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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CS(OS) 1763/2005

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Judgment dated 19.12.2011

THE POLO/LAUREN COMPANY L.P. Plaintiff

Through : Mr. Pravin Anand and Ms. Abhilasha
Nautiyal, Advs.

versus

ROHIT S. BAJAJ AND ORS.

..... Defendants

Through

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J. (ORAL)

I.A.NO.3914/2006.

1. Application stands dismissed with liberty, as prayed, to raise the pleas made in this application in the execution petition.

CS(OS) 1763/2005

2. Plaintiff has filed the present suit under Sections 134 and 135 of Trade Marks Act, 1999, and Sections 51 and 55 of Copyright Act, 1957, for permanent injunction and damages against the defendants.
3. Since none appeared on behalf of defendants no.1, 2, 4 to 8, they were proceeded *ex parte* on 17.2.2009. None is present on behalf of defendants no.3 and 9, as the matter stands settled with defendant No.3 and 9.

4. Necessary facts to be noticed for disposal of the present suit are that plaintiff, which is a limited company, stated to be a global leader in the field of designer and branded apparel, accessories and home collections since the year 1967. The plaintiff has also been involved in the business of designing and authorizing the manufacture, promotion and sale of high quality women's and children's clothing as well as accessories. Plaintiff enjoys a high reputation and goodwill in the market. The plaintiff uses a family of trade marks such as POLO, RALPH LAUREN, POLO PLAYER DEVICE, POLO BY RALPH LAUREN amongst many other POLO formative marks. The plaintiff adopted the trade mark POLO for use in relation to clothing in 1967 and the POLO PLAYER DEVICE was adopted in the year 1972 besides few other variants.
5. Learned counsel for the plaintiff submits that plaintiff is also the proprietor of several trademarks comprising or containing "POLO" in India, details of which have been extracted in the plaint. Counsel further submits that reputation and goodwill of the Plaintiff's POLO Trademarks extends to India and the trademarks are well known to the relevant class of consumers. The Plaintiff has been exporting products made under its registered trademarks to various countries.
6. Grievance of the plaintiff is that defendants have been manufacture, marketing and exporting the impugned garments and accessories deceitfully and fraudulently using the Plaintiff's various registered trademarks.
7. Plaintiff has filed the affidavit of Mr. David Robert Brown, Vice President, International Trademarks Division of the Plaintiff. In the

said affidavit Mr. David has identified the signatures of Mr.C.A Brijesh, Constituted Attorney of the Plaintiff, on the plaint at points marked 'C' and 'D' and also proved the original Power of Attorney executed by the Plaintiff in favour of Mr.C.A. Brijesh, which is exhibited as Ex. PW-1/1. He deposed that he is the signatory of the power of attorney and is duly authorized and competent to file the affidavit by virtue of a Board Resolution dated 29th August 2001 of the Plaintiff, which is exhibited as Ex. PW-1/2. He has further deposed that Plaintiff is carrying on the business since 1968 and is established in the business of designing, manufacturing and marketing articles of contemporary high quality men's, women's and children's clothing and accessories. Ralph Lauren, Chairman of the Board of the Plaintiff and principal shareholder, is widely recognized throughout the world for excellence in the creation of contemporary clothing designs. The Plaintiff trades in its goods and services *inter alia* under the trademarks POLO, POLO BY RALPH LAUREN, RALPH LAUREN and POLO PLAYER DEVICE, POLO (Polo Player Device) RALPH LAUREN, LAUREN, POLO JEANS CO., POLO SPORTS, RALPH LAUREN and the representation of a Polo Player Device (collectively referred to as "POLO Trademarks").

