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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(COMM) 801/2022**
M/S JAQUAR AND COMPANY PVT. LTD. Plaintiff
Through: Mr.Shivendra Pratap Singh,
Mr.Navdeep Suhag, Advs. (M-
8826906894)

versus

USHAHINGORANI TRADING AS UTTARANSH PUMPS
INDUSTRIES Defendant
Through: Mr.Pran Krishna Jana, Ms.Deepika
Khinder, Advs.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

% **21.11.2022**

I.A. 19051/2022 (Exemption)

1. Allowed, subject to all just exceptions.

I.A. 19052/2022

2. This is an application filed on behalf of the plaintiff seeking leave to file additional documents, which are not in the power, possession, control or custody of the plaintiff at the moment.

3. The plaintiff may file the additional documents strictly in accordance with the provisions of the law.

4. The application stands disposed of.

I.A. 19053/2022

5. This application has been filed seeking exemption from initiating pre-institution mediation under Section 12A of the Commercial Courts Act, 2015.



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

CS(COMM) 801/2022

7. Let the plaint be registered as a suit.

8. Issue summons.

9. Mr. Pran Kishan Jana, the learned counsel, enters appearance and accepts summons on behalf of the defendant.

10. Written statement be positively filed within a period of 30 days. Along with the written statement, the defendant shall also file the affidavit of admission/denial of the documents of the plaintiff, without which the written statement shall not be taken on record.

11. Liberty is given to the plaintiff to file the replication within a period of 15 days of the receipt of the written statement. Along with the replication, if any, filed by the plaintiff, the affidavit of admission/denial of documents of the defendant 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.

12. List on 1st March, 2023 before the learned Joint Registrar (Judicial).

I.A. 19050/2022

13. Issue notice.

14. Mr. Pran Kishan Jana, the learned counsel, enters appearance and accepts notice on behalf of the defendant. 13. Let a reply to the application be filed by the defendant within a period of two weeks. Rejoinder thereto, if any, be filed within a period of two weeks thereafter.

15. It is the case of the plaintiff that the plaintiff has adopted the mark 'JAQUAR' since the year 1960, and is a market leader in organized bath fittings category with over 60% market share. It has seven state-of-the-art



manufacturing units in India and one in South Korea. It has also obtained registrations for its marks, the details whereof are given in paragraph 12 of the plaint.

16. The plaintiff also gives its sale figures in paragraph 15 and promotional expenses in paragraph 16 of the plaint. The plaintiff asserts that due to the vast use of the mark of the plaintiff is well known.

17. The plaintiff is aggrieved of the adoption of the mark '**JAQUAR**' by the defendants for selling its products such as submersible pump, mono-lock pump, agricultural pump, jet pump, shallow well pump and motors. The plaintiff asserts that the use of the same mark by the defendants for cognate goods is likely to cause deception and confusion in the minds of the unwary consumers of the association of the defendant with that of the plaintiff.

18. The plaintiff further asserts that the defendant's act of infringement came to the knowledge of the plaintiff only in the month of May, 2022, whereafter the plaintiff served a cease and desist notice dated 23.05.2022 to the defendant. Though the defendant replied to the same vide letter dated 30.06.2022, it continued to use the subject-mark. The plaintiff also came to know that the defendant has applied for registration of the said mark in Class 7 vide application no.3872850, which has now been opposed by the plaintiff.

19. The learned counsel for the defendant, who appears on an advance notice, prays for time to seek instructions and file reply.

20. On a query, if he has any submissions he would like to make today, he states that he has received no instructions but submits that on its own showing, the plaintiff was aware of the existence of the defendant since May, 2022, and, therefore, there is no extreme urgency for the grant of an



ad- interim relief in favour of the plaintiff.

21. I have considered the contents of the plaint, the documents filed therewith, as also the submissions made by the learned counsels for the parties.

22. The plaintiff has been using its mark since the year 1960 and claims itself to be a market leader in bath fittings category. The goods of the defendant being cognate, the adoption of the same mark by the defendant is likely to cause confusion and deception in the minds of the unwary consumer of the association of the defendant with the plaintiff. The fact that the plaintiff was aware of the existence of the defendant since May, 2022 cannot be used to deny the plaintiff an ad-interim relief today, as the plaintiff had immediately issued a cease-and-desist notice to the defendant as also opposed the application for registration of the mark of the defendant before the Trade Marks Registry. The filing of the present Suit is also with reasonable expedition. The plaintiff cannot, therefore, be accused of having acquiesced the use of the mark of the defendant, or having delayed in approaching this Court, thereby disentitling itself to any ad-interim relief.

23. The defendant is yet to explain the reason for adoption of the same mark to that of the plaintiff by it. I may also note that the defendant has been duly served with an advance copy of the paper book of the plaint, therefore, should have been ready with at least the *prima facie* defence to it. The defendant cannot defeat the object of an advance service of the paper book by simply seeking further time to seek instructions.

24. In view of the above, there shall be an *ad-interim* injunction in favour of the plaintiff and against the defendant in terms of prayer made in paragraph 27(a) of the application till further orders.



25. List on 21st December, 2022 before the Court.

NOVEMBER 21, 2022
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NAVIN CHAWLA, J