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

\+ CS(COMM) 22/2017

NEW HORIZONS EDUCATION CORPORATION & ORS ..... Plaintiffs

Through Mr.Utkarsh Tewari, Ms.Kavita Mundkr, Mr.Govind K. Chaturvedi and Mr.Vardaan Anand, Advs.

versus

SHRIRAM NEW HORIZONS LIMITED & ORS..... Defendants

Through Mr. Rajshekhar Rao, Ms.Meghna Mishra, Ms. Manmeet Kaur, Mr.Yashvardhan Bandi, Mr.Raghav Kakkar and Mr.Gaurav Singh, Advs.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

O R D E R

% 08.02.2019

1. This suit is filed seeking a decree of permanent injunction to restrain the defendants, servants, etc. from using in any manner whatsoever in relation to any training, educational services and other activities, the name and mark NEW HORIZONS and the NEW HORIZONS logo of the plaintiff which is a registered trade mark of plaintiff No.1. Other connected reliefs are also sought.

2. The case of the plaintiff is that plaintiff No. 1 adopted the name and mark NEW HORIZONS in respect of its services and also adopted and commenced use of a distinctive mark/logo comprising the word New HORIZONS. The use commenced from 2002 however the application for registration was filed earlier. On 14.11.2002, plaintiff No. 3 entered into a joint venture with defendants No. 1 and 2 establishing plaintiffs’ business in

India. On 14.11.2002, a Name Agreement was entered into with defendants No. 1 and 2 permitting defendant No. 1 to use the name NEW HORIZONS as part of its corporate name. Plaintiff No.3 also entered into a Master Franchise Agreement with defendant No. 1 and 2 for the territories of India, Sri Lanka and Bhutan and Unit Franchise Agreements for the territories of Mumbai, New Delhi, Bangalore, Chennai and Kolkata. On 07.05.2009, Master Franchise Agreements was renewed by plaintiff No. 2. Plaintiff No. 2 also entered into a second term of the Unit Franchise for the territory of Bangalore with defendants No. 1 and 2 on 07.05.2009. It is stated that the limited right of licensee and the permission given by the plaintiffs to use the name and trade mark NEW HORIZONS expired by afflux of time. Plaintiff No. 2 intimated defendant No. 1 to cease use of the plaintiffs' name and mark NEW HORIZONS and NEW HORIZONS Label and logo. As needful was not done, it is pleaded that the suit was filed in December 2016.

3. On 24.04.2018, learned counsel for the defendants had stated that the defendants are not using the expression NEW HORIZONS as a trade mark for the business and defendant No. 1 is in the process before the Registrar of Company for removing the word NEW HORIZONS from the name of defendant No. 1. This court bound the defendants to the statement. Learned counsel for the defendants reiterates that the defendants shall not in future use the expression/trade name NEW HORIZONS in any form whatsoever.

4. The only issue which now survives is about damages.

5. It was put to the learned counsel for the plaintiffs as to what was the renewal fees for the Franchise Agreement for permission to use the expression/trade mark NEW HORIZONS. It appears that a sum of USD 10000 for seven years were to be paid plus royalty.

6. Learned counsel for the defendants states that they have almost forthwith after the expiry of the agreement stopped using the name NEW HORIZONS. However, one sub-franchise continued to illegally use the same which also stopped later. If for some reason, sub-franchise continues to violate, the defendant is unable to control it and the plaintiffs would be free to take steps against any such violator.

7. Keeping in view the facts and circumstances of the case, a decree is passed in favour of the plaintiff and against defendants No. 1 and 2 in terms of prayer 42(a) and 42(b) of the plaint.

8. At this stage, it was put to the learned counsel for the plaintiffs keeping into account the nature of the infringement by the defendants, it would be in the interest of justice that a decree may be passed in favour of the plaintiffs for a sum of Rs. 2 lakhs. Learned counsel for the plaintiffs has no objection to the same.

9. Accordingly, a decree is passed in favour of the plaintiffs and against the defendants for a sum of Rs.2 lakhs. Learned counsel for defendant No. 1 on instructions assures that the payment would be made within four weeks from today failing which interest @ 12% per month would become payable from the date of the decree till recovery. As there is an element of settlement on the basis of which the present order is passed, in terms of Section 16A of the Court Fees Act, the plaintiff shall be entitled to refund of 50% of the court fees.

10. Suit and all pending applications stand disposed of.

FEBRUARY 08, 2019/rb **JAYANT NATH, J**