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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(COMM) 529/2023 & I.As. 14515/2023, 17102/2023**
ENAGIC HK CO. LTD. Plaintiff

Through: Mr. Vaibhav Vutts, Ms. Aamna
Hasan, Ms. Anupriya Shyam and Ms.
Yushika Dalmia, Advocates.

versus

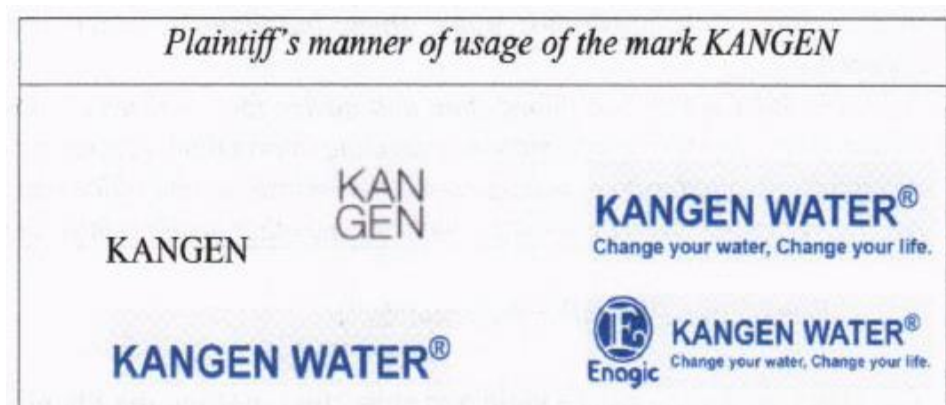
ALPINESTAR WATER INNOVATION PVT. LTD. Defendant
Through: None.

CORAM:
HON"BLE MR. JUSTICE SANJEEV NARULA

ORDER
10.01.2024

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1. Plaintiff is a registered proprietor of the trademark "KANGEN". Since the adoption of mark "KANGEN" in the year 1988, it has been used by the Plaintiff continuously and openly in various countries of its operation. It is asserted that the trademark "KANGEN" is inventive and has no connection to the goods and services being provided under it. "KANGEN" is a Japanese word which has no meaning in any Indian language, Indian context or the English language. The manner in which the trademark is used is as follows:





2. The details of the registration of the Plaintiff's mark is as follows:

<i>"Trademark"</i>	<i>Registration No</i>	<i>Registration Date</i>	<i>User Details</i>
<i>KANGEN WATER</i>	<i>2077725</i>	<i>30/12/2010</i>	<i>Proposed to be used</i>
<i>Class & Goods</i>			
<i>[CLASS: 7] Apparatus (machines) for filtering water; water distributing apparatus (machines); water processing machines; water separators.</i>			
<i>[CLASS: 11] Household tap water filters; showers; air purifying apparatus and machines; water ionizers, pipes (parts of sanitary installations); water distribution installations; water purification installation; water generators, namely generators for household purposes for producing and dispensing clean water; water intake apparatus; water supply installations; water treatment apparatus.</i>			
<i>[CLASS: 35] Commercial information and advice for consumers (consumer advice shop): marketing information; providing information, including online, about advertising, business management, administration and office functions; retail services in relation with water ionizers and other health related items"</i>			

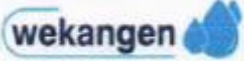
3. The above registrations are valid and subsisting, vesting exclusive right with the Plaintiff for use of the mark "KANGEN".

4. Plaintiff also has registrations for the trademark "KANGEN" in various countries including Japan, New York, European Union, Canada, Germany and USA. Details of such registrations have been set out in paragraph no. 13 of the plaint. The sales of the Plaintiff were provisionally ~INR 1000 crores in the year 2022-23, and they have been spending substantial sums on promotion and advertising their trademarks.

5. Plaintiff's grievance arises from Defendant's use of trademark "WEKANGEN". Details of the Defendant's registrations are as follows:

<i>"S. No.</i>	<i>Trademark</i>	<i>Application No.</i>	<i>Date</i>	<i>User Detail</i>
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1.		4308230	30.09.2019	<i>Proposed to be used</i>
[Class 32] Packaged Drinking Water.”				

6. Although Defendant obtained the registration on “proposed to be used” basis, however, Defendant subsequently obtained a registration of the domain name <www.wekangen.com>. However, no website is hosted on the said domain name and the Defendant never carried out any business activity under it. It is also asserted that after March, 2020 no activity whatsoever has been conducted by the Defendant under the impugned trademark.

7. The comparison of the two marks is as under:

<i>“Mark of the Plaintiff</i>	<i>Mark of the Defendant</i>
KANGEN 	WEKANGEN 

8. It is thus contended that the adoption of the Defendant’s mark “WEKANGEN” for identical goods is clearly an infringement of the Plaintiff’s prior use of the trademark “KANGEN”, which is the prominent feature of their registration.

9. Considering the foregoing, this Court on 7th August, 2023 taking note of the facts and circumstances narrated in the plaint, passed an *ad-interim ex-parte* injunction in the favour of the Plaintiff, restraining the Defendants from manufacturing, selling or offering for sale any water or water-related product under the trademark “WEKANGEN” or any other which as deceptively similar to the Plaintiff’s mark “KANGEN”. Defendant was also



restrained from using the mark “KANGEN” as part of their domain name.

10. Despite service of summons through speed post on 30th September, 2023 and through courier on 2nd September, 2023, Defendant has not appeared or filed the written statement within the permissible time. A counsel appeared on behalf of Defendant before the Joint Registrar on 11th October, 2023, however since the Presiding Officer was on leave on said date, the matter was renotified for 3rd January, 2024. More than 120 days have lapsed since the date of service, calculated from 2nd September, 2023, however, no written statement has been filed. Accordingly, their right to file written statement has been closed on 3rd January, 2024.

11. In view of the above, in absence of a written statement, Plaintiff presses for judgment under Order VIII Rule 10 of the Code of Civil Procedure, 1908 (“CPC”). Order VIII Rule 10 of the CPC, the Court is empowered to pronounce judgment where any party, from whom a written statement is required under Rule 1 or Rule 9, fails to present the same within the time permitted or fixed by the Court. In such cases, the Court is empowered to pronounce judgment against the party or make an order in relation to the suit as it deems appropriate.

12. Considering the facts noted above, this Court is of the opinion that Plaintiff is entitled to a judgment in absence of a written statement. Documents annexed with the plaint sufficiently establish their trademark rights over the word “KANGEN”. Defendant’s adoption of the word “WEKANGEN”, which incorporates Plaintiff’s mark “KANGEN” in entirety, is clearly infringing the Plaintiff’s trademark. Since Defendant is using the trademark “WEKANGEN” in relation to similar goods and services in the same field, there is a strongly likelihood of the consumers



and the persons in trade to be confused between the two marks. The Defendant's adoption of the trademark "WEKANGEN" is thus clearly *mala fide* as their mark is deceptively similar to the Plaintiff's prior registered mark "KANGEN".

13. Mr. Vaibhav Vutts, counsel for Plaintiff, on instructions, states that he does not wish to press for prayers in Paragraph Nos. 41 II (a) & (b), 41 III and IV.

14. Considering the above, the suit is decreed in favour of the Plaintiff and against the Defendant for prayers in Paragraph Nos. 41 I (a) and (b).

15. In addition to the above, the Plaintiff is also entitled to cost of the suit which is assessed as INR 3,52,000/- (court fees of INR 202,000/- + INR 1,50,000/- towards the legal expenses incurred by the Plaintiff's towards attorney fees etc.).

SANJEEV NARULA, J

JANUARY 10, 2024

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