

IN THE HIGH COURT OF DELHI AT NEW DELHI

No.....2881 A/C.....DHC/Orgl./DA4Dated.....28/02/20

N.D.O.H: 26.03.2020 before Joint Registrar (Judicial)
N.D.O.H: 27.04.2020 before Hon'ble Court

From:

The Registrar General
 Delhi High Court
 New Delhi.

To:

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

CS(COMM) No. 93/2020

Resinova Chemie Limited

....Plaintiff

Versus

Sh. K. R. Mahesh

....Defendant

Sir,

I am directed to forward herewith for information and necessary compliance a copy of order dated **26.02.2020 passed by Hon'ble Ms. Justice Mukta Gupta** of this Court. A copy of Memo of parties is also enclosed herewith.

Yours faithfully,

Mahesh
Admn. Officer Judl. (O)
for Registrar General

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Enclosure: As above

IN THE HIGH COURT OF DELHI
(Ordinary Original Commercial Jurisdiction)

CS (COMM) No. 93 of 2020

Resinova Chemie Limited

...Plaintiff

VERSUS

Sh. K. R. Mahesh

...Defendant

MEMORANDUM OF PARTIES

Resinova Chemie Limited
231, 233, 235 Ansal Chamber II
6, Bhikaji Cama Place
New Delhi – 110066
prakshi.agrawal@astralpipes.com

...Plaintiff

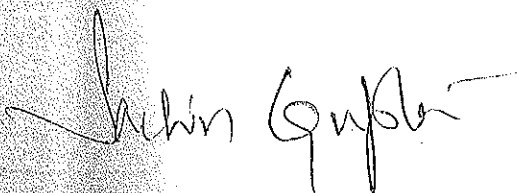
VERSUS

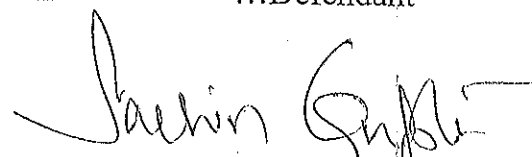
Sh. K. R. Mahesh
Proprietor
M/s. Truebuild Industries
33/3998, D2, Opel Arcade
Pachakkal JN., Malaparamba
Calicut - 673009 Kerala
info@truebuildindia.com, truebuildind@gmail.com

...Defendant

Place: New Delhi
Dated: 25 February, 2020

NOTE: The sole Defendant
being the necessary party has been impleaded.




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

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CS(COMM) 93/2020

RESINOVA CHEMIE LIMITED

..... Plaintiff

Represented by: Mr.Sachin Gupta, Ms.Jasleen Kaur,
Mr.Pratyush Rao and Ms.Rajnandini
Mahajan, Advocates.

versus

SH K.R. MAHESH

..... Defendant

Represented by: None.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

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26.02.2020

I.A. 2718/2020 (Exemption)

Allowed, subject to all just exceptions.

I.A. 2717/2020 (under Order XI Rule 1(4) CPC)

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

CS(COMM) 93/2020 & I.A. 2715/2020 (under XXXIX Rule 1 and 2 CPC)

1. Plaint be registered as a suit.
2. Issue summons in the suit and notice in the application to the defendant on the plaintiff taking steps through ordinary and dasti process, registered A.D., speed post and through email as well, returnable on 26th March, 2020 before the learned Joint Registrar for completion of service, pleadings and admission/denial of documents.

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3. Summons to the defendant shall indicate that the written statement to the plaintiff shall be positively filed within 30 days of the receipt of the summons. Liberty is given to the plaintiff to file the replication within three 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. Affidavit of admission/denial of documents shall be filed 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 and the application before Court on 27th April, 2020.
7. Case of the plaintiff is that the plaintiff coined and adopted the trademark/label 'TRUBUILD' on 1st March, 2016 in classes 1 and 19 relating to construction, chemicals and building materials namely tile grout, tile adhesive, water proofing sealers, repellents and compounds etc. and has been continuously using the said mark since then in respect of its goods. The plaintiff is also using another registered trademark ASTRAL which is that of its group company namely ASTRAL Poly Technik Ltd. Plaintiff applied for the registration of the mark 'TRUBUILD' on 14th March, 2016 claiming user since 1st March, 2016 and has since been granted registration of the trademark/label on 25th January, 2018.

