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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CS(OS) 1566/2010

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Judgment Delivered on: 14.03.2012

KSB AKTIENGESSELLSCHAFT & ANR

..... Plaintiff

Through: Mr. Shashi P. Ojha, Advocate

versus

KSB COMMUNICATIONS AND ENGINEERS PVT. LD Defendant

Through

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J. (ORAL)

1. Despite service, defendant has failed to file written statement or to appear in the matter. Accordingly, the defendant is proceeded *ex parte*.
2. Plaintiff has filed the present suit for permanent injunction, restraining infringement of trademark, copyright, delivery up, rendition of accounts etc. against the defendant. Summons in the suit and notice in the application were issued to defendants. By order dated 15.11.2011 this Court had restrained the defendants, its directors, assignees, distributors and dealers from using the letters "KSB" or any other deceptively similar letters as part of the defendant's corporate name and/or trading name and/or on its goodwill and/or services which may be deceptively similar to that of the plaintiff's trade mark/ name "KSB".
3. Defendant has not entered appearance. In support of its case, plaintiff has filed affidavit in evidence of the witness, Vijay Prabhakar Shidhaye,

Signature Not Verified for Manager-Direct Taxes & Legal of the plaintiff No. 2 and the
Digitally Signed
By: AMULYA
(CS) 1566/2010

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constituted attorney of the plaintiff No. 1 and authorised signatory of the plaintiffs. The Power of Attorney dated 18.04.2011 by plaintiff No.1 in favour of the witness (Vijay Prabhakar Shidhaye) is exhibited as Ex-PW-1/1; and the Power of Attorney dated 28th April, 2011 passed by the plaintiff No. 2 in favour of the witness (Vijay Prabhakar Shidhaye) is exhibited as Ex-PW-1/2. This witness has deposed on the line of the plaint stating that Mr.Mayur Amritlal Mehta the Constituted Attorney of the Plaintiff No. 1 and the Company Secretary of the Plaintiff No. 2 has signed and verified the plaint on behalf of Plaintiffs. The Power of Attorney by Plaintiff No.1 in favour of Mr.Mayur Amritlal Mehta is already on record on pages 61-65 of List of Documents dated 20.07.2010 and the same is Ex-PW-1/3; and the Board Resolution dated 11.05.2007 passed by Plaintiff No. 2 in favour of Mr. Mayur Amritlal Mehta is exhibited as Ex-PW 1/4.

4. This witness has deposed that plaintiff No. 1 is a corporation incorporated under the laws of Federal Republic of Germany having registered office at Johann-Klein, Str. 9, 67227, Frankenthal, Germany; and the certificate issued by the Notary Public certifying that the plaintiff No.1 is listed with the Registrar of Companies, Germany is already on record on page No. 66 of List of Document dated 20.07.2010 and the same is exhibited as Ex-PW- 1 /5.
5. Mr.Vijay Prabhakar Shidhaye, has also deposed that the letters KSB form an essential part of the corporate name of the plaintiff No. 1 and in fact, the said letters KSB were so adopted having reference to the surnames of the founders of the plaintiff No. 1. In 1871, one Johannes Klein, Friedrich Schanzlin and Jakob Becker formed a company under the name 'Frankenthaler Maschinen - & Armatur-Fabrik Klein, Schanzlin & Becker'. In 1887, the said company became a Public Limited Company.

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The name was changed to the present names incorporating the letters KSB being the first letters of the surnames of the three individuals mentioned hereinabove. The plaintiff No. 1 is known as KSB in Germany for the more than 130 years. The plaintiff No. 1 and their group companies including holding/affiliate/subsidiary/associate companies are worldwide known as KSB for the last more than 130 years. There are many companies formed and/or promoted by the plaintiff No. 1 and/or which are associated with the plaintiff No. 1 all over the world with the letters KSB as part of their corporate names. The plaintiff No. 1 has 27 manufacturing sites worldwide with subsidiaries and representatives in over 100 countries.

6. This witness has also deposed that the plaintiff No.1 has also incorporated 100 % subsidiary company in India under the provisions of the Companies Act, 1956 under the name KSB Tech Private Limited. The said Company was incorporated in India on 23rd November, 2004; and the said company has its business place at Bund Garden Road, Pune – 411 001.
7. It is also deposed that the plaintiff No. 2 is an associate of the plaintiff No. 1 and in fact, is the licensed registered user in respect of trade-marks owned by the plaintiff No. 1 in India. Plaintiff No. 1 has permitted the plaintiff No. 2 to use the name KSB in their corporate name and as trade mark. Plaintiff No. 2 has been manufacturing, marketing and selling its products bearing the trade marks KSB and/or KSB & logo in India; and plaintiff No.2 has been also exporting its products bearing the trade marks KSB and/or KSB & logo to several countries. Plaintiffs have been using the name KSB as part of their business name, trading name, trading style, house mark and trade mark for past more than four decades at least in India. Prospectus of KSB Pumps Limited, plaintiff No. 2 of the year 1977

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is already on record on page No.216-233 of List of Document dated 20.07.2010 and the same is exhibited as Ex-PW 1/9. The articles published in various newspapers related to plaintiff No.2 in 1977 proving goodwill and reputation of the plaintiffs is already on record on page No. 204-215 of List of Document dated 20.07.2010 and the same is collectively exhibited as ExpPW 1/ 10.

8. Mr.Vijay Prabhakar Shidhaye, has also deposed that the plaintiff No. 1 has been the leading manufacturer and dealer of inter alia variety of pumps, valves and spare parts thereof; and plaintiff No. 1 also provide service of engineering, installation, repair, maintenance of pumps, valves, motors, planning, components testing, training and education of personnel etc. It is also deposed that plaintiff No.1 also carries on business in India. The products of the plaintiffs are used in India by various organizations dealing in water supply, building construction, developing immovable properties, drip irrigation, cooling water circulation, industrial washing machine, sprinkling, air conditioning, paper industry, fire fighting system, water supply, sugar industry, food processing industry, petrochemical industry, chemical industry, mining industry, food process industry, hotels, power stations, refinery etc. The brochure of the plaintiff no. 1 is already on record on page No.68-81 of List of Document dated 20.07.2010 and the same is exhibited as Ex PW- 1 /11.
9. This witness has also deposed that the letters KSB form an essential part of the plaintiffs' Company as also other group companies of the plaintiffs. All the aforesaid companies have acquired reputation in the letters KSB and the said letters are associated by the traders and members of the public all over the world including India exclusively with the plaintiffs' group of companies.
10. Mr.Vijay Prabhakar Shidhaye, has also deposed that the plaintiff No. 1

has applied for and obtained registration of the trade marks KSB, KSB logo, KSB & logo in various countries in various classes. The details of some of the registrations are given below:

