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

+ CS(COMM) 598/2024 & I.A. 34007/2024, I.A. 34008/2024, I.A. 34492/2024, I.A. 34493/2024

IDEAL PREPAID INDIA PRIVATE LIMITED & ANR.

.....Plaintiffs

Through: Mr. Arvind Nayar, Sr. Adv. with Mr. Shubham Pandey, Mr. Akshay Joshi, Mr. Sumant Nayak, Mr. Mohit Chadha, Mr. Rohith M. Subramonium, Advocates

versus

IDEALPE MATRIX PRIVATE LIMITED & ORS.Defendants

Through: None.

CORAM:

HON'BLE MS. JUSTICE MINI PUSHKARNA

ORDER

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26.07.2024

I.A. 34008/2024 (seeking exemption from filing legible & true typed copies of annexures)

1. The present is an application under Section 151 of the Code of Civil Procedure, 1908 ("CPC"), seeking exemption from filing legible and true typed copies of annexures.
2. Exemption is granted, subject to all just exceptions.
3. Applicant shall file legible and true typed copies of the annexures on which the applicant may seek to place reliance, before the next date of hearing.
4. Accordingly, the present application is disposed of.

I.A. 34493/2024 (seeking exemption from dispensing with the requirement of advance service of the suit to the defendants)



5. The present is an application under Rule 22 of the Delhi High Court Intellectual Property Rights Division Rules, 2022 read with Section 151 CPC, seeking exemption from dispensing with the requirement of advance service to the defendants.

6. Since notice is being issued to the defendants, in order to file reply, the present application is disposed of, accordingly.

I.A. 34492/2024 (seeking exemption from pre-institution mediation and settlement)

7. The present is an application under Section 12A of the Commercial Courts Act, 2015 read with Section 151 of CPC seeking exemption from undergoing Pre-institution Mediation.

8. Having regard to the facts of the present case and in the light of the judgment of Supreme Court in the case of *Yamini Manohar versus T.K.D. Keerthi, 2023 SCC OnLine SC 1382*, and Division Bench of this Court in *Chandra Kishore Chaurasia Versus RA Perfumery Works Private Ltd., 2022 SCC OnLine Del 3529*, exemption from attempting Pre-institution Mediation, is granted.

9. Accordingly, the application stands disposed of.

CS(COMM) 598/2024

10. Let the plaint be registered as suit.

11. Upon filing of the process fee, issue summons to the defendants by all permissible modes. Summons shall state that the written statement be filed by the defendants within thirty days from the date of receipt of summons. Along with the written statement, the defendants shall also file affidavit of admission/denial of the plaintiffs' documents, without which, the written statement shall not be taken on record.



12. Liberty is given to the plaintiffs to file replication within thirty days from the date of receipt of the written statement. Further, along with the replication, if any, filed by the plaintiffs, an affidavit of admission/denial of documents of the defendants, be filed by the plaintiffs, without which, the replication shall not be taken on record. If any of the parties wish to seek inspection of the documents, the same shall be sought and given within the timelines.

13. List before the Joint Registrar (Judicial) for marking of exhibits on 20th September, 2024.

14. List before the Court on 20th November, 2024.

I.A. 34007/2024 (under Order XXXIX Rule 1 & 2 of CPC)

15. The present suit has been filed for passing off and permanent injunction under Section 27(2) of the Trade Marks Act, 1999, restraining illegal use of the mark, dilution, tarnishment, unfair competition, rendition of accounts, costs, etc. against the defendants.

16. It is submitted that the plaintiffs adopted the term Frontier in referring to its software application modules as early as 2004. In early 2009 it created the logo and mark '**FRONTIER**' and have been continuously providing products and services under the said mark. The plaintiffs expanded its brand '**FRONTIER**' in 2009 to also refer to its meters with the intention of integrating and unifying all the products and services which it provides.

17. Learned Senior Counsel for the plaintiffs submits that the domain name FrontierPrepaid.com was registered by the plaintiffs in January 2009 and the plaintiffs have been using this website ever since. Another domain name, namely, frontierMeters.com was registered by the plaintiffs again in January 2010. Thus, '**FRONTIER**' mark as it is known today was designed



in February 2009 by the plaintiffs. All the website domains and the respective logos are the property of the plaintiff no.1 and its owners.

18. It is submitted that the mobile application which allows for reading of data of the Plaintiffs meters, is also labelled as the Frontier Meter application and has existed in the Apple Store and Google play store since 2019.

19. Attention of this Court has been drawn to the details about the defendants, which occurs from paragraphs 12 to 17 of the plaint.

20. It is submitted that some of the defendants are ex-employees of the plaintiffs.

21. It is submitted that the plaintiff no.2 had executed an agreement with defendant no.2 in the year 2015. In addition to this for the purposes of paying remuneration to defendant no.2, a services level agreement was entered into between the plaintiff no.2 and defendant no.2. Subsequently, another agreement was signed between the parties, namely, Shareholders Agreement. Thus, it is submitted that in line with the plan of plaintiff no.2 towards expanding its business as a service provider in India, plaintiff no.1 company, has been formed. On 02nd November, 2015, plaintiff no.1 was duly incorporated under the Indian Laws and based on a fiduciary relationship and reposition of substantial faith, as an employee, Mr. Sujeet Kumar Gupta, i.e., Defendant No. 2 was placed as the Chief Executive Officer (“CEO”) of plaintiff no. 1.

22. It is submitted that owing to his association with the plaintiff and by virtue of his designation in plaintiff no. 1 organisation, the defendant no. 2 was at all times privy to sensitive and confidential information pertaining to the business of the plaintiff no. 1, including the design and workings of its



Frontier Meters and its related modules.

