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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(COMM) 661/2018, IA No.2888/2018 (u/O XXXIX R-1&2 CPC),
IA No.2889/2018 (u/O XXVI R-9 CPC) & IA No.13677/2018 (u/O
XXXIX R-2A CPC)

THE PROCTER & GAMBLE COMPANY Plaintiff
Through: Mr. Peeyoosh Kalra & Mr. Raghav
Paul, Advs.

Versus

ANAND MOHAN CHAUDHARY Defendant
Through: Mr. Ravi Ranjan, Mr. Gaurav Kumar,
Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **18.01.2019**

1. Today also the defendant has not appeared and Mr. Gaurav Kumar, Advocate appears and states that he is proxy counsel for Mr. Ravi Ranjan, Advocate for the defendant.
2. The conduct of the defendant, of avoiding to appear before this Court requires stringent orders to be passed.
3. Be that as it may, the matter is passed over as requested.

RAJIV SAHAI ENDLAW, J

4. The plaintiff has sued the defendant for permanent injunction restraining infringement and passing off of the plaintiff's mark 'VICKS' and for ancillary reliefs.
5. The suit was entertained and vide *ex parte ad interim* order dated 28th February, 2018 the defendant restrained from manufacturing or selling his products with the trade mark 'VICKS' or any other trade mark deceptively similar to the plaintiff's mark 'VICKS' and from dealing with the trade

mark 'VICKS' in any manner whatsoever. The said order continues to be in force. On 28th February, 2018, commissions were also issued to visit the premises of the defendant and to seize the infringing goods and promotion material.

6. The counsel states that all the three premises of the defendant to which commission was issued were found to be either locked or the defendant was not found therein.

7. On 14th January, 2019, the counsel for the defendant stated that the defendant had never used the mark 'VICKS' and had only intended to do so under the impression that the same is a generic word and the defendant has no objection to the suit, insofar as for permanent injunction, being decreed in favour of the plaintiff.

8. The counsel for the plaintiff on 14th January, 2019 drew attention to page 19 of the plaint and contended that use by the defendant of Russian language indicated that the defendant was in the business of selling the product under the mark of the plaintiff in Russia.

9. Personal presence of the defendant was directed.

10. The defendant identified by his counsel has appeared today along with his wife and states that he had only got a design prepared of the container in which he intended to market the product under the name 'BOROMED VICKS' in English and Russian language and had on his Facebook page put up the said design and otherwise the defendant has never manufactured or marketed any goods under the mark 'BOROMED VICKS' and/or 'SHIVANI BOROMED VICKS' and/or the mark 'VICKS', neither in India nor in any other country and has no objection to a decree for permanent

injunction being passed in favour of the plaintiff.

11. The counsel for the plaintiff, besides pointing out the conduct of the defendant of avoiding to appear before this Court, has handed over in the Court advertisement of the product 'SHIVANI BOROMED VICKS' of Shivani International on MakePolo.com, a third party website. It is argued that the mark continues to be used for advertising on MakePolo.com, though has been removed from the Facebook page of the defendant.

12. The defendant, on enquiry states that though Shivani International is his proprietary concern but he has never advertised Shivani International or 'SHIVANI BOROMED VICKS' on MakePolo.com and has already written to MakePolo.com to remove the said advertisement and MakePolo.com in their e-mail have informed that they will be so removing the said advertisement.

13. In the facts and circumstances aforesaid, though it is not deemed appropriate to put this suit to trial for ancillary reliefs claimed by the plaintiff but the plaintiff is indeed found entitled to costs of the suit from the defendant. The plaintiff, besides incurring the court fees of Rs.1,02,000/- has also paid a sum of Rs. 1.5 lac to the three commissioners, besides other expenses and professional fee, which are assessed at Rs.2,00,000/-.

14. A decree is accordingly passed in the favour of the plaintiff and against the defendant (i) of permanent injunction in terms of prayer paragraph 36 (a), (b) & (c) of the plaint dated 24th February, 2018; (ii) of recovery of costs of Rs.4.5 lacs; and, (iii) a direction is issued to the MakePolo.com to forthwith, within 48 hours of receipt of communication from the plaintiff and/or from the defendant, remove from its website the

advertisement of 'SHIVANI BOROMED VICKS'.

Decree sheet be drawn up.

Dasti under signature of Court Master.

RAJIV SAHAI ENDLAW, J

JANUARY 18, 2019

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