8. Plaintiff also has registration of its trademark/label ASTRAL since 2006 claiming user since 1996. The plaintiff has also given the sales figure and amount spent on advertisement etc. Plaintiff is advertising its product on the internet and the goods are available under the trademark 'TRUBUILD' and 'Astral TRUBUILD' on the website <https://www.astraladhesives.com/b/trubuild-18>.

9. Grievance of the plaintiff is that the defendant who is the sole proprietor of M/s Truebuild Industries is running its business at Calicut and is engaged in the business of manufacturing and marketing/dealing in building materials, construction chemicals, tile adhesives, including sealants, sealers, repellents, admixture, tile grout, water proofing compound etc. under the trade name 'TRUEBUILD' and other trademarks. Defendant filed a multiclass trademark application for registration of the trademark TRUEBUILD in classes 1 and 19 claiming user since 1st January, 2017 however no invoices were filed with the application. The said impugned trademark of the defendant was advertised in the Trademarks Journal on 3rd June, 2019 and upon publication thereof the plaintiff opposed the impugned mark on 14th September, 2019. In the counter statement filed by the defendant it was claimed that the defendant is carrying on business all over India and that it was using the mark since 2015 contrary to its claim in the application seeking registration wherein it was stated that the date of user was 1st January, 2017. The opposition proceedings between the parties are still pending before the Trademarks Registry.

10. Considering the material placed on record and that the trademark of the defendant 'TRUEBUILD' is deceptively similar to the plaintiff's trademark 'TRUBUILD' which is coined and adopted word and the plaintiff being the registered user of the trademark and prior adopter thereto, the 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. Balance of convenience also lies in favour of the plaintiff and against the defendant.

11. Consequently, an ex-parte ad-interim injunction is granted in favour of the plaintiff and against the defendant in terms of prayer in Para-18 of the application.

12. Compliance under Order XXXIX Rule 3 CPC be made within ten days.

I.A. 2716/2020 (under Order XXVI Rule 9 r/w Order XXXIX Rule 7 CPC and Section 135 CPC)

1. By this application, plaintiff seeks appointment of local commissioner to carry out the search and seizure at the premises of the defendant.

2. For the purpose of ensuring compliance of the above interim order, appointment of Local Commissioners is necessary.

3. Accordingly, Mr. Mayank Bamniyal, Advocate (Mob. 9971999961) is appointed as the Local Commissioner to visit the following premises of the defendant.

M/s Truebuild Industries,
6/1115, 2nd Floor,
Trident Complex,
Cherooty Road,
Calicut-673001, Kerala.

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4. The Local Commissioner is directed to search the premises of the defendant, make an inventory of all the infringing products and take into custody all the products under the impugned mark TRUEBUILD, their packaging, promotional materials, stationery, dyes, blocks etc. and hand over the same to the defendant or its representative on superdari.
5. The Local Commissioner need not give any advance notice to the defendant. The representative of the plaintiff and their counsel will assist the Local Commissioner in carrying out the necessary work.
6. After preparing the inventory of the goods so seized, the same would be sealed and handed-over to the defendant on superdari after taking the due identification of the owner of the goods with the undertaking to produce the seized goods as and when called by this Court.
7. The Local Commissioner will also inspect the books of account including ledgers, cash book purchase and sale records, stocks and excise registers maintained by the defendant. In case the accounts are maintained in the hardcopies, photocopies of those documents will be taken and placed on record of this Court and in case the accounts are maintained in electronic form, the mirror image of the hard-drives of the laptop/ computer being used for the purpose will be taken and filed before this Court.
8. In case in the course of inspection or otherwise if the Local Commissioner is revealed about any other premises/ go-down/ shop where the infringing activity is going on by the defendants, the Local Commissioners would be entitled to carry out the entire exercise in respect of the said premises as well.

9. The Local Commissioners are also permitted to hire a photographer who will take photographs and videograph of the infringing products at the site. In case the premises is locked the Local Commissioner will also be entitled to break open the locks of the premises or of any almirah or storage area in the premises, in the presence of concerned police officer and two respectable persons of the society.
10. The SHO concerned is directed to ensure that local commission is executed uninterruptedly and would provide necessary police protection to the Local Commissioner.
11. The fee of the Local Commissioner is fixed at ₹1 lakh besides the out of pocket expenses to be borne by the plaintiff.
12. Application is disposed of.
13. Order dasti.

FEBRUARY 26, 2020
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MUKTA GUPTA, J.

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