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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(COMM) 731/2022**
VICKY AGGARWAL TRADING AS HAINEY GLOBAL

..... Plaintiff

Through: Mr.S.K.Bansal, Mr.Ajay Amitabh
Suman and Mr.Somnath Dey, Advs.

versus

SUMEET AGARWAL AND ORS.

..... Defendants

Through: Nemo

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

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18.10.2022

I.A.17108/2022

1. The present application has been filed by the plaintiff seeking leave to file additional documents which are not in the power, possession, control or custody of the plaintiff at the moment.
2. The application is disposed of recording that the plaintiff shall file the additional documents strictly in accordance with law.

I.A.17109/2022

3. The application is allowed, subject to all just exceptions.
4. However, if there is any illegible document, the plaintiff shall file a typed copy thereof within a period of four weeks from today.

I.A.17110/2022 (exemption)

5. This application has been filed by the plaintiff seeking exemption from serving an advance copy of the plaint and the documents on the defendants.



6. For the reasons stated in the application, the same is allowed.

I.A.17116/2022

7. This application has been filed by the plaintiff seeking exemption from filing for pre-litigation mediation under Section 12A of the Commercial Courts Act, 2015.

8. Having perused the contents of the application, the same is allowed.

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9. Let the Plaint be registered as a suit.

10. Issue summons to the defendants, to be served through all permitted modes, including electronically, returnable on 10th January, 2023 before the learned Joint Registrar (Judicial).

11. The summons to the defendants shall indicate that the written statement(s) to the Plaint shall be positively filed within a period of 30 days from the date of receipt of summons. Along with the written statement(s), the defendants shall also file the affidavit(s) of admission/denial of the documents of the plaintiff, without which the written statement(s) shall not be taken on record.

12. Liberty is given to the plaintiff to file a replication within a period of 15 days of the receipt of the written statement(s). Along with the replication, if any, filed by the plaintiff, the affidavit of admission/denial of documents of the defendants be filed by the plaintiff, without which the replication shall not be taken on record. If any of the parties wish to seek inspection of any documents, the same shall be sought and given within the timelines.

I.A.17106/2022

13. Issue Notice.

14. On the plaintiff taking steps, let Notice be served on the defendants



through all permissible modes, including electronically, returnable, on 10th January, 2023 before the learned Joint Registrar (Judicial).

15. Let reply(ies) to the application be filed by the defendants within four weeks of receipt of notice. Rejoinder thereto, if any, be filed within two weeks thereafter.

16. It is the case of the plaintiff that the plaintiff is engaged in the business of processing/trading and selling Monosodium Glutamate, used for cooking purposes. The same is imported in bulk quantity and is thereafter sold under the trade mark “**VEDAN**”.

17. The plaintiff asserts that it adopted the said trade mark in the year 2005 and has been using the same since then. The said mark is also registered in Class 1. It is stated that there is no disclaimer attached to the said registration. The plaintiff further asserts that it has also obtained a copyright registration for the label in which the product is sold.

18. The plaintiff gives its sale figures in paragraph 9 of the Plaint.

19. The plaintiff asserts that the defendant no.1 had earlier adopted the mark “**VADEN**” and applied for registration of the same. The plaintiff has opposed the said registration. The plaintiff also filed a Civil Suit, being TM No.152/2018, before the court of the learned Additional District Judge, Patiala House Courts, wherein by way of an *ad-interim* order dated 26.11.2018, the defendant no.1 has been restrained from using the impugned mark “**VADEN**” or any mark deceptively similar thereto.

20. The learned counsel for the plaintiff submits that the said order of injunction still continues, and the suit is now listed, *inter-alia*, for recording of evidence of the parties.

21. The learned counsel for the plaintiff submits that faced with the order



of injunction, the defendant no.1, through defendant no.3 and 4, have applied for registration of the marks “**VIDAN**” (on 20.12.2019 on a “proposed to be used” basis in the name of the defendant no.3) and in the mark “**JTC4TUNE-VIDAN**” (again in the name of the defendant no.3 on 26.08.2019 on a “proposed to be used” basis). As the above two marks were applied in Class 30, which is not the relevant class for the goods in question, that is, Monosodium Glutamate, they escaped the attention of the plaintiff and proceeded for registration. The defendant no.1, through the defendant no.4, also applied for the registration mark “**VIDAN**” in Class 1 on 20.07.2022, which is pending consideration before the Trade Marks Registry. The said application is also on a “proposed to be used” basis.

