

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

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Decided on: 23.05.2017

+ **CS(COMM) 89/2017 and IA Nos. 13470/2014 & 21815/2014**

LOUIS VUITTON

..... Plaintiff

Through: Mr Pravin Anand, Mr Dhruv Anand,
Ms. Udit Patro and Mr Shamim
Nooreydzan, Advs.

versus

GAURAV BHATIA & ORS

..... Defendants

Through: Defendants are *ex parte*.

CORAM:
HON'BLE MS. JUSTICE DEEPA SHARMA

JUDGMENT

1. The present suit has been filed by the plaintiff seeking permanent injunction against the defendants, restraining them from infringing its trademark, copyright and also from passing off the goods of the plaintiff as that of theirs and for rendition of accounts and damages.

2. The case of the plaintiff in brief is that it is registered company existing under the laws of France and having its registered office at 2, rues du Pont-Neuf, 75001- Paris, France. Col. J.K. Sharma (Retired) is the authorized person representing the plaintiff under a Power of Attorney. It is submitted that the plaintiff-company was founded by Mr Louis Vuitton and

that it has a reputation of producing lifestyle goods having a distinctive design and exclusive craftsmanship which looks elegant and high style. They are specialized in the production and distribution of higher quality of luggage, hand bags, travel and fashion accessories for men and women, including ready to wear, shoes and jewellery. They maintain strict quality, control and have exclusive retail network. Their distribution is through a limited network of more than 460 exclusive stores located in selected cities upon the work. They only sell their products through these exclusive stores and outlets and their goods are available only at retain prices fixed by the plaintiff. The plaintiff opened its first exclusive store in India in 2003 at Oberoi Hotel in New Delhi and now they have stores one each in New Delhi, Bangalore and Chennai and two in Mumbai. These are the only 5 places where they sell their products. The plaintiffs spent a huge sum in advertisement of their products in India and their product has widespread recognition in India. Their net sale in India during the period 2007-2010 was approximately Rs. 213 crores. Their brand name LOUIS VUITTON was ranked No.17 by survey conducted in Interbrand in 2012 and is considered top fashion design. It is also a trademark and its initial **V** in an intertwined manner is also a trademark since 1854 which appears on number of its

products and is a signature symbol of the plaintiff. It also uses a canvas design with a flower pattern and intertwined initials of Louis Vuitton (LV) and this pattern is emblematic symbol of the plaintiff. The design is known as “Toile Monogram” and it is a registered trademark of the plaintiff. It introduced 33 different colours called the “Murakami Monogram Multicolour as variation to “Toile Monogram” and enjoys copyright over the said pattern which is an artistic work and is registered under No. VAI-250-120 with the Copyright Office of the United States of America. Its registration numbers in India in classes 3,14, 18 and 25 are 441451, 448229, 441452, 448230, 448231, 441453, 448233, 448235, 448234 and 861145.

3. It is submitted that defendants 1, 2 and 3 are Directors of defendant No.4 which is a trading company and operates trading under the name of Digaaz e-commerce Pvt. Ltd. which operates an e-commerce website www.digaaz.com on which it offers for sale lifestyle and fashion products. It is found that the defendant is offering for sale and supplying counterfeit products bearing several registered trademarks of the plaintiff on this website. The domain name www.digaaz.com is registered in the name of defendant No.2 and, therefore, it is directly under its control. It is submitted that the plaintiffs came to know on 23.05.2013 of the infringement of its

