



BEFORE THE LD. DISTRICT JUDGE
PATIAL HOUSE COURTS, NEW DELHI

Civil Suit No. _____ of 2017

IN THE MATTER OF:

M/s Jay Garment Accessories
Through its Proprietor
Shri Bijay Singh Mohanot
No. 5, Charles Campbell Road
Cox Town
Bangalore - 560 005

...Plaintiff

VERSUS

1. Shri Vipul Sethi
Proprietor
M/s Avirat Packaging
A-126, HIG, RIICO Colony
Abu Road, Distt. Sirohi-307 026
Rajasthan
2. M/s V K Traders
G-49, Gali No. 1
Pratap Nagar
Delhi -110 007

...Defendants

AMENDED SUIT FOR PERMANENT INJUNCTION RESTRAINING INFRINGEMENT OF TRADE MARK, PASSING OFF, FOR RENDITION OF ACCOUNTS OF PROFITS/DAMAGES, DELIVERY UP, ACTS OF UNFAIR COMPETITION, ETC.

The Plaintiff abovesigned most respectfully submit as under:

Dispute in Brief

1. By way of the present suit, the Plaintiff complains against the Defendants for dishonestly adopting a label/trade dress/packaging being deceptively similar to the Plaintiff's Arrow Tag Pins label/ trade dress/ packaging for competing goods i.e. Tag pins, Loop Pins and is accordingly seeking *interalia* a decree of permanent injunction against the Defendants from dealing in goods under such label/trade dress/packaging amounting to

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05.2017

JAY GARMENT ACCESSORIES VS. VIPUL SETHI AND ANR.

registered.

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

Present: Sh. Sachin Gupta-Ld. counsel for plaintiff.

Ld. counsel seeks sometime to show the original documents.

Heard. File perused.

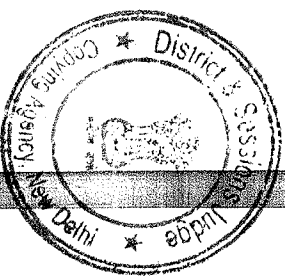
In view of submissions made, be put up on 18.05.2017.


(Fekha)

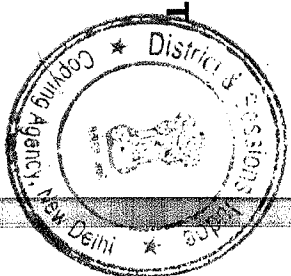
ADJ-05/NDD/PHC
New Delhi/15.05.2017

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3/2/17



IN THE COURT OF MS. REKHA, ADDITIONAL DISTRICT
JUDGE, NEW DELHI DISTRICT, NEW DELHI



TM NO. 107/2017

M/S JAY GARMENT ACCESSORIES,

Through its Proprietor,

Sh. Bijay Singh Mohonot,

No. 5, Charles Campbell Road,

Cox Town,

Bangalore-560 005

..... Plaintiff

Vs.

1. Sh. Vipul Sethi

2. V.K. Traders

..... Defendants

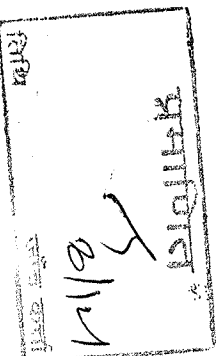
18.05.2017

Present: Sh. Sachin Gupta-Ld. Counsel for the plaintiff.

Ld. counsel submits that he is moving an application U/o VI Rule 17 CPC read with Section 151 CPC on behalf of the plaintiff alongwith amended plaint. It is stated by ld. counsel that certain amendments are necessary to decide the matter in controversy which have been inadvertently left out, hence this present application. It is also stated that through this application under disposal, the plaintiff/applicant wants to add para no. 16 (a) and 18 (a).

Heard. File perused. To decide the matter in controversy, the amended sought through this application is allowed

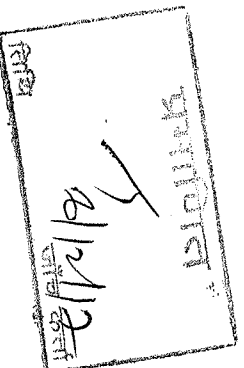
M/s. Jai Garment Accessories Vs. Vipul Sethi & Anr.



and Amended Plaintiff is taken on record.

