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

+ CS(COMM) 1130/2016
AAP KI PASAND & ANR

.....Plaintiffs

Through: Mr. Ashwin Kumar D.S.,
Advocate alongwith Mr.
Sanjay Kapur, PW-1

versus

HIMALAYAN LEAF PVT LTD

.....Defendant

Through: Mr. Sandeep Bajaj and Ms.
Aakanksha Nehra,
Advocates

CORAM:

SH. ANIL KUMAR (DHJS), JOINT REGISTRAR (JUDICIAL)

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ORDER
21.12.2019

Proceeding-11.00 AM to 12.30 PM

Evidence recorded- 11.00AM to
12.30 PM

Pages 03

PW-1 present.

His cross examination is concluded.

List the matter for remaining PE on 23.03.2020.

ANIL KUMAR (DHJS)
JOINT REGISTRAR (JUDICIAL)

DECEMBER 21, 2019/rhc

21.12.2019

Item No. 2

CS (COMM) No. 1130/2016

PW1 Mr. Sanjay Kapur (Recalled for further cross-examination after 22.08.2019).

On SA.

XXXXXX by Mr. Sandeep Bajaj counsel for the defendant

Q. Can you show from the pleadings or the record where you have stated that you procure the packaging material from your own factory?

A. As in answer No. 5 (answer to Q.No. 5 dated 22.08.2019) some materials are out sourced and some materials are produced within the factory. It is not possible to recollect if this has been stated in the plaint or pleadings. The size of the elements has clearly been stated in a table in the plaint and the elements are not readily available in the specific sizes in the outside market place off the shelf.

Q. Can you specify which element of packaging is outsourced and which is produced within own factory?

A. The first element is the paper pouch in which Tea is packed. This paper pouch is manufactured by captive persons who have been issued with the dies to cut paper to specific size and then construct the paper pouch with aluminum lining pasted inside for moisture barrier. The fabric bag is

produced within the factory by tailors and others employed by us under our own rolls. All printed materials are outsourced.

Q. I put it to you that velvet fabric is outsourced from the market by the plaintiff. What do you have to say?

A. It is correct.

It is incorrect to suggest that there is no distinctiveness/uniqueness in the packaging of the plaintiff. It is incorrect to suggest that the packaging being used by the plaintiff was freely used by other parties, prior to its use by the plaintiff. It is incorrect to suggest that the said packaging is widely used in tea sector. It is incorrect to suggest that packaging used by plaintiff and the defendant is dissimilar.

Q. I put it to you that packaging being used by the plaintiff which is subject matter of the present suit, is freely used by other parties. What you have to say?

A. Yes some parties are using our trade dress but not freely and we have taken steps for their prosecution.

Q. I put it to you that this style of packaging which is subject matter of suit is more economical and functional in nature?

A. It is incorrect.

Q. I put it to you that there is no similarity in the brand names used by the plaintiff and defendant?

A. It is correct.

It is incorrect to suggest that I am deposing falsely.

Anil Kumar (DHJS)
Joint Registrar

RO & AC
21.12.2019