INTERNATIONAL REGISTRATIONS :

Country	Registration No.	Class
Common Wealth of Australia	742533	6, 7, 9, 11, 37, 41, 42
WIPO	809284	6, 7, 9, 11, 37, 41, 42
WIPO(Renewal certificate)	662585	6, 7, 9, 11, 37, 41, 42
Canada	517146	-
Canada	225604	-
USA	2337081	6, 7, 9, 11, 35, 37, 41, 42
USA	2221113	6, 7, 9, 11, 35, 37, 41, 42
USA(renewal)	1067566	7, 11
USA(renewal)	1118637	7
United Arab Emirates	16281	7
United Arab Emirates	16273	6
United Arab Emirates	16282	7
Brunei Darussalam	26652	6
Brunei Darussalam	26653	7
Brunei Darussalam	26655	9
Brunei Darussalam	26654	11
Japan	4429026	8, 7, 9, 11, 37, 41, 42
Republic of Korea	438799	-
Republic of Korea	444840	-
Republic of Korea	447883	-
Republic of Korea	59001	-
Dublin	98876	7
Dublin	98877	11
Madrid protocol (Denmark, Finland, Iceland, Norway, Sweden, U.K)	679050	6, 7, 9, 11, 37, 41, 42
Germany	218958	-
China	174497	7
Ireland	B1049665	17
Ireland	B1049664	7
Singapore	B3121/81	7
Singapore	B3122/81	17
Singapore(renewal)	74567	7
Great Britain and northern Ireland	B1049664	7
Great Britain and northern Ireland	B1049665	17
South Africa	74/3142	6
South Africa	74/3880	6
South Africa	74/3881	7



South Africa	76/3143	7
South Africa	74/3144	11

11.PW-1 has deposed that the Plaintiff No. 2 is manufacturing the products and selling the same under the mark consisting of the letters **KSB** as an essential part, as per the specifications prescribed in that behalf by the Plaintiff No. 1, as registered user/licenced user.

INTERNATIONAL REGIS

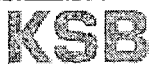
12.The above mentioned trade mark registrations are already on record on page No. 118-143 of List of Document dated 20.07.2010 and the same are collectively exhibited as Ex PW- 1 /12.

13.This witness has also deposed that the plaintiff No. 1 has applied for and obtained registration of the trade marks in respect of the goods and services falling in classes 6, 7, 9, 11, 16, 37, 41 and 42 in India as per the details given hereinbelow:

INDIAN REGISTRATIONS

Trade Marks	Registration No. / class	Date	Goods
KSB letters in circle	187197/11	09.10.1958	Valves used in installation for water supply and generating and supplying steam and gas
KSB letters in circle	187198/7	09.10. 1958	Pumps, compressors taps and valves
KSB (letters)	309500/7	24.10.1975	Pumps (power and hand operated); compressors (machinery); compressors (air); trades and valve parts of machines) all being goods included in class 7.
KSB (letters)	309501/11	24.10.1975	Valves

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	653830/11	31.01.1995	Valves including Globe valves, gate valves ,ball valves and butterfly valves
	726184/16	30.09.1996	Printed matter and stationary items
KSB (letters)	726000/6	26.09.1996	Base metals and their alloys, cast unmachined parts, semi finished and finished metal products, moulds and patterns for cast iron production ,metal pipes, metal valves ,gate valves, butter fly valves, ball valves.
	726001/7	26.09.1996	Pumps(not for land craft)
	726002/9	26.09.1996	Electric and electronic equipment, instrument and switching units, electric and electronic switching measuring open loops and closed loops control, test diagnostic check and indicating equipment including associated software and bus systems, electric cables and lines, electric drives and actuators electronic component parts and moules , computer hard and software
	726003/11	26.09.1996	Lighting, heating, cooking generation, drying, venting and water supply, equipment as well as sanitary installation, sewage lifting units and effluent treatment plants
	768577/9	3.09.1997	Electric and electronic equipment, instrument and switching units, electric and electronic switching measuring open loops and closed loops control, test diagnostic check and indicating equipment including associated software and bus systems, electric

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			cables and lines, electric drives and actuators electronic component parts and moulds, computer hardware and software.
	768578/7	3.09.1997	Pumps (not for land crafts), units consisting of pumps and motors.
	768579/11	3.09.1997	Lighting heating, steam generation, cooking, cooling, drying, venting and water supply equipment as well as sanitary installation; sewage lifting units, mainly consisting of pumps and motors for the disposal of sewage water below the backwash level, industrial and public buildings, effluent treatment plants included in class 11.
	1291428/42	21.06.2004	Engineering services, planning calculation and consulting service concerning the product in class 6,7,9 and 11
	1291429/37	21.06.2004	Installation, repair maintenance and renting of machines, valves, motors and electric and electronic devices
	1291431/41	21.06.2004	Trading and education of Personal, publication of books and other printed matter with scientific and technical.
	1291432/42	21.06.2004	Engineering services, planning calculation and consulting service concerning the product in class 6,7,9 and 11
	1291433/37	21.06.2004	Installation, repair maintenance and renting of machines, valves, motors and electric and electronic devices.

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The certificate for use in legal proceedings of plaintiff No.1's trade mark registrations under nos. 309500/7, 309501/11, 653830/11, 1291433/37, 1291431/37, 1291432/41, 187198/07, 187197/11, 1291428/42, 1291429/37, 768577/ 9, 768578 /7, 726000/6, 726001 /7, 726002 /9, 726003 /11, and 768579/11 is already on record on page no. 39-74 of the List of Documents dated 20.07.2010 and the same are collectively exhibited as Ex PW 1/13.

