or without the device of POLO player or any other word/mark/trademark/label, which may be identical with and/or deceptively similar to the plaintiff's trade mark/label/domain names in relation to their impugned goods or readymade garments and accessories and allied and cognate products, through the website www.varshaa.com or otherwise."

3. The *ad-interim* order was confirmed on 21st March, 2018 till the disposal of the suit. The remaining defendants were also proceeded *ex parte* on 21st March, 2018.

4. Learned counsel for the plaintiff states that he has instructions to only press for prayer 43(a) and (h) of the plaint.

5. Learned counsel for the plaintiff states 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 reliefs in paragraph 43(a) and (h) of the plaint. The relevant portion of the said judgment relied upon by learned counsel for the plaintiff 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.”

6. The relevant facts of the present case as pointed out by the learned counsel of the plaintiffs are as under :-

A) The plaintiff is a limited partnership engaged in the business of manufacture, distribution and sale of a wide range of apparel and clothing for men, women and children, clothing accessories, etc.

B) The plaintiff adopted the trademark POLO in 1967, and has been using the word POLO per se and in conjunction with other marks/words and DEVICE OF POLO PLAYER, in various stylized and artistic formats with and/or without the DEVICE OF POLO PLAYER. The plaintiff is the registered owner of the aforesaid trademarks/labels under various Classes of the Trade Marks Act, 1999. In support of the aforesaid submission the plaintiff has filed

legal proceeding certificates of the plaintiff's registered trademarks in India.

C) The art works involved in the plaintiff's trademark/label are original artistic works and the plaintiff is the registered owner and proprietor of the copyright therein.

D) The word/mark POLO and DEVICE OF POLO PLAYER are a material part of the plaintiff's trademark/label and are invented and arbitrary trademarks. The word/mark POLO is also the most essential feature of the plaintiff's trading style/trade name "The Polo/Lauren Company L.P." and by virtue of continuous and uninterrupted use, the plaintiff's trademark/label has become distinctive and is associated with and has acquired secondary significance with the plaintiff's goods and business.

E) The plaintiff also uses the domain names, www.polo.com , www.polo-ralph-lauren.in, www.pologolf.in, www.prl.in, www.global.polo.com for the sale of its goods.

F) The revenue generated by the plaintiff for sale of its products under the said trademark/label worldwide, for the year 2015 was USD 7,620 million. In support of the aforesaid statement the plaintiff has filed consolidated statements of income, cash flows, equity, selected/quarterly financial information.

G) The defendant no. 2 is the proprietor of defendant no. 1 and is engaged in the business of manufacturing, marketing, selling, supplying, soliciting and trade of readymade clothing and other allied/related products.

H) In July, 2015, while making a random search of web-sites selling readymade garments and accessories, the plaintiff came to know that the defendant's are selling readymade garments bearing the word/mark/label POLO with or without the DEVICE OF POLO PLAYER through their website www.varshaa.com. The plaintiff made an online purchase of goods bearing the plaintiff's trademark/label from the defendants' website which showed that the goods were counterfeit and the said fact was confirmed by the plaintiff's production department. In support of the aforesaid submissions the plaintiff has filed a copy of invoice raised by the defendants dated 16th July, 2015.

I) The trademark/label POLO and DEVICE OF POLO PLAYER adopted by the defendants in relation to their goods and services are identical with and deceptively similar to the plaintiff's trademark/label in each and every respect including phonetically, visually, structurally, in its basic idea and in its essential features. The defendants' use of the plaintiff's trademark/label wrongly conveys to the public that the defendants' goods originate from the plaintiff.

J) The defendants have dishonestly and fraudulently adopted the plaintiff's trademark/label with the intent to take advantage of and trade upon the goodwill and reputation of the plaintiff.

7. Having heard learned counsel for the plaintiff and having perused the documents placed on record, this Court is of the opinion that the plaintiff has proved the facts stated in the plaint.

8. In view of the above facts, the suit is decreed in favour of the plaintiff and against defendant in terms of prayer clause 43(a) of

the plaint along with the actual costs. The costs shall amongst others include the lawyers' fees as well as the amounts spent on purchasing the court fees. The plaintiff is given liberty to file on record the exact cost incurred by it in adjudication of the present suit, if not already filed. Registry is directed to prepare a decree sheet accordingly. Consequently, the present suit stands disposed of.

MANMOHAN, J

MARCH 23, 2018

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