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

+ CS(COMM) 334/2023

EUREKA FORBES LIMITED (FORMERLY
FORBES ENVIRO SOLUTIONS LIMITED) Plaintiff

Through: Mr. Amit Sibal, Senior Advocate with
Mr. Hemant Daswani, Ms. Saumya
Bajpai, Mr. Saksham Dhingra,
Mr. Darpan Sachdeva and
Mr. Sarabjeet Singh, Advocates.

versus

SANTOSH NATH AND ORS. Defendants

Through: None.

CORAM:

HON'BLE MR. JUSTICE AMIT BANSAL

ORDER

23.05.2023

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I.A. 10058/2023 (for exemption)

1. Subject to the plaintiff filing the original, clear and legible and translated copies of the documents on which the plaintiff may seek to place reliance, within four weeks from today, exemption is granted for the present.
2. The application is disposed of.

I.A. 10057/2023 (exemption from advance service to the defendants)

3. The present application has been filed on behalf of the plaintiff seeking exemption from advance service to the defendants.
4. In view of the fact that the plaintiff is seeking appointment of Local Commissioners to visit the premises of the defendants to prepare inventories and seize the stocks bearing the impugned marks, the application is allowed,

and the plaintiff is exempted from effecting advance service to the defendants.

I.A. 10056/2023 (u/S 12A of the Commercial Courts Act)

5. In view of the urgent interim relief sought, the plaintiff is granted exemption from the requirement of pre-institution mediation in terms of Section 12A of the Commercial Courts Act, 2015.

6. Accordingly, the application stands disposed of.

I.A. 10055/2023 (O-XI R-1(4) of the CPC)

7. The present application has been filed on behalf of the plaintiff seeking leave to file additional documents under the Commercial Courts Act, 2015.

8. The plaintiff is granted thirty days' time to file additional documents.

9. Accordingly, the application is disposed of.

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10. Let the plaint be registered as a suit.

11. Issue summons.

12. Summons be issued to the defendants through all modes. The summons shall state that the written statements shall be filed by the defendants within thirty days from the date of the receipt of summons. Along with the written statements, the defendants shall also file affidavit of admission/denial of the documents of the plaintiff, without which the written statements shall not be taken on record.

13. Liberty is given to the plaintiff to file replication(s), if any, within thirty days from the receipt of the written statements. Along with the replication(s) filed by the plaintiff, affidavit of admission/denial of the documents of the defendants be filed by the plaintiff.

14. 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 also be filed with the pleadings.

15. If any of the parties wish to seek inspection of any documents, the same shall be sought and given within the timelines.

16. List before the Joint Registrar on 21st August, 2023 for completion of service and pleadings.

17. List before the Court on 25th September, 2023.

I.A. 10053/2023 (O-XXXIX R-1 & 2 of the CPC)

18. The present suit has been filed seeking relief of permanent injunction restraining the defendants from infringing the trademarks and copyrights of the plaintiff, passing off their products as those of the plaintiff and other ancillary reliefs.

19. It has been averred in the plaint that the plaintiff is a portfolio company of Advent International, a global private equity firm. In the year 1982, the predecessor-in-title of the plaintiff, Samuel Osborn (India) Limited, introduced a water purification system that was premised on UV technology under the trademark 'AQUAGUARD'. The plaintiff currently operates in over 135 cities across India through its authorized channels, with 19,850 dealers all over the country and is engaged in the business of manufacturing, marketing, and selling home appliances such as water purifiers, vacuum cleaners, air purifiers and other products under the marks 'AQUAGUARD', 'AQUASFILTER' and 'ACTIVE COPPER MAXX'. The plaintiff also provides services such as repair and maintenance for its water

purification system to cater to the needs of its customers.

20. The plaintiff has obtained trademark registrations in respect of the marks 'AQUAGUARD', 'AQUASFILTER' and 'ACTIVE COPPER MAXX' and other formative marks, details of which are given at pages 169 to 218 and pages 1166 to 1182 of the documents filed along with the plaint.

