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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(COMM) 858/2024, I.A. 41049/2024, I.A. 41050/2024, I.A. 41051/2024, I.A. 41052/2024 & I.A. 41053/2024
KENT RO SYSTEMS LTD & ANR.Plaintiffs

Through: Ms. Rajeshwari Hariharan, Mr.
Chitranshu Kumar and Ms. Nikita
Seth, Advs.
M: 9588174061
Email: nikita@ralegal.co.in

versus

KALEEM SARWAT & ORS.Defendants
Through: Mr. Akhil Anand, Ms. Avni Sharma
and Ms. Ridhima Sharma, Advs. for
D-2.
M: 7303857800

CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA

ORDER
% **01.10.2024**

I.A. 41050/2024 (Exemption from filing certified copies of documents)

1. The present is an application under Section 151 of the Code of Civil Procedure, 1908 ("CPC"), on behalf of the plaintiffs, seeking exemption from filing certified clearer/typed or translated copies of documents.
2. Exemption is granted, subject to all just exceptions.
3. Plaintiffs shall file legible, clear, and translated copies of the documents, on which the plaintiffs may seek to place reliance, before the next date of hearing.
4. Accordingly, the present application is disposed of.

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I.A. 41052/2024 (Exemption from instituting Pre-Institution Mediation)

5. 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.

6. 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.

7. Accordingly, the application stands disposed of.

I.A. 41051/2024 (Application seeking leave to file additional documents)

8. This is an application under Order XI Rule 1(4) read with Section 151 CPC as amended by the Commercial Courts Act, 2015, seeking leave to file additional documents.

9. The plaintiffs, if they wish to file additional documents at a later stage, shall do so strictly as per the provisions of Commercial Courts Act, 2015, and the Delhi High Court (Original Side) Rules, 2018.

10. The application is disposed of, with the aforesaid directions.

I.A. 41053/2024 (Exemption from advance service to the defendant no.1)

11. The present is an application under Section 151 CPC, seeking exemption from advance service to the defendant no.1.

12. The plaintiffs seek urgent interim relief, therefore, in the peculiar facts and circumstances of this case, exemption from effecting advance service upon the defendant no.1, is granted.

13. For the reasons stated in the application, the same is allowed and disposed of.



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14. Let the plaint be registered as suit.
15. Issue summons to the defendants. Summons is accepted by learned counsel appearing for defendant no.2.
16. Upon filing of the process fee, issue summons to the defendant nos. 1 and 3 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.
17. 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.
18. List before the Joint Registrar (Judicial) for marking of exhibits, on 21st November, 2024.
19. List before the Court on 29th January, 2025.

I.A. 41049/2024 (Application under Order XXXIX Rules 1 and 2 read with Section 151 of CPC)

20. The present suit has been filed for permanent injunction to restrain infringement of plaintiffs' Design no. 312406, product passing off, damages and other related reliefs.
21. It is submitted that the present suit is filed by plaintiffs to, *inter alia*, restrain defendant nos. 1 to 3 from manufacturing and selling water purifier



systems that are identical in shape, design, and configuration to the registered design of the plaintiffs. Use of the said registered design of the plaintiffs constitutes a violation of the plaintiffs' statutory rights under the Designs Act, 2000. The present suit is being filed seeking an injunction against such infringing and unauthorized activities.

22. As per the information available with the plaintiffs, defendant no. 1 is involved in the sale of various water purifiers which infringe the plaintiffs' registered Design no. 312406. The said defendants sell all their products, especially, water purifiers to various customers across India through the website of defendant no.2. The water purifier products sold by defendant no. 1 can be purchased in Delhi through the website of defendant no. 2.

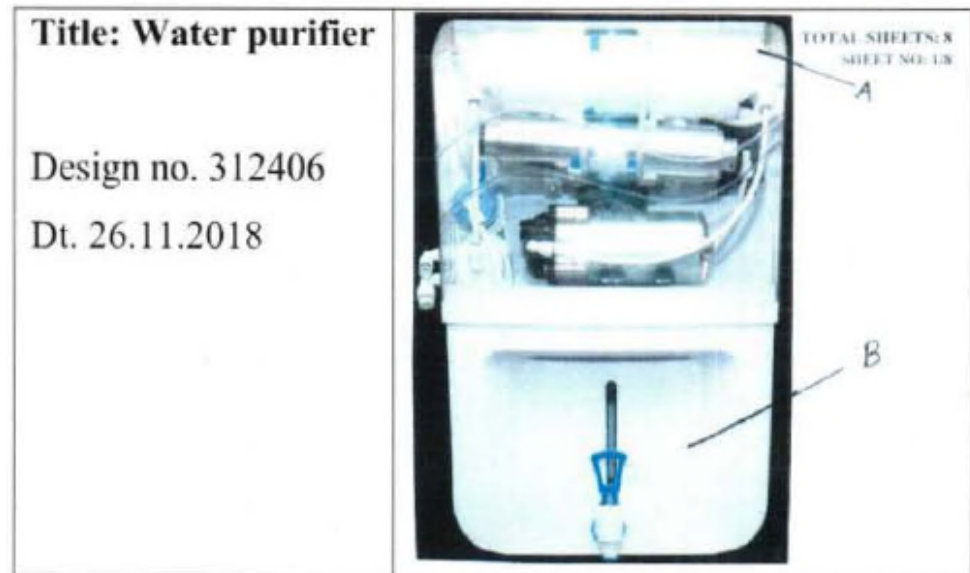
23. It is submitted that plaintiff no. 1 is conducting its business under the well-known trademark "KENT" and is one of the leading companies in India, engaged in the business of manufacture and sale of a diverse range of home electronic items like water purifiers, air purifiers, kitchen appliances, vacuum cleaners, water softeners, automatic water pressure boosting systems, CCTV Cameras, etc.

