TM No. 73/18
New TM No. 205/18
adidas AG vs. Kavyas Enterprises.

03.10.2018

Fresh trademark suit received by way of assignment. It be checked and registered.

Pr: Ld. Counsel Ms. Priya Nagpal for the plaintiff.

This is a suit for reliefs of permanent and mandatory injunction with the allegation of infringement of registered trademark. Plaintiff is a company duly registered under the Companies Act 1956 and is engaged in the business of manufacturing, export, distribution, sale and retail of all kinds of apparel and other accessories.

It is mentioned that plaintiffs are owner of trademark "adidas" and its logos. It is further mentioned in the plaint that plaintiff has earned a substantial amount of goodwill and business under the above said trademarks, the details of which are mentioned in the plaint. It is mentioned that trademark "adidas" has its peculiar artistic features and colour combination being used for the products manufactured, distributed and sold by the plaintiff company. The above said trademark and copyright is under the ownership of plaintiff. Such trademark and copyright is being used by plaintiff company for last several decades.

It is alleged that defendant is also selling, stocking and distributing the counterfeit products bearing the falsified trademark and copyright of the plaintiff company. The defendant is stocking and selling the counterfeit

product in packaging which is deceptively similar/same using the same trademark and copyright which would normally create confusion and deceive general public interested to purchase products of plaintiff company.

The present suit has been filed by the plaintiff company seeking to get permanent and mandatory injunction against counterfeiting activities of the defendant and other persons involved in the similar business who are infringing the registered trademark “adidas” and its logos.

Plaint is annexed with an application U/o 39 Rule 1 and 2 CPC as well as an application U/o 26 Rule 9 CPC.

Ld. Counsel for the plaintiff submit that since the activities of the defendant is causing huge monetary loss to the plaintiff company by selling/ stocking counterfeit products bearing the registered trademark “adidas” and its logos of plaintiff company. Hence, ad-interim injunction to restrain the defendant from infringement of registered trademark and copyright be granted.

Considering the submissions and the material placed on record, I am of the view that the plaintiff has been able to make out a prima facie case for grant of an *ex-parte* interim injunction as there is sufficient material showing the defendant is infringing the plaintiff's trademark and copyright by using the same product with infringing the word mark and trade dress so as to deceive general public and also to cause losses to plaintiff company. As such balance of convenience also lies in favour of plaintiff and, if interim order is not passed, the plaintiff will suffer irreparable loss and injury. Accordingly, defendant and his servants, agents, stockiest and dealers are restrained from using the product as enumerated above in infringement of

trademark and copyright “adidas” being owned by plaintiff company for such products.

In terms of the prayer made on behalf of plaintiff company regarding appointment of Local Commissioner with the prayer for visiting and entering into the premises of defendant as per the details given in the plaint along with the representative of the plaintiff company for searching the products being sold in infringement of trademark “adidas” and also to seize and seal such infringing evidence in the provision of Local Commissioner.

Accordingly, **Advocate, Ankit Agarwal, Address- 41, Jangpura Road, Bhogal, New Delhi, Mobile No. 9580533716, 9560831334 (Enrollment No. D/764/2017)** is hereby appointed as Local Commissioner in respect of search and inspection of the premises of defendant on the given address *i.e. Kavyas Enterprises, E-16/929, Bus Wala Complex, Main Tank Road, New Delhi-110005* and for any other place in the same market area as well as any other persons and seize and secure all infringing / counterfeited products i.e. apparels and other accessories etc and any other material including any machinery reproducing the plaintiff's artistic work/ infringing the plaintiff's copyright and trademark and / or in any manner using the impugned packaging or any other packaging similar to the impugned packaging respectively. Ld. Local Commissioner shall prepare inventory of goods and material seized from the above address and release them to defendant or its official on *superdari* after sealing the seized articles in bags and produce a sample of impugned product in the Court.

Local Commissioner shall also put their initials on the bags and some of the incriminating material with indelible ink.

It is also being made clear that Ld. Local Commissioner will also visit any other place in the same locality if there is a cogent information available regarding such material being stored / sell / used in infringement of registered trademark of the plaintiff.

In this regard it is being made clear that expenses of journey and if required stay of Ld. Local Commissioner will be borne by plaintiff company beside their fee.

Ld. Local Commissioner may take help of the local police in case of need. Local Commissioner will also ensure taking of photographs of infringing products and execution proceedings. The concerned Senior Superintendent of Police is directed to provide all possible help to Local Commissioner in smoothly carrying out the commission in case the same is required.

Fee of the Ld. Local Commissioner is fixed at Rs. 40,000/- which is to be paid in advance, besides which, incidental and travel expenses are to be borne by the plaintiff at first instance.

The commission be carried out within 15 days from today after giving notice of commission to the defendant at the spot by showing copy of order of this court. In case defendant is not found available on the given address, Local Commissioner will carry out the proceedings as per law and inspect the premises in the presence of employees / officials found there and will affix the notice / copy of order in this regard on that address. In case the premises of the defendant is found to be locked the same will be open with

the help of the local police which will carry out the proceedings by break open the locks of the premises. Ld. Local Commissioner shall submit their report within two weeks of execution of the commissions. A complete paper book be also provided to Ld. Local Commissioner.

In the meantime, let summons of the suit and notice of accompanying application be sent to defendant on PF, RC and Speed Post for **08.01.2019** Plaintiff shall comply the provisions of Order 39 Rule 3 CPC within 15 days.

(MURARI PRASAD SINGH)
ADJ-3 (CENTRAL)
TIS HAZARI COURTS
DELHI/03.10.2018

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