23. Attention of this Court has been drawn to the Documents 20 and 21 (Colly) in this regard, which show that defendant no.2 was actively involved with the design and working of the Frontier Meters of the plaintiff.

24. It is submitted that subsequently, defendant no.2 began taking advantage of his geographical placing, city of residence in India, as the other Directors/stakeholders of the plaintiffs were placed abroad. Thus, it is submitted that it was in the year 2023, that plaintiff no.1 realised the fraudulent activities being carried out by defendant no.2 with respect to misusing the fiduciary relationship and position he occupied in the plaintiff no.1 company. The defendant no.2 while still being Director/CEO of the plaintiff no.1 had secretly and fraudulently formed an enterprise with the name and style 'JP Automation' using his father, Mr. Jai Prakash Gupta as a front for this company.


25. In view of the various illicit activities being carried out by defendant no.2 and its allies, the plaintiff no.1 was constrained to file a criminal complaint against defendant no. 1 under Section 154 of the Code of Criminal Procedure, 1973 ("CrPC"), as it stood then, for registration of FIR.

26. It is submitted that owing to the fiduciary relationship between defendant no.2 and plaintiff no.1, during his tenure from 2015 to 2023, the defendant no.2 was aware and in the knowledge of various sensitive details including Logo and design of Frontier Meters related material. Thus, the intellectual property and all other pertinent information related to the brand '**FRONTIER**' has been illegally and without the consent of the plaintiff no.1, been transferred from defendant no.2 to defendant no.1.


27. It is submitted that defendant no.1 by way of trademark application



dated 06th June, 2023, filed for registration of the

mark , on a *proposed to be used* basis under Application No. 5969018 in Class 9. It is submitted that the aforesaid trademark application has been opposed by plaintiff no.1 vide Notice of Opposition No. 1264417 dated 12th December, 2023.

28. It is submitted that the most prominent and essential feature of the impugned mark as proposed to be registered by defendant no.1, is the term and logo 'FRONTIER' which is identical to the plaintiff no.1's mark '**FRONTIER**'. Thus, the impugned mark is nearly identical and deceptively similar to the plaintiff no.1's well-known mark **FRONTIER**. It is submitted that defendant no.1 by adopting the impugned mark

 has deliberately copied the plaintiff no.1's well-known mark '**FRONTIER**', in order to come close to the plaintiff no.1's popular mark, knowing that the same is likely to create confusion in the minds of the consuming public.

29. Thus, it is submitted that in view of the evident similarities between the defendant no. 1's mark and the plaintiff no. 1's well-established and well-known mark '**FRONTIER**', it is clear that the defendant no.1 has intentionally replicated the mark of plaintiff no.1, with the clear intention of capitalizing on the popularity and reputation associated with the plaintiff no.1's brand.

30. It is submitted that the deceptively striking similarity between the impugned mark and the plaintiff no.1's trademark is not merely coincidental, rather, is a result of a calculated effort by the defendant no.1 to



closely copy the well-known mark of the plaintiff no.1.

31. It is submitted that the deliberate incorporation of the well-known and distinctive prefix '**FRONTIER**', identical to plaintiff no.1's established mark, suggests a strategic decision by the defendant no.1 to benefit from the goodwill and reputation associated with the plaintiff no. 1's brand.

32. It is submitted that the specifications of the goods bearing the impugned mark i.e., Electrical meters, Electric adaptors, Electricity meters, Electric flow meter, Electric Current Meter, Electricity metering apparatus, Detector for electric meters, Electricity Meter reading for billing purpose, Electric current meters, Smart Meters being goods falling under Class 9 are identical to the goods covered under the mark FRONTIER as used by plaintiff no. 1.

33. It is further submitted that the trade channels of defendant no.1 and plaintiffs' are also identical.

34. Thus, it is submitted that defendant no.2 while still continuing as an employee of plaintiff no.1 had actively played a role in applying for the BIS certification on behalf of the plaintiff no.1 for the peripherals and hardware used in lieu of the services rendered, including the products bearing FRONTIER marks. It is submitted that this established a direct link between defendant no.2's knowledge of the intellectual property and brand, particularly the use of the mark **FRONTIER** to the rights of the plaintiffs.

35. It is submitted that the defendant no. 1 has illegally replicated and registered the domain name **FrontierMeters.in** on 05th May, 2023, while some of its members and directors were still in the employment of plaintiff no. 1, specifically and with the intention to confuse the clients and divert away the business of the plaintiffs, who has been using the domains



FrontierMeters.com and **FrontierPrepaid.com** for more than 12 years.

36. It is submitted that the adoption of the impugned mark by defendant no.1 is not only unjustified but also conclusively determines serious concerns about the defendant no.1's intent to capitalize on the plaintiff no.1's brand recognition, constituting a clear case of infringement and an attempt to trade on the established reputation of the plaintiff no. 1's well-known mark **FRONTIER**.

37. It is submitted that plaintiff no.1 had adopted the mark **FRONTIER** in early 2009 and has been using the said mark uninterruptedly and continuously since then. Therefore, plaintiff no.1 is the prior adopter and prior user of the popular mark **FRONTIER** and thus has superior rights over the same.

38. At this stage, learned Senior Counsel for the plaintiffs submits that though inadvertently, it has not been mentioned in the plaint, however, in order to make full disclosure before this Court, he submits that defendant no.2 has filed a suit for damages, permanent injunction against the plaintiffs, being *CS(COMM) 385/2023*.

39. Issue notice to the defendants by all modes.

40. Let reply be filed within a period of four weeks. Rejoinder thereto, if any, be filed within a period of two weeks thereafter.

41. List before the Court on 20th November, 2024.

MINI PUSHKARNA, J

JULY 26, 2024

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