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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(COMM) 793/2018 & IAs No.4777/2018 (u/O XXXIX R-1&2
CPC) & 4778/2018 (u/O XXVI R-9 CPC)
SWAROVSKI AKTIENGESELLSCHAFT Plaintiff
Through: Mr. Ranjan Narula, Adv.

Versus

RAKESH KUMAR Defendant
Through: Mr. Ashish Shaw, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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04.02.2019

1. The plaintiff has instituted this suit for permanent injunction restraining the sole defendant from infringing the trade mark 'SWAROVSKI' of the plaintiff and from passing off his goods as that of the plaintiff by using the mark 'SWAROVSKI ZIRCONIA' and for ancillary reliefs.
2. The suit came up first before this Court on 11th April, 2018, when while issuing summons/notice thereof, vide *ex-parte* ad-interim order, the defendant was restrained from selling products with the trade marks 'SWAROVSKI' or 'SWAROVSKI ZIRCONIA' or in pouches having the initials 'SWL' and a commission was issued to the premises of the defendant to seize the infringing goods.
3. Though the defendant has filed a written statement but the counsel for the plaintiff states that the same has been filed beyond time.
4. The counsel for the plaintiff further states that adjournment be granted to enable him to make an application for summary judgment.
5. The defendant, according to the counsel for the defendant, was served

on 17th May, 2018 and has filed the written statement on 29th January, 2019.

6. The defendant having not filed the written statement within the prescribed time and having also not filed any application for condonation of delay, the right of the defendant to file the written statement is closed.

7. As per the report of the commission, large quantities of loose stones bearing the mark 'SWAROVSKI' were seized by the Commissioner from the premises of the defendant.

8. On enquiry it is informed that the defence of the defendant is that the defendant is not aware of the supplier of the said goods which the defendant was retailing.

9. The Delhi High Court (Original Side) Rules, 2018 as amended with effect from 1st November, 2018, vide Rule 1 of Chapter X-A permit the Court to, on its own also pass summary judgment and there is no need to await the application of the plaintiff.

10. In view of the stand of the defendant of being not himself engaged in manufacture of infringing goods and the infringing goods having been left with him only for the purposes of retail and on the basis of documents filed the plaintiff has made out a case for grant of the relief of permanent injunction as claimed.

11. As far as the other reliefs claimed are concerned, the plaintiff is also found entitled to delivery of the seized goods but it is felt that no purpose will be served in keeping this suit pending for trial on the claim of the plaintiff for damages and the purpose of the plaintiff would be served by awarding to the plaintiff, the costs of the suit which are assessed at the value of the court fees paid, the fee paid to the Commissioner and the professional

fee with miscellaneous expenses at Rs.2 lakhs.

12. The counsel for the plaintiff however presses for damages.

13. It being not the plea of the plaintiff that the defendant, before the subject consignment also was dealing in infringing goods, putting the claim for damages to trial would be a case of plaintiff spending good money after bad.

14. The counsel for the plaintiff seeks direction to the defendant to disclose identity of manufacturer of infringing goods.

15. Once defendant has taken stand that he does not know the identity, no mandatory injunction can be issued.

16. A decree is accordingly passed, in favour of the plaintiff and against the defendant, (i) of permanent injunction in terms of prayer paragraph 39(a) &(b) of the plaint dated 10th April, 2018; (ii) of delivery of infringing goods by directing the defendant to deliver to the representative of the plaintiff the goods seized by the Commissioner, for destruction by the plaintiff; and, (iii) of recovery of costs as aforesaid with professional fee and miscellaneous expenses assessed at Rs.2 lakhs.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J.

FEBRUARY 04, 2019

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