24. It is submitted that the plaintiff no. 2 adopted the trademark "KENT" in the year 1988. Initially, plaintiff no. 2 conducted the business of oil meters through the entity SS Appliances and subsequently, expanded its footprint in various other product segments such as water purifiers, air purifiers, kitchen appliances, etc. The said entity SS Appliances has assigned its trademark 'KENT' under various classes in favour of plaintiff no. 2 vide Deed of Assignment dated 2nd July, 2007.

25. It is submitted that the plaintiffs, wherever appropriate, have sought protection and have been granted design registrations in respect of the aesthetic appearance of its water purification systems. In particular, plaintiff



no.2 has been granted the following design registration for its product, which forms the subject matter of the present suit:



26. The abovementioned design registration has been licensed to plaintiff no. 1 by plaintiff no.2. The aforesaid design granted to plaintiff no. 2 is valid and in force as of date.

27. It is submitted that the plaintiffs' Design no. 312406 has a transparent upper half and an opaque lower half. The top portion of the design contains a stepped construction. The middle portion of the design contains a wave-like pattern and has an inverted-truncated frustum shape and the middle portion has a belt-like construction. The upper and lower half, are separated by a prominent belt. The lower half of the design bears a concave depression wherein the water indicator and water tap are placed. The edges of the lower half are curved with a flat bottom. The features have an aesthetic appeal having no functionality. Thus, the shape of the purifier stands out from the designs and shapes of other products existing in the market. It is the combination of all these features that makes the design unique.



28. It is submitted that the plaintiffs by virtue of the Design registration enjoy rights in the entire shape and configuration of design no. 312406 and have the sole rights to monopolize and commercialize the same. No person, apart from the plaintiffs, is entitled to copy the said design.

29. It is submitted that the plaintiffs launched its purifier whose shape was covered by Design no. 312406 initially under the mark KENT GRAND + (New) in December 2019. Thereafter, the "ZERO WATER WASTAGE" technology was introduced into the product and it came to be known as KENT GRAND+ZWW. This technology pushes back the rejected water to the overhead tank, thereby rendering water wastage to almost zero. As a result, instead of wasting the rejected water, it gets diluted and reused as normal tap water for household purposes. This feature was first introduced in this model and later replicated in some other models of purifiers sold by plaintiff no. 1. It is significant to note that the plaintiffs have made tremendous efforts to popularize and sell the products covered by Design no. 312406.

30. It is submitted that the plaintiffs' design has been well received by consumers and has become a trendsetting product due to its unique design, unmatched and remarkable qualities coupled with high efficiency and cost-effectiveness. The plaintiffs' product has been used continuously, extensively, and exclusively throughout India and abroad on a very large scale and the product sold under the mark KENT GRAND+ (ZWW) has resultantly acquired a reputation of being extremely sound and reliable by virtue of adherence to strict quality standards maintained by the plaintiff. Consequently, the product covered by the plaintiffs' registered design has come to signify a product originating exclusively from the plaintiffs. There is no such product, with such an attractive shape in the market and hence the



same is distinctive of the plaintiff only.

31. It is submitted that around June-July 2024, plaintiffs received complaints from its consumers and field forces that there are several water purifier systems that have the same shape as Design no. 312406 granted to the plaintiff no.2 and are being sold on the platform of defendant no. 2, i.e., Flipkart.

