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

+ **CS(COMM)No.36/2020**

ROADGODS AUTOGEAR PVT. LTD.

....Plaintiff

Through : Mr. C.M. Lall, Sr. Adv. with Mr.
Ankur Sangal, Mr. Shantanu Rawat,
and Ms. Sucheta Tokas, Advs.

versus

FUR JADEN

....Defendant

Through : Mr. Siddharth Bambha and Mr.
Chirag Ahluwalia, Advs. with Mr.
Sahil Bansal, AR of the defendant.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

% **26.06.2020**

[Court hearing convened *via* video-conferencing on account of COVID-19]

I.A. No. 4741/2020

1. Allowed, subject to the plaintiff curing the deficiencies referred to in the captioned application within 5 days of the lockdown *qua* this Court being lifted.

CS(COMM)No.36/2020, I.A.No.4239/2020 [under Order XXXIX Rule 4 of the CPC filed by the defendant] & I.A. No. [under Order XXXIX Rule 1 and 2 of the CPC filed by the plaintiff]

2. The record shows that the suit, in the first instance, was filed in the District Court and, thereafter, transferred to this Court resulting in the plaintiff's application under Order XXXIX Rule 1 and Rule 2 of the CPC not being numbered up until now.

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3. I have heard learned counsel for the parties for some time.
4. Mr. Siddharth Bambha, who appears on behalf of the defendant firm, on instructions of Mr. Sahil Bansal i.e. partner of the defendant firm, says that the defendant firm is willing to suffer a decree in terms of prayer clause (a) with the exclusion referred to in paragraph 6.1 below.
 - 4.1 Furthermore, Mr. Bambha says that the defendant firm will pay Rs.1,75,000/- to the plaintiff towards costs.
 - 4.2 Mr. Bambha further submits that all infringing goods available with the defendant firm will be destroyed.
5. Mr. C.M. Lall, learned senior counsel, having heard the statement of Mr. Bambha, on instructions, says that the plaintiff would be satisfied if the suit is decreed in the aforesaid terms and that the plaintiff would not press for damages.
6. Accordingly, the suit is decreed only in terms of prayer clause (a). Prayer clause (a) reads as follows:

“(a) A decree of permanent injunction restraining the Defendant, its proprietors, partners or directors, as the case may be, its principal officers, servants, agents, licensees, assignees and all others acting for and on behalf of the Defendant, from manufacturing, selling, offering for sale, advertising, directly or indirectly dealing in any bags under the Impugned Design (at Page Nos. 48 to 50 of the documents or any other design as may be identical to or deceptively similar with the Plaintiff's Registered Design (at Page Nos. 7-14 of the documents), so as to cause infringement of the Plaintiff's Registered Design bearing no. 289643;”

6.1 It is, however, made clear that the injunction order granted in terms of prayer clause (a) of the plaint, will not bring within its sway, a backpack designed by the defendant firm which contains an anti-theft feature but is otherwise neither identical nor deceptively similar to the registered design of the plaintiff's backpack.

6.2 The defendant firm will withdraw the application made to the Controller of Designs for cancellation of the plaintiff's registered design.

6.3 Furthermore, the defendant firm will pay, towards costs, Rs. 1,75,000/-. The said amount will be paid to the plaintiff within three weeks from today.

6.4 The defendant firm will destroy the stock of infringing product, if any, available with it.

7. The suit and the captioned applications are disposed of in the aforesaid terms.

8. A decree will be drawn up as per the directions contained hereinabove.

RAJIV SHAKDHER, J

JUNE 26, 2020

Aj/KK

Click here to check corrigendum, if any