trademark by the defendants and also they discovered that the defendants were indulging into counterfeit activities and supplying counterfeit goods of plaintiff. The plaintiff found that the Registrar of the domain name www.digaaz.com was NAME.COM, INC., located at 2500, East Second Avenue, Second Floor, Denver, Colorado 80206, USA and the Internet Service Provider (ISP) hosting the infringing website parked on the said domain name was Pioneer Elabs Limited, located at Plot No. 16, APIIC. Software Units Layout, Madhapur, Hyderabad 500 081. The plaintiff thereafter notified the said ISP by electronic mail dated 25.07.2013 the fact that the website www.digaaz.com was offering for sale and supplying counterfeit products of the plaintiff against online orders and requested them to remove the said website. It also sent a reminder on 06.08.2013. The said ISP, however, has not replied the notices of the plaintiff. The plaintiff learnt that the defendant has changed the ISP in October, 2013 and now another ISP, Limestone Networks, located in Dallas, TX 75202, USA is hosting the defendant's website. The change of the ISP by defendant is an indication of the mala fide intention of the defendant to continue infringing the trademark of the plaintiff negatively by indulging into counterfeiting activities. It is also submitted that the act of the defendant offering the counterfeit products

of the plaintiff which are identical to the product of the plaintiff amounts to infringement of its trademark. It is further submitted that the defendants were representing to the public on their website that the goods they are supplying were 100% authentic while at the same time they are supplying counterfeit products. The defendants are pricing the goods between Rs.12,000/- to 59,000/- and are also offering discounts up to 80%. The supply by the defendant of the counterfeit products of the plaintiff bound to affect the goodwill of the plaintiff negatively and is bound to cause immense and irreparable harm in reputation. The act of the defendant is also causing loss of its business and he is also playing with the trust of the people which they have in the products of the plaintiff. It is submitted that this Court has the jurisdiction to entertain the present suit as the defendant's website is active in Delhi as well and it is also targeting Delhi's customers and selling articles in Delhi as well. It is further submitted that this Court has the jurisdiction under Section 134(2) of the Trade Marks Act as well since the plaintiff is a registered trademark and it is carrying on its business in Delhi through its exclusive boutique at the Emporio Mall, DLF Emporio, Vasant Kunj. On these facts, it is prayed that the defendants, their partners, officers, servants, agents, distributors, stockists and representatives be restrained

from manufacturing, selling and offering for sale, advertising, directly or indirectly dealing in wallets, handbags, suitcases, luggage, purses, belts, footwear, jewellery or any other goods bearing the trademark “Louis Vuitton” or logo ‘’ or the “Toile Monogram” pattern. It is also prayed that the domain name of the defendant be suspended and ISP hosting the impugned website of the defendant be directed to remove the said website. It is also prayed that the defendant be directed to render the accounts of the profit earned by them while indulging into the activities and supplying counterfeit products.

4. The defendants were duly served. They put in appearance and filed their written statement and also participated in the admission/denial of documents. The matter was also referred at the request of the parties to Delhi High Court Mediation and Conciliation Centre. Learned counsel for the plaintiff brought to the notice of the Court that the defendant did not appear in the Mediation Centre on all the four dates fixed by the learned Mediator. The defendant thereafter stopped attending the Court’s proceedings. The plaintiff led their evidences and the witnesses of the plaintiff were not cross-examined. Consequently, they were proceeded *ex parte*.

5. I have heard the arguments and perused the relevant record. The plaintiffs have duly proved on record that Col. J.K. Sharma (Retired) holds a Power of Attorney. The Power of Attorney is proved as Ex.PW-1/1. The plaintiff has proved that they are the registered owner of the trademarks in class 3, 14, 18 and 25 vide documents exhibited as Ex.PW-1/9 to Ex.PW-1/17. The plaintiff's company has also proved on record that the defendant is dealing with counterfeit products not only of plaintiff's company, but of other luxury brand such as Montblanc, Hermes, Cartier, Burberry, etc. and are offering these counterfeit products for sale on their website. The documents are collectively exhibited as Ex.PW-1/32 (colly). The plaintiffs have also proved on record their investigator's affidavit as Ex.PW-1/31 (colly) which shows that it came to know about the infringement of their trademark by defendant only through investigator. The minutes of the meeting of the Board of Director are proved as Ex.PW-1/2 and the certificate of registration of the plaintiff company is prove as Ex.PW-1/3. Vide documents Ex.PW-1/5 (Colly), the plaintiff's witness has proved that the plaintiff specializes in the production and distribution of high quality luggage, handbags, travel and fashion accessories, men's and women's ready to-wear, shoes and jewellery under the brand name 'Louis Vuitton' the logo