14. This witness has also deposed that on 21st May 1960 the Ministry of Commerce and Industry, Government of India granted 'No Objection' letter to plaintiff No.2 to sign a collaboration agreement with plaintiff No.1. The letter dated 29th November 1975 & 11th March 1976 from Ministry of Industry and Civil Supplies, Government of India to the plaintiff No.2 is already on record on page No. 202-203 of List of Document dated 20.07.2010 and the same are collectively exhibited as Ex PW- 1 /14 (Colly).

15. Mr.Vijay Prabhakar Shidhayc, has also deposed that the plaintiff No. 2 is manufacturing the products and selling the same under the mark consisting of the letters KSB as an essential part, as per the specifications prescribed in that behalf by the plaintiff No. 1, as registered user/licenced user in respect of trade-marks owned by the plaintiff No. 1 in India. The office copy of the Application dated 18th June, 1963 of Form TM -28 for registration of the plaintiff No.2 as the Registered User of the plaintiff No.1's trade mark filed before the Registrar of Trade Marks is already on record on page No.153 of List of Document dated 20.07.2010 and the same is exhibited as Ex-PW 1/16. The advertisement of Trade Mark caution notice in newspapers namely The Statesman dated 17th Oct, 1961 & The Times of India dated 30th Dec, 1961 is already on record on page

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No.151-152 of List of Document dated 20.07.2010 and the same is exhibited as Ex-PW- 1/17.

16. This witness has also deposed that the plaintiff No. 2 has applied to the Registrar of Trade Marks to be registered as registered user of plaintiff No.1's eight trademarks. It is further deposed that the plaintiffs have registered the domain name "www.ksb.com". The internet search for the trade mark KSB generated thousands of hits. Such a high number of hits are demonstrative of the popularity of the plaintiffs and the plaintiffs' products under the mark KSB and the well known character enjoyed by the said mark. Further, as internet is accessible across the world including, widely in India, the knowledge and awareness of the plaintiffs and the plaintiffs' products under the mark KSB is a foregone conclusion, even more so, to the relevant trade.

16. Mr.Vijay Prabhakar Shidhayc, has also deposed that the plaintiff No. 1 has carried on business on an extensive scale all over the world. The total turnover of the group companies of plaintiff No. 1 is more than 1990 million Euros in the year 2008. The shipping invoices of plaintiff No.1 raised on Indian companies during the period 1973-1976 are already on record on page No. 154-167 of List of Document dated 20.07.2010 and the same are collectively exhibited as Ex-PW 1/18. Plaintiff No. 1 has used the mark KSB in respect of the products manufactured and sold by it by way of promotional activity on an extensive scale, of which the letters KSB form an essential feature. Plaintiff No. 1 has spent considerable amount by way of advertisement and publicity expenses for popularising the said trade marks.

WORLDWIDE SALES AND PROMOTIONAL EXPENSES

Year	Sales	Advertisement and
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		publicity expenses
1960	DM 20,02,00,000	
1961	DM 19,55,33,000	
1962	DM 21,35,19,000	
1963	DM 22,89,28,000	
1964	DM 25,10,46,000	
1965	DM 26,81,95,000	
1966	DM 29,88,60,000	
1967	DM 28,96,96,000	
1968	DM 28,64,77,000	
1969	DM 33,64,53,000	
1970	DM 38,75,86,000	
1971	DM 43,02,59,000	
1972	DM 46,70,86,000	
1973	DM 51,02,56,000	
1974	DM 62,63,90,000	
1975	DM 72,45,67,000	
1976	DM 76,15,51,000	
1977	DM 73,55,74,000	
1978	DM 75,70,99,000	
1979	DM 75,78,91,000	
1980	DM 79,87,29,000	
1981	DM 92,18,67,000	
1982	DM 89,05,21,000	
1983	DM 87,05,30,000	
1984	DM 86,39,89,000	
1985	DM 84,36,05,000	
1986	DM 85,59,00,000	
1987	DM 83,69,89,000	
1988	DM 80,15,07,000	
1989	DM 87,93,93,000	
1990	DM 95,34,55,000	
1991	DM 1,08,19,12,000	
1992	DM 1,21,12,80,000	
1993	DM 1,14,42,75,000	
1994	DM 1,17,30,11,000	
1995	DM 1,12,61,83,000	
1996	DM 1,13,66,61,000	DM 65,22,000
1997	DM 904,416,000	DM 83,35,000
1998	DM 92,27,62,000	DM 89,92,000
1999	DM 83,23,28,000	DM 80,87,000
2000	DM 81,84,72,000	DM 74,81,000
2001	Euro 45,15,47,000	Euro 38,34,000
2002	Euro 46,67,90,000	Euro 41,65,000
2003	Euro 53,52,42,000	Euro 44,80,000
2004	Euro 54,15,05,000	Euro 45,01,000



2005	Euro	57,19,24,000	Euro	56,94,000
2006	Euro	60,93,29,000	Euro	57,21,000
2007	Euro	69,67,54,000	Euro	51,31,000
2008	Euro	81,94,90,,000	Euro	6,609,000
2009	Euro	76,84,51,,000	Euro	74,26,000

The Certificate issued by the Plaintiff No.1's auditors pertaining to Statement of sales figures & Statement of Advertisement and publicity Expenses is already on record on pages 266-269 of List of Documents dated 20.07.2010 and the same are collectively exhibited as Ex-PW- 1 /19. The advertisements published in magazines such as Pumps India, C & I and yellow pages during the period 1999- 2009 is already on record on page No. 253-265 of List of Document dated 20.07.2010 and the same are collectively exhibited as Ex.PW 1/20.

