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

+ CS(OS) 1108/2008

% ***Judgment dated 11.3.2014***

IMPERIAL AUTO SAFETY GLASS ..... Plaintiff

Through: Mr.Mohan Vidhani and Mr.Rahul  
Vidhani, Advocates

versus

VIRENDER GUPTA AND ORS. B+ ..... Defendant

Through: None.

**CORAM:**

**HON'BLE MR. JUSTICE G.S.SISTANI**

**G.S.SISTANI, J (ORAL)**

1. Plaintiff has filed the present suit under Sections 29, 27 (2), 134 and 135 of the Trademarks Act, 1999 for permanent injunction restraining the infringement of Trademark, passing off, damages, rendition of accounts, delivery up, etc. Summons were issued in the suit on 30.5.2008. On an application for appointment of Local Commissioner moved by the plaintiff a Local Commissioner was also appointed in the matter. The summons were served on the defendants and after filing the written statement the defendants stopped appearing in the matter. Defendant no.3 was proceeded *ex parte* on 12.12.2008 and defendant no.2 was proceeded *ex parte* on 18.11.2013. The suit stands abated qua defendant no.1.
2. Plaintiff has filed evidence of three witnesses, PW-1 is the partner of the plaintiff firm. PW-2 is another partner of the plaintiff firm who has deposed on the lines of the PW-1, and has exhibited certain additional documents. PW-3 is an official witness from the office of the registrar of

Trademarks. The plaintiff is a registered partnership firm. The partnership deed dated 12.4.2002 has been exhibited as Ex.PW-2/1. The partnership firm initially comprised of four partners, Sh. Sanjeev Goyal, Sh. Virender Gupta (Defendant No. 1), Sh. Ram Kishore Barwa and Bakshish Singh Saini (PW-2). Thereafter Sh.Ram Kishore Barwa and Sh.Virender Gupta retired from the partnership firm by means of a registered retirement deed dated 31.8.2006. The registered retirement deed dated 31.8.2006 is exhibited as Ex.PW-1/38.

3. It is deposed by PW-1 (Asmeet Saini) that the plaintiff firm is the proprietor of the following registered trade marks:

| Trade Mark                           | App. No. | Date of Registrati on | Description of Goods                                                                        | Stat us | Valid Untill |
|--------------------------------------|----------|-----------------------|---------------------------------------------------------------------------------------------|---------|--------------|
| IAS (LABEL)                          | 1094537  | 11/4/2002             | Toughened glass, tempered glass and automotive safety glass                                 | Regd.   | 10/4/2012    |
| IMPERI AL SAFETY GLASS (ISG) (LABEL) | 1105340  | 17/5/2002             | Automotive toughened safety glass, architectural toughened glass and laminated safety glass | Regd.   | 16/5/2012    |
| DAMBL ER                             | 1125184  | 9/8/2002              | Automotive toughened safety glass, architectural toughened glass and laminated safety glass | Regd.   | 8/8/2012     |

4. PW-1 has deposed that the firm is the owner and proprietor of distinctive trade marks and the trade name as stated above in respect of the aforesaid goods manufactured and sold by the firm. The said trade marks and trade name of the plaintiff firm have been in continuous use in respect of the

goods for which it is registered. The registration certificates of the above said trademarks are exhibited as Ex. PW 1/4 – Ex. PW 1/6

5. PW-1 has deposed that the plaintiff firm has conducted huge sales under the trade mark IAS, IMPERIAL SAFETY GLASS (ISG) and under the trade name IMPERIAL AUTO SAFETY GLASS in respect of aforesaid goods manufactured and sold by it. The goods manufactured and sold by the plaintiff firm under the said marks have been sold practically throughout India either by the plaintiff firm directly or through its dealers’ network. PW-1 has further deposed that the public and members of trade associate the said trade marks in respect of aforesaid goods only with that of the plaintiff firm. The yearly sales figures of the plaintiff firm prior to the filing of the suit which are reproduced below:

| YEAR      | SALES       |
|-----------|-------------|
| 2002-2003 | 8120940.97  |
| 2003-2004 | 11747094.00 |
| 2004-2005 | 16864142.00 |
| 2005-2006 | 26955033.00 |
| 2006-2007 | 28526103.00 |
| 2007-2008 | 40401276.00 |

