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

+ **CS(COMM) 51/2020**

V GUARD INDUSTRIES LTD.

..... Plaintiff

Through: Mr. Sachin Gupta, Mr. Pratyush Rao, Ms. Rajnandini Mahajan, Advocates with Mr. Avdhesh Kumar & Mr. Roopak Ahluwalia, A.R of the Plaintiff.

versus

NIKESH KUMAR & ANR.

..... Defendants

Through: None.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

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31.01.2020

I.A. 1367/2020 (*exemption*)

The application for exemption is allowed, subject to the plaintiff granting inspection of the documents filed, as and when required to do so, or filing the original documents at the stage of admission/denial.

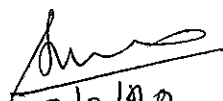
I.A. 1366/2020 (*under Order XI Rule 1(4) seeking leave to file additional documents*)

This is an application for filing of additional documents. The additional documents may be filed by the plaintiff, strictly in accordance with the provisions of the Commercial Courts Act, 2015.

The application is disposed of.

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Court Master
High Court of Delhi
New Delhi

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1. The plaint be registered as a suit. Summons be issued to the defendants by all permissible modes on filing of process fee. Summons may be served upon the defendant no.1 by email in addition at the email address disclosed in the memo of parties. Learned counsel for the plaintiff will file an affidavit to this effect.
2. The summons shall indicate that the written statements must be filed within thirty days from the date of receipt of the summons. The defendants shall also file affidavits of admission/denial of the documents filed by the plaintiff, failing which the written statements shall not be taken on record.
3. The plaintiff is at liberty to file replications thereto within fifteen days after filing of the written statements. The replications shall be accompanied by affidavits of admission/denial in respect of the documents filed by the defendants, failing which the replications shall not be taken on record.
4. It is made clear that any unjustified denial of documents may lead to an order of costs against the concerned party.
5. Any party seeking inspection of documents may do so in accordance with the Delhi High Court (Original Side) Rules, 2018.
6. List before the Joint Registrar for completion of pleadings, marking of exhibits and admission/denial of documents on 23.03.2020.
7. List before the Court on 06.07.2020.

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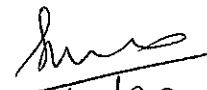
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I.A. 1368/2020 (Application under Order XXXIX Rules 1 and 2 of the CPC for ex-parte ad interim injunction)

1. Issue notice, returnable for 06.07.2020. Notice may be served upon defendant no.1 by email at the email address disclosed in the memo of parties. Learned counsel for the plaintiff will file an affidavit to this effect.
2. This suit has been instituted by the plaintiff on an allegation of infringement of its registered trademark "V-GUARD" and passing off by the defendants.
3. The plaintiff is engaged in the business of dealing in electrical and electronic apparatus, fittings and instruments. It has registered the trademark, "V-GUARD", and several derivatives thereof, in various classes including classes 9 and 11. The earliest registration by the plaintiff is of the year 1983 and it claims to have adopted the said mark for electrical and electronic products in the year 1977. A list of registrations of the plaintiff's trademarks is contained in paragraph 8 of the plaint. Although some of the early registrations in favour of the plaintiff, in respect of device marks, carry a disclaimer to the effect that the plaintiff does not have an exclusive right for use of the letter "V" or of "V-GUARD", later registrations do not contain any such disclaimer. The plaintiff also has a registered word mark, "V-GUARD", in which there is no disclaimer. The plaintiff has also registered various domain names which include the word "vguard". The plaintiff claims to have generated sales revenue for its products under the said mark in excess of ₹2,000 crores in each financial year since 2016-17.

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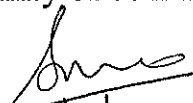
4. The allegation in the present suit is that the defendants are dealing in electrical and electronic products, as well as electrical conduit fitting products, under the impugned mark "WE-GUARD". The plaintiff has discovered from the website of the Trademark Office that defendant no.1 applied for registration of the impugned mark first on 05.07.2018 [in class 9], which was subsequently abandoned and thereafter on 27.06.2019 [in class 11], which remains pending. According to the plaintiff, the defendant no. 2 has also applied for registration of the impugned mark in class 9 on 18.10.2018.

5. It is disclosed in the plaint that the defendants are selling their products under the impugned mark online through interactive websites viz., www.weguardelectronics.co.in and www.we-guard.in, and also on third party e-commerce websites.

6. Mr. Sachin Gupta, learned counsel for the plaintiff, has also drawn my attention to *ex-parte ad interim* orders passed by this Court in suits filed by the plaintiff against other infringing parties, with respect to the same trademark. Copies of orders dated 16.08.2018 in CS(COMM) 1076/2018 [*V-Guard Industries Ltd. vs. Sh. Deepak Khajuria*] and 05.10.2018 in CS(COMM) 1160/2018 [*V-Guard Industries Ltd. vs. Akash Gupta and Ors.*] have been placed on record.

7. I am of the view that the impugned mark of the defendants displays phonetic, structural and visual similarity with the registered trademark of the plaintiff. As the defendants' business deals in goods identical to those of the plaintiff, the possibility of confusion is apparent.

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8. The plaintiff has thus made out a good *prima facie* case for the grant of an *ad interim* order of injunction. The goods in question being electrical appliances where quality and safety are of paramount concern, the balance of convenience is also in favour of grant of an injunctive relief at this stage. I am satisfied that the plaintiff would suffer irreparable loss and prejudice if its intellectual property rights are not protected.

9. Consequently, the defendants are restrained, until the next date of hearing, from manufacturing, offering for sale, or advertising or dealing in electrical and electronic apparatus, fittings and instruments under the impugned mark "WE-GUARD" or through the impugned domain names www.weguardelectronics.co.in and www.we-guard.in or any other trademark which is deceptively similar to that of the plaintiff's registered mark, "V-GUARD".

10. The provisions of Order XXXIX Rule 3 of the Code of Civil Procedure, 1908, be complied with within one week. Copies of the plaint and suit paper book will be served upon the defendants.

11. The defendants may file replies to this application within four weeks. Rejoinder thereto, if any, be filed within two weeks thereafter.

12. Defendants are at liberty to apply for vacation, variation and modification of this order, if required.

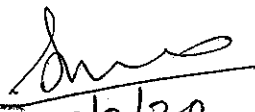
13. List on 06.07.2020.

14. A copy of the order be given *dasti* under the signature of the Court Master.

JANUARY 31, 2020/'pv'
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Sd-
PRATEEK JALAN, J

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New Delhi

