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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(COMM) 562/2023**
HAVELLS INDIA LIMITED Plaintiff

Through: Mr. Vivek Singh and Mr. Ritik
Dwivedi, Advocates.

versus

G P INDUSTRIES & ORS. Defendants

Through: None.

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

ORDER
30.05.2024

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1. It is recorded in the order of Joint Registrar on 10th May, 2024, where right of defendant no. 1 & 2 to file written statement was closed. Defendant no. 3 is a proforma party. There is no appearance on behalf of the defendant no. 1 and 2 till date.
2. Summons were issued by this Court on 21st August, 2023, and *an ex parte ad interim* injunction was passed in following terms:



24. As such, till the next date of hearing, the defendants as well as all others acting on its behalf, shall stand restrained from using/dealing in any manner with the trade mark RIO FLEX or any other mark which is deceptively similar to the REO mark of the plaintiff in relation to wires or cables or any other goods or services which may be allied or cognate thereto.

25. Additionally, Defendant 3 is directed to inspect the premises of Defendants 1 and 2 and take into custody any goods present therein which may be found to be non-compliant with the Bureau of Indian Standards Act 2016 and Regulations framed thereunder.

26. Defendants 1 and 2 are also directed to disclose, on affidavit, the returns earned by them by sale of the goods using the impugned mark RIO FLEX, since inception.

3. Background facts and circumstances had already been narrated in the said order which is as under:

1. The plaintiff alleges that the defendants are infringing the plaintiff's registered trade mark and is also passing off its product as the product of the plaintiff by using a deceptively similar trade mark and a trade dress and the appearance which mimics the appearance of the plaintiff's product.

2. The plaintiff is a company which was incorporated in 1983 and is engaged in the electrical and power distribution equipment business. Among the products of the plaintiff are industrial and domestic circuit protection devices, wires and cables, motors, fans, modular switches, home appliances and the like.



3. Para 12 of the plaint sets out various certifications granted to the plaintiff, vouchsafing the standard of its products and the activities carried out by it.

4. The mark which is asserted in the present case is the



device mark. Under the said mark, the plaintiff sells electrical products including electrical switches, sockets, regulators, fans, wires and cables.

5. The plaint contains various assertions regarding the reach of the plaintiff's activities and the goodwill that it has earned as a consequence thereof. It is stated that the plaintiff has over 17000 dealers in India with over 700 Havells Galaxy Stores in India dealing with the plaintiff's products including the products asserting the mark REO.

6. From the use of the mark REO, the plaintiff stated to have earned, during the year 2021-2022 and 2022-2023, returns of ₹ 773.51 crores and ₹ 938.08 crores. It is also stated that the plaintiff has incurred promotional and advertisement expenses, for the said mark, for the financial years 2022-23, to the tune of ₹ 4.89 crores.

7. Defendant 1 is stated to be a manufacturer of wires and cables situated in the Jhilmil industrial area which, according to Mr. Amit Sibal, learned Senior Counsel for the plaintiff, is a hub of infringers.

8. It is stated that Defendants 1 and 2 are using the mark RIO FLEX, manufacture wires and cables which are identical to those manufactured by the plaintiff, but which are not ISI compliant, as



required by the law.

9. The only difference between the defendants' and the plaintiff's products, physical samples of which have been produced in Court, is that the plaintiff's wires have the mark REO and the ISI certification, whereas the defendants' wires do not. Mr. Sibal clarifies the position by stating that the defendant's wires do have a fake ISI mark but not the ISI certification number.

10. Mr. Sibal submits that the very requirement of ISI certifications is given the inherently hazardous nature of dealing with any counterfeit wires and cables which are used for electrical circuits and the like.

11. Counterfeit wires and cables, it is asserted in the plaint, result in serious prejudice to the life and safety of the general public.

12. Mr. Sibal submits further that, in the mark RIO FLEX, "FLEX" is, in a sense, *publici juris*, as it describes the flexible nature of the wire. The dominant part of the defendants' mark is, therefore, RIO which is phonetically identical to the plaintiff's mark REO. Besides, printed on wires, it would be virtually impossible to distinguish between the two marks.

13. It is in these circumstances, that the plaintiff has approached this Court by means of the present plaint, seeking a decree of permanent injunction restraining the defendants, as well as all others acting on its behalf, from using or dealing in any manner with the trade mark/trade name RIO FLEX or any other mark which is deceptively similar to the plaintiff's registered trade mark REO, for

any goods or services including electrical wires and cables, apart from additional reliefs.

4. Accordingly, counsel for plaintiff seeks a decree in their favour.
5. Decree be passed in terms of prayer in para 71 (a) to (c), which is extracted as under:



(a) Pass a decree of declaration that the trademark 'REO' is a well-known trademark as defined in Section 2(1)(zg) of the Trade Marks Act, 1999;

(b) Pass a decree of permanent injunction restraining the Defendants, their family members, partners,

promoters, directors, servants, agents, assignees, franchisees or anyone acting for and on their behalf from using/dealing in any manner with the trademark/tradename 'RIO FLEX' or any other mark deceptively similar to the trademark/name of the Plaintiff viz. 'REO' or its derivatives/formatives either as trademark/trade mark/logo/trading style, domain name, or in relation to any goods or services so as to result any infringement of Plaintiff's registered trademarks and statutory rights;

(c) Pass a decree of permanent injunction restraining the Defendants, their family members, partners, promoters, directors, servants, agents, assignees, franchisees or anyone acting for and on their behalf from using/dealing in any manner with the trademark/trade name 'RIO FLEX' in any manner or any other mark deceptively similar to the trademark/name of the Plaintiff viz. 'REO' or its derivatives/formatives either as trademark/trade mark/logo/trading style, domain name, or in relation to any goods or services so as to result in passing off of the Plaintiff's trademark as that of the Defendant's, diluting the Plaintiff's trademark or acting in an unfairly competitive manner, thereby violating the common law rights of the Plaintiff,

6. Decree sheet be drawn accordingly.

7. The suit is disposed of in the above terms.



8. Pending applications are rendered infructuous.
9. Order be uploaded on the website of this Court.

ANISH DAYAL, J

MAY 30, 2024/RK