



2025:DHC:1534



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

% *Date of decision: 4th March, 2025*

I.A. 5752/2025

IN

+ CS(COMM) 335/2023

EUREKA FORBES LIMITED (FORMERLY FORBES ENVIRO
SOLUTIONS LIMITED)Plaintiff

Through: Mr. Shivankar Sharma, Mr. Ayush
Singh & Ms. Urvashi Raj, Advocates.

versus

MR. VINOD K. AND ANR.

.....Defendants

Through:

CORAM:

HON'BLE MR. JUSTICE AMIT BANSAL

AMIT BANSAL, J. (Oral)

1. The present suit has been filed seeking relief of permanent injunction restraining the defendants from infringing the trademark and copyright of the plaintiff, passing off their goods as that of the plaintiff, along with other ancillary reliefs.

PLEADINGS IN THE PLAINT

2. The plaintiff is a portfolio company of Advent International, a global private equity firm, and is engaged in diverse business activities that encompasses manufacturing, marketing, and selling of home appliances



such as water purifiers, vacuum cleaners, air purifiers, etc., under a number of distinctive trademarks.

3. The predecessor in title of the plaintiff is M/s. Samuel Osborn (India) Limited, which was incorporated in the year 1931. In the year 1982, the name of the company was changed to Eureka Forbes Limited and since then, the plaintiff's business was extended to the field of water purification systems.

4. The plaintiff through its predecessor in title adopted the trademark 'AQUAGUARD'/ **Aquaguard** in 1982 in respect of water purification systems that were premised on UV and Reverse Osmosis ("RO") technology.

5. Apart from water purifiers, the plaintiff's revenue is also generated from the sale of spares and consumables under the marks 'AQUAGUARD', 'AQUAGUARD I FILTER' and 'AQUASFILTER', which were specifically designed as per sediment filtration technology. To replace the aforesaid spares having the said technology, the plaintiff provides Annual Maintenance Contracts (AMC) to its customers after the warranty period of the water purifiers expires which is on a year-on-year basis.

6. The earliest registration of the mark 'AQUAGUARD' dates back to the year 1992 in India. The details of trademark registrations granted in favour of the plaintiff in respect of the marks 'AQUAGUARD', 'AQUASFILTER' and other 'AQUA' formative marks has been filed along with the plaint (*pages 169-218 of the plaintiff's documents filed with the plaint*).

7. The plaintiff is also the proprietor of the artistic work in the



‘AQUASFILTER’ / , ‘AQUAGUARD



CLASSIC’ / , ‘AQUAGUARD I NOVA’ /



‘AQUAGUARD DUAL’ / , ‘AG WATER FILTER



CARTRIDGE 1’ / , ‘AG WATER FILTER CARTRIDGE



2' / , 'AG WATER FILTER CARTRIDGE 3' /



Water Filter Cartridge (25cm D.L.Y) / Water Filter Cartridge (Sleek) , 'ACTIVE COPPER SPARES KIT' /



Water Filter Cartridge (Sleek) , 'AQUAGUARD PAANI KA DOCTOR' /

The plaintiff’s aforementioned artworks/labels are “original artistic work” within the meaning of Section 2(c) of the Copyright Act, 1957, and the plaintiff is the first owner of the copyright therein by virtue of Section 17 of the Copyright Act, 1957. The certificates of copyright registrations are filed as documents along with the plaint at pages 1053-1123 and 1147-1157. All the aforesaid trademark/copyright registrations remain valid and subsisting.

8. In over four decades, the plaintiff has grown its operations exponentially in the Indian market. The plaintiff operates in over 135 cities across India and has further expanded into 1515 towns and 400 smaller towns through its authorized channels, with 19,850 dealers all over the



country.

9. The plaintiff has given its sales turnover and advertisement expenses for the period 1983-2022 supported by a CA Certificate, which shows that the sales turnover in respect of the products sold under the mark 'AQUAGUARD' of the plaintiff is quite substantial (*filed as document along with the plaint at pages 134-135*). For the financial year 2021-2022 alone, the sales figures are to the tune of Rs.276,84,99,000/- and the advertisement expenses amount to Rs.2,76,82,000/-.

