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

+ **CS (COMM) 1068/2016 & I.As. 326/2014, 6284/2014**

M/S GM MODULAR PVT LTD

..... Plaintiff

Through: Mr. S.K. Bansal and Mr. Pankaj
Kumar, Advocates (M-9810438450).

versus

DAVENDER KUMAR GOYAL & ANR.

..... Defendants

Through: Mr. Amreek Singh, Advocate (M-
9212349363).

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

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13.09.2018

1. The present suit for infringement of registered trademark and copyright has been filed in respect of the trademark 'GM' as also its logo form. The Plaintiff is engaged in the trade of electrical products including switches, accessories, appliances and other components. The Plaintiff claims to be the owner of the said trademark in various classes including 3,6,7,8,9,11, 17, 21 and 37 etc. The Plaintiff also claims to be the owner of the 'GM' logo and device and other artistic works as per copyright registration bearing no.A-64280/2003. The Plaintiff claims enormous goodwill and reputation in the 'GM' marks and logo.

2. The present suit was filed against the Defendants complaining against the use of trademark and carton 'GGM' in a similar colour scheme, logo form and packaging. The Defendants' logo and packaging is set out herein below:



3. The Plaintiff claimed that the use of the mark 'GGM' in an identical logo and colour scheme is violative of its rights. The Plaintiff thus seeks reliefs restraining infringement of trade marks, copyright, passing off, delivery up and rendition of accounts etc.,

4. The suit was listed on 8th January, 2014, on which date, an *ex-parte* injunction was passed in the following terms:

“Having heard the learned counsel for the plaintiff and gone through the pleadings and documents placed on record, the plaintiff has been able to make out a prima face case for grant of ex-parte ad-interim injunction. Balance of convenience also lies in favour of the plaintiff and against the defendants. In case the injunction is not granted, the plaintiff will suffer irreparable loss and injury. Accordingly, the defendants, their partners, agents etc. are restrained from using, selling, advertising or in any manner dealing with the trade mark GGM as well as logo/script/label in relation to electrical wires, switches, cables, cords, electrical accessories and fittings and they are also restrained from using any other deceptively similar trade mark as that of the plaintiff.”

5. Thereafter, Defendants put in appearance and on 2nd April, 2014, they had made a statement that they are willing to use the trademark 'GGM' in a different manner. Settlement negotiations and mediation proceedings were also explored. The matter was finally taken up for hearing on the last date i.e. 23rd August, 2018 and the following order was passed:

“Learned counsel for the Defendants submits that his client’s mark is ‘GGM’, which is a registered trademark since 2010 and that his client is the prior user of the mark, in respect of wires and cables. A proposal has been put forth, for which learned counsel for the Plaintiff wishes to seek instructions.”

6. The Defendants have now agreed to change their trademark from ‘GGM’ to ‘GG Metal’. They have also agreed to change the colour scheme and the packaging which was used by them.

7. The Plaintiff has no objection if Defendants use the mark ‘GG Metal’. The new carton which is now being proposed by the Defendants has been placed on record. The said carton has a colour scheme of green, red and white along with ‘GG Metal’ logo which is acceptable to the Plaintiff. The parties have therefore settled their disputes on the following terms and conditions:

i) Defendants shall henceforth use the mark ‘GG Metal’ instead of ‘GGM’ shown below:



ii) The Defendants shall change the existing carton to the green, red and white colour scheme which has been placed on record and exhibited as **Exhibit.C1**;

iii) The Defendants agree to surrender the trade mark registration no.1940190 for the mark ‘GGM’ in class 9’. The Defendants are however

permitted to apply for registration of mark '*GG Metal*' as contained in Ex.C1. The Plaintiff shall not object to the registration of the said mark. Defendants also undertake not to use the letter 'R' until the mark '*GG Metal*' is registered in their favour.

iv) In view of the above, the Plaintiffs shall not press the relief of rendition of accounts/damages.

8. The existing stock as inventorised by the Local Commissioner is permitted to be sold by the Defendants after changing the cartons. The Defendants undertake to destroy the cartons in the seized products and only use the wires which are contained within the packaging. If the mark '*GGM*' is appearing on the wires, the same shall be obliterated before sale.

9. An affidavit shall be filed confirming the destruction of cartons, within a period of four weeks.

10. The present suit is therefore decreed in terms of para 30(a) except as permitted herein above as per Exhibit C1. The settlement terms contained in paragraph 7 shall also form part of the decree sheet along with Exhibit C1.

11. Prayer (b) is not pressed. Prayer (c) is allowed to the above extent. Prayer (d) and (e) are also not pressed. Decree sheet be drawn accordingly.

12. The present order be placed before the IPAB where the cancellation petition against the Defendants' registered trademark is pending. The IPAB would pass appropriate orders on the basis of this order.

13. Mr. Devidner Kumar Goyal is present in Court and has consented to the settlement terms above.

14. The suit and all pending applications are disposed of.

PRATHIBA M. SINGH, J.

SEPTEMBER 13, 2018/Rahul