8. It is deposed by Mr. David that Plaintiff's goods and services under the POLO trademarks are much sought after for their style and design excellence and quality of workmanship. With around 40 years of continuous, extensive and uniform use the POLO Trademarks have become so well known among the purchasing public as an international brand synonymous with high quality and

prestige. As a result the POLO Trademarks and the goodwill associated with these are of incalculable value to the Plaintiff. It is further deposed that Plaintiff is also the proprietor in India of several trademarks comprising or containing “POLO”, details of which have been extracted in the affidavit. Certificates for use in legal proceedings for the registered trademark Nos. 742755, 420657, 674214, 357142 and 742760 have been exhibited as Ex. PW-1/3, Ex. PW-1/4, Ex. PW-1/5, Ex. PW-1/6, Ex. PW-1/7; the certificates for use in legal proceedings of trademark Nos. 476409 and 577995 have been exhibited as Ex. PW-1/8 and Ex. PW-1/9; and certified copies for the registered trademark Nos. 489215, 67207 and 67245 have been exhibited as Ex. PW-1/10, Ex. PW-1/11 and Ex. PW-1/12. It is also deposed by Mr. Davit that Plaintiff has registered or has applied for registration of the POLO Trademarks in many countries of the world such as Australia, Canada, Hong Kong, New Zealand, United Kingdom, Singapore and Malaysia. Certified copies of registration certificates in respect of Plaintiff’s trademarks comprising or containing “POLO” have been exhibited as Ex. PW-1/13 at pages 4 to 15, Ex.PW-1/14 at pages 16 to 19, Ex.PW-1/15 at pages 20 to 25, Ex.PW-1/16 at pages 26 to 32, Ex.PW-1/17 at pages 33 to 40, Ex.PW-1/18 at pages 41 to 44 and Ex.PW-1/19. It is also deposed that Plaintiff registered its domain name www.polo.com on 14th January 1998. A printout of the relevant extracts of the search engine whois.com is exhibited as Ex.PW-1/20. The Plaintiff’s website www.polo.com gets approximately 800,000 visits each month at the home section alone.

9. Mr. David further goes on to state that substantial reputation and goodwill has accrued to the Plaintiff's POLO Trademarks through extensive sales worldwide. The reputation and goodwill of the Plaintiff's POLO Trademarks extends to India and the trademarks are well known to the relevant class of consumers here. The worldwide sales figures including in the USA of the products bearing the POLO Trademarks either alone or in conjunction with the trademark POLO, POLO BY RALPH LAUREN and RALPH LAUREN from the years 1978 to 2004 as derived from the Plaintiff's records have been extracted in the affidavit. Mr. David further deposed that an original Form 10K United States Securities and Exchange Commission report of Polo Ralph Lauren Corporation, of which the Plaintiff is a subsidiary, of the year 2005 is filed on record with list of documents dated 17th January 2006 which is exhibited as Ex. PW-1/21. The original Annual Reports of the Polo Ralph Lauren Corporation for the years 2000 to 2005 have been exhibited as Ex. PW- 1/22, Ex. PW- 1/23, Ex. PW- 1/24, Ex. PW- 1/25 and Ex. PW- 1/26. Mr. David also deposed that Plaintiff's products are sold in several countries including India. The Plaintiff has been exporting products made under its registered trademarks to various countries. The original invoices, bills of lading etc., establishing export of products bearing the Plaintiff's POLO Trademarks along with the original certificate of Notary Public have been exhibited as **Ex. PW- 1/27**. Mr. David next deposed that major part of the advertising expenses have been incurred in the placement of advertisements in leading magazines and newspapers like Forbes, Esquire, Vanity Fair, Vogue,

Elle, Rolling Stone, W magazine etc. and published in the United States as well as in Europe, Asia and the Middle East which are widely circulated inter alia in India. Original magazines have been filed and exhibited as Ex. PW- 1/28 to Ex. PW- 1/29. Copies of other advertisements released by the Plaintiff's POLO Trademarks have been exhibited as Ex. PW- 1/30. The statement of expenses incurred by the Plaintiff on advertisement and publicity and sales promotion for the POLO Trademarks from the year 1980 to 2004 have been extracted in the affidavit. This witness has further deposed that plaintiff has successfully enforced its rights in eight (8) US cases where the fame of the POLO Trademarks has been recognized. Certified copies of the decisions in the Plaintiff's favour from various jurisdictions have been exhibited as Ex. PW- 1/31, Ex. PW- 1/32 and Ex. PW- 1/33.

