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

+ **CS(COMM) 1204/2024 & I.A. 49822-49825/2024**

ADATA TECHNOLOGY CO. LTDPlaintiff

Through: Mr. Gaurav Bahl, Advocate.

versus

UR DISTREE PVT LTD & ANR.Defendants

Through: Mr. Sahib Kochar, Mr. Randeep Sachdeva and Mr. Shivaang Gupta, Advocates.

CORAM:

HON'BLE MR. JUSTICE AMIT BANSAL

ORDER

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24.12.2024

I.A. 49823/2024 (u/O XI Rule 1 (4) of CPC, 1908)

1. The present application has been filed on behalf of the plaintiff seeking leave to file additional documents.
2. The plaintiff is permitted to file additional documents in accordance with the provisions of the Commercial Courts Act, 2015 and the Delhi High Court (Original Side) Rules, 2018.
3. Accordingly, the application is disposed of.

I.A. 49825/2024 (seeking exemption from filing original/clear copies etc.)

4. Allowed, subject to the plaintiff filing legible copies of the annexures within four weeks from today.
5. The application stands disposed of.

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6. Let the plaint be registered as a suit.
7. Issue summons.

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8. Mr. Sahib Kochar, advocate accepts summons on advance notice on behalf of the defendants and waives issuance of formal summons.
9. 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.
10. 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.
11. 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.
12. If any of the parties wish to seek inspection of any documents, the same shall be sought and given within the timelines.
13. List before the Joint Registrar on 20th February, 2024 for completion of service and pleadings.
14. List before the Court on 16th April, 2025.

I.A. 49822/2024 (u/O XXXIX Rules 1 and 2 of CPC, 1908)

15. The present suit has been filed for permanent injunction restraining infringement of plaintiff's trademarks, passing of along with other ancillary reliefs.
16. The plaintiff is a company having its principal place of business in



Taiwan. The plaintiff has obtained registrations in India in respect of the mark

“ADATA” as well as its ‘humming bird’ logo  in Class 9 on 26th November, 2009.

17. The plaintiff has also been using the aforesaid mark “ADATA” since 2009. The products sold under the “ADATA” trademark by the plaintiff are sold on a worldwide basis. Accordingly, it is claimed that plaintiff has both statutory as well as common law rights over the mark “ADATA”.

18. The defendant no.1 is engaged in the manufacture and selling of memory devices and the defendant no.2 is the director of defendant no.1. The defendant no.2 was the director of the Indian subsidiary of the plaintiff and resigned in October, 2023.

19. An investment agreement dated 1st January, 2023 was executed between the plaintiff and the defendant no.2 in terms of which the defendants no.1 and 2 could use the trademark of the plaintiff “ADATA” and its

‘humming bird’ Logo  for the products manufactured by the defendant no.1.

20. The aforesaid agreement was terminated on 8th November, 2023. However, even after the said termination, the products in Return Merchandise Authorization (RMA), which were being manufactured by the defendant no.1 still had the trademarks of the plaintiff.

21. The grievance of the plaintiff is that even after the termination of the investment agreement, the defendants continue to use the aforesaid trademarks of the plaintiff. The defendants were only authorized to use the aforesaid trademarks by the plaintiff and have no independent right to use the



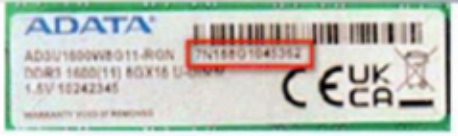
said trademark.

22. The plaintiff issued a Cease-and-Desist letter dated 23rd October, 2024 to the defendants calling upon them not to use the trademark “ADATA”.

23. The defendants replied to the aforesaid letter and stated that they were only using the said trademark in respect of servicing customers during the warranty period.

24. It is the case of the plaintiff that the defendants are continuing to manufacture unauthorised products bearing the impugned marks.

