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

+ **CS(COMM) 336/2023**

**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

**PRAMOD JAIN AND ORS. .... Defendants**

Through: None.

**CORAM:  
HON'BLE MR. JUSTICE AMIT BANSAL**

**ORDER**  
**23.05.2023**

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**I.A. 10070/2023 (for exemption)**

1. Subject to the plaintiff filing original, clear and legible 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. 10069/2023 (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 inventorize and

seize the stocks bearing the impugned mark, the application is allowed and the plaintiff is exempted from effecting advance service to the defendants.

**I.A. 10068/2023 (u/S 12A of 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. 10067/2023 (O-XI R-1(4) of 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.

**CS(COMM) 336/2023**

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 statement(s) shall be filed by the defendants within thirty days from the date of the receipt of summons. Along with the written statement(s), the defendants shall also file affidavit of admission/denial of the documents of the plaintiff, without which the written statement(s) 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 statement(s). 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 21<sup>st</sup> August, 2023 for completion of service and pleadings.

17. List before the Court on 25<sup>th</sup> September, 2023.

**I.A. 10065/2023 (O-XXXIX R-1 & 2 of 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 copyright 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 around 31<sup>st</sup> March, 2023, the plaintiff obtained information that the defendants no.1, 3, 16 and 17 are manufacturing and supplying counterfeit spares to the defendant no.2 and to the defendants no.4 to 15, using the aforementioned marks of the plaintiff as well as the get-ups/artworks/labels identical to that used in the products of

the plaintiff. The defendants no.1 to 17 are stated to be connected with each other and carrying on the infringing activities. It is stated that there are various stalls/kiosks selling counterfeit spares under the aforesaid marks of the plaintiff in Delhi and their identity is not known to the plaintiff. Hence, the defendant no.18 is impleaded as the John Doe defendant.

24. It is submitted on behalf of the plaintiff that the actions of the defendants no.1 to 17 are a deliberate attempt to ride on the goodwill and reputation of the plaintiff. It is further submitted that the sale of such counterfeit spares by the defendants no.1 to 17 is resulting in the dilution of the plaintiff's trademarks, thereby causing losses to the plaintiff's business.

25. 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.

26. A comparison of the products of the plaintiff and the defendants no.1 to 17 using the subject trademarks and get-ups/artworks/labels is set out below:

**PLAINTIFF'S PRODUCTS**



**DEFENDANTS' PRODUCTS**



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27. A comparison of the above marks and get-ups/artworks/labels of the plaintiff with those of the defendants no.1 to 17 shows that the said defendants are violating the statutory as well as common law rights of the plaintiff, which amounts to infringement of the trademark and copyrights as well as passing off.

28. Issue notice.

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



30. Replies be filed within four weeks.
31. Rejoinders thereto, if any, be filed within two weeks thereafter.
32. 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.
33. Consequently, till the next date of hearing, an ad interim injunction is passed in the following terms:

- I. The defendants, their partners, directors, proprietors, promoters, agents, servants, distributors, affiliates and assigns and any other person(s) acting for and on behalf of the defendants 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 trade marks **AQUAGUARD/AQUASFILTER/ACTIVE COPPER MAXX** or any other marks either identical or deceptively similar to the plaintiff's trade marks.
- II. The defendants, their partners, directors, proprietors, promoters, agents, servants, distributors, affiliates and assigns and any such other person(s) acting for and on behalf of the 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

34. Compliance under Order XXXIX Rule 3 of the Code of Civil

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Procedure, 1908 (CPC) be done within two weeks from today.

35. List before the Joint Registrar on 21<sup>st</sup> August, 2023 for completion of service and pleadings.

36. List before the Court on 25<sup>th</sup> September, 2023.

**I.A. 10066/2023 (O-XXVI R-9 of CPC)**

37. 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 plaintiff.

38. For the reasons stated in the application, the same is allowed and the following persons are appointed as Local Commissioners at the cost of the plaintiff and who shall visit the premises of the defendant no. 1 and the defendants no.3 to 17 in the following manner:

**(Table I)**

S. No.	Name	Mobile No.	Premises to be Visited
1.	Ms. Chavi Arora, Advocate	9599247858	Oyster International, WZ-44, Manohar Park, Near Ashoka Park Metro Station, East Punjabi Bagh, New Delhi – 110 026 <i>(Defendant no.1)</i>
2.	Ms. Meghna De, Advocate	9540617186	Kotla Village, Mayur Vihar Phase-1, Delhi- 110091 <i>(Defendant no.3)</i>
3.	Ms. Mallika Parmar, Advocate	9971428439	D.S. Corporation, 34-35, Shri Balaji Complex, 102, 1 <sup>st</sup> Floor, Veer Savarkar Block,

