

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

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Reserved on: 17.11.2016

Decided on: 04.01.2017

+ **CS(OS) 2563/2013 & I.A.2360/2014**

MONTBLANE SIMPLO GMBH

..... Plaintiff

Through: Mr.Pravin Anand, Mr.Raunaq
Kamath and Ms.Anjana Ahluwalia,
Advocates.

versus

GAURAV BHATIA & ORS.

..... Defendants

Through: *Ex parte* vide order dated 19.11.2015.

CORAM:
HON'BLE MS. JUSTICE DEEPA SHARMA

JUDGMENT

1. The Plaintiff, Montblanc Simplo GmbH is a company, incorporated under the laws of Germany having its registered office at Hellgrundweg 100, Postfach 540340, D-22525 Hamburg, Germany. Mr. Flavio Mascetti is the authorized representative of the Plaintiff Company and is therefore competent to file the present suit. It is submitted that the plaintiff is engaged in the manufacture, distribution and sale of writing instruments and have been producing high quality products having extensive sales and have acquired a distinct and distinguished reputation and their name,

MONTBLANC is one of the most widely recognised luxury brands in the world around and they were producing their writing instruments under this brand name. They have also started production of the celebrated writing under the brand name of MEISTERSTUCK since 1924 which had a wide popularity. As a result of their consistent innovation in this field, plaintiff had introduced MEISTERSTUCK CLASSIQUE; MEISTERSTUCK CLASSIQUE SOLITAIRE; MEISTERSTUCK SOLITAIRE COLLECTION, MEISTERSTUCK SPECIAL EDITION - UNICEF MEISTERSTUCK TRAVELLER, MEISTERSTUCK AMADEUS MOZART; MEISTERSTUCK LE GRANDE; and MEISTERSTUCK EE GRANDE SOLITAIRE. The plaintiff's MEISTERSTUCK collection of writing has a distinctive traders comprising of unique get up which includes shape of goods, their packaging and combination of colours and incorporates the symbol 'the Star Device' which is a white stylized six-pointed star with rounded edges. This Star Device is found in entire range of products of the plaintiff and is the world renowned 'Three Ring Device' comprising of three metallic bands around the circumference of the pen which are located near the middle of the body of the pen cap. The world recognized the products of the plaintiff with this trade dress. Besides trademarks, MONTBLANC,

MEISTERSTUCK, the Three Ring Device and the Star Device, the Plaintiff has also secured multiple registrations of these marks and devices in several countries across the world and the trade mark MONTBLANC was first registered in the year 1910. The plaintiff also applied for registration of the mark MEISTERSTUCK as well as the Three Ring Device relating to goods under Class 16 of the International Classification as per the Nice Agreement in countries such as Albania, Algeria, Argentina, Australia, Bangladesh, Benulux, Bosnia, Bulgaria, Chile, Central African Republic, Finland, France, Hungary, India, Japan, Lebanon, Norway, Nigeria, South Africa, Spain, Switzerland etc. These trademarks are also registered in India which are valid and subsisting.

2. It is submitted that defendant no. 5 is a company trading under the name of the Digaaz e-Commerce Pvt. Ltd. operating an e-commerce website www.digaaz.com where it is offering lifestyle and fashion products for sale and supplying counterfeit products bearing several registered trademarks of the Plaintiff. Defendant Nos. 1, 2 and 3 are the Directors of Defendant No. 5 and actively running, operating, steering and managing the day to day business of Defendant No. 5 and also operating the said website. Defendant No. 4 is believed to be an employee of Defendant No. 5 and is

misrepresenting to the purchasing public that Defendant No. 5 is an authorized distributor of the Plaintiff. The domain name <digaaaz.com> is registered in the name of Defendant No. 1. It is submitted that the plaintiff came to know through its sales/service team in India in July 2013 that the defendants were selling counterfeit product of MONTBLANC writing instruments on their website www.digaaz.com at discounted rate of 75 % representing the product as that of the original product of the plaintiffs. It is submitted that the plaintiff had never sold its product on discounted rate.

3. The relevant portion is extracted in plaint as under:-

“At Digaaz.com, we strive to bring to you the latest in lifestyle and consumer merchandise products through lively sales and aspiring deals and discounts. We cover world's most coveted brands and guarantee 100% authenticity to offer you safe and secure shopping”.

4. The plaintiffs also purchased the writing instrument from the defendant's websites and examined it and confirmed that it was a counterfeit product: the reasons shown are (a) the price of original MEISTERSTUCK CLASSIQUE is Rs. 30,000/-, the defendant has sold it for Rs. 6860/-, (b) the colour combination and the writing instrument purchased from defendants is different from that of plaintiff, (c) the tip of the refill of the

defendant's writing instrument has a small plastic ball which is different to that of plaintiff's article and (d) the quality of writing instrument which the defendant are selling as that of plaintiff's product is much inferior. The serial numbers on the product is also fabricated by defendants. It is submitted that defendant is infringing the registered trademarks under nos. 168115, 749405, 605697, 174504, 228166 of the plaintiffs.

5. That plaintiff due to sale of the counterfeit product has suffered loss in business and also loosing of reputation and image and confidence and trust of their client.