Perusal of file shows that present suit is for Permanent Injunction restraining Infringement of Trademark, Passing Off, for rendition of accounts of profits/damages, delivery up, Acts of unfair competition etc. Through this suit, it is prayed that this Court may pleased to grant a decree for permanent injunction restraining the defendants, their directors, partners or proprietors, as the case may be, their assignees in business, franchisees, licensees, distributors and agents from manufacturing, selling, offering of sale, exporting, importing, directly or indirectly dealing in tangs pins, loop pins or any allied or cognate goods used in Sewing and Garment industry bearing Arrow Tag pins label or any other label, which may deceptively similar to plaintiff's Arrow Tag Pins lable amounting to infringement of plaintiff's registration under No. 871619 and bearing trade mark/label/trade dress/packaging/colour combination as case may be deceptively similar with the plaintiff's ARROW Tag Pins trade mark/label/trade dress/packaging/colour combination amounting to passing off its product as that of the plaintiffs' and an order for delivery up of the infringing goods of the defendants including all offending labels, cartons, packagings, blocks, dies, printed and advertising material etc. to an authorised representative of the plaintiffs for destruction/erasure and an order for

M/s Jai Garment Accessories Vs. Vipul Sethi & Anr.



rendition of accounts of profits earned by the defendants from sale of impugned goods and a decree for the amount so found due be passed in favour of the plaintiff and against the defendants.

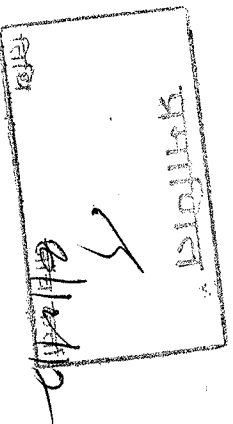
Heard. File perused.

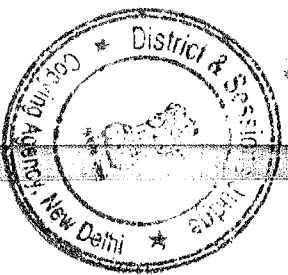
Issue summons of the suit and notice of the application U/o 39 Rule 1 and 2 CPC and application u/o 26 Rule 9 CPC to the defendant on filing of PF/RC.

Ld. Counsel for plaintiff has been prayed for ad-interim ex-parte injunction U/s 135 of Trade Mark Act.

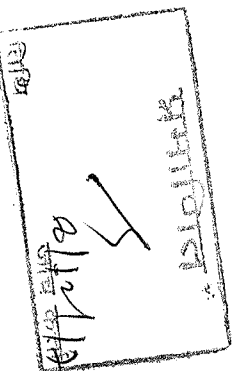
Submissions heard. File perused.

The case of the plaintiffs is that the plaintiff is the proprietorship firm of Sh. Bijay Singh Mohonot having its office at No. 5, Charles Campbell Road, Cox Town, Bangalore-560 005. It is also stated that the plaintiff is the member of the Mohonot Family and belongs to the Jay Group of Companies (hereinafter referred as Jay Garment) and is having the business of manufacturing and marketing plastic tag pins/loop Pins/Fasteners (which holds the label or price tag attached to a garment) in a distinctive packaging having a colour combination of Blue and White, plastic tag guns (help pierce the plastic tag pins into the garments) since 28.12.1993 and the plaintiff alongwith its other subsidiaries expanded its business to





