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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(COMM) 225/2021
V GUARD INDUSTRIES LIMITED Plaintiff
Through Mr.Sachin Gupta & Mr.Pratyush Rao,
Advs.
versus

BUTTERFLY GANDHIMATHI APPLIANCES LTD...Defendants
Through None.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

ORDER
% **13.05.2021**

This hearing is conducted through video conferencing.

IA No.6382/2021 (*exemption*)


Allowed subject to all just exceptions.

CS(COMM) 225/2021


Let the plaint be registered as suit.

Issue summons to the defendant through speed post, courier and email, returnable for 03.09.2021.

IA No.6383/2021

1. This application is filed under Order 39 Rules 1 and 2 CPC seeking an *ex-parte* interim injunction to restrain the defendant, its director, proprietor or partner etc. from manufacturing, selling, offering for sale, advertising, directly or indirectly dealing in electronic, electrical or electric goods including kitchen appliances under the impugned mark 'PEBBLE' or any other trade mark/label, which is identical or deceptively similar to the plaintiff's registered trademark/label PEBBLE/ 

amounting to infringement of registered trademark/trade name of the plaintiff. Other reliefs are also sought.

2. The case of the plaintiff is that in 1996 the plaintiff started dealing in various goods, namely, pumps and motors, water heaters etc. On 26.03.2013 the plaintiff obtained registration of the trademark/label PEBBLE/  for heating installations and electric products etc. and the plaintiff started use of the same in 2013.

3. In 3rd week of February, 2021, the plaintiff came across the defendant selling mixer grinder under the impugned mark 'PEBBLE' on the defendant's interactive website www.butterflyindia.com. The defendant also has a service centre at Delhi. The defendant has not filed any trademark application nor has any registration for the impugned mark 'PEBBLE'. The defendant is also dealing in various products etc. under its trademark 'BUTTERFLY'. The grievance of the plaintiff is however limited to the defendant dealing in mixer grinder under the impugned mark 'PEBBLE'.

4. Reliance is placed on section 29(2)(a) of the Trade Mark Act, 1999 which reads as follows:


“29(2) A registered trade mark is infringed by a person who, not being a registered proprietor or a person using by way of permitted use, uses in the course of trade, a mark which because of—

(a) its identity with the registered trade mark and the similarity of the goods or services covered by such registered trade mark.”

5. It is claimed that in this case there is identity of the trademarks and similarity of the goods and services covered by the registered trademark. Hence, in terms of section 29(2)(a) of the Trademark Act, a case for

infringement is made out.

6. A perusal of the print out from the website of the defendant shows that it is selling mixer grinder under the mark '*butterfly/pebble plus*'.

7. The plaintiff has made out a *prima facie* case. The defendant, its director, proprietor or partner etc. are restrained by an *ex-parte* injunction from manufacturing, selling, offering for sale, advertising, directly or indirectly or in any manner dealing with the products using the impugned mark/label 'PEBBLE' or any other trade mark/label, which is identical or deceptively similar to the plaintiff's registered trademark/label PEBBLE/ .

8. Issue notice to the defendant through speed post, courier and e-mail, returnable for 03.09.2021.

9. The plaintiff to comply with the provisions of Order 39 Rule 3 CPC within one week from today.

JAYANT NATH, J.

MAY 13, 2021/v