21. It is further averred in the plaint that the plaintiff has grown to become the market leader in the field with over four decades of operations in the Indian market. By virtue of such extensive use, the trademark 'AQUAGUARD' has acquired immense reputation and goodwill in the market. The mark 'AQUAGUARD' is associated exclusively with the products of the plaintiff. Copies of sales invoices of the products under the mark AQUAGUARD have been filed on behalf of the plaintiff. The plaintiff has also filed sales turnover from the year 1983-1984 to the year 2021-2022 (pages 1199-1200 of the documents). The annual sales turnover of the plaintiff in the year 2021-2022 was over Rs.276 crores.

22. It is also averred in the plaint that the plaintiff's get-ups/artworks/labels in respect of the aforesaid trademarks are the "original artistic work" within the meaning of Section 2(c) the Copyright Act, 1957, and the plaintiff is the first owner of the copyrights therein by virtue of Section 17 of the said Act. The plaintiff has also obtained copyright registrations in respect of the aforesaid get-ups/artworks/labels.

23. The case set up in the plaint is that sometime around 20th April, 2023, the plaintiff came across online listings of the defendants no.1 to 5 of counterfeit products using the marks of the plaintiff, being 'AQUAGUARD', 'AQUASFILTER' and 'ACTIVE COPPER MAX' as well as the get-ups/artworks/labels identical to those used in the products of

the plaintiff.

24. The defendants no.1 to 5 are stated to be connected with each other and carrying on the infringing activities. Defendant no.6 is a company that is the owner of the website "www.indiamart.com". The defendants no.1 to 5 have their counterfeit products listed on the said website. Screenshots of the said listings have been filed at pages 1552 to 1554 of the documents filed along with the plaint.

25. It is submitted on behalf of the plaintiff that the action of the defendants no.1 to 5 is a deliberate attempt to ride on the goodwill and reputation of the plaintiff. It is further submitted that the sale of such counterfeit products by the defendants no.1 to 5 is resulting in the dilution of the plaintiff's trade name/trademarks, thereby causing losses to the plaintiff's business.

26. Senior counsel appearing on behalf of the plaintiff further submits that the present dispute involves public interest as well, since the sale of such counterfeit products, which are used in water filtration/purification systems, may cause water borne diseases and loss of life on account of their sub-standard quality and/or their inability to ably aid in the water filtration/purification process.

27. A comparison of the products of the plaintiff and the defendants no.1 to 5 using the subject trademarks and get-ups/labels is set out below:

PLAINTIFF'S PRODUCTS



DEFENDANTS' PRODUCTS



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28. A comparison of the above marks and get-ups/artistic works/labels of the plaintiff with those of the defendants no.1 to 5 shows that the said defendants are violating the statutory as well as common law rights of the plaintiff, which amounts to infringement of trademark and copyright as well as passing off.

29. Issue notice.

30. Notice be issued to the defendants through all modes.

31. Replies be filed within four weeks.
32. Rejoinders thereto, if any, be filed within two weeks thereafter.
33. Based on the averments in the plaint and submissions made on behalf of the plaintiff, a *prima facie* case has been made out on behalf of the plaintiff. Balance of convenience is in favour of the plaintiff. Irreparable harm would be caused not only to the plaintiff but also to the public if an *ex parte* ad interim injunction as sought is not granted in favour of the plaintiff.
34. Consequently, till the next date of hearing, an *ex parte* ad interim injunction is passed in the following terms:
- (i) The defendants no.1 to 5, their partners, directors, proprietors, promoters, agents, servants, distributors, affiliates and assigns and any other person(s) acting for and on behalf of the defendants no.1 to 5 are restrained from selling, offering for sale, marketing, advertising, manufacturing and directly or indirectly dealing in any water purification systems and parts thereof and/or any services related thereto, bearing the trademarks 'AQUAGUARD', 'AQUASFILTER', 'ACTIVE COPPER MAXX' or any other marks either identical or deceptively similar to the plaintiff's trademarks.
- (ii) The defendants no.1 to 5, their partners, directors, proprietors, promoters, agents, servants, distributors, affiliates and assigns and any such other person(s) acting for and on behalf of the said defendants are restrained from using, manufacturing, selling, offering for sale, distributing, marketing, advertising, exporting, importing and directly or indirectly dealing in any water purification systems and/or parts thereof and/or services related thereto bearing any get-ups/artworks/labels in the manner that are identical and/or substantially similar to the plaintiff's get-ups/artworks/labels, being




and

(iii) The defendant no.6 is directed to immediately take down the listings of the counterfeit products of the defendants no.1 to 5 that use the marks of the plaintiff, being 'AQUAGUARD', 'AQUASFILTER' and 'ACTIVE COPPER MAX' and/or the get-ups/artworks/labels of the plaintiff, being

