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

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Date of decision: 08th May, 2025

+ CS(COMM) 566/2023 with I.A. 15571/2023 and I.A. 5300/2025

**EUREKA FORBES LIMITED (FORMERLY
FORBES ENVIRO SOLUTIONS LIMITED)Plaintiff****Through: Mr. Shivankar Sharma and Mr. Ayush
Singh, Advocates.**

versus

NANDAN SALES AND ORSDefendants**Through: Mr. Divyansh Tiwari, Advocate for
defendant no. 1.
Mr. Dharmendra Kr. Verma,
Advocate for defendant no. 10.
Mr. Nipun Dwivedi, Advocate for
defendant no. 12.****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 those of the plaintiff, along with other ancillary reliefs.

CASE SETUP 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 encompass the 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 has been 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' and other 'AQUA' formative marks have been filed along with the plaint.

7. Until 2003–2004, the Plaintiff packaged its candles/filters in transparent plastic bags with an enclosed leaflet bearing product and brand details. However, recognising the vulnerability to counterfeiting, the



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plaintiff, from 2004 onwards, began using plastic shrink wraps bearing a distinctive and periodically updated get-up/artwork/label.. To further safeguard itself against counterfeiting, the plaintiff periodically updated the design of the get-up/artwork/label while maintaining its core distinctive features. Over time, the plaintiff has developed various iterations of this get-up/artwork/label, which are given below:

NAME OF CATRIDGE	ARTWORK
AQUAGUARD CLASSIC	
AQUAGUARD I NOVA	
AQUAGUARD DUAL	



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AG WATER FILTER CARTRIDGE 1	
AG WATER FILTER CARTRIDGE 2	
AG WATER FILTER CARTRIDGE 3	
AG WATER FILTER CARTRIDGE 3	

8. In 2020, in order to strengthen and protect its proprietary rights, the plaintiff obtained registration of the trade mark/trade dress/label “AQUASFILTER” in the year 2020. A copy of the trade mark registration application, along with the corresponding registration certificate for the



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mark “AQUASFILTER,” has been filed with the list of documents. The plaintiff also adopted get-up/artwork/label under its ‘AQUASFILTER’ mark, which is given below:

TITLE	ARTWORK
AQUASFILTER	

9. In 2020, the plaintiff also adopted the mark ‘ACTIVE COPPER’ for its filters used in water purification systems. The plaintiff exclusively sells its ‘ACTIVE COPPER’ filters as a consumable kit comprising four distinct filtration units.

TITLE	ARTWORK
ACTIVE COPPER SPARES KIT	

10. 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. All the aforesaid trademark/copyright registrations remain valid and subsisting.



11. 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 authorised channels, with 19,850 dealers all over the country.

12. 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. 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/-.

13. Since around April/May 2023, the plaintiff has received constant complaints about counterfeit spare parts and consumables such as water filters, candles, MLTs, tubes, RO membranes, and cartridges being sold in the market. In response, the Plaintiff engaged investigation agencies to trace the source of such counterfeiting activities. Following these investigations, the Plaintiff filed four separate suits for trademark infringement and counterfeiting and obtained ex-parte ad interim injunctions in its favour. Further, Local Commissioners were appointed to visit the premises of the defendants and seize the infringing goods. During these executions, further leads emerged indicating that defendants no.1 to 14 in the present suit were also involved in similar counterfeiting activities.

14. Defendants No.1 to 3 are dealers/distributors based in Maharashtra, and Defendant Nos. 4 and 5 are dealers/distributors located in Odisha. Defendants no.6 to 13 are dealers/distributors based in Delhi. Defendant No.



11, who acts as both manufacturer and distributor, operates from Bawana, Delhi. These Defendants are found to be directly or indirectly procuring counterfeit goods bearing identical labels, get-ups, and artworks from Defendant No. 11. Defendant no.14 is a John Doe defendant.

15. Accordingly, the plaintiff filed the present suit on 17th August, 2023 seeking to restrain the defendants from carrying on their infringing activities.

PROCEEDINGS IN THE SUIT

16. On 21st August 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' and 'ACTIVE COPPER' or any other deceptively similar mark and any get-ups/artworks/labels similar to that of the plaintiff. This Court also appointed four Local Commissioners to visit the defendants' premises.

17. The Local Commissioners executed the commissions at the respective locations of the defendants on 28th August, 2023 and effected seizure of the infringing products.

18. On 19th October 2023, the Joint Registrar allowed the application to amend the name of defendant no.8, and an amended memo was taken on record.

19. Since no written statement was filed on behalf of defendants no. 2, 4, 5, 11 and 13 despite being served, the Joint Registrar, *vide* order dated 10th January 2024, closed the right of defendants no. 2, 4, 5, 11 and 13 to file a



written statement.

20. On 24th January 2024, the parties were referred for mediation at the Delhi High Court mediation and conciliation centre.

21. On 27th November 2024, the matter was settled and decreed *qua* plaintiff and the defendants no.3, 6, 7 and 8. Further, the plaintiff and the defendants no.10 and 12, were referred for mediation. Since no written statement was filed on behalf of defendant no.9, this Court closed the right of defendant no.9 to file a written statement. As none had been appearing for defendants no.2, 4, 5, 9, 11 and 13, defendants no.2, 4, 5, 9, 11 and 13 were proceeded against *ex parte*.

22. The plaintiff has also settled the dispute with the defendants no.1, 10 and 12. The plaintiff now seeks a decree against defendants no. 2, 4, 5, 9, 11 and 13 in terms of Order VIII Rule 10 of the Code of Civil Procedure, 1908 (hereinafter, 'CPC').