10. In the month of April 2023, the plaintiff came across the counterfeit products sold by the defendant no.1. Thereafter, the plaintiff availed the services of an investigation agency and made enquiries into the business operations of the defendant no.1, which revealed that the defendant no.1 is engaged in the business of selling counterfeit infringing spares/consumables under the trademark 'ACTIVE COPPER MAXX' as well as identical get-up/artwork/label and further copied the slogan 'PAANI KA DOCTOR'. It was further revealed that the defendant no.2 is engaged in manufacturing and/or distributing counterfeit spares under the marks 'AQUAGUARD', 'AQUAFILTER' and 'ACTIVE COPPER MAXX' and 'PAANI KA DOCTOR'.

11. Accordingly, the plaintiff filed the present suit on 19th May, 2023 seeking to restrain the defendants from carrying on their infringing activities.

PROCEEDINGS IN THE SUIT

12. On 23rd May, 2023, this Court granted an *ex parte ad interim* injunction in favour of the plaintiff restraining the defendants from manufacturing, selling and advertising the water purification systems and



spare parts or any cognate goods bearing 'AQUAGUARD', 'AQUASFILTER', 'ACTIVE COPPER MAXX', 'PAANI KA DOCTOR' marks and any get-ups/artworks/labels similar to that of the plaintiff. This Court also appointed four Local Commissioners to visit the defendants' premises.

13. The Local Commissioners executed the commissions at the respective locations of the defendants on 26th May, 2023 and effected seizure of the infringing products.

14. *Vide* order dated 21st August, 2023, the Joint Registrar noted that the process issued to the defendant no.1 returned with a service report that "no such person resides at given address". On the same date, counsel for the defendant no.2 entered appearance and sought time to file written statement/reply.

15. The counsel for the defendant no.1 entered appearance on 15th January, 2024.

16. In the order dated 20th February, 2024, the Joint Registrar recorded that the defendants no.1 and 2 had filed written statements, however, the same were under objections. Therefore, the Joint Registrar directed the counsel for the defendants to take steps to have the same placed on record. Despite such directions, counsel for the defendants did not take any steps.

17. Subsequently, counsel for the defendant no.1 stopped appearing and written statements on behalf of the defendants were not placed on record.

18. Thereafter, the parties were referred for mediation to the Delhi High Court Mediation and Conciliation Centre *vide* order dated 29th February, 2024.

19. The present suit was decreed *qua* the defendant no.2 *vide* order dated



11th December, 2024 on the basis of a settlement. In the same order, the defendant no.1 was proceeded against *ex-parte* due to non-appearance in the court proceedings after 20th February, 2024.

20. The plaintiff now seeks a decree against the defendant no.1 in terms of Order VIII Rule 10 of the Code of Civil Procedure, 1908 (hereinafter, 'CPC').

ANALYSIS AND FINDINGS

21. I have heard the submissions of Mr. Shivankar Sharma, learned counsel for the plaintiff and also perused the material on record.

22. The plaint has been duly verified and is also supported by the affidavit of the plaintiff. In view of the fact that no written statement has been filed on behalf of the defendant no.1, all the averments made in the plaint have to be taken to be admitted. Further, since no affidavit of admission/denial has been filed on behalf of the defendant no.1 in respect of the documents filed with the plaint, in terms of Rule 3 of the Delhi High Court (Original Side) Rules 2018, the same are deemed to have been admitted. Therefore, in my opinion this suit does not merit trial and the suit is capable of being decreed in terms of Order VIII Rule 10 of CPC.





23. From the averments made in the plaint and the evidence on record, the plaintiff has been able to prove that it is the registered proprietor of the trademark 'AQUAGUARD' and other formative marks. Due to its long and continuous use, the plaintiff has also acquired a copyright over the labels.