manufacturing Textile Cleaning Spray Guns and other connected goods such as Trimmers used in the garment industry from time to time and the Jai Group is Asia's leading manufacturers and exporters of the above-mentioned products. It is also stated that the plaintiff's predecessor bonafidely and honestly adopted the trade mark **ARROW** in the year 1994 for manufacture and sale of plastic tag pins, tag guns, implements and tools and extended the use of said trade mark for its other products namely Textile cleaning spray guns, trimmers etc. It is also stated that the plaintiff has not only sold its products bearing the trade mark **ARROW** in distinctive packaging's extensively throughout the country through their various distributors and dealers but are also exporting their aforementioned products to over fifty countries. It is also stated that plaintiff's group firm M/s Jai Plastic Company has been granted registration of such trade marks by the Registrar of Trade Marks and trade mark is in force, valid and subsisting and has been registered in favour of the plaintiff. Hence, the plaintiff has exclusive right to use the ARROW tag pins, Label/trade dress/ packaging and ought to be protected against imitation, confusion, deception, dilution and unfair competition in trade. It is also stated that the plaintiff's **ARROW** Tag Pins have been sold in a distinctive blue colour cubical box with Arrow Pins written in black lettering in the center of a light coloured circle

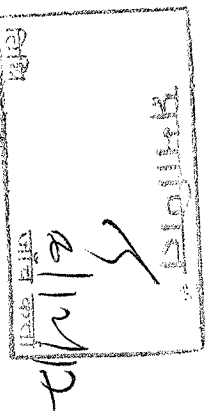




since the year 1994-95 and the colour have become lighter over the years, as against what have been registered, being part of trade dress improvements in order to avoid imitators from time to time and although the scheme of colour combination has remained the same, the packaging containing the present shade of colours has been in use at least since early 2000s and the plaintiff has placed on record its old brochure, which depicts the aforementioned packaging/label/trade dress and the said brochure was also part of the ARROW trade mark infringement suit being CS No. 523/2009 which was decreed by Hon'ble High Court of Delhi vide order dated 06.09.2011. It is also stated that the consumers at large and trade distinguish, identify and associates the distinctive ARROW TAG PINS trade mark/label/trade dress and packaging, its overall get up, colour combination and packaging when used in relation to tag pins donating source and origin of such products with the plaintiff and none else and Arrow Tag pins, label/trade dress/packaging, it's overly get up, colour combination has thus become synonymous of a brand owned by the plaintiff indicating ^{source} and origin of products, which are known for quality and high standard products.

It is also stated that the plaintiff has been regularly and continuously promoting its distinctive trademark through extensive advertisements, publicities promotions

M/s Jai Garment Accessories Vs. Vipul Sethi & Anr.

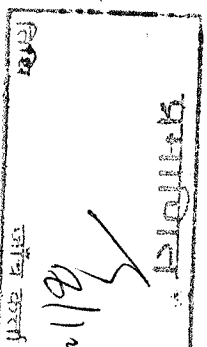


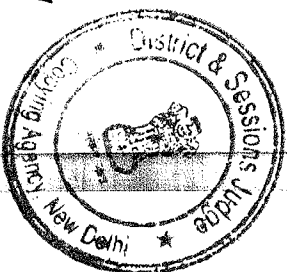
and marketing research and has been spending enormous amounts of money, efforts, skills and time thereon.

It is also stated that th defendant No. 1 namely Sh. Vipul Sethi is the proprietor of M/s Avirat Packaging having his office at A-126, HIG, RIICO Colony, Abu Road, Distt.-Sirohi-307 026, Rajasthan and is in the business of manufacturing & trading of garment accessories-Tag Pin & loop pins and the defendant No. 2 the distributor of defendant No. 1 in whole Delhi including New Delhi area without any right.

It is also stated that the sometime in the first week of April, the plaintiff came to know that there was exact replica of plaintiff's **ARROW** tag Pins trade dress/packaging under the brand **AVISTER** selling at Delhi Markets including New Delhi Area without issuance of invoice and the defendants product under the impugned trade dress/packaging was purchased by the plaintiff's representative Sh. Dharmendra Manoth from the shop namely Style Tailors TM Shop, Shop No. 33, Mohan Singh Place, Connaught Place, New Delhi on 03rd April, 2017 without invoice and upon enquiry, the plaintiff came to know that tag pins under the brand AVISTER are being sold in packaging, which is identical to ARROW Tag Pin label/trade dress/packing and the impugned products are being manufactured by defendant No. 1 and are being sold in the whole of Delhi by defendant No. 2. The grievance and objection of the plaintiff is limited to the use of blue