ANALYSIS AND FINDINGS

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

24. 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 defendants no. 2, 4, 5, 9, 11 and 13, 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 defendants no. 2, 4, 5, 9, 11 and 13 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.

25. 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.

26. 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.

27. A perusal of the plaint and the Local Commissioners' report reveals that the defendants are engaged in the manufacture and sale of counterfeit versions of the plaintiff's AQUA-branded products. The unauthorised use of the 'AQUA' marks by the said defendants is deliberate, unjustified, and intended solely to capitalise on the plaintiff's established goodwill. The plaintiff has no control over the quality of these infringing goods, and the sale thereof is likely to cause consumer confusion, dilute the distinctiveness of the plaintiff's brand, and erode public trust. Such acts pose a grave threat to the plaintiff's business interests and hard-earned reputation.

28. Based on the discussion above, a clear case of infringement of trademark and copyright is made out. The defendants no. 2, 4, 5, 9, 11 and 13 have taken unfair advantage of the reputation and goodwill of the plaintiff's trademarks/artistic works and have also deceived the unwary consumers of their 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.

29. At this stage, it may be relevant to note that the defendants no. 2, 4, 5, 9, 11 and 13 did not appear before the Court, despite service of summons. Further, no communication on behalf of the defendants no. 2, 4, 5, 9, 11 and 13 has been placed on record in respect of the allegations of the plaintiff in this suit.

30. Since the defendants no. 2, 4, 5, 9, 11 and 13 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.

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

32. Counsel for defendant no.1 submits that defendant no.1 has no objection if a decree of permanent injunction is passed in favour of the plaintiff and is willing to pay Rs. 60,000/- towards costs and damages to the plaintiff.

33. Counsel for defendant no.10 submits that defendant no.10 has no objection if a decree of permanent injunction is passed in favour of the plaintiff and is willing to pay Rs. 10,000/- towards costs and damages to the plaintiff.

34. Counsel for the plaintiff is agreeable for the same.

35. In so far as defendants no.2, 4, 5, 9, 11 and 13 are concerned, a perusal of the Local Commissioners' Report would show that during the execution of the Commission, counterfeit products bearing the 'AQUA' formative marks were found at the defendants no. 2, 4, 5, 9, 11 and 13. The



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quantity of the goods found by the Local Commissioners is given below

Premises	Units found
Defendant no.2	139 units
Defendant no.4	2040 units
Defendant no.5	278 units
Defendant no.9	73 units
Defendant no.11	0 units
Defendant no.13	53 units

36. In *Cartier International A.G. v. Gaurav Bhatia*¹, while granting the damages in case where defendants were selling counterfeit watches and did not appear to contest the suit filed by the plaintiff, a Coordinate Bench of this Court has observed that a defendant who deliberately avoids court proceedings should not be allowed to benefit from such evasion as that would be unfair to a defendant who submits account records and is held liable for damages, while one who evades proceedings escapes liability due to the absence of financial records.

37. The aforesaid principles would be squarely applicable in the present case. In the present case, the defendants have deliberately sold counterfeit products bearing 'AQUA' formative marks. Further, despite service of summons, defendants no.2, 4, 5, 9, 11 and 13 have failed to enter an appearance and contest the suit.

38. In *Hindustan Unilever Limited v. Reckitt Benckiser India Limited*², a Division Bench of this Court outlined the principle of 'rough and ready

¹ 2016 SCC OnLine Del 8

² ILR (2014) 2 Del 1288



calculations' for awarding damages.

39. Taking into account the entire facts and circumstances presented in this is a fit case, where damages and costs should be awarded.

RELIEF

40. In view of the foregoing analysis, a decree is passed in favour of the plaintiff and against the defendants no.1, 2, 4, 5, 9, 10 and 13 in terms of the prayer clauses 56 (a), (b), and (c) of the plaint.

41. Insofar as the relief of damages and costs sought in prayer clauses 56 (h) and (i) of the plaint is concerned, defendants no.1 and 10 have settled the matter with the plaintiff. Defendant no. 1 agreed to pay Rs 60,000 to the plaintiff, and Defendant no. 10 has agreed to pay Rs.10,000 to the plaintiff. Accordingly, a decree is passed in favour of the plaintiff directing the defendants no.1 and 10 to pay the aforesaid amount within one week.

42. In so far as the defendants no. 2, 4, 5, 9, and 13 are concerned, a decree is passed awarding damages and costs in favour of the plaintiff and against defendants no. 2, 4, 5, 9, and 13 in the following manner:

Defendants	Amount awarded
Defendant no.2	Rs.30,000
Defendant no.4	Rs.1,00,000
Defendant no.5	Rs.60,000
Defendant no.9	Rs.15,000
Defendant no.13	Rs.10,000

43. Plaintiff and Defendant no. 12 have arrived at a settlement before the Delhi High Court Mediation and Conciliation Centre ('Centre').

44. The Settlement Agreement dated 19th September, 2024 (hereinafter



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“Settlement Agreement”) has been placed on record and the same bears the signatures of the parties and their respective counsel.

45. I have gone through the terms of the Settlement Agreement and find the same to be lawful.

46. Plaintiff and defendant no. 12 shall remain bound by the terms of the Settlement Agreement.

47. In terms of the Settlement Agreement, the present suit is decreed qua defendant no.12. The Settlement Agreement shall form part of the decree.

48. Since no recovery was made at the premises of the defendant no.11, counsel for the plaintiff does not press for reliefs against the defendant no.11.

49. Counsel for the plaintiff does not press for the remaining reliefs.

50. Let the decree sheet be drawn up.

51. Pending applications shall stand disposed of.

AMIT BANSAL, J

MAY 08, 2025

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