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

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CS(COMM) 207/2018& I.As. 1641/2018 AND13562/2018

MONTBLANC-SIMPLO GMBH ..... Plaintiff  
Through: Mr. Pravin Anand, Advocate with  
Mr. Manish Biala, Advocate.

versus

M/S BAJAJ BELTS & ORS ..... Defendants  
Through: None.

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Date of Decision: 11<sup>th</sup> October, 2018

**CORAM:**  
**HON'BLE MR. JUSTICE MANMOHAN**

**J U D G M E N T**

**MANMOHAN, J:** (Oral)

1. Despite a pass over, none is present for the defendants. Consequently, this Court has no other option, but to proceed ahead with the present case.

2. It is pertinent to mention that the present suit has been filed for permanent injunction restraining infringement of trademark, passing-off, damages, rendition of accounts, delivery up, etc. The prayer clause is reproduced hereinbelow:-

*“21. It is humbly prayed before this Hon’ble Court that it may be pleased to grant:-*

- a) *An order for permanent injunction restraining the Defendants, their proprietors, officers, servants, agents, distributors, stockists, representatives and anyone acting for or in their behalf from manufacturing, selling and/or offering for sale, advertising, directly or indirectly dealing in any products including though not limited to leather goods, belts, watches, jewellery etc. bearing the trademarks MONTBLANC and/or the Star Device or any similar trademark and/or device amounting to an infringement of trade mark.*
- b) *An order for permanent injunction restraining the Defendants, their proprietors, officers, servants, agents, distributors, stockists, representatives and anyone acting for or on their behalf from manufacturing, selling and/or offering for sale, advertising, directly or indirectly dealing in any products including though not limited to leather goods, belts, watches, jewellery etc. bearing the trademarks MONTBLANC and/or the Star Device or any similar trademark and/or device amounting to passing off the Defendants' goods and services as those of the Plaintiff.*
- c) *An order for delivery-up of all the impugned materials of the Defendants including the infringing products, signage, goods, stickers, cartons, packing, dies, articles, papers or any other material bearing the impugned trade marks, device or model numbers for the purpose of their destruction/erasure.*
- d) *An order declaring the Plaintiff's trade marks MONTBLANC, and the Star Device as well-known trademarks under Section 2(1)(zg) of the Trade Marks Act, 1999.*
- e) *An order of rendition of account of profits illegally earned by the Defendants on account of illegal use of the Plaintiff's trademarks or any mark identical or deceptively similar to that of Plaintiff's, and a decree be passed in favour of the Plaintiff of the amount so ascertained.*

*f) An order for damages to the sum of Rs.1,00,05,000/- (Rupees one crore five thousand only) in favour of the Plaintiff, jointly and severally against each of the Defendants on account of loss of sales, reputation and goodwill of the Plaintiff's' trade marks caused by the activities of the Defendants and a decree for the said amount be passed in favour of the Plaintiffs.*

*g) An order for costs of the proceedings."*

3. Vide order dated 05<sup>th</sup>February, 2018, this Court granted an *ex parte ad interim* injunction in favour of the plaintiff and against the defendants. The relevant portion of the *ex-parte* injunction order is reproduced hereinbelow:-

*"Consequently, till further orders, the defendants, their proprietors, officers, servants, gents, distributors, stockists, representatives and anyone acting for or on their behalf are restrained from manufacturing, selling and/or offering for sale, advertising, directly or indirectly dealing in any products including but not limited to leather goods, belts, watches, jewellery etc. bearing the trademarks MONTBLANC and/or the Star Device  or any similar trademark and/or device in any manner whatsoever."*

4. On 05<sup>th</sup>February 2018, this Court also appointed three Local Commissioners. During the execution of the local commissions, the defendants were found to be infringing the plaintiff's trademarks and were found in possession of 1155 counterfeit products of the plaintiff. The relevant portions of the Local Commissioners reports are reproduced hereinbelow:-

### **Report of First Local Commissioner**

*“4. It is most respectfully submitted that after a detailed search and enquiry, we rounded up all the goods and put them on the front counter and we concluded the process. I prepared the inventory of the infringed material, which were thirty two in number which included 10 belts with buckles, 3 belt straps, 8 buckles, 10 cuff links and 1 money clipper. A chart indicating the Inventory of items is given below:*

| <i>S.No.</i> | <i>Product</i>            | <i>Quantity</i> |
|--------------|---------------------------|-----------------|
| <i>1.</i>    | <i>Belts with Buckles</i> | <i>10</i>       |
| <i>2.</i>    | <i>Belt Strap</i>         | <i>3</i>        |
| <i>3.</i>    | <i>Buckles</i>            | <i>8</i>        |
| <i>4.</i>    | <i>Cuff Links</i>         | <i>10</i>       |
| <i>5.</i>    | <i>Money Clipper</i>      | <i>1</i>        |
| <i>Total</i> |                           | <i>32</i>       |

