



\$~34

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(COMM) 523/2022 & I.A. 1241/2024**
RETAIL ROYALTY COMPANY & ANR. Plaintiffs

Through: Mr. Dushyant K. Mahant, Mr. Urfee Roomi, Ms. Janaki Arun, Mr. Ayush Dixit, Mr. Jaskaran Singh and Ms. Anuja Chaudhury, Advocates.

versus

MD SOHAIB ANSARI TRADING AS L F FASHION & ANR.

..... Defendants

Through: Mr. Animesh Rastogi, Ms. Neha Rastogi, Mr. Chirag Kapoor and Mr. Vibhav Singh, Advocates with Mohd. Sohaib Ansari Defendant No. 1- (in-Person).

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

21.02.2024

%

1. Mr. Animesh Rastogi, counsel for the Defendants, is present along with Mohd. Sohaib Ansari, Defendant No. 1. On instructions from his client, Mr. Rastogi reiterates the statement already noted in the order dated 18th January, 2024, to the effect that the Defendants do not intend to use any of the impugned marks which have been restrained by this Court, through order dated 1st August, 2022, specifically enumerated in paragraph no. 22 of the said order.

2. As regards, the Defendants' label/ mark
“”/ “AMERICAN SKY”, is concerned, there is already a clarity. The said mark is not subject matter of the present suit and the Plaintiffs have no objection to the Defendants using the said mark.



3. Mr. Rastogi further states that the Defendant. No.1 undertakes to withdraw their trademark application no. 4913222.
4. In light of the above, with a view to amicably resolve the matter, Mr. Rastogi states that the Defendants would have no objection to the suit being decreed in terms of paragraph no. 66 (a) to (h) of the plaint. However, Mr. Rastogi states that Defendants do not have the financial means to bear the litigation cost which is being insisted upon by the Plaintiffs.
5. Mr. Dushyant K. Mahant, counsel for the Plaintiffs, on the other hand, relying on the affidavit of cost filed, states that the Plaintiffs have spent an amount of Rs. 18,31,104.50/- towards litigation cost. Mr. Mahant further points out that huge amount of infringing goods were recovered from the Defendants' premises and since the Plaintiffs are not insisting on the award of damages, however, the Court must consider awarding actual litigation cost in their favour.
6. Having considered the above, the following directions are issued:
 - (a) The suit is decreed in favour of the Plaintiffs and against the Defendants in terms of in terms of paragraph no. 66 (a) to (h) of the plaint.
 - (b) The infringing goods which were seized by the Local Commissioner, are presently on *superdari* with the Defendants. Regarding these infringing goods, there is a controversy as to what labels such goods bear. According to Mr. Rastogi, the goods bearing the mark "AMERICAN SKY" have also been seized by the Local Commissioner. Mr. Mahant, on the other hand, states that the infringing goods would need to be re-inspected to confirm the above.
 - (c) Accordingly, it is directed that re-inspection of such infringing goods be carried out in the presence of representatives of both the parties. The



goods which only bear the mark “AMERICAN SKY” / “AMERICAN SKY”, shall be returned to the Defendants. The goods which bear any of the marks mentioned in the injunction order dated 1st August, 2022, shall be altered so as to ensure that the infringing labels from the said articles are removed. In case that is not possible, then Plaintiffs shall be entitled to destroy the same in accordance with law.

7. This brings us to the question of award of cost. In the opinion of the Court, since the Defendants have agreed to withdraw their trademark application and suffer a decree of injunction, there is an element of amicable resolution in the instant suit, and therefore it would be appropriate to direct the refund of the court fees. However, in addition to that, Rs. 5,00,000/- is awarded in favour of the Plaintiffs and against the Defendants towards the litigation cost.

8. As regards the prayer for declaration of Plaintiffs’ marks as ‘well-known mark’, the Court is not inclined to grant such a declaration, as there is no contest in the present suit.

9. Registry is directed to issue a certificate for refund of court fees.

10. The suit is decreed in the above terms and is disposed of, along with pending applications.

SANJEEV NARULA, J

FEBRUARY 21, 2024/as