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

+ **CS (COMM) 132/2019**

M/S. M.L. BROTHERS LLP Plaintiff
Through: Mr. Anil Sapra, Senior Advocate with
Mr. Umesh Mishra and Mr. Sarthak
Katiyal, Advocates. (M:9868401295)
versus

UMA IMPACT PRIVATE LIMITED & ANR. Defendants
Through: None.

CORAM:
JUSTICE PRATHIBA M. SINGH
ORDER
% **12.03.2019**

I.A. 3579/2019 (exemption)

1. This is an application seeking exemption from filing original documents. Recording the Plaintiff's undertaking that the inspection of original documents shall be given, if demanded, or that the original documents shall be filed prior to the stage of admission/denial, the exemption is allowed. I.A. is disposed of.

I.A. 3578/2019 (u/S 65 A & B of Evidence Act)

2. The electronic evidence produced is taken on record, however, subject to the same being proved in accordance with law, at the stage of trial. I.A. is disposed of.

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3. Let the plaint be registered as a suit.
4. Ld. Senior counsel for the Plaintiff submits that the Defendant No.1 - Uma Impact Private Limited, also has a showroom/shop at 2892/44, Beadon



Pura, Arya Samaj Road, Karol Bagh. Amended memo of parties showing the additional address of Defendant No.1 be placed on record within two days.

5. Issue summons to the Defendants through all modes upon filing of Process Fee.

6. The summons to the Defendants shall indicate that the written(s) statement to the plaint shall be positively filed within 30 days from date of receipt of summons. Along with the written statement(s), the Defendants shall also file an affidavit of admission/denial of the documents of the Plaintiff, without which the written statement(s) shall not be taken on record.

7. Liberty is given to the Plaintiff to file a replication(s) within 15 days of the receipt of the written statement(s). Along with the replication(s), if any, filed by the Plaintiff, an affidavit of admission/denial of documents of the Defendants, be filed by the Plaintiff, without which the replication(s) shall not be taken on record. If any of the parties wish to seek inspection of any documents, the same shall be sought and given within the timelines prescribed under the Delhi High Court (Original Side) Rules, 2018.

8. List before the Joint Registrar for marking of exhibits on 23rd April, 2019. It is made clear that any party unjustifiably denying documents would be liable to be burdened with costs.

9. List before Court on 10th May, 2019.

I.A. 3577/2019 (u/O XXXIX Rules 1 & 2 CPC)

10. The Plaintiff - M/s. M. L. Brothers LLP has filed the present suit seeking injunction restraining the infringement and passing off of their trademarks/trade-dress/artistic work in the cartons/labels as also rendition of accounts, delivery up, etc. The case of Plaintiff is that it is the registered

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owner of two trademarks being “*U-BON*” and “*BORN TO BE FREE*”. The history of devolution of the title in the mark has been set out in the plaint. Further, the case of the Plaintiff is that mobile accessories of the Plaintiff under the trademark “*U-BON*” are sold in distinctive cartons/packaging. The Plaintiff is also the registered owner of the copyright in the artistic work and registered proprietor of the trademarks “*U-BON*” and “*BORN TO BE FREE*”. Sales figures and the advertisement expenses of the Plaintiff have been set out in the plaint.

11. The grievance of the Plaintiff is that the Defendants, who are sister concerns, commenced the use of identical products i.e. mobile accessories in packaging/cartons, which are a substantial imitation of the Plaintiff’s packaging. It is submitted by Mr. Anil Sapra, Ld. Senior Advocate appearing for the Plaintiff, that the Defendants have also started using the expression “*BORN TO WIN*”, which is deceptively similar to the Plaintiff’s mark “*BORN TO BE FREE*”. The products of the Plaintiff and the Defendants have been produced before the Court. It is further submitted that the Plaintiff introduced various advertisement materials/pamphlets, which have also been imitated by the Defendants. Copies of the said pamphlets/publicity material, are set out at pages 44 & 45 of the plaint.

12. The Court has perused the trademark registration certificates, as also the copyright registration certificate, showing that the Plaintiff is the owner of the trademarks and artistic work. A perusal of the packaging, which is shown to the Court, clearly shows that the Defendants have not only copied the colour combination of the layout and get up of the Plaintiff’s cartons, even the dimensions, descriptive material used and the presentation of the whole products is also identical. There is complete likelihood of the



Defendants' products being confused/passed off as the Plaintiff's products. The Plaintiff has made out a *prima facie* case in its favour. Balance of convenience rests in favour of the Plaintiff and irreparable harm would be caused to the Plaintiff if the Defendants are not enjoined.

13. Accordingly, it is ordered that till the next date the Defendants are restrained from selling, importing and manufacturing the electronic goods including mobile accessories, earphones, hands-free headsets, handsfree kits, etc. and other electronic goods using packaging, which is identical or similar to the Plaintiff's "*U-BORN*" packaging. The Defendants are also restrained from using the expression "*BORN TO WIN*", which is a spinoff of the Plaintiff's "*BORN TO BE FREE*" mark, for identical class of products. If the Defendants have any existing stock of electronic products/packaging, they are permitted to approach the Court for disposal of the same. Compliance of Order XXXIX Rule 3 CPC be made within one week from the execution of the local commission.

14. Reply to the application be filed within four weeks from service of the present order along with the paper book. Rejoinder, thereto, within two weeks, thereafter. List the application before Court on 10th May, 2019 for hearing.

I.A. /2019 (u/O XXVI Rule 9 CPC)

15. Ld. Senior Advocate for Plaintiff has handed over an application under Order XXVI Rule 9 CPC read with Order XXXIX Rule 7 CPC. Let the I.A. be numbered by the Registry.

16. In I.A. 3577/2019 today, an injunction order has been passed restraining the Defendants from selling, importing and manufacturing the electronic products/mobile accessories in identical/similar packaging to that



of the Plaintiff's. The Plaintiff prays for a Local Commissioner to be appointed in the matter to visit the premises of Defendant No.1 in Delhi and seize the offending goods stored therein. Accordingly, **Ms. Tulip De, Advocate (M:8826079845)**, who is present in Court, is appointed as the Local Commissioner to visit the premises of Defendant No.1 at 2892/44 Beadon Pura, Arya Samaj Road, Karol Bagh, Delhi - 110005.

17. The Local Commissioner shall seize the impugned products, including packaging, labels, stationery, and other materials bearing the marks "*U-BON*" and "*BORN TO BE FREE*". The Local Commissioner shall also examine the books of accounts of the Defendants to ascertain the quantum of sales made by the Defendants of products bearing the impugned marks. The Local Commissioner is directed to seal all the products seized and hand over the same to the Defendants on *superdari*. The Defendants shall provide the Local Commissioner access to their computer servers so that the accounting records, sale/purchase records and sources of these products can be ascertained. The Defendants shall render all cooperation to the Local Commissioner for execution of the commission.

18. The Local Commissioner shall also be entitled to obtain police assistance from the local police stations. The SHO of the area concerned shall render all assistance if a request in that regard is made by the Local Commissioners. One representative and one counsel on behalf of the Plaintiff are permitted to accompany the Local Commissioner. The Local Commissioner shall be entitled to take photographs as well.

19. The fee of the Local Commissioner is fixed at Rs.75,000/-, to be borne by the Plaintiff. The Commission shall be executed within 10 days. Let the report of the Local Commissioner be filed within two weeks after



execution of the commission. Copy of this order and complete paper book shall be served by the Local Commissioner upon the Defendants at the time of execution of commission.

20. I.A. is disposed of in the above terms.

21. *Dasti.*

PRATHIBA M. SINGH, J.

MARCH 12, 2019/dk