

\$~29

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 13.05.2010.

+ CS(OS) 1419/2009

LOUIS VUITTON MALLETIER Plaintiff
Through : Mr. Pravin Anand, Advocate.

versus

ATUL JAGGI & ANR. Defendants
Through : Mr. Siddharth Bambha, Advocate.

CORAM:
MR. JUSTICE S. RAVINDRA BHAT

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes.
2. To be referred to Reporter or not? Yes.
3. Whether the judgment should be reported in the Digest? Yes.

S.RAVINDRA BHAT, J. (OPEN COURT)

1. The plaintiff in the suit claims permanent injunction and other consequential reliefs to the following effect:

“XXXXXX

XXXXXX

XXXXXX

(a) *An order for permanent injunction restraining the defendants, its partners, if any, officers, servants, agents, distributors, stockists and representatives from manufacturing, selling and/or offering for sale, advertising, directly or indirectly dealing in wallets, handbags, purses, or any other goods bearing the trademark “LOUIS VUITTON” and/or the trademark “LV” logo and/or the “Toile monogram” pattern or any similar trademark amounting to an infringement of registered Trademark Nos. 441451, 441452B and 441453B respectively;*

(b) *An order for permanent injunction restraining the Defendants, its partners, if any, officers, servants, agents, distributors, stockists and representatives from manufacturing, selling and/or offering for sale, advertising, directly or indirectly infringing the copyright contained in the Toile Monogram*

pattern, Murakami monograms, or making or applying substantially similar patterns;

(c) An order for permanent injunction restraining the Defendants, their partners, if any, their officers, servants, agents, distributors, stockists and representatives from manufacturing, selling and/or offering for sale, advertising, directly or indirectly dealing in wallets, handbags, purses and imitations of leather and similar goods made of these materials bearing the trademark “LOUIS VUITTON” and/or the trademark “LV” logo and/or the “Toile monogram” pattern or any similar trademark in or doing any other act amounting to passing off of the Defendants’ goods as those of the Plaintiffs;

(d) An order for delivery up to the Plaintiff by the Defendants of all finished and unfinished materials and accessories, packaging, labels,, dies, blocks, stationery and other material bearing any of the plaintiff’s trademarks or bearing any other mark(s)/logo/device similar thereto, for the purpose of erasure/destruction;

(e) An order for rendition of the accounts of profit illegally earned by the Defendants on account of the use of the trademark “LOUIS VUITTON” and/or the trademark “LV” logo and/or the “Toile monogram” pattern and for a decree for the amount so found due to be passed in favour of the plaintiff;

(f) A sum of Rs. 20,00,000/- for a decree of damages as valued for the purposes of this petition for the purposes for loss of sales, reputation and goodwill of the Plaintiff’s trademarks caused by the activities of the Defendants.

(g) An order as to the costs of the proceedings.

XXXXXX

XXXXXX

XXXXXX”

2. The suit is premised on the plaintiff being proprietor of the registered trademark “LOUIS VUITTON” in respect of accessories and variety of leather goods. The plaintiff claims to have coined and used the mark since 1890. It also claims that the mark is distinctive and has acquired a world-wide reputation. The plaintiff had complained that the defendants had indulged in trademark infringement in similar kinds of goods that were using the “LOUIS VUITTON” brand or mark.

3. This Court had, by an order dated 07.08.2009, directed an *ex-parte ad interim* injunction in the following terms:

“XXXXXX

XXXXXX

XXXXXX

I.A. No. 9897/2009 (Under Order 39 Rule 1 & 2) in CS(OS) 1419/2009

Issue notice to the defendants, returnable before the Joint Registrar on 06.10.2009, who shall ensure that the parties complete pleadings and also admit/deny documents through affidavits; thereafter, the matter shall be listed before the Court on 14.01.2010, for framing issues.

The plaintiff claims to be a company incorporated under the laws of France; the company claims deriving its name from its founder, Louis Vuitton, who, in the year 1954, started creating leather luggages, bags and accessories in Paris, which gained immense popularity due to company's craftsmanship, attention to detail and inventive designs. In 1987, the plaintiff claims becoming part of the Moët Hennessy Louis Vuitton (LVMH) Group, which possesses a vast portfolio of around 50 prestigious brands in the world of fashion. It is claimed that over the past 150 years, the plaintiff has built and maintained a reputation for its products. The plaintiff also relies upon its net sales for the year 2000-2002 (worth 3202 million euros in 2000; 3612 million euros in 2001 and 4194 million euros in 2002).

