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

+ CS(COMM) 1160/2018

V GUARD INDUSTRIES LTD. Plaintiff

Through Mr. Sachin Gupta with Ms. Jyoti
Mehra, Ms. Jasleen Kaur, Advs.

versus

AKASH GUPTA & ORS. Defendants

Through None.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

ORDER

% **05.10.2018**

I.A. 13753/2018

Keeping in view the averments in the application, plaintiff is exempted from filing the original/clear/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) 1160/2018

Let the plaint be registered as a suit.

Issue summons in the suit to the defendants by all modes including *dasti*, returnable for 16th November, 2018 before the Joint Registrar for completion of service and pleadings.

The summons to the defendants shall indicate that a written statement to the plaintiff shall be positively filed within four weeks of the receipt of the summons. Liberty is given to the plaintiffs 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 in accordance with the Delhi High Court Rules.

List the matter before Court on 14th January, 2019.

I.A. 13754/2018

Issue notice to defendants by all modes including *dasti*, returnable for 16th November, 2018 before the Joint Registrar.

It is pertinent to mention that the present suit has been filed for permanent injunction restraining infringement of trade mark, passing off, unfair competition, 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.

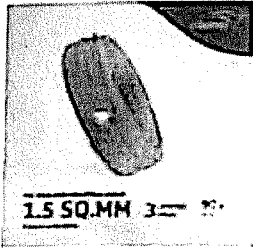

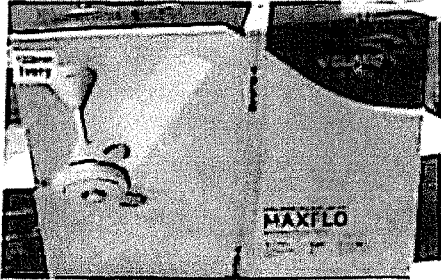
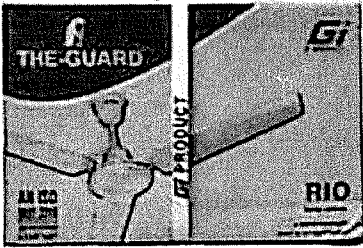
It is stated that the plaintiff is the registered proprietor of the trademark V-GUARD and its formative variants in Classes 7, 9 and 11 under the Trade Marks Act, 1999 and by virtue of extensive and continuous use has become a household name and synonymous with the plaintiff's business.

It is stated that in 2016, the plaintiff as a part of rebranding adopted a new trade dress and device mark. The new trade dress comprises of black and yellow colour combination and a device mark i.e Kangaroo in a leaping position. It is stated that the plaintiff began selling its product under the new trade dress in April 2017. However, the plaintiff officially announced it in February 2018. It is stated that at the time of adoption of the new trade dress by the plaintiff, no third party was using any identical or deceptively similar trade dress.

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 the third week of September, 2018, the plaintiff came across the defendants' product being sold in Delhi markets under the impugned mark 'THE-GUARD'. He states that the plaintiff's representative purchased the impugned products from the defendant no.4 at Shahdara, Delhi. He states that the defendant no.1 is manufacturing/marketing table fans, ceiling fans under the impugned mark through the defendant no.2 and manufacturing/marketing wires and cables under the impugned mark

through the defendant no.3 and distributes the same in Delhi through the defendant no.4 and themselves. A pictorial representation of the products of the plaintiff and the defendants is reproduced hereinbelow:-

Plaintiff's product	Defendant's product
	
	

Learned counsel for the plaintiff states that the defendant's application dated 31st October, 2017, for registration of mark 'THE-GUARD' was allowed and the same is now registered. He states that the plaintiff has already filed a cancellation petition before the IPAB, for cancellation of the defendant's mark.

Learned counsel for the plaintiff states that the mala fide intention on part of the defendants is evident as the defendants have copied the trade mark of the plaintiff and have only changed the letter 'V' with 'THE'. He further states that the defendants have exactly

copied the plaintiff's trade dress, colour combination as well as arrangement, the shape etc. and similar device to ride on the goodwill and reputation of the plaintiff

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 defendants, their proprietor or partners, directors as the case may be its assignees in business, licensees, franchisee, distributors and dealers are restrained from manufacturing, selling, offering for sale, advertising, directly or indirectly dealing in electronic/electrical goods including but not limited to ceiling fans, table fans, wires and cables under the impugned mark THE-GUARD with the device of a penguin, trade dress and carton packaging having colour combination of yellow and black or any other trade mark/device/trade dress/carton packaging/colour combination in any manner whatsoever.

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.

OCTOBER 05, 2018/j

Bald
08/10/2018
Court Master
High Court of Delhi
New Delhi

MANMOHAN, J