10. As per this witness defendants No.1 and 2 have been manufacturing and exporting garments including shirts and T-shirts under the trademark POLO and Device of Polo Player to various countries. Defendant No.3 is also involved in manufacture, marketing and export of the impugned garments and accessories and deceitfully and fraudulently using the Plaintiff's various registered trademarks. Defendants No. 4 to 8 are various business entities run by Defendant No. 1 and 2. Defendant No.9 is a business entity being managed and operated by Defendant No.3. Defendant No.9 also operates through its website www.varshaa.com, besides others, two of which known to the Plaintiffs are www.rohitfashions.com and www.stockgarments.com. Printouts from www.varshaa.com and

printouts from the Online Database of registered domain names in respect of the website www.varshaa.com have been exhibited as Ex. PW- 1/34 and Ex. PW- 1/35, respectively. Printouts of webpages from www.rohitfashions.com and printouts from the online database pertaining to its domain name registrations have been exhibited as Ex. PW- 1/36 and Ex. PW- 1/37 respectively. Printouts of web pages from www.stockgarments.com and printouts from the online database pertaining to its domain name registrations have been exhibited as Ex. PW- 1/38 and Ex. PW- 1/39 respectively.

11. This witness has further deposed that it was in February 2005 that the Plaintiff became aware of fact that Defendants No.1 and 2 were manufacturing and exporting garments and accessories under the Plaintiff's POLO Trademarks to various countries through Defendant Nos. 4 and 5. The Plaintiff's apprehensions were further confirmed when it received copies of UK Customs Seizure reports and Netherlands Custom Authorities reports which contained details of the counterfeit garments seized. Copies of the UK and Netherlands Custom Authorities seizure reports have been marked as X- 1. Pursuant to such information from the UK and Netherlands Customs Authorities plaintiff filed a complaint against Defendants No. 1, 2, 4 and 5 with the Commissioner of Police, Greater Chennai, Egmore, Chennai on June 27, 2005, a true copy of which has been marked as X- 2. The Assistant Commissioner of Police, Chennai Crime Branch, sought an opinion from the Trademark Registry prior to taking action. The original opinion of the Registrar of Trademarks has been exhibited as Ex. PW- 1/40. Upon receiving the Registrar's opinion,

the Central Crime Branch registered FIR No. 830/2005 against Defendant Nos.1 and 2 trading as Defendant Nos. 4 and 5 and ordered a raid allowing 'search and seizure' at the premises of Defendant Nos. 1, 2, 4 and 5. A true copy of the FIR has been marked as X-3. A copy of the search slip issued by the Central Crime Branch has been marked as X- 4. Original photographs taken during the search and seizure have been exhibited as Ex. PW-1/41. An original sample of a counterfeit garment seized during the raid is also exhibited as Ex. PW-1/42. The police raids conducted at the premises of these Defendants were given press coverage and an original news report has been exhibited as Ex. PW-1/43. This witness has also deposed that Defendants have been actively colluding and selling the counterfeit clothing and accessories bearing the Plaintiff's POLO Trademarks. The Defendants have adopted an identical trademark, namely POLO, for identical goods, namely garments for which the Plaintiff and its trademarks are well known. Defendant No.3 and 9 have also been involved in online sale of counterfeit garments bearing the POLO Trademarks or similar trademarks of the Plaintiff supplied by Defendant Nos. 1 and 2 and 4 to 8 and otherwise. He has also deposed that in the light of the identity of the marks adopted and used by the Defendants with the registered POLO Trademarks of the Plaintiff, the malafides and dishonest intentions of the Defendants are obvious. The Plaintiff's trademarks are registered in India from as early as the year 1984 and the Defendants' unauthorized use thereof amounts to an infringement of the Plaintiff's exclusive statutory and proprietary rights in its trademarks.