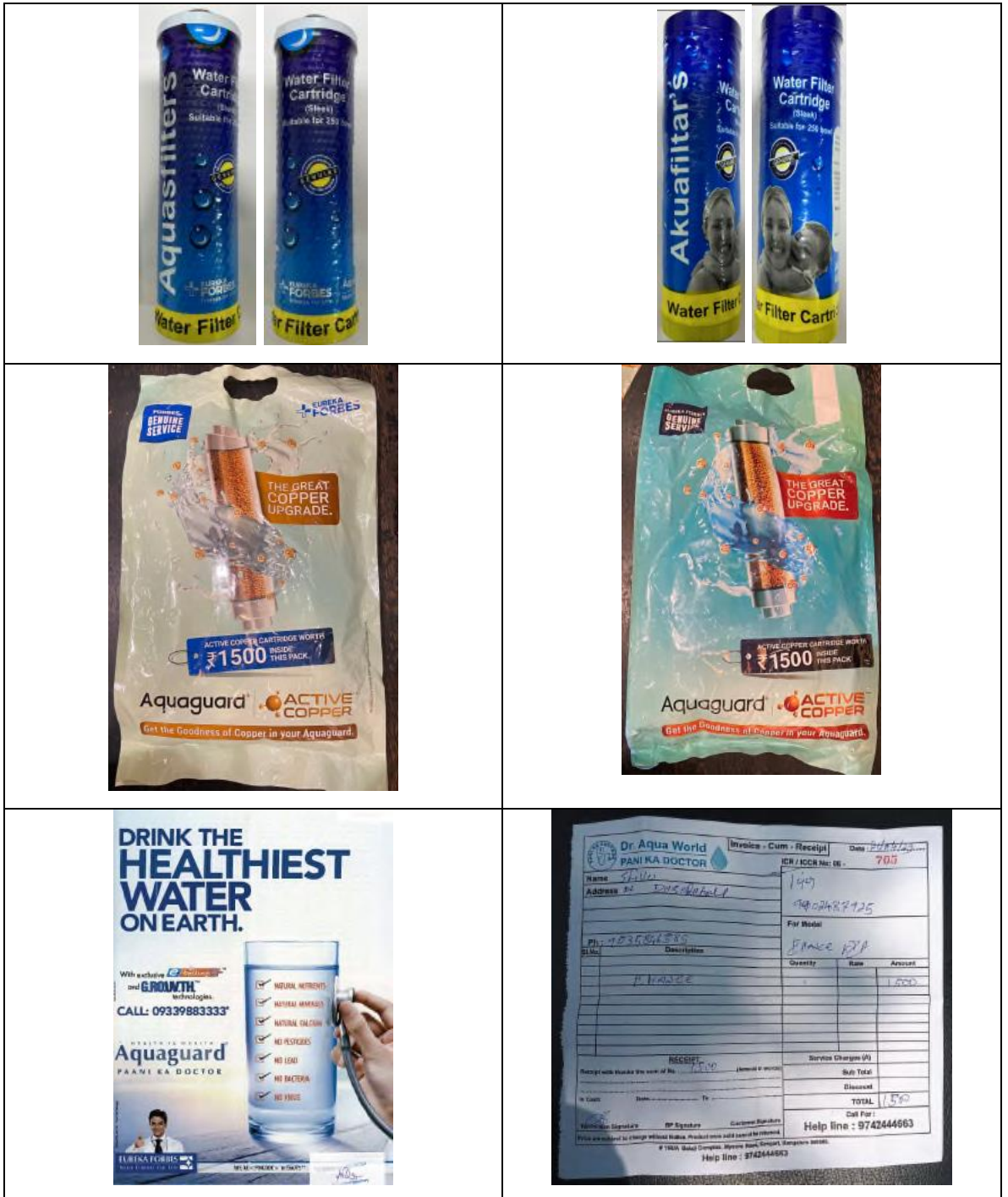
24. The plaintiff has also filed several documents in support of its contentions including but not limited to sales invoices, CA Certificates for sales turnover and advertisement expenses establishing goodwill and reputation as well as several trademark registration certificates for the



plaintiff's 'AQUAGUARD' mark and 'AQUA' formative marks, in support of prior registrations of the plaintiff.