The plaintiff claims that in addition to the use of the name "Louis Vuitton" as a trademark, the initials of Louis Vuitton, namely "LV", represented in an intertwined manner has also been used as a trademark by the plaintiff since 1890. As a reaction to copying of designs of the House of Louis Vuitton, Louis Vuitton's son, in the year 1896 created a new canvas design with a flower pattern and the intertwined initials of the Louis Vuitton (LV); this design was named "Toile monogram". The said "Toile monogram", it is claimed, underwent constant reinventions and in 2003, the plaintiff, in collaboration with Takashi Murakami, a famous Japanese designer, designed and introduced its collection in a new interpretation of the Monogram canvas with 33 colors, to create the "Murakami Monogram Multicolore" collection, the "Murakami Eye Love" collection and "Murakami Cherry Blossom" collection.

The plaintiff also claims to be selling jewellery bearing "LV" logo, Toile Monogram and Murakami Monogram, which include rings, earrings, bracelets, necklaces, pendants, charms and hairpins. It is submitted that the said items of jewellery are well-known as originating from the plaintiff and enjoys substantial goodwill and reputation in the market. The plaintiff also claims to be the first foreign company permitted to set up its own duty free outlets in the country; the plaintiff's trademarks "LOUIS VUITTON", word mark "LV" logo and the monogram patterns are also registered in India under classes 3, 14, 18 and 25 with the Registrar of Trademarks under Registration Nos. 441451, 448229B, 441452B, 448230B, 448231, 441453B, 448233B, 448235, 448234 and 861145.

The Plaintiff submits that Defendant No. 1 is the proprietor of 'Purse Collection' located at 6/64, W.E.A. Ajmal Khan Road, Karol Bagh and 23/24, Fruit Market, Ajmal Khan Road, Karol Bagh; Defendant No.2 is the proprietor of 'M/s. Purse Emporium' at 15/A/65, W.E.A., Ajmal Khan Road, Karol Bagh, New Delhi. It is claimed by the plaintiff on the basis of some investigative findings that Defendants are involved in counterfeiting the plaintiff's products. Such products,

sold by defendants bear the plaintiff's exclusive trademarks, i.e. "Louis Vuitton", the "LV" logo and the "Toile monogram" pattern. The plaintiff claims that the defendants are infringers since they stock large quantities of products with infringing marks in their outlets; this is based on report of an alleged investigation. The plaintiff's claims are supported by photographs of the counterfeit items purchased by the plaintiff's representative, from the defendants' outlets.

The plaintiff has made out a prima facie case; if ad interim relief is not granted, restraining the defendants from use of similar trademark as that of the plaintiff, serious prejudice and harm would be caused to it. The balance of convenience too favours the plaintiff.

Till the next date of hearing, defendants as also their individual proprietors/partners, officers, servants, agents, representatives, distributors, stockists etc. and all others acting for and on their behalf are restrained from manufacturing, selling and/or offering for sale, advertising, directly or indirectly dealing in wallets, handbags, purses, or any other goods bearing the trademark "LOUIS VUITTON" and/or the trademark "LV" logo and/or the "Toile monogram" pattern or any similar trademark to that of the plaintiff; they are also restrained from infringing the copyright of the plaintiff in the "Toile Monogram" pattern & Murakami monograms, of the plaintiff or making or applying substantially similar patterns.

The plaintiff shall comply with provisions of Order 39 Rule 3 CPC within one week.

Dasti.

XXXXXX

XXXXXX

XXXXXX"

4. The Court had, on the same day, appointed a Local Commissioner to visit the defendants' premises and report as to the correct position *vis-à-vis* the nature of goods and issues such of them as were found to be carrying the impugned mark. The Local Commissioner has filed his report which *inter alia* confirms the infringing activity of the defendants.

5. The defendants had initially filed a written statement and contested the suit. Subsequently, during the course of the proceedings, it was submitted that they had stopped infringing activities and further that they would not sell or offer for sale any product bearing the "LOUIS VUITTON" mark or any other mark deceptively or confusingly similar to it. In the circumstances, the plaintiff had indicated that the claim for damages and other reliefs (save and

except the injunctive relief) would not be pressed provided the defendants pay reasonable costs for the proceedings.

6. In view of the developments made and having regard to the statement of the defendants' counsel, who submits, upon instructions, that a sum of Rs. 2.75 crores would be paid towards costs, this Court is of the opinion that the suit has to succeed in term of paras 37 (a), (b) and (c) of the plaint. The defendants shall also bear the costs of proceedings quantified at Rs.2.75 lakhs, of which, a sum of Rs. 1.5 lakhs shall be paid within ten days. The defendants are directed to destroy the goods seized by the Local Commissioner on a date to be intimated to the plaintiff in its presence or in the presence of plaintiff's representative.

7. The suit is decreed in the above terms.

**S. RAVINDRA BHAT
(JUDGE)**

**MAY 13, 2010
'ajk'**