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

+ **CS(COMM) 1076/2018**

V GUARD INDUSTRIES LTD. Plaintiff

Through Mr. Sachin Gupta, Adv.

versus

DEEPAK KHAJURIA Defendant

Through None.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

ORDER

% **16.08.2018**

I.A. 10901/2018 in CS(COMM) 1076/2018

Keeping in view the averments in the application, plaintiff is exempted from filing the original/clearer/typed/translated copies of documents at this stage and is also permitted to file additional documents within thirty days.

Needless to say, this order is without prejudice to the rights and contentions of the parties.

Accordingly, present application stands disposed of.

CS(COMM) 1076/2018

Let the plaint be registered as a suit.

Issue summons in the suit to the defendant by all modes including *dasti*, returnable for 03rd October, 2018 before the Joint Registrar for completion of service and pleadings.

The summons to the defendant shall indicate that a written statement

to the plaint shall be positively filed within four weeks of the receipt of the summons. Liberty is given to the plaintiff to file a replication within two weeks of the receipt of the advance copy of the written statement.

The 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.

Admission/denial of documents shall be filed on affidavit by the parties within two weeks of the completion of the pleadings. The affidavit shall include the list of the documents of the other party. The deponent shall indicate its position with regard to the documents against the particulars of each document.

List the matter before Court on 12th November, 2018.

I.A.10902/2018 in CS(COMM) 1076/2018

Issue notice to defendant by all modes including *dasti*, returnable for 03rd October, 2018 before the Joint Registrar.

It is pertinent to mention that the present suit has been filed for permanent injunction restraining infringement of trademark, passing off, unfair competition, declaration, rendition of accounts of profits/damages, delivery up etc.

In the plaint, it is stated that the plaintiff is a company founded in 1977 and engaged in the business of manufacturing, distributing and marketing/selling voltage stabilizers, digital UPS, inverters and inverter batteries, electric and solar water heaters, domestic and agricultural pumps, industrial motors, switchgears, distribution boards etc. under the trademark

V-GUARD.

It is stated that the plaintiff is the registered proprietor of the trademark V-GUARD and its formative variants in Classes 7, 9 and 11 under the Trade Marks Act, 1999 and by virtue of extensive and continuous use has become a household name and synonymous with the plaintiff's business.

It is the case of the plaintiff that the annual revenue generated by the plaintiff from the sale of its products under the mark V-GUARD in the financial year 2017-18 was Rs. 2332.38 Crores and the plaintiff incurred an expenditure of Rs. 98.76 Crores on advertising and promotion of its V-GUARD product.

Learned counsel for the plaintiff states that in November 2017, the plaintiff came to know that the defendant had applied for registration of the deceptively similar trademark V-GAURD vide application No. 3125371 dated 15th December, 2015 claiming use since 11th December 2015. He states the said application was published on 31st July, 2017. Subsequently the plaintiff tried looking for the defendant's goods, however, was unsuccessful.

Learned counsel for the plaintiff states the plaintiff opposed the defendant's trademark application on 23rd November, 2017 before the Trade Marks Registry, emphasizing on the non-availability of the defendant's goods in the market. He states although the plaintiff's opposition has not been officially served on the defendant, it is available on the official website of the Trade Marks Registry.

Learned counsel for the plaintiff states that the last week of July, 2018, the plaintiff came across the defendant's product being sold in Delhi.

Learned counsel for the plaintiff states the defendant has unethically and unlawfully adopted the plaintiff's trademark by making an innocuous change. He states the defendant has intentionally misspelt V-GUARD, exchanging the placement of the letters 'U' and 'A' in an attempt to mislead the consumers, thus making it V-GAURD. He states the defendant, being in the same business as the plaintiff, is well-aware of the plaintiff's reputation and trademarks and the acts of the defendant amount to misrepresentation as well as misappropriation of goodwill and reputation built up by the plaintiff through its own effort and investment and also amounts to passing off of the defendant's goods for those of the plaintiff.

Learned counsel for the plaintiff states that the defendant's illegal adoption of the deceptively similar mark V-GAURD with that of the plaintiff's V-GUARD is an issue of public interest as a malfunction of electronic/electrical goods such as stabilizers can lead to serious consequences such as malfunctions, short circuits, and fires. He states the plaintiff's consumers who purchase the defendant's products under the mistaken impression that the defendant's V-GAURD product is the plaintiff's V-GUARD product are at risk of loss of life and property.

The Supreme Court in the case of *Midas Hygiene Industries P. Ltd. & Anr. v. Sudhir Bhatia & Ors., 2004 (28) PTC 121 (SC)* has held that in case of infringement of trademark normally an injunction must follow and that delay is not fatal in bringing infringing action.

Keeping in view the aforesaid, this Court is of the opinion that a *prima facie* case of infringement and passing off is made out in favour of the plaintiff and balance of convenience is also in its favour. Further, irreparable harm or injury would be caused to the plaintiff if an interim injunction order

is not passed.

Consequently, till further orders, the defendant, its assignees in business in business, licensees, franchisee, distributors and dealers are restrained from manufacturing, selling, offering for sale, advertising, dealing in electronic/electric goods including but not limited to stabilizer, fans, UPS, inverters and transformers under the mark V-GAURD or other trademark which is deceptively similar to the plaintiff's trademark V-GUARD.

Let the provisions of Order 39 Rule 3 CPC be complied within a period of two weeks.

Order *dasti* under the signature of the Court Master.

AUGUST 16, 2018

j

MANMOHAN, J

Manmohan
17/08/2018
Court Master
High Court of Delhi
New Delhi