6. The plaintiff has sought the decree of permanent injunction permanent injunction restraining the Defendants, their partners, if any, officers, servants, agents, distributors, stockists and representatives from manufacturing, selling and/or offering for sale, advertising, directly or indirectly dealing in writing instruments, wallets, watches, leather goods, jewellery or any other goods bearing the trademark MONTBLANC, MEISTERSTUCK, the Three Ring Device and/or the Star Device or any similar trademark and/or device or doing any other act amounting to passing off of the Defendants' goods as those of the Plaintiff; and also claimed damages of worth of Rs.20,05,000/- .

7. The notice of the suit was issued to the defendants and defendant nos. 1, 2, 4 and 5 filed their written statement. However, subsequently, the defendants stopped attending the Court and they were proceeded ex-parte. The plaintiff has led its ex-parte evidence and they have proved on record its documents. The plaintiff's witness has duly proved on record the Authority letter in his favour as Ex. PW 1/1. He has also proved on record that the plaint had been signed on behalf of the plaintiffs by Mr. Flavio Mascetti in his capacity of the constituted attorney of the Plaintiff Companies. He has also proved on record the document exhibited as Ex. PW 1/3 (Colly) which proves that the brand MONTBLANC as the widely recognized luxury brand and that the plaintiff has a good will and reputation in this brand. He has also proved on record the internet extracts from the Plaintiffs website *www.montblanc.com* as Ex. PW 1/4 showing that the public identifies plaintiff's products from its trade dress which includes the Star Device comprising a white stylized six-pointed star with rounded edges and the Three Ring Device comprising of three metallic bands around the circumference of the pen which are located near the middle of the body of the pen cap. He has also proved the copy of the registration of the trademark MONTBLANC as PW 1/5 and that of trademark MEISTERSTUCK as PW

1/6 and that of Three Ring Device as PW 1/7 and that of other trademarks as PW 1/8 to PW 1/14. He has also proved on record a cautionary notice published by the plaintiff In India as Ex. PW 1/16. He has also proved on record that defendant no. 5 is a company trading under the name of Digaaz e-Commerce Pvt. Ltd. and that Defendant Nos. 1, 2 and 3 are the directors thereof. Defendant No. 4 is an employee of Defendant No. 5 and that operating through their e-commerce website www.digaaz.com registered in the name of defendant no. 2 and an extract from www.whois-search.com providing the details of this domain name is exhibited as Ex. PW 1/17. The articles of association of the defendant company are Ex. PW 1/18 and internet extracts pertaining to the defendants are exhibited as Ex. PW 1/19. They have also proved on record the printout from the defendant website www.digaaz.com displaying the counterfeit products of plaintiff's trademark as PW 1/22. Ex. PW 1/24 is the invoice showing the purchase of counterfeit MEISTERSTUCK CLASSIQUE. Ex. PW 1/25 are the Photographs of the counterfeit MEISTERSTUCK CLASSIQUE purchased from the Defendants' website and its packaging. Ex. PW 1/26 are the photographs of the warranty card accompanying the defendant's product and PW 1/27 is the invoice evidencing purchase of the defendant's product and its delivery in

New Delhi. The web printout of some of the consumer complaints against defendant are exhibited as PW 1/13. The copy of the FIR registered against the defendants is exhibited as Ex. PW 1/ 31. The seizure memo along with the clear typed copy indicating the volume of counterfeit products recovered from the defendants' premises is exhibited as PW 1/32. The witness has also stated that there are numerous consumer complaints against the defendants relating to the sale of the counterfeit products through their website. One of the many customers who was cheated by the defendants and had purchased counterfeit watches from the website www.digaaz.com lodged a complaint before the Cyber Crime Cell of the Chandigarh Police vide FIR No. 395 dated 24.09.2014 under Section 406,420 IPC & 66 AIT Act of PS-39, Chandigarh. The police had also seized good number of counterfeit products from defendants and defendant no. 1 and defendant no. 2 were also arrested by Cyber Cell.

8. I have heard the arguments of the learned counsel of the plaintiff and perused the relevant record.

9. It is urged by learned counsel for the plaintiff that the documents on the record duly proves that the plaintiff is the owner of MONTBLANC, MEISTERSTUCK, the Three Ring Device and/or the Star Device

trademarks and that the defendant is selling the counterfeit products as that of plaintiff's products and thereby infringing their trademark.

10. From the evidences and the documents produced on record, it stands proved that the plaintiff is the owner of the MONTBLANC, MEISTERSTUCK, the Three Ring Device and/or the Star Device. The plaintiff has also duly proved that defendants are counterfeiting their products by copying and marketing the same as that of plaintiff's products through their website. The plaintiff has also explained in detail the manner in which the plaintiff's registered trademark is violated by the defendants in several products. They have also proved on record that the defendants were also in the habit of selling the counterfeit products and that is why on the complaint to the Cyber Cell, the FIR was registered against them.

11. In view of the above discussion, the plaintiff is entitled to the relief claimed. Accordingly, by way of permanent injunction, the Defendants, their partners, if any, officers, servants, agents, distributors, stockists and representatives are restrained from manufacturing, selling and/or offering for sale, advertising, directly or indirectly dealing in writing instruments, wallets, watches, leather goods, jewellery or any other goods bearing the trademark MONTBLANC, MEISTERSTUCK, the Three Ring Device

and/or the Star Device and are also restrained from passing off their counterfeit products as that of plaintiffs.

12. The claim for damages is hereby rejected since the plaintiffs have not produced sufficient evidences to show the extent of actual damages they had suffered due to the act of defendants.

No order as to cost.

JANUARY 04, 2017
sapna

DEEPA SHARMA
(JUDGE)

