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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS (COMM) 134/2022**

V GUARD INDUSTRIES LTD. Plaintiff

Through: Mr. Sachin Gupta, Ms. Jasleen kaur,
Mr. Pratyush Rao, Ms. Snehal Singh,
Ms. Swati, Mr. N. Kumar Tripathi,
Advocates (M: 9811180270)

versus

VENIGANDLA SREEKANTH & ORS. Defendants

Through: None.

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

% **02.03.2022**

I.A. 3353/2022 (for exemption)

1. This is an application seeking exemption from filing certified/cleared/typed or translated copies of documents. Exemption is allowed, subject to all just exceptions. Application is disposed of.

I.A. 3351/2022 (u/S 12A)

2. This is an application seeking exemption instituting pre-litigation mediation. In view of the orders passed in *CS (COMM) 132/2022* titled *Upgrad Education v. Intellipaat Software*, the application is allowed and disposed of.

I.A. 3352/2022 (exemption from advance service to the Defendants)

3. In view of the fact that the Plaintiff has sought *ex parte ad-interim* injunction along with the appointment of the Local Commissioner, the exemption from advance service to the Defendants is granted.

4. Application is disposed of.

CS (COMM) 134/2022

5. Let the plaint be registered as a suit.

6. Issue summons to the Defendants through all modes upon filing of Process Fee.

7. The summons to the Defendants shall indicate that a written statement to the plaint shall be positively filed within 30 days from date of receipt of summons. Along with the written statement, the Defendants shall also file an affidavit of admission/denial of the documents of the Plaintiff, without which the written statement shall not be taken on record.

8. Liberty is given to the Plaintiff to file a replication within 15 days of the receipt of the written statement(s). Along with the replication, if any, filed by the Plaintiff, an affidavit of admission/denial of documents of the Defendants, be filed by the Plaintiff, without which the replication shall not be taken on record. If any of the parties wish to seek inspection of any documents, the same shall be sought and given within the timelines.

9. List before the Joint Registrar for marking of exhibits on 18th May, 2022. It is made clear that any party unjustifiably denying documents would be liable to be burdened with costs.

10. List before Court on 11th April, 2022.

I.A. 3354/2022 (u/O XXXIX Rules 1 & 2 CPC)

11. Issue notice. The Plaintiff, V-Guard Industries Ltd, has filed the present suit seeking permanent injunction restraining infringement of trade mark, copyright & design, passing off, unfair competition, delivery up, damages, etc. against the Defendants. The Plaintiff is a company setup in 1977 manufacturing, distributing, marketing and selling various household appliances, electronic and electrical apparatus including stabilizers, UPS, inverter batteries, electric and solar water heaters, food processor, mixer grinders, ceiling fans, etc. In India, the Plaintiff claims to have 500

distributors, 3,000 direct dealers and more than 20,000 retailers. Furthermore, the Plaintiff not only manufactures and sells products in India but also exports them to neighbouring countries like Nepal, Sri Lanka, Bhutan, Maldives and Bangladesh.

12. In the present case, the dispute relates to ceiling fans manufactured and marketed by the Plaintiff under the trade mark V-GUARD along with certain sub-brands. The dispute in the present case does not revolve around the trade mark V-GUARD, however, it pertains to the colour scheme of yellow and black carton packaging/ trade dress as also a registered design of ceiling fans.

13. Mr. Sachin Gupta, Id. Counsel for the Plaintiff places reliance on the registered trademark No. 388488 & 3884689 of the Plaintiff V-GUARD relating to yellow and black carton packaging/trade dress filed on 11th July, 2018. He also places reliance on the certificate of registration of design bearing no. 330602-001. It is his submission that the Defendants have not only copied the trade dress, colour combination but also the design and also the sub-brands of the Plaintiff. For example, the Plaintiff uses the sub-brand mark **CRYSTAL PLUS** and Defendant has adopted the sub-brand **CRYSTA 400**. Similarly, in respect of the products sold as **GLADO PRIME**, Defendants uses **SPADE PRIME**. He, thus, submits that there is a deliberate intention to imitate the Plaintiff's mark and design as also the colour scheme of the trade dress.

14. On the question of jurisdiction, it is the submission of the Id. Counsel that Defendants products are being sold across the country, though the Defendant No.2 itself is based out of Hyderabad. He submits that the product of the Defendants sold under the brand name-Kamakshi is available

for purchase and sale in Delhi on various websites including India Mart and Defendant no.2's own website.

