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

+ **CS(COMM) 1185/2016**

THE CARTOON NETWORK INC. Plaintiff

Through: Mr. Pravin Anand, Mr. Dhruv Anand,
Ms. Udit Patro & Mr. Shamim
Nooreyezdan, Advs.

Versus

VISHVAJEET SHARMA & ORS. Defendants

Through: Mr. Amit Jain & Mr. Niraj Kumar
Mishra, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% 13.04.2017

IA No.4407/2017 (of the plaintiff under Order XIV Rule 5 CPC)

1. The counsel for the defendants appears on advance notice and considering the nature of the application need for a reply is not felt and the counsels have been heard.

2. Qua issue no.(i)

“Whether the plaintiff is the proprietor of the  logo? OPP”

framed on 20th March, 2017 the counsel for the plaintiff contends that the aforesaid issue should be recasted as under:

“Whether the plaintiff is the proprietor of the trademarks as enumerated in paragraph 18 of the plaint? OPP”

3. It is the contention of the counsel for the plaintiff that the plaintiff in the prayer paragraphs no.57(a) to (c) in the plaint has claimed the relief of permanent injunction on the basis of plaintiff's “CARTOON NETWORK” trade mark as enumerated in para no.19 (sic 18) of the plaint in particular



trade mark No.1268352 for the trade mark **CARTOON NETWORK**. It is contended that even if for any reason the plaintiff is found wanting for the relief on the basis of the trade mark **CARTOON NETWORK**, the relief claimed needs to be considered vis-a-vis the other trade marks of the plaintiffs.

4. The counsel for the defendants contends that the plaintiff has claimed the relief primarily on the basis of the trade mark **CARTOON NETWORK** and all the other trade marks enumerated in para no.18 of the plaint essentially have the words “CARTOON NETWORK” and if the plaintiff is permitted to prove the rights with respect to all the trade marks enumerated in para 18, it will unduly delay the trial.

5. At the stage of framing of issues, this Court has to confine itself to the pleadings and since it is not the case of the defendants that the plaintiff is not entitled to the relief on the basis of other registrations besides the registration of trade mark **CARTOON NETWORK**, merit is found in the contention of the counsel for the plaintiff. As far as the apprehension of the defendants of delay is concerned, the same can be met by limiting the time in which the plaintiff would lead its evidence.

5. Accordingly, the issue no.(i) is recasted as under:

“Whether the plaintiff is the proprietor of the trademarks as enumerated in paragraph 18 of the plaint? OPP”

6. The plaintiff seeks amendment of issue no.5

“Whether the plaintiff is not entitled to the relief claimed on account of laches, acquiescence and waiver? OPP”



framed on 20th March, 2017 by changing the onus thereof from that placed on the plaintiff to on the defendants.

7. The counsel for the defendants fairly agrees to the same.

8. Accordingly, the issue no.(v) stands recasted as under:

“Whether the plaintiff is not entitled to the relief claimed on account of laches, acquiescence and waiver? OPD”

9. Qua issue no.(x)

Whether the registrations of the plaintiff containing the words “CARTOON NETWORK, C.N.” etc. are valid? OPP

framed on 20th March, 2017 the plaintiff seeks recasting thereof as under:

“Whether the registrations of the plaintiff containing the words “CARTOON NETWORK, C.N.” etc. are invalid? OPD”

10. After hearing the counsels, there is consensus that the question of invalidity of the trade mark of the plaintiff is not to be gone into in the suit and the counsel for the defendants states that the defendants have already approached the Intellectual Property Appellate Board (IPAB) for the said relief.

11. Once that is so, no evidence is to be led before this Court on issue no.(x); however the framing of the said issue is necessary in view of the plea of the defendants and in terms of Section 124 of the Trade Marks Act, 1999.

12. Even according to the Trade Marks Act, the issue has to be of invalidity and not of validity.

13. Accordingly, the issue no.(x) is recasted as suggested by the plaintiff as under:



***“Whether the registrations of the plaintiff containing the words
“CARTOON NETWORK, C.N.” etc. are invalid? OPD”***

14. The counsel for the plaintiff does not press for amendment of issue no.(xi) framed on 20th March, 2017.

15. The counsel for the plaintiff states that no evidence is to be led on issue no.(xi) before this Court as well.

16. The plaintiff seeks framing of additional issue no.(xiv) as under:

***“Whether the plaintiff is entitled to the relief as sought in paragraph
57 of the plaint including damages and costs? If yes, to what effect?
OPP”***

and re-numbering of the existing issue no.(xiv) as issue no.(xv).

17. Though in my view, the issue no.(xiv) proposed is already covered in the issues already framed but the counsel for the plaintiff states that a view has been taken in one of the judgments that without a specific issue qua damages, no relief in that respect can be granted.

18. Accordingly, the existing issue no.(xiv) is ordered to be re-numbered as issue no.(xv) and the following issue is added as issue no.(xiv):

***“Whether the plaintiff is entitled to the relief as sought in paragraph
57 of the plaint including damages and costs? If yes, to what effect?
OPP”***

19. The application is disposed of.



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20. Affidavits by way of examination-in-chief be filed within six weeks from today.

21. The parties to appear before the Court Commissioner with prior appointment on or about 6th July, 2017.

RAJIV SAHAI ENDLAW, J

APRIL 13, 2017

‘gsr’..

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