32. It was also learnt that defendant no. 1 is manufacturing and selling an identical product under the mark “NEW AQUA SMART”. The combination of the deceptively similar marks with identical look and feel of the products adds to the confusion and leads to deception of the consumers. Screenshots of some such infringing purifiers, being advertised through the website of defendant no. 2, are reproduced herein below:

S. No.	SCREENSHOT OF PRODUCT AS AVAILABLE ON DEFENDANT'S NO.2'S WEBSITE	URL
1.		https://www.flipkart.com/marchio-aqua-smart-water-purifier-12-l-ro-uv-uf-ids-control-tank/p/itm2827c6e772f17?pid=WAPGX SXUK7EGJZBA&lid=LSTWAPGX SXUK7EGJZBA1ZKKG6&marketplace=FLIPKART&fm=factBasedRecommendation%2FrecentlyViewed&iid=R%3Arv%3Bpt%3App%3Buid%3Af Mark- New Aqua Smart Seller- Defendant no. 1
2.		https://www.flipkart.com/marchio-ultra-12-l-ro-uv-uf-minerals-alkaline-water-purifier/p/itm9151e9f41433f?pid=WAPGWY



		UYCKUF6TWE&lid=LSTWAPGWYUYCKUF6TWE9TUNYN&marketplace=FLIPKART&fm=factBasedRecommendation%2FrecentlyViewed&iid=R%3Arv%3Bpt%3App%3Buid%3Af596b Mark - Marchio Ultra
3.		https://www.flipkart.com/aquaforte-neo-smart-12-l-ro-uv-uf-minerals-water-purifier/p/itm1286a62bd7c47?pid=WAPGG227X8Y6UBTC&lid=LSTWAPGG227X8Y6UBTCUU6A2N&marketplace=FLIPKART&fm=factBasedRecommendation%2FrecentlyViewed&iid=R%3Arv%3Bpt%3Ad%3Buid%3A0d8729d1- Mark- <u>Aquaforte Neo Smart</u>
4.		https://www.flipkart.com/super-aquafresh-new-grand-ro-uv-uf-tdd-mineral-9-l-ro-uv-uv-uv-led-tds-control-water-purifier/p/itm824af2c257d95?pid=WAPGSHZGTW3ZYG5&lid=LSTWAPGSHZGTW



33. It is submitted that defendant no. 1 is manufacturing, assembling, selling, trading, and dealing in water purifiers under the name NEW AQUA SMART which infringe plaintiffs' registered Design no. 312406. The defendants' product is identical in all respects, including the colour palette and arrangement of plaintiff's logo to create complete similarity between the products.

34. This malafide intention of the defendants is to come as close as possible to the plaintiffs' brand with an intention to ride upon and encash its goodwill and hard-earned reputation. A pictorial representation of the two products, as given in the plaint, is reproduced as under:

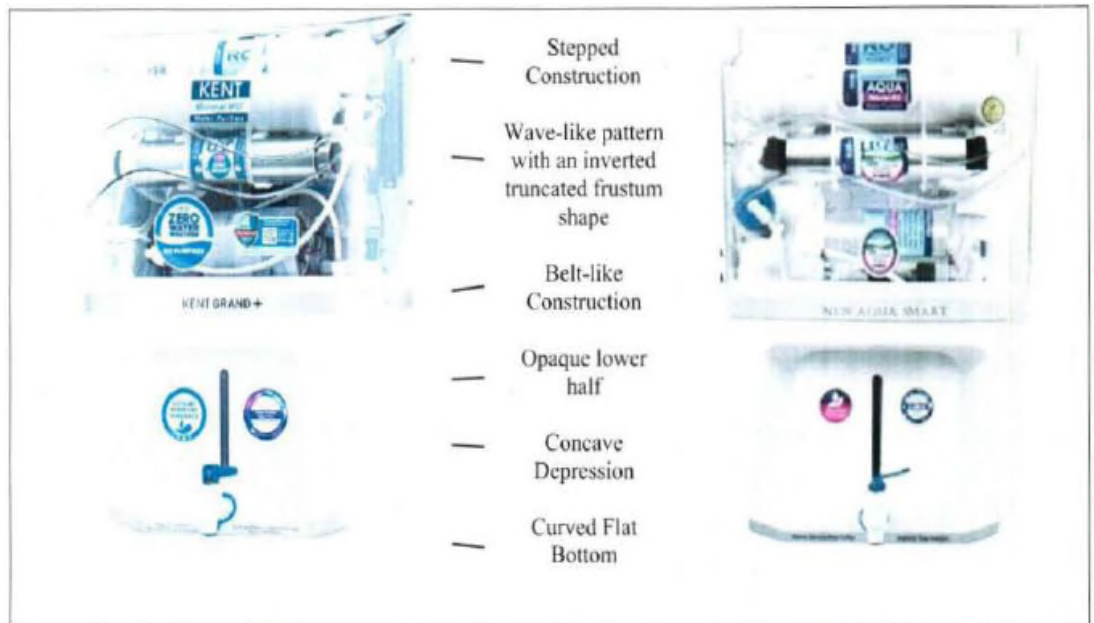


Registered Design of Plaintiff	Plaintiff's Product as per Registered Design	Defendant No. 1's Product as available of Defendant No. 2 website
Design No:-312406, Dated: 26.11.2018 	[KENT GRAND + ZWW] 	NEW AQUA SMART 