17. This witness has also deposed that the plaintiff No. 2 has manufactured and sold the products and has carried on business on an extensive scale under the trade marks, the essential feature of which are the letters KSB. The turnover of the plaintiff No. 2 is more than Rs. 596 crores in the year 2008. Plaintiff No. 2 has also spent considerable amount by way of advertisement and publicity expenses for popularising the following trade marks:

INDIA SALES AND PROMOTIONAL EXPENSES

Year	Sales (Rs.)	Advertisement and publicity expenses (Rs)
1963	3,73,000	
1964	20,26,000	
1965	38,72,000	
1966	80,73,000	
1967	1,20,40,000	
1968	74,54,000	
1969	1,19,86,000	
1970	1,49,23,000	
1971	1,57,73,000	

1972	2,11,97,000	
1973	2,62,83,000	
1974	3,62,47,000	
1975	4,88,80,000	
1976	3,54,05,000	
1977	3,61,36,000	
1978	4,20,87,000	
1979	4,54,61,000	
1980	6,16,34,000	
1981	10,81,03,000	
1982	13,89,17,000	
1983	19,81,31,000	
1984	18,45,40,000	
1985	22,83,92,000	
1985	29,36,79,000	
1987	34,23,54,000	
1988	55,42,55,000	
1989		
1990	54,60,26,000	
1991	57,05,54,000	
1992	49,82,40,000	
1993	76,31,96,000	
1994	90,79,16,000	
1995	1,06,16,48,000	
1996	1,31,17,78,000	50,88,000
1997	1,86,50,12,000	94,67,000
1998	1,66,09,95,000	1,28,41,000
1999	2,03,52,54,000	1,69,70,000
2000	1,83,57,06,000	87,23,000
2001	2,08,06,00,000	1,13,49,000
2002	2,30,42,07,000	1,57,00,000
2003	2,42,66,89,000	1,91,00,000
2004	3,04,56,45,000	2,10,00,000
2005	3,59,58,18,000	2,31,00,000
2006	4,06,37,60,000	3,99,88,297
2007	5,12,08,00,000	3,55,86,090
2008	6,58,57,00,000	4,46,31,372
2009	5,92,17,00,000	3,40,02,803

18. Mr.Vijay Prabhakar Shidhaye, has also deposed that certificate issued by the plaintiff No. 2's auditors pertaining to Statement of sales and publicity Expenses of plaintiff No.2 is already on record at pages 270-274 vide List of Documents dated 20.07.2010 and the same are collectively exhibited as

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Ex-PW 1/21. Plaintiff No.2's invoices from the year 1996 are already on record at pages 224-252 of List of Document dated 20.07.2010 and the same are collectively exhibited as Ex.PW 1/22; and Annual Report of Plaintiff No.2 for the period 1962 is already on record on page No. 82-83 of List of Document dated 20.07.2010 and the same is exhibited as Ex. PW- 1 /23.

19. This witness has also deposed that letters from plaintiffs' dealers from all across India namely Protos Engineering Co. Private Limited, Mumbai, Hind Boring Works, Ahmedabad Radlas, Lucknow and Raman Brothers, Tamil Nadu original letter from M/s Gujarat Trading Company and M/s V.B Patel & Company is already on record at pages 275-280 vide List of Documents dated 20.07.2010 and the same are collectively exhibited as Ex.PW 1/24. It is deposed that the trade mark KSB has been promoted by the plaintiff No. 1 world-wide at huge financial investments over past several decades. The trade mark KSB has thus acquired worldwide goodwill and reputation including in India on account of long and exclusive usage, premium quality parts and exclusive services. The trade mark KSB thus falls in the category of "well known trade marks" and thus requires protection of widest extent and beyond limitation or constriction of category of goods or services. By reason of open, long and extensive use of the trade mark KSB by the plaintiffs it has become distinctive and exclusively associated with the plaintiffs by the members of trade and public.
20. Mr.Vijay Prabhakar Shidhaye, has also deposed that the Defendant KSB Communications and Engineers Private Limited is a company registered under the provisions of the Companies Act, 1956, and having its registered office at R2-D2/48 Vinod Purivijay Enclave, New Delhi, Delhi-110001, as per the website of the Ministry of Corporate Affair. It has also

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been deposed that the plaintiffs learnt from the website of Ministry of Company Affairs, "mca.gov.in" which was uploaded only in June, 2007 about incorporation and existence of KSB Communications and Engineers Private Limited, the Defendant. Companies Master Details and the certificate of Incorporation and Memorandum of Association of the defendant obtained from the website of Ministry of Corporate Affairs is already on record at pages 281-294 vide List of Documents dated 20.07.2010 and the same are collectively exhibited as Ex. PW 1/25.

21. This witness has also deposed that KSB was already a well-known trade mark as of 2005 having annual turnover of Rs. 359.5 Crores of plaintiff No.2; and the advertisement and sales promotions expenses incurred by plaintiff No.2 in respect of trade mark/ name KSB and its logo in India for the financial year ended March, 2005 was Rs 2.3 Crores, when the defendant came into existence by adoption of the name KSB as part of its corporate name. It is deposed that such adoption by defendant is without due cause and designed to mislead members of public into believing that there is business association between the plaintiffs and the defendant. It is intended by the defendant to misrepresent and mislead the members of public into believing that the defendant is in some way connected with the plaintiffs and/or belong to the plaintiffs' group of companies and/or associated with the plaintiffs. Plaintiffs have 65 companies worldwide with the name KSB, which forms the key essential and dominant component thereof as per following list:

Sl. NO.	NAME OF THE COMPANY	COUNTRY
1.	KSB Aktiengesellschaft	Frankenthal (Pfalz)
2.	KSB Service GmbH (Schwedt)	Schwedt
3.	KSB Service GmbH (Frankenthal)	Frankenthal (Pfalz)
4.	KSB Armaturen Verwaltungs-und	Frankenthal (Pfalz)
5.	KSB S.A.S.	France

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6.	KSB Italia	Italy
7.	KSB Österreich Gesellschaft mbH	Austria
8.	KSB Nederland B.V.	Netherlands
9.	KSB Finance Nederland B.V.	Netherlands
10.	KSB Limited	Great Britain
11.	KSB Belgium S.A.	Belgium
12.	KSB Zurich AG	Switzerland
13.	KSB TESMA AG	Greece
14.	KSB Viosen Pumpenfabrik AG	Greece
15.	KSB Morck AB	Sweden
16.	KSB-AMVI, S.A.	Spain
17.	KSB Bombas e Valvulas, S.A.	Portugal
18.	KSB-Pumpy Armatury s.r.o., koncernu	Czech Republic
19.	KSB Szivattyu es Armatura Kft	Hungary
20.	KSB Pompy I Armatura Sp. Zo.o.	Poland
21.	KSB Carpadia a Armatury, s.r.o.	Slovak Republic
22.	KSB Finland Oy	Finland
23.	KSB Finanz S.A.	Luxemburg
24.	KSB Mechanical Services on Site NV	Belgium
25.	KSB ITUR Spain S.A.	Spain
26.	KSB Export Afrique S.A.S.	France
27.	KSB Atlantic Pump & Valve Service S.L.	Spain
28.	KSB Service Suciba, S.L.U.	Spain
29.	KSB 000	Russia
30.	KSB SRB d.o.o. Beograd	Serbia
31.	KSB on site maching BVBA	Belgium
32.	KSB Engineering Services NV	Belgium
33.	KSB Inc.	USA
34.	KSB Pumps Inc.	Canada
35.	KSB Venezolana, C.A.	Venezuela
36.	KSB Bombas Hidraulicas S.A.	Brazil
37.	KSB da Amazonia S.A.	Brazil
38.	KSB Compania Sudamericana	Argentina
39.	KSB Chile S.A.	Chile
40.	KSB Mexicana, S.A. de C.V.	Mexico
41.	KSB de Mexico, S.A. de C.V.	Mexico
42.	Precision Pump and Machine – KSB, Inc.	USA
43.	KSB Valvulas Ltda	Brazil
44.	KSB-Pompa, Armator Sanayl	Turkey
45.	KSB Ltd.	Japan
46.	KSB Pumps Co. Ltd.	Thailand
47.	KSB Singapore (Asia Pacific) Pte. Ltd.	Singapore
48.	KSB Pumps Limited	India