Vipul



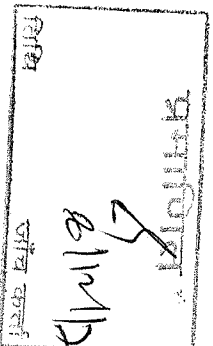


colour box and the impugned label where the brand **AVISTER** is written in a light coloured circle, which is an outright and fraudulent imitation of plaintiff's **ARROW Tag Pins** trade mark/label/trade dress/packaging in terms of its colour combination, lay out, get up and arrangement of features. It is also stated that sequencing the colour, their arrangement upon the label and overall impression created by them collectively. Such a consumer is likely to get confusion on account of similar packaging, colour combination, ones all get up and trade dress and by doing this, the defendants want to cash upon the reputation and goodwill built up by the plaintiff in this trade and derive undue and unlawful profit therefrom in violation of statutory rights of the plaintiff and the defendants have unethically and unlawfully copied the whole of plaintiff's ARROW Tag Pins, trade dress/packaging/label which can never be a matter of co-incidence. In fact and circumstances of the case, present suit has been filed.

I have heard the arguments and perused the material available on record.

In view of the above submissions, the plaintiff has established a prima facie case in their favour and balance of convenience also lies in their favour. Plaintiff has shown prime facie that in case defendant^{are} is not restrained, it shall cause irreparable injury to the business and goodwill of the plaintiff which can not be compensated

M/s Jai Garment Accessories Vs. Vipul Sethi & Anr.

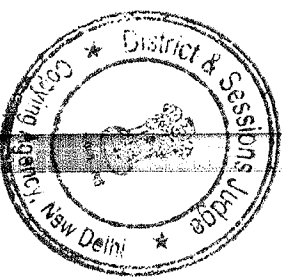
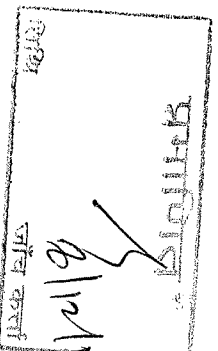


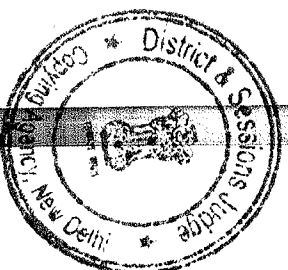
in terms of money.

Hence, the defendants, their directors, partners or proprietors, as the case may be, their assignees in business, franchisees, licensees, distributors and agents are hereby restrained till further orders from manufacturing, selling offering for sale, exporting, importing, directly or indirectly dealing in tag pins, loop pin for sewing and garment industry or any allied or cognate goods under the impugned Avister label/packaging/trade dress/combination of colours/artistic work or any other label/packaging/trade drss/artistic work as may be deceptively similar with the plaintiff's **ARROW** Tag Pins artistic work/label/packaging/trade dress/combination of colours amounting to infringement of plaintiff's trade mark or amounting to infringement of plaintiff's trade mark or amounting to passing off their goods as those of plaintiff's.

At this stage, Ld. Counsel for the plaintiff also presses his application **U/o 26 Rule 9 read with Order 39 Rule 7 CPC and Section 135 of TRADEMARKS ACT 1999** for the appointment of Local Commissioner with direction to him to conduct a search at G-49, Gali No. 1, Pratap Nagar, Delhi-110007 or any other premises ~~where any other premises~~ where the infringing goods or packaging under the impugned mark Avister label being deceptively similar to Arrow Tag Pins

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label/trade dress/packaging/colour combination pertaining thereto are stocked/stored as per the information received by the Id. Local Commissioner and for preserving and protecting infringing evidence as per Section 135 of the Trade Mark Act, 1999.

Heard. File perused. Accordingly, I appoint:-

Sh. Aditya Chandra, Ld. Advocate, Office at A-230, 2nd Floor, Defence Colony, New Delhi, Mobile No. 9717444444 as Local Commissioner to visit the premises of defendant at :-

G-49, Gali No. 1, Pratap Nagar, Delhi-110047.