25. A comparison of the products of the plaintiff and that of the defendants is set out below:-

PLAINTIFF'S PRODUCTS	DEFENDANTS' PRODUCTS
  	  

26. The following similarities emerge from the aforesaid comparison:



- i. The plaintiff's products are "without cardboard" whereas the defendants' products are "with cardboard".
 - ii. The label on the plaintiff's products has the "hummingbird"  logo whereas the label on the defendants' products does not have the "hummingbird"  logo.
 - iii. The serial numbers on the plaintiff's products contain 12 digits, whereas the serial numbers on the defendants' products contain 13 to 15 digits.
27. Issue Notice.
28. Notice is accepted by Mr. Sahib Kochar, advocate appearing on advance notice on behalf of the defendants.
29. Reply be filed within four (4) weeks.
30. Rejoinder thereto, if any, be filed within two (2) weeks thereafter.
31. Based on the averments made in the plaint and the submissions made on behalf of the plaintiff, a *prima facie* case of infringement and passing off has been made out on behalf of the plaintiff.
32. Balance of convenience is in favour of the plaintiff and against the defendants. Irreparable injury would be caused to the plaintiff if the defendants continue to use the impugned mark. Prejudice would also be caused to the public as the mark of the defendant is deceptively similar to that of the plaintiff and is likely to cause confusion in the market.
33. Consequently, till the next date of hearing, the defendants, their employees, servants, agents, representatives and all others in active concert or participation with them are restrained from



manufacturing/selling/advertising/importing/exporting or in any other way dealing in goods and providing services under the mark “ADATA” or any other deceptively similar mark, or use the mark “ADATA” or a deceptively similar variant as a tradename or business name, or any other mark which amounts to an infringement and passing off of the ADATA trademarks of the plaintiff.

34. The defendants shall also take down all references to the impugned mark from their social media pages, including Facebook, Instagram, LinkedIn etc.

35. The defendants shall also remove all references to the mark “ADATA” from their website “*urdistee.com*” and stop using the aforesaid mark as a part of their e-mail address.

36. List before the Joint Registrar on 20th February, 2025, for completion of service and pleadings.

37. List before the Court on 16th April, 2025.

I.A. 49824/2024 (u/O XXVI Rule 9 of CPC)

38. The present application has been filed under Order XXVI Rule 9 of the CPC seeking appointment of Local Commissioners to visit the premises of the defendants, make an inventory of all the goods having the impugned design and effect seizure of the same.

39. In view of what is stated above, the plaintiff has made out a case for appointment of Local Commissioners.

40. The following persons are appointed as Local Commissioners at the cost of the plaintiff and shall visit the premises of the defendants in the following manner:



1.	<u>Local Commissioner</u> Ms. Shilpa Kumari Mobile no. +91-8278877932	<u>Premise A</u> B-80, Okhla Industrial Area, Phase-2, New Delhi – 110020
2.	<u>Local Commissioner</u> Ms. Sarika Mehta Mobile nos. +91-9654612475, +91-9891392080	<u>Premise B</u> Plot No.11/7, Mile Stone Mathura Road, Near Vee Kay Kohli Synthetics Private Limited, Haryana.

41. The following directions are passed in this regard:

- The Local Commissioners, along with a representative of the plaintiff and their counsel, shall be permitted to enter upon the premises of the defendants mentioned above in order to conduct the search and seizure.
- The Local Commissioner shall conduct a search at the defendants' premises and seize any material bearing the mark "ADATA" and/or



the hummingbird logo , including any packaging/promotional material reflecting infringement (hereinafter referred to as 'infringing material').

- After seizing the infringing material, the same shall be inventorized,



sealed and signed by the Local Commissioners, in the presence of the parties, and released on *superdari* to the defendants on their undertaking to produce the same as and when further directions are issued in this regard.

- d. The Local Commissioners shall also be permitted to make copies of the books of accounts including ledgers, cash registers, stock registers, invoices, books, etc. insofar as they pertain to the infringing material.
- e. The defendants and their representatives are directed to provide full assistance to the Local Commissioners for executing the present commission.
- f. In case, the aforesaid premises of the defendants or any part thereof is found locked, the Local Commissioners are permitted to break open the locks and doors for execution of the commission.
- g. To ensure an unhindered and effective resolution of this order, the SHO of the local police station having jurisdiction of the aforesaid premises and the DCP concerned are directed to render the necessary protection and assistance to the Local Commissioners, if and when sought.
- h. The Local Commissioners shall have the liberty to take photographs and/or videos of the stock seized of the infringing products to be filed along with the Report.

42. The Local Commissioners shall file their Reports within two (2) weeks of executing the commission, along with photographs taken and photocopies of the books of account and stock and the inventory procured



pursuant thereto.

43. The fees of the Local Commissioners, to be borne by the plaintiff, is fixed at Rs.1,00,000/- each. The plaintiff shall also bear expenses for travel and other miscellaneous out-of-pocket expenses for the execution of the commission.

44. The application stands disposed of in the above terms.

45. A copy of this order be given *Dasti* under signatures of the Court Master.

AMIT BANSAL, J

DECEMBER 24, 2024

Vivek/-