6. Some of the sales bills of the plaintiff firm for the sales under the said mark of the plaintiff firm are exhibited as Ex. PW 1/7 to PW-1/22.
7. PW-1 has also deposed that the plaintiff firm is using the mark IAS (Label) since 1997 and ISG (Label) since 1/5/2002 on the goods and also on the plastic packings thereof and by putting the stickers etc. Further, PW-1 has deposed that the plaintiff firm has sometimes been using the trade marks, “IMPERIAL AUTO SAFETY” and “IMPERIAL SAFETY

GLASS” on the stickers, plastic packing and on the goods which is also the full name of plaintiff firm’s trading style. As per the deposition of PW-1, the label/Sticker of the plaintiff firm with respect to the trade mark IAS, as is registered, is bound in a triangle device with cut at the center of each of its lines which makes it unique and distinctive and the plaintiff firm claims copyright in it being its owner. The labels/Sticker of the plaintiff firm that are being used are exhibited as PW1/23 to PW1/28. The plaintiff firm claims copyright in all those labels. The original photograph of the packing of the plaintiff firm is exhibited as PW-1/29, the original photographs of the packing and the articles are Exhibit PW-1/30 to Exhibit PW-1/32. It is also deposed that the plaintiff firm has been purchasing the stickers, packing material etc from different firms, a few of the purchase invoices thereof are exhibited as Ex.PW-1/33 to PW1/36.

8. PW-1 has further deposed that the plaintiff firm has also advertised the said trade marks through different media and the same has acquired valuable goodwill and reputation in favour of the firm. As a result of widespread advertising and sales promotion undertaken by the plaintiff firm and further due to inherent qualities borne by the goods of the plaintiff firm, the said marks have acquired formidable goodwill and reputation in the market, amongst the consumers and members of trade. An advertisement which appeared in magazine known as Glass Yug (Edition January-March 2008) is exhibited as Ex.PW1/37.
9. It is also deposed by PW-1 that the plaintiff firm is the prior adopter, user and the proprietor of the registered trademarks and the trading style and the same have been in continuous open and extensive use by the firm in respect of abovementioned goods. It is also submitted that the word IMPERIAL is the essential and memorable part of the trade style of the

plaintiff firm and is also a part of the registered trade mark No: 1105340 of the plaintiff.

10. It has also been deposed by PW-1 that the said defendant no. 1 [Sh. Virender Gupta] and Mr. Ram Kishore Barwa retired from the plaintiff firm vide retirement deed dated 31/08/2006, which is exhibited as Ex. PW-1/38. On retirement all the assets and liabilities of the business were taken over by the then continuing partners namely Sh. Sanjeev Goyal & Sh. Bakshish Singh Saini including the aforesaid trademarks and trade name. It is also deposed that the defendant has admitted the said retirement deed in the written statement and also that the defendant has filed a certified copy thereof in these proceedings.
11. PW-1 has next deposed that the retiring partners had later on signed the prescribed application form in form No: 23 for the transfer of the afore detailed registered trade marks namely No: 1094537; 1105340 and 1125184 and had also executed affidavits in support of the same to be filed with the Registrar of Trade Marks for the smooth transfer of the said registrations in favour of the continuing partners of the plaintiff firm.
12. It is also deposed that Mr. Virender Gupta, the defendant No; 1 and the other retired partner namely Mr. Ram Kishore Barwa had also deposed on affidavits dated 29.11.2007 regarding their retirement from the firm. They had also stated that they have no objection for transfer of the registered trade marks Nos: 1094537, 1105340 and 1125184 in the names of continuing partners or any other persons whom the continuing partners want. It is also deposed that the original of the said affidavit along with the affidavit of Mr. Ram Kishore Barwa has also been filed with the Registrar of Trade marks along with an application in form TM-24, which is pending, for the registration of Bakshish Singh Saini, Sanjeev Goel and the deponent as subsequent proprietors of the said three registered trade