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49.	KSB Pumps Company Limited	Pakistan
50.	KSB Pumps Arabia Ltd.	Saudi Arabia
51.	KSB Taiwan Co., Ltd.	Taiwan R.O.C.
52.	PT. KSB Indonesia	Indonesia
53.	KSB Limited	Hong Kong
54.	KSB Korea Ltd.	Korea
55.	KSB Shanghai Pump Co. Ltd.	China
56.	KSB Service LLC	U.A.E.
57.	KSB Middle East Fze	U.A.E.
58.	Dallan KSB AMRI Valves Co., Ltd.	China
59.	KSB Tech Pvt. Ltd.	India
60.	KSB Valves (Shanghai) Co. Ltd.	China
61.	KSB Pumps (S.A.) (Pty) Ltd.	South Africa
62.	KSB Australia Pty. Ltd.	Australia
63.	KSB Pumps and Valves (Pty) Ltd.	South Africa
64.	KSB Algerie Eurl	Algeria

22. List of group of companies of plaintiff No.1's worldwide and affiliated enterprises are already on record and the same is exhibited as Ex. PW 1/26. It is also deposed that one of the group companies of the plaintiff No.1, namely KSB Engineering Services NV is involved in engineering, installation, repair, maintenance of pumps, valves, motors, planning etc. It is next deposed that perusal of Memorandum of Association of the defendant as obtained by the plaintiffs from the website maintained by the Ministry of Corporate Affairs (MCA 21) shows that the defendant object to be perused by the Defendant Company includes “ (C5)(iv).... sanitary fittings and sanitary pipes.....”, “(C 19) *To carry on business of mechanical engineers water works engineers and deal in machinery implements, rolling stock and hardware of all kinds ...*” which overlaps with business of the plaintiffs for which the plaintiffs already hold trade mark registration no. 726000, 1291428, 1291429, 1291432 and 1291433 as enlisted above. The use of the trade-mark KSB, therefore,

by the defendant amounts to infringement of plaintiffs registered trade-marks.

23. Mr. Vijay Prabhakar Shidhaye, has also deposed that by using the name "KSB" along with the word "Engineers" as part of the defendant's corporate name, the defendant is creating confusion amongst traders and members of public and is misleading the traders and members of the public into believing that the defendant is in some way connected with the plaintiffs and/or belong to the plaintiffs' group of companies. It has also been deposed that one of the group companies of the plaintiff No.1, namely KSB Engineering Services NV is involved in engineering, installation, repair, maintenance of pumps, valves, motors, planning etc.; and by using the corporate name containing the letters "KSB", the defendant is also infringing some of the plaintiffs' registered trade-marks and are also trying to pass off the defendant's goods and/or services as that of the plaintiffs. The plaintiffs, therefore by their Advocates' letter dated 13th June 2007, called upon the defendant to cease and desist from using the name containing the letters "KSB"; and defendant duly received the said notice on 19th June, 2007 as confirmed by the Post Office by its letter dated 17th December, 2008, but there was no reply received from the defendant. The office copy of the legal notice dated 13th June, 2007 sent to the defendant by the plaintiffs' attorney namely Bharat Shah & Co. along with the letter of Sr. Sudpt. of Post Office stating that the said legal notice has been delivered on 19th June, 2007 is already on record on page No.295-301 of List of Document dated 20.07.2010 and the same are collectively exhibited as Ex. PW 1/27. The plaintiffs through their Advocates' letter dated 13th June, 2007 also requested the Regional Director, Northern Region under the Companies Act, 1956 to direct the defendant to change its name. As per the provisions of the Companies

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Act, 1956 the name of the Defendant's Company is undesirable. The Regional Director, Northern Region requested to file the cancellation petition in the revised FORM 24 A alongwith the copy of the petition in physical form, which was filed on 29th December 2009. The office copy of the letter dated 13th June, 2007 sent to the Regional Director is already on record on page No.302-304 of List of Document dated 20.07.2010 and the same is exhibited as Ex. PW 1/28. It is also deposed that the plaintiff No.2 has also submitted the Rectification Petition on Form -24 A on the website of Ministry of Corporate Affairs on 29.12.2009. The Rectification Petition on Form -24 A is already on record on page No.305-318 of List of Document dated 20.07.2010 and the same is exhibited as Ex.PW 1/29.