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and  from the website “www.indiamart.com”, within the next 48 hours. In the event that the said listings are still accessible on the said website after 48 hours, the plaintiff shall inform the defendant no.6 of the URLs, which shall be taken down within 48 hours from such intimation. If there are any residual listings of products carrying the impugned

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marks/get-ups/artworks/labels which are not taken down, the plaintiff is permitted to approach the Court. The plaintiff is further permitted to communicate to the defendant no.6 the URLs of any counterfeit products of the defendants no.1 to 5, which are using the aforesaid trademarks/get-ups/artworks/labels and are listed on the website "www.indiamart.com" in the future, which shall also be taken down by the defendant no.6 within 48 hours of such intimation.

35. Compliance under Order XXXIX Rule 3 of the Code of Civil Procedure, 1908 (CPC) be done within two weeks from today.

36. List before the Joint Registrar on 21st August, 2023 for completion of service and pleadings.

37. List before the Court on 25th September, 2023.

I.A. 10054/2023 (O-XXVI R-9 of the CPC)

38. The present application has been filed seeking appointment of Local Commissioners to visit the premises of the defendants, prepare inventories and seize the products bearing the trademarks of the plaintiffs.

39. For the reasons stated, the application is allowed. The following persons are appointed as Local Commissioners at the cost of the plaintiff, and who shall visit the premises of the defendants no.1 to 5 in the following manner:

(Table I)

S. No.	NAME & MOBILE NO.	PREMISES TO BE VISITED	FEEES (IN RS.)
1.	Ms. Harsheen Madan Palli, Advocate	2 nd floor, 1684-A, Kotla Mubarakpur Main Chopal Near Chopal, New Delhi, Delhi-	1,00,000/- (plus out of pocket expenses)

	(Mobile No.: 9833551489)	110003 <i>(Defendant no.1)</i>	
2.	Ms. Abhipriya Rai, Advocate (Mobile No.: 7508549780)	WZO/45-A, Mahavir Nagar, Delhi, West Delhi, Delhi-110018 <i>(Defendant no.2)</i>	1,00,000/- (plus out of pocket expenses)
3.	Mr. Prateek Mehta, Advocate (Mobile No.: 9911886609)	Old No. 5 B, New No. 104, Sembudoss Street, Chennai-600001, Tamil Nadu, India <i>(Defendant no.3)</i>	1,50,000/- (plus out of pocket expenses)
4.	Mr. Deepak Dhyani, Advocate (Mobile No.: 9811723901)	1, Karunamoyee, Ghat Road, Dharapara, Barisha, Kolkata-700082, West Bengal, India <i>(Defendant no.4)</i>	1,50,000/- (plus out of pocket expenses)
5.	Mr. Sohail Khanna, Advocate (Mobile No.: 8800420426)	GF, Shed No. 2/B, Plot No. 4, Vijay Estate, Near Railway Crossing, Ahmedabad, Gujarat, 382481 <i>(Defendant no.5)</i>	1,50,000/- (plus out of pocket expenses)

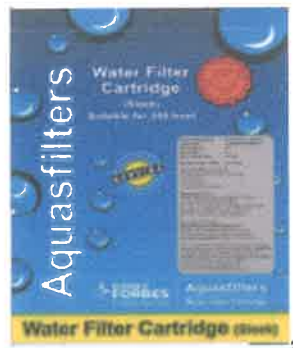
40. In addition to the addresses mentioned above, the Local Commissioners shall also demand the disclosure of any other premises of the defendants no.1 to 5 where the products/materials using the trademarks/get-ups/artworks/labels of the plaintiff are manufactured, stocked and/or sold by the said defendants and also visit such premises so disclosed in furtherance of execution of the commission.

