

IN THE HIGH COURT OF SINDH AT KARACHI**H.C.A. No. 309 / 2015**

ORDER WITH THE SIGNATURE OF THE JUDGE

1. For orders on office objection.
2. For hearing of CMA No. 4746/2015
3. For hearing of Main Case.

03.05.2016

Mr. Moin Qamar, advocate for the appellant.

Mr. Afaq Yousuf Khan, advocate for the respondent.

ORDER

Zulfiqar Ahmad Khan, J.:- The instant appeal has been filed against the order of the learned Single Judge where an application seeking interim injunctive relief against the violations of appellant's trade mark 'ALDO' was refused. The counsel for the appellant contended that while the appellant has a global business of US\$1.4 Billion on account of its operation of more than 500 'ALDO' branded stores globally, it has also registered its said trade mark in Pakistan in respect of Classes 1, 18, and 35 of the Nice Classification. The counsel contended that 'ALDO' has become a famous and well-known trade mark pursuant to its massive goodwill, to the extent that wherever a person uses a similar trade mark, it is always construed that such use of 'ALDO' trade mark is made by a person related to the global owner of this well-known trade mark. Being aggrieved by the acts of the respondent where the latter commenced use of an identical/deceptively similar version of appellant's trade mark, a suit for infringement and passing off was filed, in which, the above referred injunctive relief was also sought by the appellant, which was refused by the impugned order.

We heard the counsel for the appellant on the previous hearings, where he walked us through the merits of his client's case, and on the previous date of hearing while the respondent's counsel leveled his grounds of using 'ALDO' trade mark in Pakistan, the Court asked him to satisfy as to the reasoning behind adoption of ALDO trade mark by

his clients. When the hearing commenced today, the learned counsel for the respondent submitted that his clients adopted the ALDO trade mark taken from the acronyms of his grand-father's name ALLah-wasayo Deen Omer. When posed with the question as to why the said acronyms, even if they are hypothetically admitted to be arising from his grand-father's name, are used in an identical and deceptive manner (to the world famous 'ALDO' trade mark) as used by the appellant, the counsel had no satisfactory answer. While the Court found it hard to believe the said assertion about grandfather's name, the counsel for the respondent was asked to satisfy the court on the grounds (and merits – if any) of his client's adoption and use of the deceptively similar ALDO trade mark, upon which, after consultation with his clients, the learned counsel made a categorical statement that the respondent would be satisfied if the instant appeal is allowed as prayed by this Court by setting aside the impugned order dated 19.08.2015, however, allowing the learned trial court to decide the main suit preferably within four months after recording the evidence by a mutually appointed commissioner.

Mr. Moin Qamar, learned counsel for the appellant agreed to the said proposition and to the contention of appointment of the commissioner for recording evidence so that the suit could be decided as early as possible, and preferably within four months, after the recording of evidence.

In the circumstances, we allow the instant appeal by permanently restraining the respondent and all persons claiming or working under or on its behalf (jointly or severally) from using trade mark 'ALDO' or otherwise operating any shoe or footwear store under 'ALDO' trade mark or "The Aldo Shoes" trade name. It is expected that the main suit (No. 886/2010) will be decided as early as possible, preferably within four months after recording the evidence by the appointment of a commissioner for recording the evidence.

J U D G E

CHIEF JUSTICE