



2024:DHC:8024



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% **Date of decision: 15th October, 2024**+ **FAO-IPD 10/2022 & CM APPL. 37461/2017****RAJESH MEHTA & ANR**

.....Appellants

Through: Ms. Ekta Sarin, Mr. Amit Ranjan,
Advs.

M- 9810605803

Email: Litigation@Rahulchaudhry.com

versus

OAKLEY INC

.....Respondent

Through: Mr. Rishi Bansal, Mr. Rishabh
Gupta, Advs. (M:9711447472)**CORAM:****HON'BLE MS. JUSTICE MINI PUSHKARNA****MINI PUSHKARNA, J (ORAL)**

1. The present appeal has been filed challenging the order dated 19th July, 2017 passed by the learned Trial Court in *TM No. 359/2016*, whereby the application of the respondent herein for injunction under Order XXXIX Rules 1 and 2 was allowed, and the application of the appellants herein under Order XXXIX Rule 4 CPC, was dismissed by the learned Trial Court.
2. The suit being *TM No. 359/2016 (New TM No. 13702/2016)* has been filed by the respondent herein, in order to restrain the appellants who are the defendants in the suit, on the ground that the appellants/defendants in the suit are infringing the shape trademark / trade dress of the type of goggles named 'OAKLEY FROGSKINS' and 'OAKLEY RADARLOCK', owned by the respondent/plaintiff.

Signature Not Verified

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By: AMAN KUMAR
Signing Date: 17.10.2024
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3. In the suit there is a prayer, seeking to stop the appellant/ defendants in the suit, to stop using the “shape/trade dress” for their products i.e. ‘SASA LIFE STYLE’ and ‘SASA SPORTY’.
4. This court notes that when the present appeal was listed for hearing on 17th October, 2017, the impugned order dated 19th July, 2017 was stayed by this court, which has continued till date.
5. The effect of the order dated 17th October, 2017 passed by this Court is that the appellants herein, who are the defendants in the suit, have continued using the shape/trade dress of the goggles, which is the subject matter of the suit before the learned Trial Court.
6. This Court notes that vide order dated 22nd February, 2024, this Court had directed the learned Trial Court to take steps to appoint a new Local Commissioner for the purposes of recording the evidence. It was further directed that, the pendency of the present appeal before this court, will not delay the proceedings in the trial and that the recording of evidence and conclusion of trial, is expected to conclude within six months, thereto.
7. Learned counsel appearing for the parties have jointly submitted before this court that evidence of the plaintiff, i.e. the respondents in the appeal, is already complete before the Local Commissioner in the Trial Court proceedings.
8. The matter is now at the stage of recording the evidence of the witness of the defendants, i.e., appellants before this Court.
9. This Court further takes note of the submissions on behalf of the appellants, i.e., the defendant in the suit, that they shall produce only one witness, and that the next date before the learned Local Commissioner is, 19th October, 2024.



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10. Considering the fact that the trial is at its final stages, and there is only one witness of the appellants/defendants in the suit, who is required to be examined by the plaintiff/respondent in the suit, it is directed that the evidence be recorded at the earliest, and the trial be concluded in a short frame of time.

11. This Court further notes that the matter is already listed before the learned Trial Court for final arguments on 23rd November, 2024.

12. Accordingly, with the consent of the parties, the order dated 17th October, 2017 passed by this Court, is confirmed, till the pendency of the suit, without expressing any observation on the merits of the said order.

13. It is clarified that the observations made in the order dated 17th October, 2017 in the present appeal, have been passed only for the purposes of the interim application in the present appeal, and shall not be considered as any expression on the merits of the case.

14. The learned Trial Court shall proceed to hear the matter after conclusion of the trial, uninfluenced by any observation made in the order dated 17th October, 2017, passed by this Court or the order dated 19th July, 2017, passed by the learned Trial Court.

15. With the aforesaid directions, the present appeal, along with pending applications, is disposed of.

MINI PUSHKARNA, J

OCTOBER 15, 2024/KG