25. The plaintiff has placed on record images of the defendant no.1's impugned trademarks/labels to show that the defendant no.1 is indulging in infringement and passing off of the plaintiff's registered mark, 'AQUAGUARD' and other formative marks. The similarities between the plaintiff's marks/labels and the defendant no.1's impugned marks/labels are set out below:

PLAINTIFF'S PRODUCTS	DEFENDANT'S PRODUCTS
	
	



26. On a perusal of the product of the defendant no.1, it is evident that the marks used are identical to 'AQUAGUARD' and 'AQUA' formative marks and that the defendant no.1 had employed a nearly identical trade dress and



have substantially reproduced the plaintiff's artistic work in the spares/consumables of the water purification systems.

27. Based on the discussion above, a clear case of infringement of trademark and copyright is made out. The defendant no.1 has taken unfair advantage of the reputation and goodwill of the plaintiff's trademarks/artistic works and has also deceived the unwary consumers of its association with the plaintiff by dishonestly adopting the plaintiff's registered marks/labels without any plausible explanation. Therefore, the plaintiff has established a case of passing off as well.

28. At this stage, it may be relevant to note that the defendant no.1 did not appear before the Court, despite service of summons. Further, no communication on behalf of the defendant no.1 has been placed on record in respect of the allegations of the plaintiff in this suit.

29. Since the defendant no.1 has failed to take any requisite steps to contest the present suit, despite having suffered an ad interim injunction order, it is evident that it has no defence to put forth on merits.

30. Counsel for the plaintiff also presses for a decree on the aspect of damages and costs.

31. One of the factors that could be considered by the Court while considering the aspect of damages is the conduct of the infringing party.

32. In the present case, the report of Local Commissioner (Mr. Sumit Misra) has highlighted the misconduct of the proprietor of Dr. Aqua World, Mr. Tejas Yadav at the defendant no.1's premises. The said report records that Mr. Yadav accompanied by his brother and 3-4 associates threatened the Local Commissioner/ Mr. Sumit Misra and the legal officer as well as the private detectives in their local vernacular.



33. Further, taking into account that the defendant no.1 failed to object to the observations made in the Local Commissioner's report and was proceeded against *ex-parte*, the plaintiff is entitled to damages and costs from the defendant no.1. In this regard, a reference may be made to the judgment in *M/s Inter Ikea Systems BV v. Imtiaz Ahamed & Anr*, 2016 SCC OnLine Del 6717. The relevant observations are set out below:

"21. The court is mindful of the fact that in such a situation where the defendant chooses to stay away from the court proceedings, he should not be permitted to enjoy the benefits of such an evasion. Any view to the contrary would result in a situation where a compliant defendant who appears in court pursuant to summons being issued, participates in the proceedings and submits his account books, etc., for assessment of damages, would end up on a worse footing, vis-a-vis a defendant who chooses to conveniently stay away after being served with the summons in the suit. That was certainly not the intention of the Statute. Section 135 (1) of the Trademarks Act, 1999 provides that relief that may be granted in any suit for infringement of or for passing off includes injunction and at the option of the plaintiff, either damages or an account of profits. The plaintiffs in the present case have opted for claiming damages and have established beyond doubt that they have suffered damages on account of the conduct of the defendants which are a result of infringement of their trademark and copyright."

[Emphasis Supplied]

34. On the aspect of costs, it cannot be disputed that at the bare minimum, the plaintiff has incurred legal costs of Rs. 2,05,000/- towards court fees and further a sum of Rs. 5.5 lakhs towards the fees of the four Local Commissioners appointed by this Court.

35. In light of the discussion above, besides the relief of permanent injunction, the plaintiff has also made out a case for award of damages and costs.



RELIEF

36. In view of the foregoing analysis, a decree of permanent injunction is passed in favour of the plaintiff and against the defendant no.1 in terms of prayer clauses 57(a), 57(b) and 57(c) of the plaint.
37. A decree of damages and costs of Rs.3,00,000/- is passed in favour of the plaintiff and against the defendant no.1 in terms of prayer clauses 57(g) and 57(h) of the plaint.
38. Counsel for the plaintiff does not press for the remaining reliefs.
39. Let the decree sheet be drawn up.
- 39.1. To be noted, the suit has already been decreed *qua* defendant no.2.
40. All pending applications stand disposed of.
41. The date already fixed before Joint Registrar stands cancelled.

AMIT BANSAL, J

MARCH 4, 2025

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