			Shakarpur, Delhi 110092 <i>(Defendant no.4)</i>
4.	Mr. Sameer Kulshreshtha, Advocate	9716589571	M/s. Purotech RO System, G-2, Vishwakarma Colony, Pul Prahaladur, M.B. Road, New Delhi- 110044 <i>(Defendant no.5)</i>  M/s. S.K. Water Solutions, HR-232, 60 Feet Road, Sharma Market, Pul Pralhadpur, New Delhi- 110044 <i>(Defendant no.6)</i>
6.	Mr. Tarun Walia, Advocate	9911735381	Kashyap Water Zone, D-26, Block D, Pandav Nagar, Delhi, 110092 <i>(Defendant no.7)</i>
7.	Ms. Sanya Kapoor, Advocate	9810907412	M/s. Simplex Water Solutions, 443, Shanti Marg, Mandawali, Delhi-110092. <i>(Defendant no.8)</i>
8.	Mr. Aman Venugopal, Advocate	8968707240	M/s Aqua Star Sales and Service, C-43 (Old), C-41 (New), West Vinod Nagar, Delhi – 110 092 <i>(Defendant no.9)</i>  M/s Aqua Star Sales and Service, C-43 (Old), C-41 (New), West Vinod Nagar, Delhi –

			110 092 (Defendant no.10)
10.	Ms. Devangana Shah, Advocate	9818284969	Plot No. 159, Vipin Garden, Metro Pillar No. 798, Dwarka Mor, New Delhi-110059 (Defendant no.11)
11.	Ms. Mansi Jain, Advocate	8447826941	Shop No.1, Stall No. 8, Diwan Hall Road, Lajpat Rai Market, North Delhi, Delhi, 110006 (Defendant no.12)
12.	Mr. Bhupesh Pandotra, Advocate	8929375505	17, Old Lajpat Rai Market, Opp. Sarvodaya Kanya Vidhyalaya, Deewan Hall Road, Chandni Chowk, North Delhi, Delhi, 110006 (Defendant no.13)
13	Mr. Arpit Bhargava, Advocate	9871316969	Shop No. 10-A Sr. No. 21, Deewan Hall Road, Lajpat Rai Market, North Delhi, Delhi, 110006 (Defendant no.14)
14	Mr. Aman Sinha, Advocate	9911304514	A1/19, Sector 4, Rohini, Delhi, 110085 (Defendant no.15)
15	Ms. Sanya Kumar, Advocate	9818335779	Shop No 28, Nethram Complex, Gurudwara Road, Delhi – 110 003 (Defendant no.16)
16	Ms. Mansi Bhatia, Advocate	9953732408	Shop No 1, J-3/84, Khirdki Extn, Malviya Extn, New Delhi – 110017 (Defendant no.17)

39. In addition to the addresses mentioned above, the Local Commissioners shall also demand the disclosure of any other premises of the defendant no.1 and the defendants no.3 to 17 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.

40. The fees of each of the Local Commissioners is fixed at Rs.100,000/- plus out of pocket expenses, to be borne by the plaintiff.

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

I. The Local Commissioners shall visit the said premises of the defendant no.1 and the defendants no.3 to 17 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' and 'ACTIVE COPPER MAXX' and/or the get-ups/artworks/labels of the plaintiff, being



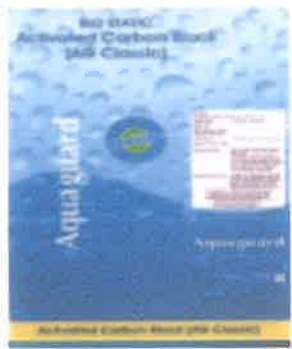


and

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 defendant no.1 and the defendants no.3 to 17.

- 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



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 defendant no.1 and the defendants no.3 to 17 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 accounts and stock and excise registers maintained by the defendants concerning the products and/or other materials using the plaintiff's marks/get-ups/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.

42. 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.

43. Accordingly, in addition to the Local Commissioners appointed as per Table I, following persons are appointed as Local Commissioners on a stand-by basis, who shall execute the commission in the event that one or more Local Commissioners mentioned in Table I above are not available.

S. No.	Name	Mobile No.
1.	Ms. Amrit Singh, Advocate	9911744609
2.	Ms. Sandhya Gupta, Advocate	9312280288
3.	Mr. Priyankar Raj Kaushik, Advocate	9910180416
4.	Ms. Vidhi Gupta, Advocate, Advocate	9910170303

44. 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 41 of this order.
- II. In the event that the Local Commissioners appointed on stand-by basis are required to execute the commission, the total amount of fees to be paid to them by the plaintiff shall be the same amount as mentioned in paragraph 40 of this order.

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.

**MAY 23, 2023**

*at*

Sd/

**AMIT BANSAL, J.**