There are several printouts obtained from the internet that demonstrate that large quantities of infringing products were being manufactured, offered and sold by the Defendants through the internet. Printouts from the various websites on the internet demonstrating the Defendant's infringing activities have been exhibited as Ex. PW-1/45, Ex. PW-1/46, Ex. PW-1/47, Ex. PW-1/48, Ex. PW-1/49, Ex. PW-1/50 and Ex. PW-1/51. Additional printouts containing extracts of the Defendants' website www.varshaa.com from the year 2003 to 2007 obtained from www.webarchive.org and extracts from Google search results have been exhibited as Ex. PW-1/52 and Ex. PW-1/53 respectively. It is next deposed that the damage to the Plaintiff's POLO Trademarks on account of the infringing and unlawful activities of the Defendants by their use for counterfeit goods bearing the POLO Trademarks is estimated to be around Rs.40,01,200 (Rupees four million twelve hundred). The surreptitious online trade activities of the Defendants under the POLO Trademarks are continuing to causing incalculable harm and injury to the business, goodwill and reputation of the Plaintiff. The Plaintiff's POLO trademarks are suffering dilution and erosion of the goodwill and reputation occasioned by the loss of distinctiveness, uniqueness and exclusivity attached thereto. All profits earned by the Defendants in pursuance of their infringing activities and misrepresentation of their goods as emanating from, licensed by or associated with the same source as the Plaintiff's goods are the losses of the Plaintiff and amounts to unjust enrichment of the Defendant.

12. I have heard counsel for the plaintiff and perused the plaint and the accompanying documents and the evidence led by the plaintiff. The evidence of the plaintiff remained unrebutted. In this case at the stage of filing of the suit, interim orders were granted and the Local Commissioner was also appointed to seize the goods in question. The goods were taken possession of and then released on superdari to the defendant. The plaintiff has established that the plaintiff is the proprietor of the registered trade mark POLO/ RALPH LAUREN/POLO PLAYER DEVICE. Plaintiff has placed on record certificates for the use in legal proceedings for their registered trademark as Ex.PW-1/3 to PW-1/12. Having regard to the evidence placed on record the plaintiff has also established that the registered trademark of the plaintiff is a well known mark as defined in Section 2(z)(g) of the Trade Marks Act. The aforesaid facts and circumstances show that the plaintiff has the exclusive right to use the trademark POLO/ RALPH LAUREN/POLO PLAYER DEVICE. The defendant is attempting to counterfeit the products of the plaintiff and pass off its goods as that of the plaintiff. This not only causes loss of profits to the plaintiff, but results in inferior products made available to the public at large who are deceived by the conduct of the defendant.
13. In view of the above, the plaintiff is entitled to a decree of permanent injunction against the defendant from dealing with the goods having infringing mark in terms of prayers (i) to (vii) of paragraph 35 of the plaint.

14. The last aspect to be considered is the issue of damages for loss of reputation and business as also the cost of the present proceedings. It is trite to say that the defendant has deliberately stayed away from the present proceedings with the result that an enquiry into the accounts of the defendant for determination of damages cannot take place. However, the infringement of the trademark of the plaintiff is not in dispute. The plaintiff has claimed damages to the tune of Rs.50,00,000/- for loss of sale and reputation payable to the plaintiff. The attention of this Court has been drawn to a number of judgments in this behalf where dealing with similar situations, damages have been awarded.
15. In the case of 'M/s L.T. Overseas Ltd. v. M/s Guruji Trading Co. and Anr. [CS (OS) No. 2711/1999] decided on 07.09.2005 this court had granted Rs.3 lakhs damages to the plaintiff. In the case of Relaxo Rubber Limited and Anr. v. Selection Footwear and Anr., 1999 PTC 578, the defendant did not file the written statement after taking time for the same and a decree was passed under Order VIII Rule 10 of the Code of Civil Procedure, 1908. Against the claim of tentative damages of Rs.5 lakhs, Rs.3 lakhs was awarded as damages. In another case of Hindustan Machines v. Royal Electrical Applies, 1999 PTC (19) 685, a sum of Rs.3 lakhs was awarded.
16. In the case of Time Incorporated v. Lokesh Srivastava and Anr., 2005 (30) PTC 3 (Del) where apart from compensatory damages of Rs.5 lakhs, punitive damages have also been awarded. It would be