22. The learned counsel for the plaintiff submits that the above applications have been filed by the defendant no.1 in the name of the defendant nos.3 and 4, who appear to be the relatives of the defendant no.1, in order to avoid the effect of the *ad-interim* injunction which is operating against the defendant no.1 and to overreach it.

23. He submits that the connection of defendant no.1 with the impugned marks is evident from the packaging of the product, which is now available with the market with the Impugned Trade Mark “**VIDAN**”, wherein the name of the defendant no.2, which is the firm of the defendant no.1, appears as the manufacturer.

24. Having considered the contents of the plaint, documents annexed therewith and having considered the submissions of the learned counsel for the plaintiff, in my opinion, the plaintiff is able to make out a good *prima facie* case in its favour. It appears that the defendant no.1, in order to frustrate the *ad-interim* order of injunction against him, which is stated to be



still operating, used the device of the defendant nos.3 and 4 not only to violate the *ad-interim* injunction but also to create right in the Impugned Mark by obtaining the registration thereof. The said registration does not, therefore, *prima facie* appear to be honestly obtained. The same was, in any case, applied for on 'proposed to be used' basis. The balance of convenience is also in favour of the plaintiff and against the defendants and the plaintiff is likely to suffer grave irreparable injury in case *ad-interim ex-parte* injunction as prayed for is not granted, inasmuch as the parties are dealing in Monosodium Glutamate, which is a chemical used for cooking purposes.

25. Accordingly, there shall be an *ad-interim ex-parte* injunction in favour of the plaintiff and against the defendants in terms of the prayer made in paragraph 6 (a) and (b) of the application, till further orders.

26. Compliance with Order XXXIX Rule 3 of the Code of Civil Procedure, 1908, be made within a period of two weeks from today.

I.A.17107/2022

27. By this application, the plaintiff prays for appointment of a Local Commissioner to visit the premises of the defendant nos.1 and 2, addresses whereof have been given in the Memo of Parties as under:

- “1. Dhanutia Bhawan,
Nehru Road,
Khalpara, Siliguri-734005
West Bengal
2. Nehru Road,
Khalpara, Siliguri – 734005
West Bengal
Also At
Dhanutia Bhawan,
1st Floor, Nehru Road,
Siliguri – 734005”



28. For the reasons stated hereinabove, I am of the opinion that the plaintiff has been able to make out a good case for appointment of a Local Commissioner.

29. Accordingly, I appoint Ms. Mansi Srivastava, Advocate, Mobile No. 9799690148 as a Local Commissioner to visit the abovementioned premises and godowns of the defendant nos.1 and 2.

30. The Local Commissioner shall be empowered to:

(i) take into custody any goods bearing the impugned mark/logo



“VIDAN”/ and the trade dress “

or any other trade mark/ label/ trade dress which is deceptively similar to the plaintiff’s said trade mark/label/ trade dress and make an inventory thereof. The Local Commissioner shall thereafter release the said goods on *supardari* to the defendants and on an undertaking that the same shall be produced in court as and when so directed;

(ii) visit other premises at the identification to the plaintiff where the impugned goods bearing the impugned trade mark/label/trade dress or any other trade mark/label which is deceptively similar to the trade mark/ label of the plaintiff are expected to be found;

(iii) sign the account book including ledgers, cash register, stock registers, invoices, books etc., of the defendants;

(iv) break open the locks/seal, if required, for taking possession of the impugned goods to execute the Commission;

(v) photograph/ videograph the proceedings of the Commission;



(vi) seek assistance from the Station House Officer (SHO) of the concerned Police Station, for the execution of the Commission. The SHO of the concerned Police Station is directed to render such assistance and protection to the Local Commissioner, if requested for.

31. The fee of the Local Commissioner is fixed at Rs.1,50,000/- (Rupees One Lakh Fifty Thousand Only) apart from any out-of-pocket expenses that the Local Commissioner may incur, to be paid at the first instance by the plaintiff.

32. The application is allowed in the above terms.

33. This order may not be uploaded on the website of the Delhi High Court for a period of two weeks.

34. *Dasti.*

NAVIN CHAWLA, J

OCTOBER 18, 2022/Arya