24. This witness has also deposed that since the plaintiffs did not come across any business conducted by the defendant, the plaintiffs awaited the outcome of the rectification proceedings, which was pending before the Regional Director, Northern Region under Section 22 of the Companies Act, 1956, however, no steps have been taken by the Regional Director to take any action for deletion of the defendant's name from the Register of Companies till date. Therefore, the plaintiffs' through counsel once again called upon the defendant to cease and desist from using the impugned name KSB vide their letter dated 9th June 2010 which was duly received on 14th June 2010, as per the electronic delivery information of the Indian Postal Services. The office copy of the legal notice dated 9.12.2010 is already on record at pages 319-320 of List of Documents dated 20.07.2010 and the same is exhibited as Ex.PW 1/30.
25. This witness has further deposed that in order to find out the extent of operations and address of the defendant company and its promoters, the plaintiffs engaged the services of an investigator. The investigator in its report dated 19th July 2010 have stated that the promoters of the company

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namely Mr.Arvind Kumar Singh and Ms.Shobha Singh are husband and wife who are residing at registered office address of the defendant company. The investigator in its report has further stated that the defendant is in the business of installation of Cellphone towers from the address namely, RZ/C-110, Vinod Puri, Vijay Enclave, New Delhi. The Investigator report dated 19.07.2010 is already on record at pages 321-322 of List of Documents dated 20.07.2010 and the same is exhibited as Ex.PW 1/31. Meanwhile, the plaintiffs had also initiated legal proceedings against other users of KSB as part of trade name/corporate name and succeeded in obtaining injunctions, interim as well as permanent against following parties as per details given below:

USE OF 'KSB' INJUNCTED BY VARIOUS COURTS

Sl.No.	Suit No. and Forum	Title	Order	Incorporation / Defendant was dealing in Goods /Services
1	Suit No. 1906/04 before Bombay High Court	KSB Aktiengesellschaft & Anr. Vs. KSB Fire Protection Services Private Limited	Vide order 26 February 2009 the defendants were directed to change their name. The name has been changed to Bnshah Fire Protection Services Private Limited	Incorporated in 1990 Fire Fighting System, Fire Hydrant System, Automatic Sprinkler System, Fire Alarm/Detection System
2	Suit No. 2930 of 2007 before Bombay High Court	KSB Aktiengesellschaft & Anr. Vs. KSB Real Estate and Finance Private	Vide order dated 11 th February, 2008 the Court restrained KSB Real Estate and Finance Private Limited from using the trade name/trade mark KSB	Incorporated in 1982 Real estate and finance

		Limited	The name has been changed to Gold Dust Real Estate Private Limited	
3	CS(OS) NO. 933 of 2007 before Delhi High Court	KSB Aktiengesellschaft & Anr. Vs. KSB Exports Limited	Vide order dated 3.07.07 & 19.11.07 this Hon'ble Court restrained KSB Exports Limited from exporting goods under the trade mark/trade name KSB	Incorporated in 2005 Manufacturing and selling tools for making watch, goldsmith/ jewellery, spices and insense sticks etc.
4	1892 of 2008 before Delhi High Court	KSB Aktiengesellschaft & Anr. Vs. KSB Developers Private Limited	Authourised representative of KSB Developers Private Limited undertook before this Hon'ble Court on 5.11.08 to change the name	Incorporated in 2006 Constructing & developing properties
5	RD /TA/Sec 22/28/07/1097 8 Regional Director, Ministry of Corporate Affairs, Mumbai	KSB Aktiengesellschaft & Anr. Vs. KSB Eastern Engineering Services Private Limited	Vide order dated 9.10.09 the Court restrained KSB Eastern Engineering Industries Private Limited from using the trade mark/trade name KSB	Incorporated in 1985 Engineering Services
6	CS NO. 1136 of 2009 before Chennai High Court	KSB Aktiengesellschaft & Anr. Vs. KSB Constructions Private Limited.	Vide order dated 19.1.2010 the Court restrained KSB Constructions Private Limited from from using the trade name /trade mark KSB as part of Corporate name.	Incorporated in 2009 Construction business
7.	Suit No. 398 of 2010 District Judge at Alipore, Kolkata.	KSB Aktiengesellschaft & Anr. Vs. KSB Holdings Private	Hon'ble Kolkata High Court vide order dated 18.03.2009, restrained KSB Holdings Private Limited from using the trade mark/trade name	Incorporated in 1992 Investment

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		Limited.	KSB.	
8	CS(OS) No. 1250/08 before Hon'ble Delhi High Court	KSB Aktiengesellschaft & Anr. Vs. KSB Global Limited.	Hon'ble Delhi High Court vide final order and judgment dated 4.6.2010, permanently restrained KSB Global Limited from using the trade mark/trade name KSB.	Incorporated in 1995 Real Estate
9	CS(OS) No. 1287/2010 before Hon'ble Delhi High Court	KSB Aktiengesellschaft & Anr. Vs. KSB Associates Private Limited.	Hon'ble Delhi High Court vide order dated 2.7.2010 passed an ex parte ad interim injunction in favour of the Plaintiffs restraining the defendant from using the trade mark KSB as part of the corporate name.	Incorporated in 1987 Real Estate
10	CS(OS) No. 1329/2010 before Hon'ble Delhi High Court	KSB Aktiengesellschaft & Anr. Vs. KSB Capital Services Limited.	Hon'ble Delhi High Court vide order dated 6.7.2010 passed an ex parte ad interim injunction in favour of the Plaintiffs restraining the defendant from using the trade mark KSB as part of the corporate name.	Incorporated in 1996 Capital Services /Stock Brokers

The final order and judgment dated 4.6.2010 passed by the Hon'ble High Court of Delhi in CS(OS) No. 1250/08, the ex parte ad interim injunction order dated 2.7.2010 in favour of the plaintiffs by Delhi High Court in Suit No. 1287 of 2010, the ex parte ad interim injunction order dated 6.7.2010 in favour of the plaintiffs by Delhi High Court in Suit No. 1329 of 2010, the Order dated 11.2.2008 of Bombay High Court in Suit No. 2930 of 2007, the Order Dated 3.7.2007 and 19.11.2009 by Delhi High Court in Suit No. 933/07, the final order Dated 5.11.08 by Delhi High Court in Suit No. 1892/08, the order dated 13.04.06 in Suit No. 3988/03 before Bombay High Court, the order dated 13 Sep, 2006 by Bombay

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High Court in Suit no. 442/06, the order dated 26 February 2009 by Bombay High Court in Suit no. 1906/04, the order dated 9th Oct, 2009 by Bombay High Court in Suit no. 1504/07, the order dated 19th Jan, 2010 by Madras High Court in Suit no. 1136/09, the order dated 18.3.2010 by Calcutta High Court F.M.A.T No. 398 of 2010, the order dated 12.11.2007 in matter no. RD /TA/Sec 22/28/07/10978 Regional Director, Ministry of Corporate Affairs, Mumbai are already on record from page No.1-60, filed vide List of Document dated 20.07.2010 and the same are collectively exhibited as Ex.PW1/ 32.