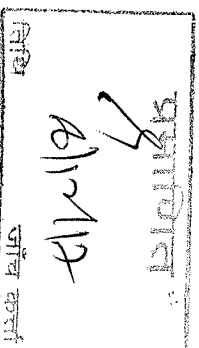
The fee of the Local Commissioner is fixed at Rs.75,000/- (Rs. Seventy Five Thousand only) exclusive of travel and pocket expenses to be paid in advance.

The commissions shall be carried out preferably within 15 days from the date of receipt of the order, after giving notice of the commission to the defendants at the spot.

Ld. Local Commissioner to submit his report within two weeks of the execution of the commission. The complete paper book provided to Ld. Local Commissioner by the plaintiff along with copy of this order.

The Local Commissioner shall seize all infringing goods or packaging under the impugned Mark Avister label being deceptively similar to **Arrow Tag Pin** label/trade dress/packaging/colour combination pertaining thereto

M/s Jai Garment Accessories Vs. Vipul Sethi & Anr.



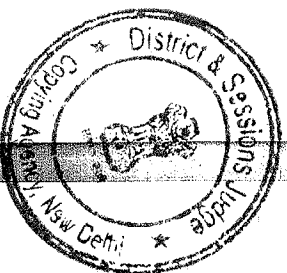
and the Local Commissioner shall also seize its promotional materials, stationery, dyes, blocks etc at the aforementioned place of the defendant.

After inventorising the stock, the same be released to the defendant No. 2 on supardari or in case of non availability of defendant No.2 may be given on supardari to the representative of the plaintiff. The Local Commissioner shall sign the account books, if any, of the said defendant No. 2 including ledgers, cash register, stock register, invoices, books etc.

The Local Commissioners would be entitled to break open the locks in execution of the commission. On the request made by Ld. Local Commissioner the concerned SHO or the Deputy Commissioner of Police shall immediately provide police aid. The Local SHO/ACP/DCP are also directed to provide all possible help to Ld. LC in smooth carrying out of Commission. One copy of this order be supplied to Local SHO through plaintiff. All the Police Official shall maintain absolute secrecy for effecting execution of communication.

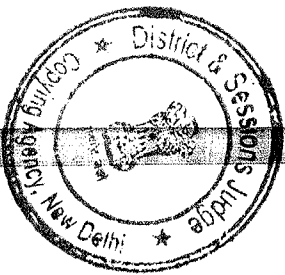
The plaintiff may also arrange for photography, videography etc., if required. The representatives of the plaintiff alongwith the counsel(s) of the plaintiff are permitted to accompany the Local Commissioner at the spot.

Compliance of Order 39 Rule 3 CPC be made



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within 10 days after receipt of the order.

As already ordered, issue summons of this suit and notice of the applications to the defendants on filing of PF/RC/AD. Steps be filed within two weeks from today.

Be put up on 17.08.2017.

Copy of this order be given to the plaintiff Dasti as prayed.

(REKHA)

**ADDITIONAL DISTRICT JUDGE-05
PATIALA HOUSE COURTS,
NEW DELHI DISTRICT, NEW DELHI
18.05.2017**

1st Copy

Received

18/5/17

R/madar

02/10/17 AD.

RGD

03-06-17

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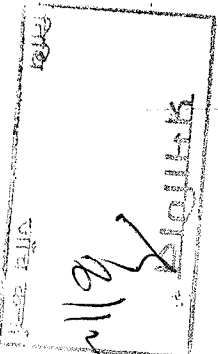
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L.C. Report Filed

on 15-09-17

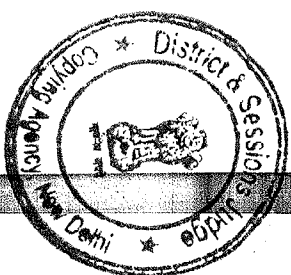
M/s Jai Garment Accessories Vs. Vipul Sethi & Anr.

