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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CS(COMM) 880/2017 & I.A. 15427/2017

AKTIEBOLAGET VOLVO & ORS

..... Plaintiffs

Through: Ms. Prakriti Sharma, Advocate.

versus

VOLVO SOFTWARE PVT LTD & ORS

..... Defendants

Through: None.

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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 trade mark/name, passing off, damages, delivery up, etc.
2. By way of an ex parte ad interim injunction order dated 21st December, 2017, this Court had restrained the defendants from using the mark/name VOLVO or any mark/name similar to the plaintiffs' trade mark/name VOLVO in any manner whatsoever including as a corporate name.
3. Though the defendants have been served, yet none has entered appearance on their behalf.

4. Today, learned counsel for plaintiffs has handed over photocopies of letters dated 19th January, 2018 written by the defendants to the plaintiff. Since the letters written by the defendants are identical, only one of the letters written by defendant No.1 is reproduced hereinbelow:-

“TO,

19th January, 2018

Mr. Raunaq Kamath
Anand and Anand
B-41, Nizamuddin East
New Delhi - 110013

*Re: Unauthorized use and infringement of the well-known trademark VOLVO
Aktiebolaget Volvo & Ors. Vs. Volvo Software Pvt. Ltd. &
Ors.: CS(Comm) No.880 of 2017 before The High Court of
Delhi.*

Ref – Your Letter Ref 10089/HC/674-55 dated 27th December, 2017.

Sir,

Kindly refer to your letter No.10089/HC/674-55 dated 27th December, 2017, with regard to which we would like to put in your notice that, our Company namely M/s VOLVO SOFTWARE PRIVATE LIMITED was registered under the Companies Act with a view to Commence an IT Company long back and the name was Selected after Checking its availability at website of Ministry of Corporate Affairs Govt. of India. Due to some course of events the Directors of the Company decided not to start any business in the said Company and consequent to which all the assets in form of Land were sold. Our Company has not done any business till date, therefore, the question of talking advantage of your clients Trade Mark/Name “VOLVO” does not arise. It can be referred from the website of Ministry of Corporate Affairs Govt. of India, that the Company Namely M/s Volvo Software Private Limited has not done any business

till date and further, we have initiated the process of closure of the said Company, but only because of the fact that, the process of closure of a company is a Lengthy Process, it is taking time. We assure that, we do not have any intention of taking advantage of your clients Trade Mark/Name, therefore, it is kindly requested to vacate the notices and the legal proceedings against us as the matter has been resolved amicably.

For Volvo Software Private Limited

Sd/-

Director

CIN – U72200DL2006PTC144581”

(emphasis supplied)

5. In view of the fact that the defendants have decided not to appear in the present proceedings, they are proceeded ex parte. This Court is also of the view that the present suit can be disposed of without any further delay. A Coordinate Bench of this Court in ***Satya Infrastructure Ltd. and Ors. Vs. Satya Infra & Estates Pvt. Ltd., 2013 SCC OnLine Del 508*** has held as under:-

“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.”

6. Accordingly, the undertakings given by the defendants in their letter dated 19th January, 2018 are accepted by this Court and the defendants are held bound by the same.

7. As a matter of abundant precaution, the present suit is also decreed in favour of the plaintiffs and against the defendants in accordance with paragraph 23(a) and (b) of the present plaint. Registry is directed to prepare a decree sheet in accordance with paragraph 23(a) and (b) of the plaint as well as the undertakings given by the defendants in their letter dated 19th January, 2018. With the aforesaid observations, present suit and pending application stand disposed of.

MANMOHAN, J

MARCH 13, 2018

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