

\$~19

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

+ **CS(COMM) 1102/2018**

M/S SHIVA TRADERS

..... Plaintiff

Through: Mr. Satish Kumar, Advocate with Mr.
Umesh Mishra, Advocate.

versus

HIVELOOP TECHNOLOGY PVT. LTD. & ORS. Defendants

Through: Mr. Nitin Sharma, Advocate with Ms.
Disha Sharma, Advocate for
Defendant No. 1.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

% **29.05.2019**

I.A. 8022/2019 (U/o 23 R 3 CPC)

1. This is a joint application on behalf of the parties under Order 23 Rule 3 CPC.

2. The present suit is for permanent injunction restraining infringement of trademark, copyright, passing off, and, delivery up, damages, rendition of accounts etc. It is stated that the parties have amicably resolved the disputes and have arrived at a settlement in terms of para 2 Sub Clause (a) to (g) of the application which reads as under:

(a). The defendant no. 1 admits the plaintiff to be the registered proprietor of the trademark U-BON and other formative marks in

respect of the goods falling in class 09 and other classes of the Trade Marks Act, 1999 and also acknowledges the proprietary right of the plaintiff in the said trademarks as mentioned in the plaint.

(b). The defendant no. 1 also admits and acknowledges the plaintiffs Copyright in the artistic features of the packaging pouches, labels including their distinctive scripts, fonts, positions and placing of features, their respective get ups, lay outs, combination of colours and arrangements of general and descriptive materials in respect of goods falling in class 09.

(c). The defendant no. 1 also admits and acknowledges that the plaintiff is prior user of the trademark U-BON and other formative marks for the goods falling in class 09 as well as in other classes.

(d). The defendant no. 1 also admits the plaintiff to be the owner of Copyright in the artistic works as involved in the trademark U-BON and defendant no. 1 shall not have any objection with respect to the registration of the pending copyright applications of the plaintiff in any manner whatsoever.

(e). That the plaintiff acknowledges that the defendant no. 1 is running its business through mobile application namely UDAAN which provides platform for the third party sellers to sell and purchase the goods on wholesale basis. The listing of the said goods/products is done on the website/application of the defendant no. 1 by the third party sellers being defendant no. 2 to 6 or may be other parties.

(f). The present case has been filed against the Defendant Nos. 2 to 6 on account of infringement and passing off of the trademark and copyright. The present suit has been filed against Defendant No. 1 to disclose the name and detail of unscrupulous persons/entities who are selling their counterfeit products under the trademark U-BON on the platform of the Defendant No. Lit is agreed between the parties that the Defendant No. 1 shall only

allow to list the products of U-BON on its ecommerce website /mobile application, which are listed by the Plaintiff and/or its representatives duly authorized by the Plaintiff in writing. The defendant no. 1 undertakes not to list any products under the trademark U-BON on its e-commerce website/mobile application of any third party. In case of any inadvertent listing of the impugned/counterfeit products under the trademark U-BON by third party sellers, both the parties herein shall take necessary steps to delist/remove the same from the e-commerce website/mobile application in accordance with the law.

(g). The defendant no. 1 has no objection if the present suit is disposed off /decided as per the terms and conditions mentioned herein above.

3. The application is duly supported by the affidavits of the authorised representatives and is also signed by the learned counsels who are present before the Court today.
4. The counsels support the Settlement Agreement and seek decree in terms thereof.
5. I have perused the compromise/settlement arrived at between the parties and find the same to be lawful.
6. A decree is passed, in terms of the Settlement dated 24th May 2019, which along with the Annexure thereto shall form part of the decree sheet.
7. Decree sheet be prepared. The date of 2nd July 2019 stands cancelled.

8. A certificate entitling the plaintiff to refund of court fees be issued and handed over to the counsel for the plaintiff.

9. The application is allowed in above terms.

SANJEEV NARULA, J

MAY 29, 2019

ss