useful to reproduce paras 7 and 8 of the said judgment, which are as under :-

“7. Coming to the claim of Rs.5 lacs as punitive and exemplary damages for the flagrant infringement of the plaintiff's trade mark, this Court is of the considered view that a distinction has to be drawn between compensatory damages and punitive damages. The award of compensatory damages to a plaintiff is aimed at compensating him for the loss suffered by him whereas punitive damages are aimed at deterring a wrong doer and the like minded from indulging in such unlawful activities. Whenever an action has criminal propensity also the punitive damages are clearly called for so that the tendency to violate the laws and infringe the rights of others with a view to make money is curbed. The punitive damages are founded on the philosophy of corrective justice and as such, in appropriate cases these must be awarded to give a signal to the wrong doers that law does not take a breach merely as a matter between rival parties but feels concerned about those also who are not party to the lis but suffer on account of the breach. In the case in hand itself, it is not only the plaintiff, who has suffered on account of the infringement of its trade mark and Magazine design but a large number of readers of the defendants' Magazine 'TIME ASIA SANSKARAN' also have suffered by purchasing the defendants' Magazines under an impression that the same are from the reputed publishing house of the plaintiff company.

8. This Court has no hesitation in saying that the time has come when the Courts dealing actions for infringement of trade marks, copy rights, patents, etc. should not only grant compensatory damages but award punitive damages also with a view to discourage and dishearten law breakers who indulge in violations with impunity out of lust for money so that they realize that in case they are caught, they would be liable not only to reimburse the aggrieved party but would be liable to pay punitive damages also, which may spell financial disaster

for them. In *Mathias v. Accor Economi Lodging, Inc.*, 347 F.3d 672 (7th Cir. 2003) the factors underlying the grant of punitive damages were discussed and it was observed that one function of punitive damages is to relieve the pressure on an overloaded system of criminal justice by providing a civil alternative to criminal prosecution of minor crimes. It was further observed that the award of punitive damages serves the additional purpose of limiting the defendant's ability to profit from its fraud by escaping detection and prosecution. If a tortfeasor is caught only half the time he commits torts, then when he is caught he should be punished twice as heavily in order to make up for the reason that it is very difficult for a plaintiff to give proof of actual damages suffered by him as the defendants who indulge in such activities never maintain proper accounts of their transactions who they know that the same are objectionable and unlawful. In the present case, the claim of punitive damages is of Rs.5 lacs only which can be safely awarded. Had it been higher even this court would not have hesitated in awarding the same. The Court is of the view that the punitive damages should be really punitive and not flee bite and quantum thereof should depend upon the flagrancy of infringement.”

17. Learned counsel for the plaintiff states that damages have been claimed in the present suit and the plaintiff is entitled to the damages to the tune of Rs.50,00,000/-.
18. I am in agreement with the aforesaid submission of learned counsel for the plaintiff that damages in such cases must be awarded and a defendant, who chooses to stay away from the proceedings of the Court, should not be permitted to enjoy the benefits of evasion of court proceedings. Any view to the contrary would result in a situation where the defendant who appears in Court and submits its

account books would be liable for damages, while a party which chooses to stay away from court proceedings would escape the liability on account failure of the availability of account books. A party who chooses to not participate in court proceedings and stays away must, thus, suffer the consequences of damages as stated and set out by the plaintiff. There is a larger public purpose involved to discourage such parties from indulging in such acts of deception and, thus, even if the same has a punitive element, it must be granted. R.C. Chopra, J. has very succinctly set out in *Time Incorporated's case (supra)* that punitive damages are founded on the philosophy of corrective justice. That was the case where the publishers of Time Magazine had come to Court and one of the factors which weighed while awarding punitive damages was that the readers had been sufferers of the infringement of the mark of the plaintiff. The only difference is that in the present case it is the consumer of the products of the plaintiff, who have suffered as a consequence of the infringement of the mark of the plaintiff by the defendant.

19. For the reasons stated above, the plaintiff has made out a case for grant of decree as prayed in the plaint. Accordingly, the order dated 20.12.2005 is confirmed and the suit is decreed in favour of the plaintiff and against the defendant with costs. Plaintiff is also entitled to the damages to the tune of Rs.5.0 lacs.

G.S.SISTANI,J

DECEMBER 19, 2011

msr