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

+ CS(COMM) 848/2018 & IAs 6391/2018 and 11832/2018

TOMMY HILFIGER EUROPE B.V Plaintiff

Through: Mr. Saif Khan, Mr. Dhruv Anand and
Ms. Kavya Mameen, Advs.

versus

MR. NAEEM & ORS Defendants

Through: Mr. Arpit Rawat, Adv. for D7 and
D8.
Mr. Akshay Srivastava, Adv. for D9.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

% **25.09.2019**

1. The present suit has been filed by the plaintiff with the following prayers:

“It is, therefore, prayed that this Hon'ble Court may be pleased to grant:

(i) An order for permanent injunction restraining the Defendants, un-named Defendants/ John Doe(s), their partners, if any, officers, servants, agents, distributors, stockists and representatives from importing, manufacturing, warehousing, selling and/or offering for sale, advertising, directly or indirectly dealing, in any manner, in any goods bearing the registered trademarks of the Plaintiff as mentioned in paragraph 16 of the plaint, specifically registration nos. 725528, 465059, 1275397, 964905, 964904, 1195244, 1275396, 1114705, 725529, 1673064, 726014, 528964,

528965, 528966, 528968, 528969, 661684, 1116005, 2208025 and or any similar trademark amounting to an infringement of registered Trademarks of the Plaintiff.

(ii) An order for permanent injunction restraining the Defendants, un-named Defendants/ John Doe(s), their partners, if any, their officers, servants, agents, distributors, stockists and representatives from importing, manufacturing, warehousing, selling and/or offering for sale, advertising, directly or indirectly dealing, in any manner, in any goods bearing the trademarks of the Plaintiff as mentioned in paragraph 16 of the plaint or any similar trademark or doing any other act amounting to passing off of the Defendants' products as those of the Plaintiff;

(iii) An order for permanent injunction restraining the Defendants, un-named Defendants/ John Doe(s), their principal officers, servants, agents, their affiliates, subsidiaries, distributors, and all others acting for and on their behalf from using trademarks, patterns, labels, logos or devices, which are identical or deceptively or confusingly similar to the Plaintiffs trademarks as mentioned in paragraph 16 of the Plaint or any similar trademark so as to misrepresent the quality/ origin of their goods and from taking unfair advantage of the Plaintiffs reputation and goodwill in the said trademarks or any similar trademark thereby causing dilution and tarnishment of the Plaintiffs abovementioned trademarks;

(iv) An order for delivery up to the Plaintiff by the Defendants, un-named Defendants/ John Doe(s) of all finished and unfinished materials, products and accessories, packaging, labels, dies, blocks, stationery and other materials bearing any of the Plaintiffs trademarks or bearing any other mark(s)/logo/device similar thereto, for the purpose of erasure/destruction;

(v) An order for damages to the sum of Rs. 1,00,05,000/- in favour of the Plaintiff and against the Defendants on account of

*loss of sales, reputation and goodwill of the Plaintiffs trademarks caused by the activities of the Defendants and a decree for the said amount be passed in favour of the Plaintiffs;
or*

(vi) An order requiring the Defendants to render accounts of all sums earned by the Defendants through their unlawful and infringing activities referred to in this plaint and a decree for the same in favour of the Plaintiff and against the Defendants;

(vii) An order for furnishing to the Plaintiff by the Defendants the data of all transactions undertaken (including the data of the manufacturers, the number of purchases and sales, names of buyers and suppliers, etc.) during the course of their business relating to goods bearing the registered trademarks of the Plaintiff;

(viii) An order directing the Defendants to provide all details pertaining to their supply chain, warehouses, godowns, etc;

(ix) An order for costs of the proceedings

AND

Any further order as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

2. On July 31, 2018, the parties were referred to the mediation process. A settlement was arrived between the plaintiff and defendant nos. 1 to 6 before the Mediation Centre vide settlement agreement dated February 11, 2019. As there was no settlement between the plaintiff and defendant nos. 7 to 9, they were again referred to the mediation process vide order dated February 22, 2019. The Mediation Centre has again filed a settlement agreement dated May 6, 2019 executed between the plaintiff and defendant nos. 7 & 8. It transpires that the disputes between the plaintiff and defendant no. 9 have not been settled.

3. Today, learned counsel for defendant no. 9 along with defendant no.9 Vinay Bansal states, defendant no. 9 is ready to suffer a decree provided reasonable damages are awarded in favour of the plaintiff.

4. The settlement agreement dated February 11, 2019 running into 20 pages including Annexures A to D and settlement agreement dated May 6, 2019 running into 14 pages including Annexures A to D are taken on record. The suit qua defendant nos. 1 to 8 is decreed in terms of the the said settlement agreements. Decree sheet be drawn accordingly.

5. On the submission of the learned counsel for the defendant no.9, learned counsel for the plaintiff states, he shall press the suit with regard to prayer nos. (i) to (v) and (vii) of Para 57. He also states, he does not press prayers (vi), (viii) & (ix). Noting the said submissions of the learned counsel for the defendant no. 9 and the plaintiff, the suit is decreed in terms of prayers (i) to (iv) & (vii)

6. In so far as prayer (v) for damages is concerned, defendant no. 9 shall pay an amount of Rs.1,75,000/- to the plaintiff as damages as also to partly cover the litigation cost suffered by the plaintiff in pursuing this suit.

7. I also record the submissions of the learned counsel for the defendant no.9, that defendant no. 9 shall destroy all the infringed goods of any description in defendant no. 9 possession within a week from today in the presence of the plaintiff's representative on a date and time fixed mutually by both the parties. He also undertakes to inform the plaintiff of any infringing activity that he may come across in future in respect of any of the plaintiff's trademark. An undertaking to the aforesaid extent shall be filed by the defendant no.9 in this court within a period of 10 days from today. In the undertaking the defendant no. 9 shall annex a photocopy of the draft /

cheque as being paid to the plaintiff in satisfaction of the decree.

8. Decree sheet be drawn in terms of this order qua defendant no. 9 as well.

The suit stands disposed of.

IAs 6391/2018 and 11832/2018

Dismissed as infructuous.

V. KAMESWAR RAO, J

SEPTEMBER 25, 2019/jg