### **Report of Second Local Commissioner**

*“4. It is most respectfully submitted that after a detailed search and enquiry, we rounded up all the goods and put them on the front counter and we concluded the process. Pictures of the seized goods were also taken. I prepared the spot proceedings along with the inventory of the infringed material, which were total 291 in number details of which is given in the inventory which was signed by Mr. Ajay Bajaj, Mr. Ashutosh Upadhyaya, Constable Surender and myself. The spot proceedings with the inventory is annexed hereto and marked as Annexure A-2.”*

### **Report of Third Local Commissioner**

*“8. The sealed goods of total 832 articles were released on Superdari to Defendant No.3, Mr. Vicky, who undertook not to tamper with the sealed goods and produce the same as and when directed by this Hon’ble Court. The Superdarinama*

*prepared by me is annexed herewith and marked as Annexure E.”*

5. The defendants have entered appearance and filed their written statement. The relevant portion of the said written statement is reproduced hereinbelow:-

*“7. That it is humbly submitted before this Hon’ble Court that Defendant No.1&2 shops are owned by one Mr. Ajay Bajaj while Defendant No.3 is Mr. Vicky as duly mentioned in para No.12 of the suit of the Plaintiff’s. That the Defendant No.1 & 3 is the first time infringer who are only engaged to the extent of selling the goods having no knowledge of the Brand. That it is pertinent to mention before this Hon’ble Court that the Defendants started their work in the last week of November and the Plaintiffs raided the shop in December itself.*

*8. That the Defendant No.1, 2 & 3 are innocent to the extent that these Defendants were not having any knowledge of the Brand and the acts of the Defendants were neither intentional nor deliberate. I request to this Hon’ble Court that the Hon’ble Court may kindly be pleased to accept the undertaking as well as the apologies of the defendants and may be graciously pleased to kindly grant them relief.”*

6. On the last date of hearing, the plaintiff had filed I.A. 13562/2018 under Order XIII-A of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 (for short ‘Act, 2015’) specifically giving up prayers 21(d) and (f) of the prayer clause to the suit. No reply has been filed by the defendants to the present application.

7. Learned counsel for plaintiff prays that in view of the judgment of this Court in ***Satya Infrastructure Ltd. & Ors. Vs. Satya Infra & Estates***

**Pvt. Ltd., 2013 SCC OnLine Del 508**, the present suit be decreed qua the relief of injunction, delivery up and costs. The relevant portion of the said judgment relied upon by learned counsel for the plaintiffs is reproduced hereinbelow:-

*“I am of the opinion that no purpose will be served in such cases by directing the plaintiffs to lead ex parte evidence in the form of affidavit by way of examination-in-chief and which invariably is a repetition of the contents of the plaint. The plaint otherwise, as per the amended CPC, besides being verified, is also supported by affidavits of the plaintiffs. I fail to fathom any reason for according any additional sanctity to the affidavit by way of examination-in-chief than to the affidavit in support of the plaint or to any exhibit marks being put on the documents which have been filed by the plaintiffs and are already on record. I have therefore heard the counsel for the plaintiffs on merits qua the relief of injunction.”*

8. The relevant facts of the present case are that the plaintiff is a company which was initially founded as the Simplo Filler Pen Company in Hamburg, Germany in 1906 and is engaged in the business of manufacture, distribution and sale of writing instruments. It is stated that on account of the plaintiff's success, the plaintiff expanded its core business from luxury writing instruments to other luxury goods such as watches, jewelry including cufflinks, leather products including wallets, belts, briefcases, bags, organizers etc.

9. It is stated in the plaint that the plaintiff introduced the first MONTBLANC writing instrument in 1910 and has secured registration of the trademark MONTBLANC in Classes 16, 18 and 25 of the Trade Marks Act, 1999, for the aforementioned range of products. It is also stated that the entire range of the plaintiff's products always feature its

trademark/name MONTBLANC in conjunction with its corporate symbol, 'the Star Device'  comprising a white stylized six-point star with rounded edges. It is stated in the plaint that the plaintiff has common law rights in the trademarks MONTBLANC and the Star Device  as well as multiple registrations in India, since 1955 and 1956.

10. It is the case of the plaintiff that the plaintiff's sales turnover in India from 2003 to 2013 is in excess of 100 million USD and the advertising expenses incurred by the plaintiff in India from 2003 to 2013 are in excess of 7 million USD.

