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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(COMM) 1160/2018, I.A. 13754/2018, I.A. 12923/2019 & I.A. 17805/2023**

V GUARD INDUSTRIES LTD. Plaintiff
Through: Mr. Sachin Gupta, Mr. Ajay Kumar,
Ms. Prashansa Singh, Mr. Rohit
Pradhan and Mr. Manan Mondal,
Advs.

versus

AKASH GUPTA & ORS. Defendants
Through:

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

ORDER
16.04.2024

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1. A perusal of the order-sheets shows that defendant Nos.1 and 2 have not appeared and defendant Nos.3 and 4 have already been proceeded *ex parte*. This Court has noted the same on 10th January, 2024, as also the submission by counsel for the plaintiff noting an order passed by the High Court of Judicature at Madras dated 22nd November, 2023 in (T)OP(TM)/293/2023 titled as “*M/s V-Guard Industries Ltd. v. Akash Gupta & Anr*”.

2. The said judgment of High Court of Judicature at Madras dated 22nd November, 2023 has been placed on record. A perusal of the said judgment shows that the plaintiff, in this case, was the petitioner before the High Court of Judicature at Madras, in the rectification petition against the respondents



seeking removal of the impugned mark “THE-GUARD”.

3. The High Court of Judicature at Madras issued notices to the respondents (defendants herein) but no one appeared. In this situation, the High Court of Judicature at Madras has examined the report relating the trademark “THE-GUARD” of the plaintiff/petitioner including their invoices and registration certificates, as well as a determination by the Additional District Judge, Ernakulam that the petitioner’s trademark is a well-known mark. The High Court of Judicature at Madras, therefore, cancelled the certificates of registration of the defendant/respondent No.1’s mark “THE-GUARD”.

4. Mr. Sachin Gupta, Counsel for the plaintiff seeks a decree in terms of order passed by this Court on 05th October, 2018. An *ex parte ad-interim* order had been passed in the background facts as stated in the said order which are reproduced as under:

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In the plaint, it is stated that the plaintiff is a company founded in 1977 and engaged in the business of manufacturing, distributing and marketing/selling voltage stabilizers, digital UPS, inverters and inverter batteries, electric and solar water heaters, domestic and agricultural pumps, industrial motors, switchgears, distribution boards etc. under the trademark V-GUARD.



It is stated that the plaintiff is the registered proprietor of the trademark V-GUARD and its formative variants in Classes 7, 9 and 11 under the Trade Marks Act, 1999 and by virtue of extensive and continuous use has become a household name and synonymous with the plaintiff's business.

It is stated that in 2016, the plaintiff as a part of rebranding adopted a new trade dress and device mark. The new trade dress comprises of black and yellow colour combination and a device mark i.e Kangaroo in a leaping position. It is stated that the plaintiff began selling its product under the new trade dress in April 2017. However, the plaintiff officially announced it in February 2018. It is stated that at the time of adoption of the new trade dress by the plaintiff, no third party was using any identical or deceptively similar trade dress.

It is the case of the plaintiff that the annual revenue generated by the plaintiff from the sale of its products under the mark V-GUARD in the financial year 2017-18 was Rs. 2332.38 Crores and the plaintiff incurred an expenditure of Rs. 98.76 Crores on advertising and promotion of its V-GUARD product.

Learned counsel for the plaintiff states that in the third week of September, 2018, the plaintiff came across the defendants' product being sold in Delhi markets under the impugned mark 'THE-GUARD'. He states that the plaintiff's representative purchased the impugned products from the defendant no.4 at Shahdara, Delhi. He states that the defendant no.1 is manufacturing/marketing table fans, ceiling fans under the impugned mark through the defendant no.2 and manufacturing/marketing wires and cables under the impugned mark



through the defendant no.3 and distributes the same in Delhi through the defendant no.4 and themselves. A pictorial representation of the products of the plaintiff and the defendants is reproduced hereinbelow:-

Plaintiff's product	Defendant's product
	
	

Learned counsel for the plaintiff states that the defendant's application dated 31st October, 2017, for registration of mark 'THE-GUARD' was allowed and the same is now registered. He states that the plaintiff has already filed a cancellation petition before the IPAB, for cancellation of the defendant's mark.

Learned counsel for the plaintiff states that the mala fide intention on part of the defendants is evident as the defendants have copied the trade mark of the plaintiff and have only changed the letter 'V' with 'THE'. He further states that the defendants have exactly



copied the plaintiff's trade dress, colour combination as well as || arrangement, the shape etc. and similar device to ride on the goodwill and reputation of the plaintiff

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5. Accordingly, the injunction passed was in the following terms:

Consequently, till further orders, the defendants, their proprietor or partners, directors as the case may be its assignees in business, licensees, franchisee, distributors and dealers are restrained from manufacturing, selling, offering for sale, advertising, directly or indirectly dealing in electronic/electrical goods including but not limited to ceiling fans, table fans, wires and cables under the impugned mark THE-GUARD with the device of a penguin, trade dress and carton packaging having colour combination of yellow and black or any other trade mark/device/trade dress/carton packaging/colour combination in any manner whatsoever.

6. In these circumstances, *ex parte ad-interim* order is made absolute and counsel for the plaintiff seeks a decree in these terms. Accordingly, decree of permanent injunction is passed in terms of the said order passed by this Court on 05th October, 2018 in favour of the plaintiff.

7. Decree-sheet be drawn up accordingly.

8. Suit is disposed of.

9. Pending applications, if any, also stand disposed of as being infructuous.

10. Order be uploaded on the website of this Court.

ANISH DAYAL, J

APRIL 16, 2024/MK/ig