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

+ **CS(COMM) 726/2017**

KIRAN SHOES MANUFACTURERS Plaintiff
Through **Mr. Pranay Sarkar, Advocate.**

versus

M/S MARUTI FOOTWEAR COMPANY Defendant
Through **None**

% **Date of Decision: 13th 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 of registered trademark, passing off, damages, rendition of accounts, delivery up etc. against the defendant. The prayer clause in the present suit is reproduced hereinbelow:-

“a. A decree of permanent injunction be passed thereby directing that the Defendant, its proprietor, partners, employees, agents, distributors, franchisees, representatives and assigns be restrained from manufacturing or authorizing the manufacture, selling or offering for sale, marketing, advertising, promoting, displaying or in any other manner whatsoever any sports shoe or footwear and/or any other allied and cognate goods using any mark identical, phonetically, visually or deceptively similar to the Plaintiffs Registered Trade registered at 1673434, 816260 and 1369593 and Present Label Marks and/or any other trade mark which is identical or deceptively or confusingly

similar to any of the listed trade/label mark and/or any other trade mark which are deceptively similar with the Plaintiff's present trade marks and facilitate passing off the Defendant's product as that of the Plaintiff thereto.

b. A decree of permanent injunction be passed thereby directing that the Defendant, its proprietor, partners, employees, agents, distributors, franchisees, representatives and assigns be restrained from manufacturing or authorizing the manufacture, selling or offering for sale, marketing, advertising, promoting, displaying or in any other manner whatsoever any sports shoe or footwear and/or any other allied and cognate goods and/or in any other manner whatsoever using a design of the sole and shape and configuration of a shoe which is a substantial reproduction of the design which form the subject matter of the plaintiff's design registration No. 178564 and amounting to piracy of the registered design thereto.

c. An order for delivery up of all the goods, dyes, moulds, blocks, tags, labels, other printed matter and any other material whatsoever bearing the trade mark/label mark and/or any other mark confusingly and deceptively similar to the trade mark/label mark and/or the registered design to the authorized representatives of the Plaintiff for the purpose of destruction/ erasure;

d. A decree of damages of Rs. 5,00,000 for illegal profits earned by the defendants on account of their illegal activities and for the loss caused to the goodwill and reputation of the plaintiff.

e. An order for costs of the proceedings. ”

2. The defendant initially entered appearance. However, thereafter learned counsel for the defendant sought discharge on the ground that despite several attempts to contact the authorised representative of the defendant, he had not received any reply or instructions. Accordingly, vide order dated 8th March, 2018, learned counsel for the defendant

was discharged. Since none appears for the defendant, today it is proceeded ex-parte.

3. Learned counsel for the plaintiff states that he has instructions not to press for any relief other than the reliefs prayed for in prayer 28(a) and (e) of the plaint. He fairly points out that during the pendency of the present suit the plaintiff's design registration has expired. The statement made by learned counsel for plaintiff is accepted by this Court and plaintiff is held bound by the same.

4. 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 28(a) & (e) of the plaint. The relevant portion of the said judgment relied upon by learned counsel for the plaintiffs 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.”

5. 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 partnership firm registered with the Department of Industries, Nepal, wherein Mrs. Manju Taparia, Mrs. Santosh Rathi, Mrs. Januki Kumari J.B. Rana (Shahi) and Mr. Amir Pratap Rana are its partners. In support of the aforesaid submissions the plaintiff has filed registration certificate of the plaintiff firm, confirmation of partnership by the Department of Industries, Nepal and Authorization in favour of Mrs. Santosh Rathi and Mr. Amir Pratap Rana duly constituting them as the Authorized Representatives of the firm.

B) The plaintiff is engaged in the business of manufacturing and marketing of sports shoes and footwear under the registered trade mark GOLDSTAR with various label marks. The plaintiff firm has been manufacturing its shoes in Nepal since 1990 and has been officially exporting the same to India since 1997/1998.