26. This witness has also deposed that pursuant to the Suits/Notices/legal actions initiated by the plaintiffs, various companies have changed their corporate names by deleting the words "KSB " from their corporate names.

**LEGAL NOTICES LEADING TO
CHANGE OF NAMES**

ACTION INITIATED	PREVIOUS NAME	CHANGED NAME
Legal Notice dated 9.6.2008	KSB Builders Private Limited, Kolkata	BKS Developers Private Limited
Legal Notice dated 9.6.2008	KSB Promoters Private Limited, Kolkata	Binayak Real Estate Private Limited
Legal Notice dated 9.6.2008	KSB Complex Private Limited, Kolkata	BKS Complex Private Limited
Legal Notice dated 9.6.2008	KSB Estate Private Limited, Kolkata	BKS Estate Private Limited
Legal Notice dated 9.6.2008	KSB Heights Private Limited, Kolkata	BKS Heights Private Limited
Legal Notice dated 9.6.2008	KSB Constructions Private Limited, Kolkata	BKS Hirise Private Limited
Legal Notice dated 9.6.2008	KSB Homes Private Limited, Kolkata	BKS Homes Private Limited

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27. This witness has also deposed that the use of the trade mark/ name KSB by the defendant, which is identical to the trade mark/name /corporate name KSB of the plaintiffs, constitutes infringement of plaintiffs' registered trade-marks. KSB and KSB logo are the trade-marks possessing worldwide and global reputation for a variety of goods and business. KSB and its logo as trade-marks, enjoy highest degree of inherent distinctiveness being a coined mark. It is a trade-mark used in several countries; and is a registered trade mark in India since the year 1958. The goods bearing the trade-mark KSB have been selling in India since 1945 through import, and in open retail market through plaintiff No.2 sole selling agent since the year 1960. The sales of plaintiff No.2 from its operations under the trade mark KSB and its logo in India for the financial year ended March 2005 was Rs. 359.5 Crores and as of March 2009 was above Rs. 592 crores. The advertisement and sales promotions expenses incurred by the plaintiff No.2 in respect of trade mark/ name KSB and its logo in India for the financial year ended March, 2005 was Rs 2.3 Crores and as of March 2009 was above Rs. 3.4 Crores. It has also been deposed that one of the group companies of the plaintiff No.1, namely KSB Engineering Services NV is involved in engineering, installation, repair, maintenance of pumps, valves, motors, planning etc.; and perusal of Memorandum of Association of the defendant as obtained by the plaintiffs from the website maintained by the Ministry of Corporate Affairs (MCA 21) shows that the defendant object to be perused by the defendant Company includes " (C5)(iv).... sanitary fittings and sanitary pipes.....", "(C 19) *To carry on business of mechanical engineers water works engineers and deal in machinery implements, rolling stock and hardware of all kinds* which overlaps with business of the plaintiffs for which the plaintiffs already hold trade mark registration

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no. 726000, 1291428, 1291429, 1291432 and 1291433 as enlisted above. Therefore, any unauthorised use of the trade-mark KSB by any unauthorised trader amounts to violation of plaintiffs' statutory right and infringement of plaintiffs' registered trade-marks under Section 29(2) of The Trade Marks Act, 1999 (the Act).

28. Mr. Vijay Prabhakar Shidhaye, has also deposed that the plaintiffs' trade mark KSB and its logo, are 'well-known' trade-marks and enjoy highest and widest degree of statutory protection. It is also deposed that considering the KSB is a "well known" trade-mark, the impugned use amounts to infringement of registered trade-mark, irrespective of similarity or otherwise of the competing services that the plaintiffs' trade-marks are registered for; and any unauthorised use thereof or any other deceptively similar mark by any unauthorised trader would inevitably lead to dilution and erosion of the distinctiveness of the registered trade mark KSB and would be detrimental to highest degree of goodwill and reputation that vests therein, amounting to violation of plaintiffs' statutory right and infringement of plaintiffs' registered trade-marks under Section 29(4) of the Act. By using the corporate name containing the letters KSB on their letter heads, printed matters, goods and/or services, the defendant has infringed and are continuing to infringe the plaintiffs' above referred registered trade marks under Section 29 (5) of the Act.

29. It is also deposed that the defendant has adopted the trade mark KSB with dishonest and fraudulent intent to derive and misappropriate the undue benefit of goodwill and reputation enjoyed by the trade mark and trade name KSB pertaining to the plaintiff's business. Considering the size of KSB group and the extent of business conducted by them globally, plaintiffs could be capable of venturing into any business, goods or

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services. The use of the word "Engineers" for the alleged cellphone installation business carried on by the defendant under the trade name KSB and/ or Trade mark KSB, therefore, would inevitably be associated by people with the plaintiffs. It is also deposed that by considering that the plaintiffs have not granted any license or approval to the defendant qua the business or services provided by the defendant, the use of the trade mark KSB in respect of the goods sold and/or services offered by the defendant is bound to damage and be detrimental to the goodwill and reputation that vests in the trade mark KSB of the plaintiffs. The use of the trade mark KSB by the defendants, therefore, constitutes acts of infringement.

30. As per this witness, the plaintiffs' trade mark and trade name KSB is already perceived as a well known trade mark in India and globally; and besides all the above, there is great likelihood that the actual or potential customers will be further induced to associate the business and :-

- i) believe that the defendant's business is line extension and the plaintiffs have recently started a business of providing capital services either themselves or in collaboration with the defendant or that they have licensed the trademark KSB to the defendant for the above mentioned activities (confusion qua source);
- ii) believe that the defendant's activities had been endorsed by the plaintiffs and the services that are sought to be offered by the defendant have the same level of quality and reliability that is synonymous with the goods and services of the plaintiffs' companies (confusion qua quality);

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- iii) believe that the defendant has some connection with the plaintiffs, in terms of direct nexus or affiliation or group company with the plaintiff's companies (confusion qua association).