35. It is submitted that, it is evident from the above comparison that the main features i.e., transparent upper half and opaque lower half, stepped construction at the top of its transparent half, a protruding step-like feature, the upper and lower half separated by a prominent belt, the lower half of the design bearing a concave depression wherein the water indicator and water tap are placed are all copied by the defendant. The edges of the lower half of the product of defendant no.2 are curved with a flat bottom. The table showing that defendant no. 1 slavishly and blatantly copying the main features of plaintiffs' KENT GRAND+ ZWW, is reproduced as under:



SIMILARITIES BETWEEN PLAINTIFF'S DESIGN AND DEFENDANT'S NO.1'S PRODUCTS



36. It is pertinent to note that defendant nos. 1 and 3 have never taken any leave, license, or permission to use the plaintiffs' design.

37. It is submitted that the listings of the infringing products are mushrooming on a daily basis and the plaintiffs is suffering monetary losses due to diversion of the customers. In view thereof, it is paramount that these things are taken down as and when reported by the plaintiffs.

38. It is submitted that the purifiers sold on the said defendants' website are exact imitations of the plaintiffs' purifier in all respects. The infringing goods are being sold dishonestly and malafidely with the intention to ride upon the goodwill and reputation of the plaintiff to derive unfair gains for themselves at the cost of the plaintiffs' reputation. Consumers mistake the said purifiers as being that of the plaintiffs (as the shape, packaging, and designs are the same) and purchase the products under such mistaken impression. Further, such purifiers are of poor quality and break down too



often. This causes consumers to believe that the purifiers of the plaintiff are of poor quality when plaintiffs strive very hard to maintain quality and provide the best after-sales service. Further the fact that such goods are sold on the defendant no. 2's website which is one of the most popular e-commerce websites in the country, further leads to customers being misled about the origin and quality of the said products and the customers might associate such products to that of the plaintiffs'. The said defendants' inaction in the matter is causing great hardship to the business, goodwill, and reputation of plaintiffs.

39. The unlawful activities of defendants and the sellers on defendants' platform are causing and will continue to cause grave loss, harm, and injury to plaintiffs as well as the public at large, which cannot be compensated monetarily.

40. Learned counsel appearing for the plaintiffs has relied upon the order dated 11th September, 2024 passed by Coordinate Bench of this Court in CS (COMM) 784/2024, wherein, with respect to the infringement of same product and same design done by other entities, interim orders were passed in favour of the plaintiffs herein. Learned counsel appearing for the plaintiffs, thus, submits that similar order be passed in the present case also.

41. Accordingly, in view of the above facts and circumstances, the plaintiffs have demonstrated a *prima facie* case for grant of permanent injunction and in case no *ex-parte ad interim injunction* is granted, the plaintiffs will suffer an irreparable loss. Further, the balance of convenience also lies in favour of the plaintiffs, and against the defendants.

42. Further, this Court also notes that in similar case with respect to infringement of the same product and same design, by other entities, Coordinate Bench of this Court in CS(COMM) 784/2024, vide order dated



11th September, 2024, has already passed interim orders in favour of the plaintiffs herein.

43. Accordingly, this Court proceeds to pass similar order in the present case also.

44. Accordingly, till the next date of hearing, defendants, their proprietors, partners or directors, their principal officers, servants, and agents, and all others, acting for and on behalf of the defendant nos. 1 and 3 are restrained from manufacturing, selling, offering for sale, advertising, directly or indirectly dealing in any water purifier that infringes/passes off the plaintiffs' registered Design no. 312406.

45. Further directions are issued to defendant no.2 to take down all the listings of the infringing product, as given in the present plaint and disclose the KYC details of defendant nos. 1 and 3.

46. It is further directed that the plaintiffs are permitted to inform the defendant no.2 of any listings that they may come across even in future in respect of other entities that are infringing the Design no. 312406 of the plaintiffs, so that the same can be immediately removed by the defendant no.2, within 48 working hours of the intimation.

47. Issue notice to the defendants. Notice is accepted by learned counsel appearing for defendant no.2.

48. Issue notice to defendant nos. 1 and 3 by all permissible modes, upon filing of Process Fee, returnable on the next date of hearing.

49. Let reply be filed within a period of four weeks.

50. Rejoinder thereto, if any, be filed within two weeks, thereafter.

51. Compliance of Order XXXIX Rule 3 CPC be done within one week, from today.



52. Re-notify on 29th January, 2025.

MINI PUSHKARNA, J

OCTOBER 1, 2024/kr