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

+ **CS(COMM) 120/2018, I.A. 5572/2012 & I.A. 5573/2012**

DISNEY ENTERPRISES, INC & ANR Plaintiffs

Through: Mr. Himanshu Deora, Advocate.

versus

A.M SIDDIQUI & ANR Defendants

Through: Mr. Saurav Tiwari, Advocate.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

% **22.07.2019**

1. The present suit is for permanent injunction restraining infringement of trademarks and copyrights, passing off and dilution and damages, rendition of accounts of profits and delivery up. Vide order dated 12th February 2019, parties were referred to the Delhi High Court Mediation and Conciliation Centre.

2. Mediation has been successful with the efforts of Mr. Atul Bhuchar, Mediator and a Settlement Agreement dated 12th April 2019 purporting to be signed by the Plaintiff, the Defendants and the respective counsels for the parties and signed by the Mediator has been received from the Mediation Cell of this Court. The same is marked as Exhibit C-1. The terms of the settlement are reproduced here under:

“1. That the Second Party {which term shall hereinafter Include their directors, partners, principles, employees, agents, distributors, franchisees, representatives, legal heirs, assigns and successors In business as the case may be and all those connected with them In their business, jointly as well as severally) admit and state that the First Party have superior rights in and are the proprietor and/ or owner of the well-known DEI Materials, as listed hereinabove and annexed hereto as Annexure - C and D.

2. That the Second Party admits that the use by them of the DEI Materials, as listed hereinabove or any other character, device, sign, logo or trade name incorporating the DEI Materials, which are identical and/ or deceptively similar to the First Party well-known DEI Materials amounts to infringement of trademark and copyrights, respectively and/or passing off and hereby undertake before this Hon'ble Court that the Second Party have discontinued the use of the DEI Materials in any manner whatsoever, and undertake that they shall neither hereinafter use or advertise (directly or indirectly) the DEI Materials nor will ever publish, print, sell, distribute, trade, retail, advertise, deal in or provide (directly or indirectly) in any variety of bags, such as school bags, carry bags, travel bags, etc. or any other product or services under the DEI Materials in any manner whatsoever nor shall indulge into any other act which may amounts to infringement of the First Party' well-known DEI Materials and/or infringement of Copyright and/or which may amount to passing off the goods or services of the Second Party as those of the First Party.

3. That the Second Party further undertake not to abet others in the infringement and/or passing off of the First Party' prior and well-known DEI Materials.

4. That the Second Party undertakes before this Hon'ble Court that they have not filed or caused to be filed' any application (trademark / copyright / design etc.) for registration of the DEI Materials or any other character, device, sign, logo or trade name incorporating the DEI Materials, which are identical and/ or

similar to the DEI Materials of the First Party or likely to recall trade identifiers of the First Party or their well-known DEI Materials, in any manner whatsoever, in respect of any goods or services, in India and also worldwide.

5. The Second Party further undertakes to this Hon'ble Court that they shall not hereinafter file or pursue any application (trademark or copyright) to register the DEI Materials or any other character, device, sign, logo or trade name incorporating the DEI Materials, which are identical and/ or similar to the DEI Materials of the First Party or likely to recall trade identifiers of the First Party or their well-known DEI Materials, in India as well as worldwide, for all times to come.

6. It is agreed by the Second Party that in case any such application as mentioned hereinabove in para (4) .and (5) is found to have been filed or caused to have been filed, the Second Party undertakes to withdraw the said application(s) within a period of 30 days of it being brought to its notice.

7. That the Second Party have assured the First Party that they are not in possession of any further stocks bearing the DEI Materials or any other character, device, sign, logo or trade name incorporating the DEI Materials, which are identical and/ or similar to the prior and well-known DEI Materials of the First Party.

8. It is agreed between the parties that the Second Party shall suffer a decree of permanent injunction in terms of paragraph 25(a) sub paras (i to iii) of the prayer clause of the suit in terms of the present settlement agreement.

9. It is agreed between the parties that the Second Party shall pay a sum of Rs. 75,000/- (Rupees Seventy Five Thousand only) to the First Party as compensation towards full and final settlement of this suit. The said amount has been paid on the execution of the present settlement agreement vide demand draft no. 001677 dated 12.04.2019 drawn on Axis Bank, Jungpura Branch, New

Delhi. Copy of the same is annexed herewith as ANNEXURE - E.

10. It is agreed by the Second party that in case of breach of any of the terms of the present settlement at any time in future, they shall be liable, jointly and severally, to pay liquidated damages to the tune of Rs. 25,00,000/- (Rupees Twenty Five Lakhs Only) to the First Party apart from otherwise being liable for other remedies available to the First Party, including but not limited to injunctive reliefs and contempt proceedings.

11. It is agreed by the First Party that in good faith and in the interest of this agreement, they waive off any present claim to damages and legal costs as they may have been entitled to. It is agreed between the parties that the said waiver shall not be applicable to any infringing activities found in the future, and also, if it is revealed in the future that the Second Party are in breach of any of the terms of the present agreement, the First Party shall be at liberty to seek damages as accordance with Law, not only for such future breach but also for the past infringing activities.

12. It is agreed between the parties that in consideration of the undertakings tendered by the Second Party hereinabove, the First Party agrees to forego the relief(s) of rendition of accounts, delivery up, damages and costs of the present proceedings against the Second Party in paragraphs 25 (b) to (e) of prayer clause of the present suit.

13. It is agreed between the parties that they shall request the Hon'ble Court to decree the present suit in terms of the present Settlement Agreement.

14. The First Party shall request the Hon'ble Court to pass appropriate orders for refund of court fee under section 16 of the Court Fees Act, 1870.”

3. The counsels support the Settlement Agreement and seek decree in terms thereof.
4. I have perused the compromise/settlement arrived at between the parties and find the same to be lawful.
5. A decree is passed, in terms of the Settlement Agreement dated 12th April 2019, which along with the Annexure thereto shall form part of the decree sheet, leaving the parties to bear their own costs.
6. Decree sheet be prepared.

SANJEEV NARULA, J

JULY 22, 2019/ss