‘W’ and the 'Toile Monogram' pattern since the year 1854. The extract of the plaintiff website is also proved on record as Ex.PW-1/22 (colly), Ex.PW-1/24(colly), Ex.PW-1/27, Ex.PW-1/28, Ex.PW-1/29 and Ex.PW-1/33(colly) showing that public identifies plaintiff's products from its trade dress which includes logo ‘W’ compromising of ‘Toile Monogram’. The Article of Association of defendant-company is exhibited as Ex.PW-1/23. The print out of defendant's website www.digaaz.com displaying counterfeit product of plaintiff's trademark is proved as PW-1/29 (colly). The print out of the complaints received from the consumer regarding the products supplied by the defendant are exhibited as Ex.PW-1/33 (colly). The copy of the First Information Report (FIR) registered against the defendants is exhibited as Ex.PW-1/35. The seizure memo indicating the volume of counterfeit products recovered from the defendant's premises is exhibited as Ex.PW-1/36. Some other complaints is also proved as Ex.PW-1/38 and Ex.PW-1/39 (Colly). A complaint by one of the consumers against the defendant on its website was registered by the cyber cell of the Chandigarh Police vide FIR No. 397/2014 under Sections 406/420 IPC and 66 of IT ACT PF, PS-39, Chandigarh as Ex.PW-1/35. Documents showing that defendants No. 1 and 2 were arrested by the Cyber Cell and remained in judicial custody for 14

days is also proved on record as Ex.PW-2/1 to Ex.PW-2/4 (colly) by the Sub-Inspector of Cyber Crime Investigation Cell.

6. I have heard the arguments and perused the relevant record. From the documents placed on record, it is apparent that the suit has been filed by a duly authorized person. Various documents showing the registration of the trademark in favour of the plaintiff proves that the plaintiff is the registered owner of the trademark Louis Vuitton and logo ‘**V**’ and “Toile Monogram” pattern. The documents on record also conclusively show that the defendants 1 and 2 have been indulging into supply of counterfeit products of the plaintiff and for that purpose, two FIRs have already been registered. The fact that they were arrested and remained in judicial custody clearly proves that the defendants have infringed the trademark of the plaintiff and also the copyright which vest in the plaintiff and is also indulging into the business of passing off the counterfeit goods as that of the plaintiffs. The defendants have also claimed the damages and has relied on the findings in the case *Microsoft Corporation vs. Yogesh Papat* 2005 (30) PTC 245 (Del) and *Ardath Tobacco Company & Ors. v. Munna Bhai*, 2009(39) PTC 208 (Del).

7. There is no doubt that the plaintiff is entitled for the damages because the defendants have infringed his trademark and the copyright and has been selling counterfeit products of the plaintiff and has, therefore, caused losses not only in goodwill and reputation, but also financial. However, there is no evidence on record to ascertain the actual damages suffered by the plaintiff. The Courts are not supposed to do the guess work and grant damages for the losses suffered by the plaintiff. The damages have to be actual and not superfluous.

8. In view of the above discussion, I hereby restrained the defendants, their partners, officers, servants, agents, distributors, stockists and representatives from manufacturing, selling and offering for sale, advertising, directly or indirectly dealing in wallets, handbags, suitcases, luggage, purses, belts, footwear, jewellery or any other goods bearing the plaintiff's trademark "Louis Vuitton" or 'V' logo or the "Toile Monogram" pattern. The defendants are also restrained from using the domain name and directed to remove the said website from ISP. The defendants are also directed to render the accounts of the profit earned by them. However, no damages are granted.

9. The suit stands disposed of with no order as to costs. Decree sheet be drawn accordingly

**DEEPA SHARMA
(JUDGE)**

**MAY 23, 2017
BG**

