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

+ **CS(COMM) 849/2018**

M/S AERO CLUB

..... Plaintiff

Through

Ms.Shwetasree

Majumdar

and

Mr.Karan Kamra, Advs.

versus

M/S NEW FANCY STORE

..... Defendant

Through

Mr.Avinash

K.Trivedi and Mr.Nitin

Arora, Adv.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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31.01.2019

1. The present suit is filed seeking a decree of permanent injunction to restrain the defendant etc. from manufacturing, selling, offering for sale, advertising, directly or indirectly dealing in products bearing the

‘WOODLAND’ word mark, the Tree Device  and the Woodland Label

 or any other mark deceptively similar thereto amounting to infringement of the plaintiff's registered trademarks. Other connected reliefs are also sought.

2. The matter came up for hearing before the court on 09.05.2018 when this court passed the interim order restraining the defendant from from manufacturing, selling, offering for sale, advertising, directly or indirectly dealing in products bearing the ‘WOODLAND’ word mark, the Tree Device

 and the Woodland Label  or any other mark deceptively similar

thereto amounting to infringement of the plaintiff's registered trademarks.

3. A local commissioner was also appointed to visit the premises of the defendant at New Fancy Store, Shop No.203, Maharaja Building, Bari Market, Ghubbare Wali Street, Sadar Bazar, Delhi.

4. The local commissioner has carried out inspection. As per his report, the counterfeit wallets and promotional materials bearing infringing trademarks have been found at the said premises. He in his report has stated that a total of 23,328 wallets and promotional materials bearing infringed marks have been found. These wallets and promotional materials have been taken into custody and the same have been handed over back on superdari by the local commissioner to the defendant.

5. A perusal of the written statement filed by the defendant would show that there is no denial of the fact that the defendant has been using the infringing trademarks of the plaintiff.

6. As per the report of the local commissioner, the defendant is passing off the product and selling counterfeit products.

7. The learned counsel for the defendant on instruction states that they will not in future manufacture, sell, offer for sale, advertise, directly or indirectly dealing in products bearing the 'WOODLAND' word mark, the

Tree Device  and the Woodland Label  or any other mark deceptively similar thereto amounting to infringement of the plaintiff's registered trademarks. He also submits that as a goodwill gesture they are willing to destroy or hand over counterfeit goods containing the impugned trademark that were given to the defendant on superdari.

8. Keeping in view the above, in my opinion, it is a fit case where a

decree can be passed in favour of the plaintiff and against the defendant.

9. Accordingly, I pass a decree in favour of the plaintiff and against the defendant in terms of prayer para 51 (i), (ii) and (iii) of the plaint. A decree of mandatory injunction is also passed in favour of the plaintiff and against the defendant directing the defendant to hand over to the plaintiff/authorised representative of the plaintiff within two weeks the counterfeit products that were handed over to him by the local commissioner on superdari which displays the impugned trademarks, which is the subject matter of the present suit. The plaintiff shall also be entitled to a decree in its favour for a sum of Rs.4 lakhs on account of expenses and damages against the defendant. In case, an amount of Rs.2.50 lakhs is paid within two weeks, the same would be in full and final settlement of the aforesaid decree of Rs.4 lakhs passed by this court.

10. The suit and all pending applications, if any, stand disposed of as above.

JAYANT NATH, J.

JANUARY 31, 2019/v