15.9.17



FM No.107/2017

JAY GARMENT ACCESSORIES VS. VIPUL SETHI AND
ANOTHER
17.08.2017



Present: Sh. Divyaish Sivastava-I.d. Proxy counsel for counsel
for plaintiff.

Sh. Nikhil-I.d. Proxy counsel for counsel for defendant
no. 1 and 2.


Ld. Proxy counsel for defendant no.1 and 2 submits that
he is filing memo of appearance of Aparna Jain and further submits
that same is being filed on behalf of the defendant no.1 and 2.

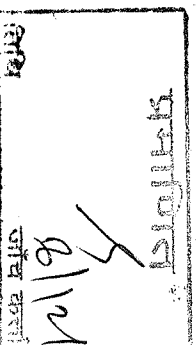
Report on process to V.K. Traders-defendant no.2 for
21.07.2017 perused. Same received back with report of service by
one Varun who told himself as the proprietor of V.K. Traders.

Ld. Proxy counsel for defendant no.1 and 2 seeks time
to file the WS. Heard. File perused.

In view of submission made, time is granted for filing
the WS, same be filed within two week from today with advance
copy of the same be supplied to the other party at least one week
before NDOH and the point whether the WS will be taken on record
is left open.

In view of submission made, be put up on 21.12.2017.


(Rekha)
ADJ-05/NDD/PHC
New Delhi/17.08.2017



No. 107/2017

JAY GARMENTS ACCESSORIES VS. VIPUL SETHI & ANOTHER

28.08.2017

File taken up today on an application u/o 39 Rule 4 for vacation/suspension of ex-parte injunction order against the defendants along with affidavit, WS, list of documents, some annexures, vakalatnama, proof of service and index.

Present: Ms. Aparna Jain-Id. Counsel for defendants.

Heard. Application perused.

Issue notice to the application u/o 39 Rule 4 to the plaintiff as well as to his counsel on filing of PF/RC. PF be filed within 02 days from today.

At request, be put up on 30.08.2017.

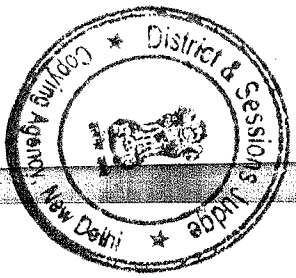
(Rekha)
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New Delhi/28.08.2017

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28.8.17



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28/08/17

TM NO. 107/17

JAI GARMENTS ACCESSORIES VS. VIPUL SETHI AND ANR.

30.08.2017

Present: Sh. Sachin Gupta-Id. Counsel for plaintiff.

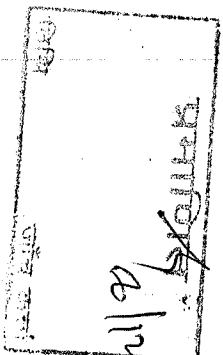
Ms. Aparna Jain-Id. Counsel for defendant.

Ld. counsel for plaintiff wants to give his statement. Let his statement be recorded. His statement is recorded separately. Plaintiff shall be bound by the statement given by ld. counsel for plaintiff today in the court.

In view of submissions made, be put up for consideration on statement on 04.09.2017.



(Rekha)
ADJ-05/NDD/PHC
New Delhi/30.08.2017



Recd copy of 30.08.17
in court
5/9/17
Appca D
Counsel for defendant

TM NO. 107/17

JAY GARMENTS ACCESSORIES VS. VIPUL SETHI AND ANR.

04.09.2017

Present: None for the plaintiff despite repeated calls.
Ms. Aparna Jain-Id. Counsel for defendant.
Be awaited.


(Rekha)

ADJ- 05/NDD/PHC
New Delhi/04.09.2017

At this stage, file again taken up.

Present: Sh. Sachin Gupta-Id. Counsel for plaintiff.