Thus the defendant's use of the impugned mark/name is aimed at encashing on and misappropriating the goodwill and reputation acquired by the plaintiffs, which would consequently and irreparably be damaged by tarnishment; and such use by the defendant amounts to an act of passing off their business as and for that of the plaintiffs. Defendant is using the impugned trade mark KSB for capital investment business inviting financial investments from public by misrepresenting themselves as worldwide reputed entity which the plaintiffs are;

- (iv) The confusion or deception would also accrued in the minds of members of public as the services of the defendant may be associated with the plaintiffs as financial services rendered by the plaintiffs inviting financial investment. In fact, plaintiffs already have two group companies which are in the business of financial investments internationally by the name of KSB Finance, Netherlands B.V and KSB Finaza S.A.. These two group companies of the plaintiffs are primarily focused at generating funds and finance for overall growth and investment in other group companies. The adoption of the trade mark and trade name KSB by the defendant is totally fraudulent and malafide since the same is without any justification. It is also deposed that perusal of Memorandum of Association of the defendant as obtained by the plaintiffs

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from the website maintained by the Ministry of Corporate Affairs (MCA 21) shows that the defendant was promoted by seven individuals by the name Mr. Alok Kumar Sharma, Ms. Geetanjali Sharma, Mr. Sanjiv Kumar, Ms. Jyoti Singhal, Mr. Budh Prakash, Ms. Kusum Lata & Aradhana Agarwal. The adoption of the trade name KSB by the defendant is to attract financial investment from members of the public by misrepresenting and creating confusion about their association with global business of plaintiffs; and the Defendant is therefore liable to be enjoined not only to protect and prevent injury to plaintiffs' goodwill and reputation in the trade mark KSB but even to prevent injury to members of public arising from confusion and deception practices by the defendant.

31. Mr. Vijay Prabhakar Shidhaye, has also deposed that the use of the impugned trade mark by the defendant also constitutes acts of unfair competition in as much as the defendant is using plaintiffs' trade mark/name KSB for alleged engineering and installation business not offered by the plaintiffs. The conduct of the defendant is neither *bona fide* nor that of an innocent adoption as they are bound to be aware of the overwhelming reputation of the plaintiffs trade mark/name KSB and its logo in the pump, valve, engineering industry. The law does not permit protection to a person who deliberately sets out to take benefit/advantage of somebody else's reputation especially when such reputation extends worldwide.
32. This witness has also deposed that the blatant and unrestricted use of identical trademark by defendant in relation to their goods and/or the

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services offered, will inevitably lead to dilution and erosion of the uniqueness and exclusivity associated with the plaintiffs trade mark/ name KSB by reducing their capacity to identify and distinguish the goods and services of the plaintiffs as originating from a particular source, regardless of the presence or absence of likelihood of confusion, mistake or deception. In other words, the unauthorized and indiscriminate use by the defendant of the impugned trademark upon illegal goods and services is bound to result in the whittling away of the selling power, distinctive quality and value of the established trade mark of the plaintiffs. In the event that the defendant's activities are not curbed, they will succeed in prompting others to imitate the Plaintiffs well-known trade mark thereby leading to further dilution..

33. This witness has also deposed that the defendant is liable to be enjoined urgently so as to protect the public interest, as the consumers ought to be protected against deception and from being subjected to goods that have been manufactured and dispensed without any supervision or any quality control by the plaintiffs. In addition to the injury that the use of the trade mark KSB by the defendant is causing to the consumers at large, it is also injuring the goodwill, reputation and the business of the plaintiffs. The profits earned by the defendant is unlawful and liable to be restored to the plaintiffs; and the defendant is liable to render accounts of profits, as the plaintiffs have no access to the accounts of the defendant and is neither in position to ascertain what profits the defendant has made.
34. 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 has gone unrebutted.

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35. Plaintiff no.1 has proved the registration of the trade mark KSB, KSB Logo and KSB & Logo in various countries and in various classes, collectively exhibited as Ex.PW-1/12. Plaintiff no.1 has also been able to establish that they have obtained registration of the trade mark in respect of goods and services falling in Classes 6, 7, 9, 11, 16, 37, 41 and 42 in India. The certificates for use and legal proceedings have been collectively exhibited as Ex.PW-1/13. Plaintiff no.2 has also applied to the Registrar of Trade Marks for registration of their eight trade marks and also registration of domain name www.ksb.com. The sale figures placed on record and the certificate issued by plaintiff's no.1 auditors pertaining to the statement of sales figures, statement of advertisements and publicity expenses have been collectively marked as Ex.PW-1/19. The sale figures of plaintiff no.2 would establish the extensive sales under the trade mark. Evidence on record would also show that the turnover of plaintiff no.2 is more than Rs.596.0 crores in the year 2008. A certificate issued by plaintiff's no.2 auditors, pertaining to statement of sales and publicity expenses of plaintiff no.2, has been exhibited as PW-1/12.
36. The above factors would show that the trade mark of the plaintiffs' KSB falls in the category of well known trade marks as defined under Section 2(z) (g) of the Trade Marks Act and, thus, the same requires protection of the widest extent beyond limitation or constriction of category of goods and services. By the extensive use of the trade mark KSB by the plaintiffs, the trade mark has become distinctive and exclusively associated with the plaintiffs by the members of trade and public. At the time, when the defendant came into existence by adoption of the name KSB as part of its corporate name plaintiff was already well-established and it seems that defendant had designed to use the name to mislead the members of the public into believing that there is business

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association between the plaintiffs and the defendant. The use of the trade mark KSB by the defendant amounts to infringement of the plaintiffs' registered trade marks. By using the name KSB along with engineers as part of the defendant's corporate name the defendant is creating confusion amongst the traders and members of the public into believing that the defendant is in some way connected with the plaintiffs. The act of the defendant is likely to infringe some of the plaintiffs' registered trade mark and it seems that the defendant is trying to pass off their goods and or their services as that of the plaintiffs. Defendants cannot be permitted to ride over the goodwill and reputation of the plaintiffs, which is well-established. The act of the defendant would result in dilution through tarnishment and blurring.

37. In view of the above, the plaintiff is entitled to a decree of permanent injunction against the defendant from using the infringing mark/ label in terms of prayers (a) to (c) of paragraph 30 of the plaint.
38. Counsel for the plaintiff also prays for 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 attention of this Court has been drawn to a number of judgments in this behalf where dealing with similar situations, damages have been awarded.
39. 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

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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.

40. 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."

41. Learned counsel for the plaintiff prays that the damages be awarded for the loss of reputation and business as also the cost of the present proceedings. 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

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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.

42. 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 15.11.2011 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.2.00 lacs.

MARCH 14, 2012
ssn [PDF]


G.S.SISTANI, J