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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(COMM) 557/2019 & IAs 13738/2019, 13739/2019, 13740/2019
and 13741/2019

HINDALCO INDUSTRIES LTD. Plaintiff
Through: Mr. Sachin Gupta, Ms. Jasleen Kaur,
Mr. Pratyush Rao and Ms. Rajnandini
Mahajan, Advs.

versus

SHARAD KUMAR JINDAL & ANR. Defendants
Through:

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER
% **30.09.2019**

IA No. 13741/2019 (for exemption)

Exemption allowed subject to all just exceptions.

Application stands disposed of.

IA No. 13738/2019 (Under Order XI Rule 1 (4) CPC)

This is an application filed by the plaintiff seeking permission to file additional documents.

For the reasons stated in the application, the same is allowed. Plaintiff is directed to file the additional documents within four weeks.

Application stands disposed of.

CS(COMM) 557/2019

1. Summons be issued in the suit to the defendants returnable on December 16, 2019.
2. Summons shall state that the written statement shall be filed by the

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defendants within 30 days from the date of receipt of summons. The defendants shall file their affidavit of admission and denial of documents filed by the plaintiff.

3. Replication shall be filed within 30 days of the receipt of the written statement / documents. The replication shall be accompanied by the affidavit of admission denial of documents filed on behalf of the defendants. If any of the parties wish to seek inspection of any documents, the same shall be sought and given within the time lines.

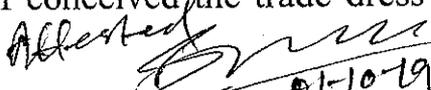
4. List on December 16, 2019 before Joint Registrar for marking exhibits.

IA 13739/2019 (Under Order XXXIX Rule 1 and 2 CPC)

5. Issue notice on this application to the defendants returnable on March 02, 2020.

6. It is the submission of the learned counsel for the plaintiff that the plaintiff company, earlier called as Hindustan Aluminium Corporation Ltd., was incorporated in 1958 for manufacturing alumina, aluminum and aluminum fabricated items. In 1962, the plaintiff company began producing various goods in Uttar Pradesh and now has a capacity of making approximately 1300 thousand metric tons per year of aluminium metal and approximately 1700 thousand metric tons per year of alumina. In the year 1989, the name of the company was changed from Hindustan Aluminium Corporation Ltd. to Hindalco Industries Ltd. In the year 1994, the plaintiff's plant in Maharashtra started its operations using modern equipment in technical collaboration with "Pechiney" of France who manufactures Aluminium Foils.

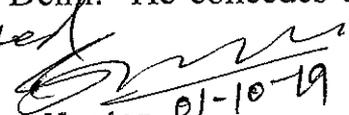
7. On July 31, 2002, plaintiff conceived the trade dress and packaging

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consisting of a unique colour combination of silver and blue along with emoji. The plaintiff has been using the said trade dress/packaging since then. The said trade dress /packaging of the plaintiff's product under the trade mark "FRESHWRAPP" is an original artistic work created at the behest of the plaintiff. The plaintiff is also the proprietor of trademark "FRESHWRAPP" which is a well-known trademark and has been continuously and extensively using it since June 5, 2003. The plaintiff has obtained registration for the said trademark which are valid and duly subsisting. In this regard, learned counsel for the petitioner has drawn my attention to Para 12 of the plaint. The trademark "FRESHWRAPP" is being widely promoted and advertised through the medium of the internet by which the consumers have instantly come to recognize "FRESHWRAPP" as the trade mark of the plaintiff

8. According to the learned counsel for the plaintiff "FRESHWRAPP" has become a household name across India, synonymous with foils and wraps and had the trust of the consumers by quality, dependability, long dependability and true after-sales service. A reference has been made to the volume of sales and sales in Indian Rupees by drawing my attention to Para 15 of the plaint.