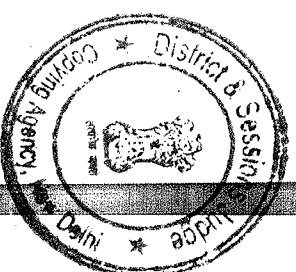
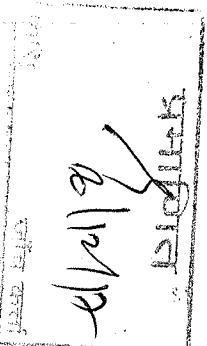
None for the defendant despite repeated calls.

Ld. counsel for plaintiff submits that he is filing reply to the defendant No. 1's application Under Order 39 Rule 4 CPC alongwith supportive affidavit alongwith spare copy. Spare copy be given to the other party against due receipt. Ld. counsel also submits that he is moving an application U/o 39 Rule 2A R/w Section 151 CPC arising out of the disobedience and non-compliance with the order dated 18.05.2017 alongwith some annexures.

Be put up on 06.09.2017.


(Rekha)

ADJ- 05/NDD/PHC
New Delhi/04.09.2017



TM NO. 107/17

M/s Jai Garment Accesories VS. Vipul Seth & Anr.

06.09.2017

Present: Sh. Sachin Gupta-Ld. counsel for plaintiff.

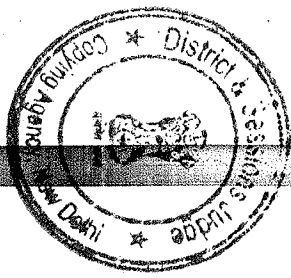
Ms. Aparna Jain-Ld. counsel for defendant.

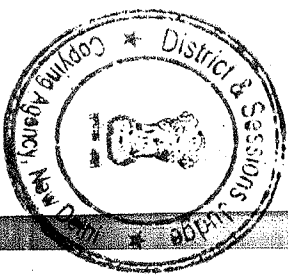
Heard. File perused. Perusal of file shows that on 18.05.2017, interim order was passed restraining the defendants, their directors, partners or proprietors, as the case may be, their assignees in business, franchisees, licensees, distributors and agents from manufacturing, selling offering for sale, exporting, importing, directly or indirectly dealing in tag pins, loop pin for sewing and garment industry or any allied or cognate goods under the impugned Avister label/packaging/trade dress/combination of colours/artistic work or any other label/packaging/trade drss/artistic work as may be deceptively similar with the plaintiff's **Arrow Tag Pins artistic** work/label/packaging/trade dress/combination of colours amounting to infringement of plaintiff's trade mark or amounting to infringement of plaintiff's trade mark or amounting to passing off their goods as those of plaintiff's till further order.

Ld. counsel for plaintiff submits that the plaintiff company has no objection if the defendants, their

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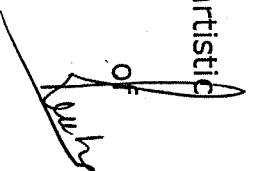
११/०९/१७
२१/११/१७






directors, partners or proprietors, as the case may be, their assignees in business, franchisees, licensees, distributors and agents are restrained only to the extent from using label/packaging/trade dress/artistic work as may be deceptively similar with the plaintiff's **Arrow Tag Pins**, artistic work/label/packaging/trade dress/combination of colours. Ld. counsel also submits that his statement dated 30.08.2017 may also kindly be read as part of this context. Heard. The plaintiff company shall be bound by the statement made by ld. counsel for plaintiff today in the Court.

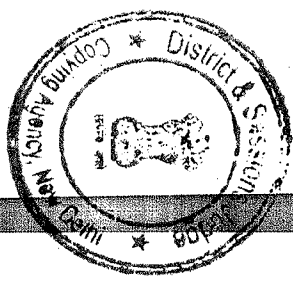
Heard. File perused. In view of submissions made today as well as statement dated 30.08.2016 and in given fact and circumstances of the case, the defendants, their directors, partners or proprietors, as the case may be, their assignees in business, franchisees, licensees, distributors and agents are hereby restrained till further orders from using label/packaging/trade dress/combination of colours/artistic work or any other label/packaging/trade dress/artistic work as may be deceptively similar with the plaintiff's **Arrow Tag Pins** artistic work/label/packaging/trade dress/combination

of 

RECORDED


colours. Order dated 18.05.2017 be read accordingly.

