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

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CS(COMM) 1205/2018

V GUARD INDUSTRIES LTD.

..... Plaintiff

Through: Mr. Sachin Gupta, Advocate with  
Ms. Jyoti Mehra and Ms. Jasleen Kaur,  
Advocates.

versus

M/S B.M. ENTERPRISES & ORS.

..... Defendants

Through

**CORAM:**

**HON'BLE MR. JUSTICE MANMOHAN**

**ORDER**

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**30.10.2018**

**I.A. 14929/2018 in CS(COMM) 1205/2018**

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) 1205/2018**

Let the plaint be registered as a suit.

Issue summons in the suit to the defendants by all modes including

*dasti*, returnable for 06<sup>th</sup> December, 2018 before the Joint Registrar for completion of service and pleadings.

The summons to the defendants 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 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 20<sup>th</sup> December, 2018.

**I.A. 14930/2018 in CS(COMM) 1205/2018**

Issue notice to defendants by all modes including *dasti*, returnable for 06<sup>th</sup> December, 2018 before the Joint Registrar.

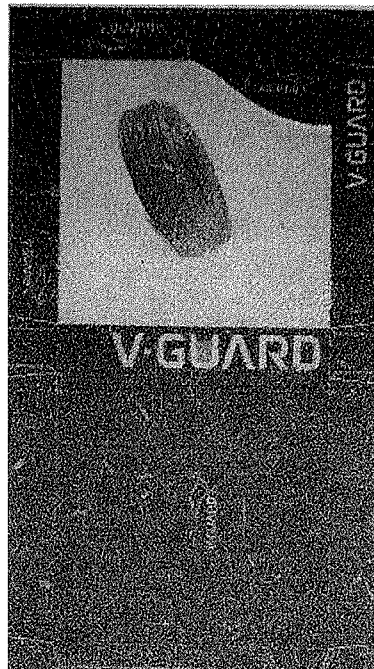
It is pertinent to mention that the present suit has been filed for permanent injunction restraining infringement of trade mark, copyright, passing off, unfair competition, rendition of accounts of profits/damages, delivery up etc.

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 Class 9 of 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 the plaintiff is registered proprietor of the V-GUARD label/packaging/trade dress under No.3714037 dated 28<sup>th</sup> December, 2017 in respect of goods *inter alia* electric cables and wires, insulated electric cables and electric wires etc. falling in Class 9. The subject matter of registration is reproduced below:-



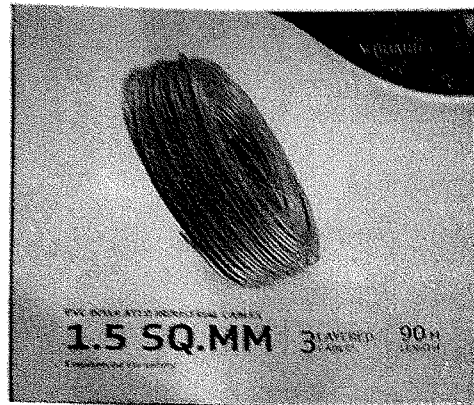
It is stated that the plaintiff as a part of rebranding adopted a new trade dress and device mark. The new trade dress comprised of a base of yellow with a splash of black on one corner. It is stated that the plaintiff began selling its product under the new trade dress in April, 2017. However, the plaintiff 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 averred in the plaint that the yellow and black label/trade dress/carton packaging including their overall and individual colour combination, get up, placement of features constitutes an "original artistic work" within the meaning of Section 2 (c) of the Copyright Act, 1957.

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 fourth week of September, 2018, the plaintiff came across the defendants' electric wires being sold under the impugned label/carton packaging/trade dress identical to that of the plaintiff's label/carton packaging/trade dress. He states that the defendant no.2 is the proprietor of the defendant no.1 and is engaged in the business of manufacturing and marketing wires under the impugned packaging. He states that defendant nos.3 and 4 are dealers of the defendant nos. 1 and 2. A pictorial representation of the products of the plaintiff and the defendants is reproduced hereinbelow:-

### Plaintiff's Product



### Defendants Product



Learned counsel for the plaintiff states that the plaintiff has no grievance against the use of the mark ORO by the defendant no.1.

Learned counsel for the plaintiff states that the defendant no.1 unlawfully and blatantly adopted plaintiff's label/carton packaging/ trade dress in a bid to trade upon plaintiff's reputation.

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 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 wires under the impugned ORO label/packaging/trade dress having colour combination of yellow and black or any other label/trade dress/carton packaging/colour combination which is a colourable imitation or substantial

reproduction to the plaintiff's V-GUARD label/carton packaging/ trade dress.

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 30, 2018  
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*N. Balh*  
01/11/2018  
Court Master  
High Court of Delhi  
New Delhi

MANMOHAN, J