11. Learned counsel for the plaintiff states that in December, 2017, the plaintiff surveyed the Gaffar Market area in New Delhi to ascertain whether there are entities that are engaged in the manufacture, distribution and/or sale of counterfeit products and learnt that the defendants are involved in such activities. He states that the defendants are engaged in the wholesale distribution and retail of counterfeit products such as belts, watches etc.

bearing the plaintiff's trademarks MONTBLANC and the Star Device . He states the defendant no. 3 is also involved in supplying the aforementioned products to various other shops in Gaffar Market as well as in other markets and adjoining cities.

12. Learned counsel for the plaintiff states that the plaintiff's constituted attorney visited the premises of the defendants and purchased sample products i.e. 3 wallets from defendant nos. 1 and 2 and also 3 belts from defendant no. 3, all of which prominently depict the plaintiff's trademark MONTBLANC, to confirm whether the defendants are dealing in

counterfeit products bearing the plaintiff's trademarks. A pictorial representation of the plaintiff's and defendants' product is reproduced hereinbelow:-

Defendant No.1's Product      Plaintiff's Product



Defendant No.1's Product



Plaintiff's Product



Defendant No.3's Product

Plaintiff's Product



Defendant No.3's Product



Plaintiff's Product



13. Learned counsel for plaintiff states the plaintiff's officials examined the impugned products and confirmed that the impugned products do not originate from the plaintiff and are counterfeit goods.

14. According to learned counsel for the plaintiff, in particular the following factors revealed that the products are counterfeit:-

| <b>Belts purchased from Defendant Nos. 1 and 2:</b> |                                                                                                                                  |
|-----------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------|
| a.                                                  | The belts were sold for INR 230 each, which is considerably lower than the cost of the original belts sold by the Plaintiff      |
| b.                                                  | The belts are of extremely poor quality.                                                                                         |
| c.                                                  | The Plaintiff does not manufacture or sell belts with this design.                                                               |
| d.                                                  | Star Device on the buckle is too steep                                                                                           |
| e.                                                  | Gift box is not authentic.                                                                                                       |
| f.                                                  | Wrapping cloth (bag) is missing.                                                                                                 |
| <b>Wallets purchased from Defendant No.3:</b>       |                                                                                                                                  |
| a.                                                  | The wallets were sold for INR 375 each, which is considerably lower than the cost or the original wallets sold by the Plaintiff. |
| b.                                                  | The wallets are of extremely poor quality.                                                                                       |

|    |                                                                                   |
|----|-----------------------------------------------------------------------------------|
| c. | The color of the leather is not consistent with the Plaintiff's original wallets. |
| d. | Gift box is not authentic.                                                        |
| e. | Wrapping paper is inconsistent with the Plaintiff's original paper.               |

15. Learned counsel for the plaintiff states that the defendants have copied virtually every detail and feature of the plaintiff's product to deceive customers and members of the trade into believing that the products sold by the defendants originate from the plaintiff. He states that the illegal conduct of the defendants has resulted in misappropriation of the reputation and goodwill of the plaintiff as well as dilution of its trademark/name MONTBLANC and the Star Device , resulting in loss, damages and injury to the plaintiff.

16. Learned counsel for the plaintiff states that the defendants also offer for sale and supply counterfeit goods of other luxury brands such as Cartier, Louis Vuitton etc. and the volume of counterfeit goods sold by the defendants leads to a presumption that the defendants are seasoned infringers and counterfeiters with a regular supply of counterfeit goods.

17. In the opinion of this Court, the defendants have no real prospect of defending the claim, as in paragraph 7 of their written statement, the defendant nos. 1 and 3 have admitted to being first time infringers. The defendants have also tendered their apologies. Moreover, as the defendants are selling counterfeit products bearing the plaintiffs trademarks as apparent

from the reports of the Local Commissioners on record, it is a clear case of infringement of the plaintiffs' registered trade mark.

18. Order XIII-A of the Act, 2015 empowers this Court to pass a summary judgment without recording evidence if it appears that the defendant has no real prospect of defending the claim.

19. In view of the above, the present suit is decreed in favour of the plaintiff and against the defendants in accordance with paragraph 21 (a) to (c), (e) and (g) of the prayer clause of the present plaint along with actual cost and court-fees paid. Defendants are directed to hand over infringing goods seized by the Local Commissioners to the plaintiffs for destruction within 14 days of passing the order. Registry is directed to prepare a decree sheet accordingly.

20. However, this Court is of the view that the procedure prescribed in Rule 124 needs to be availed of by the parties who claim the status of a well-known mark. Consequently, the plaintiff is directed to file an appropriate application under Rule 124 of the Trade Mark Rules, 2017, within a period of two weeks. The Registrar is directed to decide the same as expeditiously as possible preferably within a period of three months.

21. With the aforesaid observations, present suit and pending applications stand disposed of.

**MANMOHAN, J**

**OCTOBER 11, 2018**

mn/js