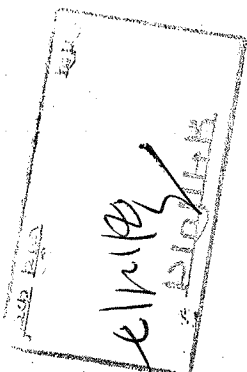
In view of submissions made, be put up on
31.10.2017 for filing the Rejoinder to the reply of the
application U/o 39 Rule 4 CPC. Copy of this order be given
dasti as prayed for.



[Signature]
(Rakha)
ADJ-05/NDD/PHC
New Delhi/06.09.2017

[Signature]
9/11/17

Copy Received
[Signature]
06/09/17



R/msda

Honble HRA Court

order dated - 08-09-2017

Received on 29-09-2017

[Signature]
29-9-17

R/msda

~~Assistant of Sessions Judge~~

~~ADJ-05~~
[Signature]

CS No.107/2017

JAY GARMENTS ACCESSORIES VS. VIPUL SETHI AND ANR.

31.10.2017

Present: None for plaintiff despite repeated calls.

Ms. Aparna Jain-Id. Counsel for defendant.

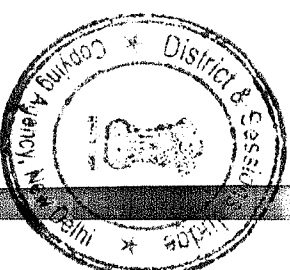
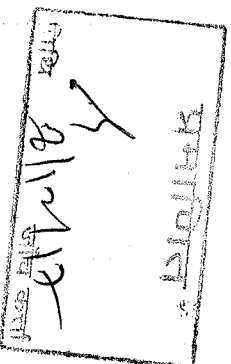
Ld. Counsel for defendant submits that she is filing reply to the application u/o 39 Rule 2A r/w Section 151 CPC, rejoinder to the reply on behalf of the plaintiff to the defendant no.1's application u/o 39 Rule 4 CPC along with supporting affidavit and index along with spare copy. Spare copy be given to the other party if appeared against due receipt.

Be put up on 29.01.2018.



(Rekha)

ADJ-05/NDDD/PHC
New Delhi/31.10.2017



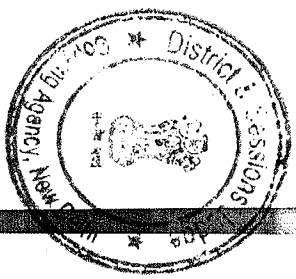
117

TM NO. 107/17

JAI GARMENTS ACCESSORIES VS. VIPUL SETHI AND ANR.

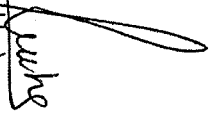
30.08.2017

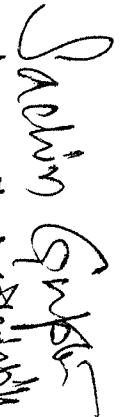
Statement of Sh. Sachin Gupta-Id. counsel for plaintiff, Enrollment No. D-759/04, Office at A-1, Vasant Kunj Enclave, New Delhi-78.
At Bar



I state that I am counsel for plaintiff firm and my Vakalatnama is on record. I further state that I have no objection if trademark 'Avister' is used by the defendant No. 1 for his business and I further have no objection if the goods are manufactured, offered for sale, export, import, directly or indirectly, deal in tag pin, loop pin for sewing and garment industry or any allied or cognate goods under the trademark/device/artistic work 'Avister' registered under Registration No. 2980833 Certificate No. 1403779 by defendant No. 1 or any other person on his behalf. I also state that I have no objection if the injunction order dated 18.05.2017 is clarified to this extent. I am giving this statement on instructions/on behalf of the plaintiff firm and the plaintiff firm shall be bound by the statement given by me today in the court.

RO & AC


(Rekha)
ADJ.-05/ND/PHC
New Delhi/30.08.2017


Sachin Gupta
Advocate/Amicus

D-759/04.
30/8/2017