15. Heard Id. Counsel for the Plaintiff.

16. A perusal of the trademark registration as also the cartons of both the Plaintiff and the Defendants which have been produced before the Court leave no matter of doubt that there is a clear imitation of the trade dress and the colour combination by the Defendants. Insofar as the impugned design of the fan is concerned, the design appears to be unique on a *prima facie* look at the product. The design when seen with the central portion of the fan along with the wings, constitute a unique pattern which is protectable under the registered design.

17. The court is convinced that there is a clear pattern of imitation as the violation of the rights is not just for one intellectual property but a combination of those including the colour combination, trade dress and design. There is a further allegation of imitation of the sub-brands of the Plaintiff.

18. On jurisdiction, applying the test enunciated by the Division Bench in ***Banyan Tree v. A. Murali Krishna Reddy & Anr. 2010 (42) PTC 361 (Del)*** this Court, *prima facie*, has the jurisdiction to entertain the present suit since the products of the Defendant are stated to be available for sale and delivery in Delhi.

19. Accordingly, this court is satisfied in view of the registered trademark and design of the Plaintiff that the Plaintiff has made out a *prima facie* case for grant of an *ex parte ad interim* injunction. Accordingly, till the next date, the following reliefs are granted in favour of the Plaintiff against the Defendants:

1. The Defendants shall stand restrained from manufacturing, selling, offering for sale any ceiling fans in the impugned yellow and black packaging or any other packaging which is an imitation or colourable reproduction of the Plaintiff's V-Guard packaging/cartons.
 2. Insofar as the design of the fan are concerned, the Defendants are restrained from manufacturing any further ceiling fans with the impugned design which is either a colourable imitation or substantial reproduction of the Plaintiff's registered design 330602-001.
20. Insofar as the sub-brands are concerned, the same shall be considered after the Defendants enters appearance. Compliance of Order XXXIX Rule 3 CPC be effected within two weeks.
21. Reply to the application be filed within four weeks from the service of the present order along with the paper book.
22. List the application before the Court on 11th April, 2022.

I.A. 3355/2022 (u/O XXVI Rule 9 CPC)

23. This is an application filed by the Plaintiff seeking appointment of a Local Commissioner. The Court has considered the merits of the Plaintiff's case and has granted an *ex parte ad interim* injunction as recorded above in I.A. No.3354/2022. Accordingly, in order to ensure that the injunction is fully complied with, it is deemed appropriate to appoint a Local Commissioner to visit the Defendants' premises at M/s Kamakshi Die Casting, F-16, IDA, Gandhinagar Kukatpally, Hyderabad – 500072. **Mr. Somnath De, Id. counsel (Mobile no.- 8860987189; E-mail – advocatesomnath@gmail.com)**, who is present in Court, is appointed as

the Local Commissioner to undertake the following tasks:

1. The Local Commissioner shall make a complete inventory of the stock of the ceiling fans, packaging, cartons, promotional material etc., which depict the impugned colour combination of yellow and black as also the impugned design of the ceiling fans which is registered with number 330602-001 in Class 25-04.
2. The Local Commissioner shall also obtain the details of the period from when the ceiling fans in the impugned trade dress and design are being sold by the Defendants and obtain copies of the accounts. The Defendants shall cooperate and give password to the computer file containing the accounts, if the same is on a computerised software.
3. The Local Commissioner would take assistance from the Local SHO in executing the Commission.
4. The Local Commissioner is permitted to take photographs or videography of the proceedings if it is deemed appropriate. Two representatives of the Plaintiff, which would include a lawyer, are permitted to accompany the Local Commissioner.
5. The Local Commissioner, while executing the local commission shall ensure that there is no disruption to the business of the Defendants except for the purposes of the execution of the commission. The commission shall be executed in a peaceful manner and the Defendants shall cooperate with the Local Commissioner.
6. Insofar as already manufactured products with the impugned design are concerned, after inventorizing the same, they shall

be returned to the Defendants on *superdari*.

7. The order passed today shall be communicated by the Local Commissioner to the Defendants. Copy of the order and complete paper book shall be served by the Local Commissioner upon the Defendants at the time of execution of commission.
24. The fee of the Local Commissioner is fixed at Rs.1,00,000/-. The commission shall be executed on or before 15th March, 2022.
25. List the application before the Court on 11th April, 2022.
26. The present order shall not be uploaded for a period of two weeks for enabling the execution of the commission.
27. Order *Dasti*.

PRATHIBA M. SINGH, J.

MARCH 02, 2022/dk/aman/sk