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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(COMM) 826/2016 & IA No.8153/2016 (u/O XXXIX R-1&2 CPC).

HUGO BOSS TRADE MARK MANAGEMENT
GMBH & CO KG

..... Plaintiff

Through: Mr. Chander M. Lall, Sr. Adv. with
Mr. Karan Bajaj and Mr. Dhruv
Nayar, Advs.

versus

RAFIQUE HAROON KUDIA & ORS

..... Defendants

Through: Mr. Yash Agarwal proxy counsel for
De-1 to 3.

Mr. Shafiq Khan, Ms. Sundri Rawat
and Ms. Anika Dhingra, Advs. for D-
4&5.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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01.11.2018

1. The plaintiff has instituted this suit against five defendants namely (i) Rafique Haroon Kudia; (ii) Mohamed Uzair Rafique Kudla; (iii) Mohamed Ghayas Rafique Kudla; (iv) Daleep; and, (v) Bablu for permanent injunction restraining infringement and passing off and for ancillary reliefs.

2. The suit came up first before this Court on 15th July, 2016 when while issuing summons thereof, vide *ex parte ad interim* orders, the defendants were restrained from infringing the trade mark of the plaintiff and from passing off their goods as that of the plaintiff.

3. All the defendants have been served with the summons of the suit. The defendants no.1 to 3 failed to file written statement within the prescribed time and vide order dated 12th January, 2018 the defence of the

defendants no.1 to 3 stands struck off. The defendants no.4&5 have filed written statement and to which a replication has been filed.

4. The suit is ripe for framing of issues and for consideration of the application for interim relief.

5. Mr. Yash Agarwal, Advocate appearing for the defendants no.1 to 3 states that he has filed a letter of adjournment and the plaintiff as well as the defendants no.4&5 have given no objection thereto.

6. The counsel for the plaintiff and the counsel for the defendants no.4&5, on the letter of adjournment have merely endorsed 'received' and 'received copy' respectively and have not given any no objection.

7. The senior counsel for the plaintiff states that even otherwise the defence of the defendants no.1 to 3 having been struck off, the adjournment letter by their counsel is misconceived.

8. Mr. Shafiq Khan, Advocate for the defendants no.4&5, on enquiry states that the defendants no.4&5 have been wrongly impleaded; that the defendant no.5 is merely an employee of the defendant no.4 and "how can be he impleaded".

9. The senior counsel for the plaintiff points out that the application of the defendants no.4&5 for deletion from the array of defendants has already been dismissed.

10. I have perused the plaint and the documents filed therewith as well as the written statement of defendants no.4&5 and for reasons recorded in

Satya Infrastructure Ltd. Vs. Satya Infra & Estates Pvt. Ltd. 2013 SCC OnLine Del. 508, I am satisfied that there is no need to frame issues qua defendants no.4&5 insofar as the relief of permanent injunction claimed in this plaint is concerned and/or to relegate the plaintiff to evidence vis-à-vis defendants no.1 to 3.

12. The senior counsel for the plaintiff under instructions states that if a decree for injunction with costs is passed today itself, the plaintiff will not press for any other ancillary reliefs.

13. Costs are always in discretion of Court and do not call for trial.

14. The plaintiff has made out a case for grant of a decree of permanent injunction. A decree of permanent injunction is passed, in favour of the plaintiff and against the defendants in terms of prayer paragraphs A(i) to (v), B (i) (a)&(b) and C of the plaint dated 12th May, 2016. The plaintiff is granted liberty to approach the Registrar of the domain name and/or Facebook for implementation of the decree in terms of prayer paragraph B(i)(a)&(b) of the plaint.

15. A decree is also passed in favour of the plaintiff and against the defendants no.1 to 5 jointly and severally, for recovery of costs of this suit assessed at Rs.5,00,000/-.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J

NOVEMBER 01, 2018

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