41. The fees of the Local Commissioners, as fixed in the table above, shall be borne by the plaintiff.

42. The following directions are passed for execution of the commissions:

I. The Local Commissioners shall visit the aforesaid premises of the defendants no.1 to 5 in the aforesaid manner and prepare inventories of all the products and other materials, including but not limited to packaging, promotional materials, stationery, dyes and blocks, bearing the trademarks of the plaintiff, being 'AQUAGUARD', 'AQUASFILTER', 'ACTIVE COPPER MAXX' and/or the get-

ups/artworks/labels of the plaintiff, being





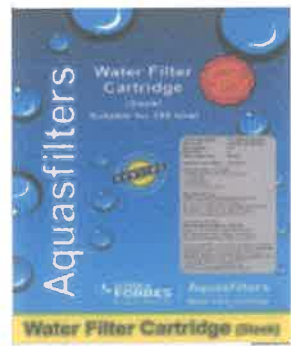
and



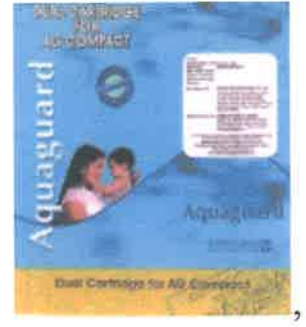
and/or any other trademarks/get-

ups/artworks/labels either identical or deceptively similar to the aforesaid trademarks/get-ups/artworks/labels of the plaintiff, which are found lying in the premises of the defendants no.1 to 5.

II. The Local Commissioners shall seize and seal the products and any other materials using the trademarks of the plaintiff, being 'AQUAGUARD', 'AQUASFILTER', 'ACTIVE COPPER MAXX' and/or the get-ups/artworks/labels of the plaintiff, being



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and

and/or any other

trademarks/get-ups/artworks/labels either identical or deceptively similar to the aforesaid trademarks/get-ups/artworks/labels of the plaintiff, which are found lying in the premises of the defendants no.1 to 5 and handover the same on *supardari* basis to the plaintiff upon their furnishing an undertaking to produce the same as and when directed by this Court. The said products/materials shall be stored in the warehouse(s) of the plaintiff.

III. The Local Commissioners shall procure photocopies of the books of account and stock and excise registers maintained by the defendants

concerning the products and/or other materials using the impugned marks/get-up/artworks/labels.

- IV. The Local Commissioners shall also take photographs of the seized stock.
 - V. The defendants and their representatives are directed to provide full assistance to the Local Commissioners for executing the present commissions.
 - VI. In case the aforesaid premises of the defendants or any part thereof are found locked, the Local Commissioners are permitted to break open the locks and doors for execution of the commissions.
 - VII. The concerned Station House Officers of the Police Stations having jurisdiction over the aforesaid premises to be visited by the Local Commissioners shall render necessary assistance, if required, to the Local Commissioners.
 - VIII. Copy of this order along with a complete set of the plaint shall be served upon the defendants by the Local Commissioners at the time of execution of the commission.
 - IX. The Local Commissioners shall file their reports within two weeks of execution of the commission along with the photographs taken and photocopies of the books of account and stock and excise registers procured pursuant thereto.
43. At this stage, senior counsel appearing on behalf of the plaintiff submits that an additional Local Commissioner be appointed on a stand-by basis to execute the commission in the event one of the aforesaid Local Commissioners are not available.
44. Accordingly, in addition to the Local Commissioners appointed as per

Table I, Mr.Devendra Kumar, Advocate (Mobile No.:8744880124) is appointed as a Local Commissioner on a stand-by basis, who shall execute the commission in the event that a Local Commissioner mentioned in Table I above is not available. The following directions are passed in this regard:

I. The execution of the commission shall be done in conformity with the directions contained in paragraph 42 of this order.

II. In the event that the Local Commissioner appointed on stand-by basis is required to execute the commission, the total amount of fees to be paid to him by the plaintiff shall be the same amount as mentioned against the address of the premises to be visited, as given in Table I.

45. In the event that a Local Commissioner is still not available for executing the commission, the plaintiff is at liberty to approach the Court for appointment of another Local Commissioner.

46. The application stands disposed of in above terms.

47. This order shall not be uploaded on the website of this Court till the execution of the commissions.

48. Copy of this order be given to the counsel for the plaintiff *dasti* under signatures of the Court Master.

Sd/-
AMIT BANSAL, J.

MAY 23, 2023

at


Court Master
Delhi High Court
New Delhi