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

+ CS(COMM) 311/2020

ASTRAL POLY TECHNIK LTD. Plaintiff

Represented by: Mr. Sachin Gupta Advocate with
Ms. Jasleen Kaur, Advocate.

versus

SHRI BALAJEE POLYMER INDUSTRIES & ORS..... Defendants

Represented by: Nemo

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

% **11.08.2020**

The hearing has been conducted through Video Conferencing.

I.A. 6742/2020 (exemption from filing certified/clear/typed documents and duly notarised affidavits, physical form of suit papers and service of advance notice to defendants)

1. Exemption allowed, subject to all just exceptions.
2. Notarized affidavits in support of the plaint, statement of truth, applications and certificate under Section 65B of the Indian Evidence Act be filed within one week of the resumption of the normal court functioning.
3. Application is disposed of.

I.A. 6741/2020 (under Order XI Rule 1 (4) Commercial Courts Act)

1. Additional documents, if any, be filed within 30 days.
2. Application is disposed of.

I.A. 6743/2020 (exemption from filing court fee)

1. By this application, the plaintiff seeks extension of time for filing the court fees.

2. Court fees be filed within one week from today.
3. Application is disposed of.

CS(COMM) 311/2020 and I.A. 6739/2020 (under Order XXXIX Rule 1 and 2 CPC)

1. Plaintiff be registered as a suit.
2. Issue summons in the suit and notice in the application to the defendants on the plaintiff taking steps through e-mail, SMS and WhatsApp, returnable on 21st October, 2020.
3. Written statement to the suit and reply affidavit to the application be filed within 30 days along with the affidavit of admission/denial.
4. Replication and rejoinder affidavit along with the affidavit of admission/denial be filed within three weeks thereafter.
5. The case of the plaintiff is that the plaintiff, a Private Limited Company adopted the trade mark ASTRAL on 25th March, 1996. The plaintiff filed an application for registration of the trade mark



in class 17 claiming user from 19th April, 2002. Thereafter, the plaintiff filed an application for registration of the trade mark





in class 19 on 3rd October, 2005 claiming user from 1st January, 2004. In the year 2006 the plaintiff was converted into a Public Limited Company. On 11th March, 2015 the plaintiff applied for registration of the word mark 'ASTRAL' per se in class 17 and 19, claiming user since 25th March, 1996. Thus, as on today the plaintiff has registration of the

marks 'ASTRAL', '  , '  ' .

6. Grievance of the plaintiff is that in the third week of July, 2020, the plaintiff came to know about the sale of counterfeit pipes and fittings under the impugned mark ASTRAL. The plaintiff appointed an investigator to look into these activities. Investigator of the plaintiff met defendant No.3 who informed that they manufacture pipes under the mark ASTRAL but only accept bulk orders. They did not deal in small quantities and for small quantities the investigator was required to contact their dealer in Chandni Chowk, Delhi where he could get ASTRAL branded pipes. The investigator of the plaintiff procured the impugned product from the dealer in Chandni Chowk who confirmed that the same were manufactured and supplied to him by the defendants.

7. The plaintiff thus claims that the defendants are not only violating the proprietary right of the plaintiff under the mark ASTRAL but also selling inferior quality counterfeit products which may result in disaster as the products sold are pipes and fittings thereof.

8. A comparison of the original product of the plaintiff and the defendants' counterfeit product has been reproduced in para 26 of the plaint as under:-

Plaintiff's product	Defendant's counterfeit product
 <p>The image shows two pieces of white CPVC pipe. The top pipe has the 'ASTRAL CPVC' logo and text clearly visible. The bottom pipe has similar branding and text, including 'ASTRAL CPVC 50R 11' and technical specifications.</p>	 <p>The image shows two pieces of white CPVC pipe. The top pipe has the 'ASTRAL CPVC' logo and text, but it appears less sharp and more blurry compared to the original. The bottom pipe also has similar branding and text, but the overall quality of the image is lower.</p>

9. Considering the averments in the plaint as also the documents filed therewith, this court finds that the plaintiff has made out a *prima facie* case in its favour and in case no *ad interim ex parte* injunction is granted, the plaintiff would suffer an irreparable loss. Balance of convenience also lies in favour of the plaintiff. Consequently, the defendants, their partners, assignees in business, distributors, dealers, stockists, servants and agents are restrained from manufacturing, selling, offering for sale, advertising, directly or indirectly dealing in pipes and fittings thereof and any other plumbing and sanitary goods in pipes and fittings thereof under the impugned mark ASTRAL or any other trade mark which is deceptively similar to the plaintiff's trade mark ASTRAL, amounting to infringement of the Plaintiff's registered trade marks and passing off the goods of the defendants as that of the plaintiff, till the next date of hearing.

10. Compliance under Order XXXIX Rule 3 CPC shall be made within one week.

I.A. 6740/2020 (under Order XXVI Rule 9 r/w Order XXXIX Rule 7 CPC and Section 135 Trademarks Act, 1999)

1. By this application filed under Order XXVI Rule 9 read with Order XXXIX Rule 7 CPC and Section 135 Trademarks Act, 1999, the plaintiff seeks appointment of a Local Commissioner to carry out search and seizure of the infringing counterfeit products being manufactured and sold by the defendants.

2. Considering the averments in the plaint, this court deem it fit to appoint a Local Commissioner, namely, Mr. Varun Sharma, Advocate Enrolment No.D/488/2012, (Mobile No.9971440786), who will carry out the local inspection in terms of the order as follows. The fees of the learned

Local Commissioner is fixed at Rs.1,00,000/- plus out of pocket expenses.
The local commissioner will :-

(a) visit the defendant's premises at the address below where the plaintiff presumes that the stock of counterfeit pipes and fittings under the impugned mark ASTRAL, its packaging, promotional materials, stationery, dyes, blocks etc. will be lying:

Shri Balajee Polymer Industries
Khudi Road
Barnala - 148101
Punjab

or any other premises where the infringing goods or packaging under the impugned mark ASTRAL are stocked/ stored as per the information received by the Learned Local Commissioner;

(b) prepare an inventory and take in custody all the products under the impugned mark ASTRAL, their packaging, promotional materials, stationery, dyes, blocks etc. and hand them over to the Defendant's representative on *superdari*;

(c) record details of such other persons who, according to the information disclosed by the defendants, have role in manufacturing and sale of counterfeit pipes and fittings under the impugned mark ASTRAL;

(d) procure copies of the books of account, stock & excise registers maintained by the defendants pertaining to counterfeit pipes and fittings sold under the impugned mark ASTRAL;

(e) break open the locks, if access to the premises where the impugned products under the impugned mark ASTRAL, their promotional materials,

stationery, dyes, blocks etc. are stocked, is denied to the learned Local Commissioner;

(f) take videography/photographs of the seized stock;.

(g) seek police assistance, if necessary, to carry out the execution.

3. SHO of the concerned Police Station at Barnala is directed to grant necessary police assistance to the learned Local Commission so that the execution of the Local Commissioner is carried out properly and smoothly.

4. Application is disposed of.

5. Copy of the order be given *Dasti*.

MUKTA GUPTA, J.

AUGUST 11, 2020

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