9. It is his case that defendant no.1 is in the business of marketing of aluminium foil under the impugned mark "NEW FRESHWRAP". The plaintiff came across the defendants product being sold under the impugned mark "NEW FRESHWRAP" sometime in third week of May, 2019. The defendants' product under the impugned mark are advertised and available at the defendant no.1's website <https://ak-sales-corporation-aluminium-foils.business.site> which is accessible from Delhi. He concedes to the fact

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that defendant no.1 has applied for the registration of tradename "NEW FRESHWRAP" under no. 4003614 on November 21, 2018 and the same is objected to by the plaintiff. It is his submission that impugned mark "NEW FRESHWRAP" is deceptively similar to the plaintiff's tradename "FRESHWRAPP" and conveniently added a prefix (NEW) and deleted (P) form the word "FRESHWRAPP" which shows dishonest and malafide intent on the part of the defendants by adopting similar trade dress / packaging as that of the Plaintiff's product under the mark "FRESHWRAPP"

10. Considering the plaint, including the documents and hearing the learned counsel for the plaintiff, this court is of view that the plaintiff has made out a prima facie case in it favour and for grant of ad-interim injunction. Accordingly, defendants, its proprietors, partners, directors, distributors, dealers, stockists, retailers, servants and agents are restrained from manufacturing, selling, offering for sale, advertising, directly or indirectly dealing in aluminium foil and/or cling film under the impugned mark/ trade name/ domain name containing NEW FRESHWRAP/ NEW FRESH WRAPP  or any other trade mark /trade name/ domain name as may be deceptively similar to plaintiff's well known trade mark FRESHWRAPP  amounting to infringement of registered trade mark and/or amounting to passing off till the next date of hearing.

11. The provision of Order XXXIX Rule 3 CPC be complied within three weeks.

IA 13740/2019 (Under Order XXVI Rule read with Order XXXIX Rule 7 read CPC and Section 135 of Trade Marks Act, 1999

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12. After hearing the learned counsel for the plaintiff, this court is of the view that a Local Commissioner need to be appointed. Accordingly, this court appoints Ms. Sonali Kumar, Adv. (Mobile No. 9873166499) as Local Commissioner, who shall visit the premises of the defendants as under:

M/s. A.K. Sales Corporation
Ambika City, Shop No. 29,
Padampur Road,
Sri Ganganagar, Rajasthan – 335001

The above-named Local Commissioner shall visit the aforesaid premises of the defendants for carrying out the following acts:

- (a) Visit the manufacturing plant of the Defendants at the address below where the aluminium foil preparations under the impugned mark NEW FRESHWRAP/ NEW FRESH WRAPP, its packaging, promotional materials, stationery, dyes, blocks etc. will be lying or any other premises where the infringing goods or packaging under the impugned mark NEW FRESHWRAP/ NEW FRESH WRAPP are stocked/stored as per the information received by her;
- (b) prepare an inventory and take in custody all the products under the mark NEW FRESHWRAP/ NEW FRESH WRAPP their packaging, promotional materials, stationery, dyes, blocks etc. and hand them over to the Defendant's representative on *superdari*'.
- (c) record details of such other persons who, according to the information disclosed by the Defendants, have role in manufacturing and sale of aluminium foil and/or cling film under the impugned mark NEW FRESHWRAP/ NEW FRESH WRAPP;

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(d) procure copies of the books of account, stock & excise registers maintained by the Defendants pertaining to aluminium foil and/or cling film under the impugned mark NEW FRESHWRAP/ NEW FRESH WRAPP;

(e) break open the locks, if access to the premises where goods namely aluminium foil and/or cling film under the impugned mark NEW FRESHWRAP/ NEW FRESH WRAPP, their promotional materials, stationery, dyes, blocks, etc. are stocked, is denied to her;

13. For carrying out the commission, the Local Commissioner shall be at liberty to seek the assistance of the local police. She can photograph and videograph the commission. The Local Commissioner shall be accompanied by the counsel and representative of the plaintiff.

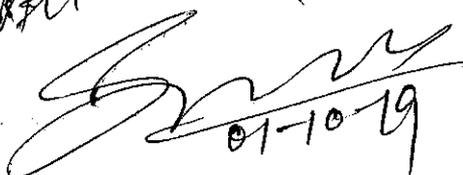
14. The Local Commissioner shall be paid an amount of Rs.1,00,000/- for executing the commission excluding out of pocket expenses and travelling expenses, which shall be paid as per actuals. The commission shall be executed within three weeks from today and the report thereto shall be submitted by the Local Commissioner within two weeks thereafter.

15. Copy of this order be sent to the Local Commissioner appointed by this court.

A copy of this order be given *dasti* under the Signatures of the Court Master.

V. KAMESWAR RAO, J

SEPTEMBER 30, 2019/ljg



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