C) During the subsistence of the present suit, the plaintiff has become the sole proprietor of the following trademarks in India:-

Trade Mark	Number	Status
GOLDSTAR	1369593	Registered
	1673434	Registered
	1668434	Registered
	1669858	Registered
	816260	Registered
SEVENSTAR	848550	Registered

In support of the aforesaid submissions the plaintiff has filed Nepali trade mark applications, Trade Mark registrations in India – 1369593/816260/167343.

D) Due to the high quality of the plaintiff's product, there is a large demand for the plaintiff's footwear sold under the registered mark GOLDSTAR and the above mentioned label marks and various other trade/label marks. The said trade marks have become synonymous with footwear of high quality sold at affordable prices and is recognized by the general public and traders for the same.

E) The annual expenditure incurred by the plaintiff on advertisement for its product for the financial year 2011-2012 was Rs. 11,25,275.00/-. The plaintiff's annual sales promotion figures in the ordinary course of business for the year 2011-2012 was Rs. 35,84,81.81/- in India and Rs. 5,73,570.89/- in Nepal. The annual sales figures of the plaintiff's shoes sold under its registered trademarks for 2011-2012 was Rs. 89,07,04,972.25/-, in India and Nepal. In support of the aforesaid contention the plaintiff has filed CA certified advertisements and sale promotion figures, CA certified sales figures in India, invoice of advertisements placed in India by the plaintiff and invoice of bills of exports by the plaintiff to India.

F) In September, 2011, the plaintiff came to know from various market resources, that the defendant has been manufacturing and selling sports shoes with an identical, trade/label mark, design and get up as that of the plaintiff. The defendant has copied each and every feature of the plaintiff's product, namely, the entire shape and configuration of the shoe, including the design of the sole. The

defendant has also used the trademarks registered at No. 1673434 % 816260, and where the plaintiff writes their registered house mark GOLDSTAR, the defendants have written KLTStar/KLEITOS. In support of the aforesaid submission, the plaintiff has filed the defendant's advertisements in Delhi. A pictorial representation of the plaintiff's and defendant's product is reproduced hereinbelow:-



G) The plaintiff served a cease and desist notice on the defendant on 01st September, 2011. The plaintiff received a reply dated 13th September, 2011, from the defendant, seeking certain clarifications. Subsequently, the plaintiff served another notice on the defendant on 04th April, 2012, which was returned, refused.

H) The use of the plaintiff's registered trademarks leads to dilution of the plaintiff's trademarks. The defendant has copied each and every feature and the design of the plaintiff's product and is also using similar and identical trademarks and label marks as that of the plaintiff. The defendant's footwear uses the plaintiff's registered trademarks registered at no. 1673434, 816260 and 1369593 along with its mark KLTStar, which is visually and phonetically similar to the plaintiff's registered trademark No. 1369593/KLEITOS on its product. The get up of the defendant's products is substantially identical to that of the plaintiff's product, thus amounting to infringement and passing off. In support of the aforesaid submission the plaintiff has filed photographs of the plaintiff's and defendant's products.

I) The defendant's product is substantially identical to that of the plaintiff's product and the defendant has adopted and used the aforementioned trade mark/label mark with the mala fide and dishonest intention of passing off their goods as that of the plaintiff's and the defendant is running an illegal business by using same/identical trademark and label marks.

J) The plaintiff does business by sale of its goods in Delhi and carries on business in Delhi through its Liaison office at 181-B, Khirki Village, Press Enclave Road, New Delhi and has its exclusive

distributor in Delhi at the address Katyal Metal Agencies, 9611/13 Sadar Thana Road, Motaikhan, Paharganj, New Delhi. The plaintiff has no branch office in Bahadurgarh where the defendant resides and carries on business. In support of the aforesaid statement the plaintiff has filed its distributorship agreement for the territory of Delhi, bills of purchase and sale of plaintiff exclusive distributorship and liaison office incorporation certificate of the plaintiff.

6. 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.

7. In view of the above facts, the suit is decreed in favour of the plaintiffs and against defendant in terms of prayer clause 28 (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 and applications stand disposed of.

MANMOHAN, J

MARCH 13, 2018

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