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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(COMM) 1589/2016, IA No.7933/2012 (u/O XXXIX R-1&2 CPC)
and IA No.10290/2012 (u/O XXXIX R-4 CPC).
PEPSICO INC & ANR Plaintiffs

Through: Mr. Kunal Mimani, Adv.

versus

KASHMIR HYGIENICS PVT TLD & ORS Defendants
Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **04.05.2018**

1. The counsel for the plaintiffs states (a) that the two plaintiffs namely PepsiCo, Inc. and PepsiCo India Holdings Private Ltd., had instituted this suit against the five defendants namely (i) Kashmir Hygienics Private Limited; (ii) Optimum Foods and Beverages Private Limited; (iii) Golden Dew Inc.; (iv) Aditya Sehgal; and, (v) B.B. Sehgal, for permanent injunction restraining the said defendants from using, marketing and/or licensing the marks 'GOLDEN DEW' and 'AMERICAN DEW' or any other mark or label which is similar or deceptively similar to the plaintiffs' mark / label 'MOUNTAIN DEW' and for ancillary reliefs of delivery and rendition of accounts and costs; (b) that the suit has been amicably settled and already stands decreed against the defendants no.1 and 3 to 5 and remains only against the defendant no.2 Optimum Foods and Beverages Private Limited; (c) that the defendant no.2 Optimum Foods and Beverages Private Limited. was a retailer of the goods under the impugned mark marketed by the defendants no.1,3 to 5; (d) that the defendant no.2

Optimum Foods and Beverages Private Limited was proceeded against *ex parte* on 15th March, 2017 and the plaintiffs have led their *ex parte* evidence against the defendant no.2 Optimum Foods and Beverages Private Limited.

2. The counsel for the plaintiffs, on enquiry, states that under the amicable settlement the defendant no.1 has suffered a decree of permanent injunction as claimed but the defendants no.3 to 5 have revised their label/mark and to which the plaintiffs have agreed.

3. On specific enquiry, it is stated that no damages have been received under the Settlement from any other defendants.

4. In this view of the matter, a decree is passed in favour of the plaintiffs and against the defendant no.2, of permanent injunction in terms of prayer paragraph 34 (a) of the plaint dated 26th April, 2012 but with the clarification that the said decree of permanent injunction will not prevent the defendant no.2 Optimum Foods and Beverages Private Limited from using the mark under which the defendants no.3 to 5 have been permitted by the plaintiffs to sell their goods, leaving the parties to bear their own costs.

5. Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J

MAY 04, 2018

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