marks New Delhi vide receipt no: 553851 dated 13/12/2007

13. It is also deposed that the afore mentioned continuing partners namely Sh.Sanjeev Goyal & Sh. Bakshish Singh Saini had taken the deponent (PW-1) as a partner with them vide partnership deed dated 1<sup>st</sup> September, 2006 and all the assets and liabilities of the firm including the three registered trademarks have been taken over by the three existing partners.
14. Plaintiff has also filed evidence of Bakshish Singh Saini (PW-2), who has deposed on the lines of the PW-1, however, has exhibited certain additional documents. PW-2 has deposed that he and Sh.Sanjeev Goyal had taken the son of PW-2 (i.e PW-1, Asmeet Saini) as partner, vide partnership deed dated 1<sup>st</sup> September, 2006. Copy of the partnership deed is exhibited as Ex.PW-2/2.
15. PW-3, who is an official witness from the office of the Registrar of Trademarks, has proved the certified copies of the registration certificates of the above said trademarks which have been exhibited as Ex.PW3/1, Ex.PW 3/2 and EX.PW 3/3. This witness has also proved the request in Form TM-24 for the registration of Bakshish Singh Saini, Sanjeev Goel and Asmeet Saini as subsequent proprietors, retirement deed dated 31.8.2006 and affidavits of Virender Gupta (defendant no. 1) and Ram Kishore Barwa dated 29.11.2007 which are collectively exhibited as Ex. PW 3/4.
16. I have heard counsel for the plaintiff and carefully perused the documents which have been placed on record along with the affidavits by way of evidence which have been filed. The registration certificates of the plaintiff's trade marks have been exhibited as Ex.PW-1/4 to PW-1/6. The label / stickers of the plaintiff firm that are being used and upon which plaintiff claims copyrights have been exhibited as Ex.PW-1/23 to PW-1/28. The plastic packaging, photo of packing, invoice and visiting card

of the defendant are exhibited as Ex.PW-1/39 to PW-1/43.

17. By the above said exhibits plaintiff has been able to establish that they are the registered proprietor of the trade marks 'IAS, ISG, IAG and IMPERIAL' and the plaintiff has been using the IAS (Label) since 1997 and ISG since 1.5.2002 (Label) on the goods and also on the plastic packing thereof and by putting stickers etc. thereon. It has also been established that the label of the plaintiff with respect to the trade mark IAS as is registered is bound in triangle device with cut at the centre of each of its lines which makes it unique and distinctive.
18. The local commissioner has also filed his report, wherein he has stated that on inspection he found 14 pieces of infringing goods which were identified by the plaintiff's advocate; and certain infringing articles were also seized and sealed, and the same were handed over to defendant on *Superdari*. The evidence of the plaintiff is un rebutted.
19. The plaintiff has also claimed damages on account of illegal activities of the defendants along with delivery up of the goods bearing the impugned trade mark and trade name, which were seized and sealed by the local commissioner and handed over the same to defendant on *Superdari*.
20. 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. In the case of **Time Incorporated v. Lokesh Srivastava and Anr** reported at 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.”

21. 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 a defendant who appears in Court and submits its account books would be liable for damages, while another defendant who, chooses to stay away from court proceedings would escape the liability on account of failure of the availability of account books. A party who chooses not to participate in court proceedings and stays away must, thus, suffer the consequences of damages as stated and set out by the plaintiffs. 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.
22. 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 30.05.2008 is confirmed and the suit is decreed in favour of the plaintiff and against the defendants. Plaintiff is also entitled to damages to the tune of Rs.2.0 lacs. Decree sheet be drawn up accordingly.

**I.A.No 6997/2008**

23. In view of the order passed in the suit, the present application stands disposed of.

**MARCH 11, 2014**  
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**G.S.SISTANI, J**