

IN THE HIGH COURT OF DELHI AT NEW DELHI

No.....289A/7.....DHC/Orgl/D-4

Dated.....19/01/2020

N.D.OH.-10.02.2020 before Joint Registrar (Judicial)
N.D.OH.-12.03.2020 before Hon'ble Court

From:

The Registrar General
Delhi High Court
New Delhi.

To:

Counsel for Plaintiffs

Mr. Sachin Gupta, Advocate
A-1 Vasant Kunj Enclave
New Delhi-110070

Sub. : **CS(COMM) No.5/2020**

M/s. Asugar Engineering Servces & Anr.

....Plaintiffs

Versus

Weld Trade Private Limited

.....Defendant

Sir,

I am directed to forward herewith for information and necessary compliance a copy of order dated **08.01.2020 passed by Hon'ble Ms. Justice Mukta Gupta**, of this Court. A copy of Memo of parties is also enclosed herewith.

Yours faithfully,

Mahar
Admn.Officer(Judl.) Orgl.
for Registrar General

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Enclosure: As above

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IN THE HIGH COURT OF DELHI
(Original Ordinary Civil Jurisdiction)
CS (COMM) No. 5 of 2020

M/s. Asugar Engineering Services and Anr. ...Plaintiffs

Versus

Weld Trade Private Limited ...Defendant

MEMORANDUM OF PARTIES

1. M/s. Asugar Engineering Services,
Nargis Classic, 1st Floor, 47, Mukundnagar,
Pune – 411 037 ...Plaintiff No. 1

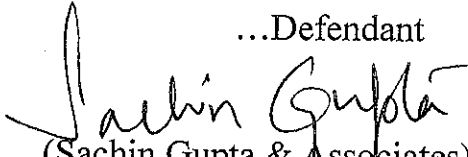
2. Essen Welding Alloys Private Limited
(Formerly known as Asugar Engineers Private Limited)
Kawadi, Kadam Wak Wasti,
Off Pune Solapur Highway, Pune – 412201 ...Plaintiff No. 2

VERSUS

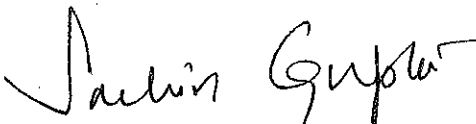
Weld Trade Private Limited,
3964/239, 2nd Floor, City Market,
Ajmeri Gate, New Delhi – 110006

...Defendant

Place: New Delhi
Dated: 6 January, 2020


(Sachin Gupta & Associates)
Advocates for the Plaintiffs
A-1 Vasant Kunj Enclave
New Delhi – 110 070
E: info@sgassociate.com
M: 98111 80270
T: 011-26121161

Note: The only defendant who has been impleaded is the main Defendant



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(COMM) 5/2020**
M/S. ASUGAR ENGINEERING SERVICES & ANR.

..... Plaintiff

Represented by: Mr. Sachin Gupta, Mr. Pratyush Rao,
Ms. Jasleen Kaur, Advs.

versus

WELD TRADE PRIVATE LIMITED

..... Defendant

Represented by:

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

08.01.2020

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I.A. 130/2020

Exemption allowed subject to just exceptions.

I.A. 128/2020

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

CS(COMM) 5/2020

1. Plaint be registered as a suit.
2. Issue summons in the suit to the defendant by ordinary and dasti process, registered A.D. and speed post returnable for 10th February, 2020 before the Joint Registrar for completion of service, pleadings and admission/ denial of documents.
3. Summons to the defendants shall indicate that the written statement to the plaint shall be positively filed within 30 days of the receipt of the summons. Liberty is given to the plaintiff to file a replication within three

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weeks of the receipt of the advance copy of the written statement.

4. Parties shall file all original documents in support of their respective claims along with their respective pleadings. In case parties are placing reliance on a document which is not in their power and possession, its detail and source shall be mentioned in the list of reliance which shall be also filed with the pleadings.


5. Admission/ denial of documents shall be filed on affidavit by the parties along with the pleadings. The affidavit shall include the list of the documents of the other party. The deponents shall indicate their position with regard to the documents against the particulars of each document.

6. List the suit before Court on 12th March, 2020.

I.A. 129/2020 (u/O XXXIX R 1&2 CPC)

1. Issue notice in the application to the defendant through ordinary and dasti process, registered A.D. and speed post returnable on 10th February, 2020 before the Joint Registrar for completion of service and pleadings.

2. Reply affidavit if any be filed within four weeks. Rejoinder affidavit in three weeks thereafter.

3. Case of the plaintiffs is that the plaintiff No.1 which was earlier a proprietorship firm adopted the trademark AZUCAR 80 for use upon and in relation to welding electrodes and welding apparatus, which were imported, marketed and sold by the plaintiff No.1. On 17th November, 1988 the plaintiff No.1 applied for and was granted registration of the composite trademark  in class 9. The said trademark has been registered in favour of the plaintiff No.1 subject to the condition that it shall not give right

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to exclusive use of the numeral 80 and the formula $C_{12}, H_{22} O_{11}$. Subsequently, in the year 2009 the plaintiff No.1 became a partnership firm.

4. Plaintiffs claim that the goods imported, manufactured and sold by the plaintiffs have earned a great reputation and thus the sales figure of the plaintiffs in the year 1987-1988 from ₹5,63,952/- has risen to ₹70,06,609/- in the year 2018-2019. Since the year 1988 the plaintiff No.2 as licensee of plaintiff No.1 has been openly, continuously and extensively using the trademark AZUCAR with the numeral 80 or 100 in relation to two different varieties of welding electrodes. In the last week of December, 2019 plaintiff came to know that the defendant which is a company incorporated under the Companies Act is dealing in welding electrodes under the trademark AZUCAR together with numerals 80 or 100. Thus, the defendant is infringing the plaintiff's trademark by using the same trademark for identical goods sold in the market.

5. Considering the averments in the plaint as also the documents filed with the plaint, plaintiff has made out a prima facie case in its favour and in case no ad-interim injunction is granted the plaintiff would suffer an irreparable loss. The balance of convenience also lies in favour of the plaintiff and against the defendant.

6. Consequently, till the next date of hearing before this Court defendants, its agents are restrained from using the trademark "AZUCAR" with or without the numerals 80 or 100 or any other trademark containing the word 'AZUCAR' or any other word deceptively similar to the plaintiff's registered trademark.

7. Compliance affidavit under Order XXXIX Rule 3 CPC be filed within one week.
8. List the application before Court on 12th March, 2020.
9. Order dasti.

JANUARY 08, 2020
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SHUKTA GUPTA, J.