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

+ CS(COMM) 1677/2016 & IAs No.16132/2016(u/O XXXIX R-1&2
CPC) & 5272/2017 (u/O I R-10 CPC)

FUTURE BRANDS LTD & ANR Plaintiffs
Through: Ms. Niyati Kohli and Mr. Karan
Luthra, Advs.
Versus
KARNIKA GARMENTS & ANR Defendants
Through: None.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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05.02.2018

1. The two plaintiffs namely Future Brands Ltd. and Future Retail Limited, instituted this suit against (i) M/s Karnika Garments through its sole proprietor Manoj Kakkar; (ii) Mayasheel Retail LLP; and, (iii) defendants No.3 to 10, all shown as Ashok Kumar, for permanent injunction restraining infringement of mark/word/logo/label 'BUFFALO' of plaintiff No.1 with respect to readymade garments and from thereby passing off their goods as that of the plaintiffs and for ancillary reliefs.

2. The suit was entertained and vide *ex-parte* ad-interim order dated 23rd December, 2016, which continues to be in force, while issuing summons of the suit, the defendant No.2 Mayasheel Retail LLP and its directors, promoters, shareholders, managers etc. were restrained from directly or indirectly using, selling, offering for sale, distributing, transferring,
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disposing off, retailing any goods with the plaintiff No.1's registered trade mark/word/logo/label 'BUFFALO', unique designs on the back pocket of the jeans, the plaintiff's name and other labels.

3. The defendants No.1&2 appeared through separate counsels and have filed separate written statements. The order dated 24th April, 2017 records the statement of the counsel for the defendant No.1 that he shall approach the plaintiffs with an offer for amicable settlement. Vide order dated 24th May, 2017, the parties were referred to the Mediation Cell of this Court but mediation remained unsuccessful. On 9th October, 2017, the defendants No.4 to 10 were deleted from the array of defendants. However, the plaintiffs have not filed the amended memorandum of parties till date.

4. The counsel for the plaintiffs today states that the plaintiffs have filed IA No.5272/2017 to sue Sanjeev Kakkar instead of Manoj Kakkar as sole proprietor of defendant No.1, as disclosed by the defendant No.1 in its written statement and the same is pending consideration.

5. None appears for either of the defendants today. The defendants No.1&2 are proceeded against *ex-parte*.

6. As far as the defendant No.3 Ashok Kumar is concerned, the plaintiff has not furnished any particulars of the same and on request of the plaintiff, defendant No.3 also is deleted from the array of defendants.

7. The Court Master to, under his signature, in today's date, make notation in the Memorandum of Parties as well as in the plaint of deletion, as aforesaid, of defendants No.3 to 10.

8. The counsel for the plaintiffs, on enquiry, draws attention to pages 33, 36, 38 & 39 of Part III file containing documents under cover of List of Documents dated 3rd November, 2017, being the registrations in favour of the plaintiff No.1. On being asked to show the infringing products, the counsel for the plaintiffs states (i) that the case of the plaintiffs is that the defendant No.1 is a manufacturer of jeans and other clothing items; (ii) that the defendant No.1 was authorised by the plaintiffs to affix the label and name of the plaintiffs to the jeans manufactured by the defendant No.1 of a certain quality and to sell the same; (iii) that the defendant No.2 Mayasheel Retail LLP is one of the outlets through which the defendant No.1 was selling such jeans and other clothing items; (iv) that the plaintiffs, in the year 2015 discovered that the defendant No.1 was affixing the label of the plaintiffs, also on jeans of a quality inferior to that on which the plaintiffs had authorised the defendant No.1 to affix the label and mark of the plaintiffs and to sell the same.

9. I have asked the counsel for the plaintiffs, as to what is there to show that the defendant No.1 affixed the label and mark of the plaintiffs to jeans of inferior quality.

10. The counsel for the plaintiffs states that it is the plea of the plaintiffs that the jeans of the qualities specified by the plaintiffs was to retail at a price of Rs.1,399/- but the defendant No.1 was found to be retailing jeans and other clothing items with the label of the plaintiffs at the price of Rs.1,099/-.

11. I entertain doubts, whether price alone can be an indicator of the quality.

12. I have further asked the counsel for the plaintiffs, how Court can grant a relief of permanent injunction restraining the defendant No.1 from affixing the label/mark of the plaintiffs to a particular quality of jeans and clothing items. Section 41(e) and (g) of the Specific Relief Act, 1963 also bars injunctions of such kind to be granted, performance of which cannot be supervised by the Court and to determination violation whereof will require detailed adjudication.

13. The counsel for the plaintiffs states that there is no written contract between the plaintiffs and the defendant No.1 and the plaintiffs, ever since discovered the aforesaid acts of the defendant No.1, have stopped transacting with the defendant No.1. The counsel for the plaintiffs hence states that the plaintiffs are only seeking permanent injunction restraining the defendant No.1 from affixing the label/mark of the plaintiffs to any of its goods or clothing items.

14. The plaintiffs, in the plaint, have also sought relief with respect to the defendants using the words 'FUTURE GROUP'.

15. The counsel for the plaintiffs however states that the plaintiffs are now confining the relief only to the mark/label 'BUFFALO', registration certificates whereof are at pages 33, 36, 38 & 39 mentioned aforesaid.

16. The counsel for the plaintiffs also states that the plaintiffs have other evidence of the defendants in the past having affixed the mark of the plaintiffs on clothing items of inferior quality.

17. In the aforesaid state of affairs, the need to relegate the plaintiffs to *ex-parte* evidence is not felt and reference in this regard may also be made to ***Satya Infrastructure Ltd. Vs. Satya Infra & Estates Pvt. Ltd.*** 2013 SCC OnLine Del 508.

18. The plaintiffs are found entitled to the relief of permanent injunction as claimed, as aforesaid. However, no case for the plaintiffs being entitled to any damages from any of the defendants, is made out. The plaintiffs shall however be entitled to costs of the suit from the defendant No.1.

19. A decree is accordingly passed in favour of the plaintiffs and against the defendants No.1&2, of permanent injunction restraining the defendants No.1&2 from infringing the mark/label containing the word 'BUFFALO' registration certificates whereof are at pages 33, 36, 38 and 39 supra and/or from passing off their goods as that of the plaintiffs. The plaintiffs shall also be entitled to costs of this suit from the defendant No.1. Counsel's fee assessed at Rs.2 lakhs.

20. Decree sheet be drawn up.

21. The date of 9th April, 2018 before the Joint Registrar is cancelled.

RAJIV SAHAI ENDLAW, J.

FEBRUARY 05, 2018

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