

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

% Order delivered on: 20th August, 2015

+ **CS (OS) No.1668/2013**

LOUIS VUITTON MALLETIER Plaintiff
Through Mr.Dhruv Anand, Adv.

versus

MR.MANOJ KHURANA & ORS. Defendants
Through Mr. Peeyoosh Kalra, Adv. with
Ms. Mahua Kalra, Adv.

CORAM:
HON'BLE MR.JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J. (ORAL)

1. The plaintiff has filed the present suit for permanent injunction restraining infringement of registered trademarks, passing off, dilution, tarnishment, damages and delivery up against the defendants.
2. By order dated 30th August, 2013 this Court had passed an *ex parte* ad interim injunction in favour of the plaintiff and against the defendants restraining them from manufacturing, selling and/or offering for sale, advertising, directly or indirectly dealing in wallets, handbags, purses, belts and other goods etc. bearing the trademarks of the plaintiff or any deceptively variant thereof amounting to infringement of plaintiff's trademarks, copyright and passing off.

3. The defendants entered into appearance and filed their written statement on 13th May, 2014 to which the plaintiff filed its replication on 29th January, 2015. The process of admission and denial of documents was completed on 13th April, 2015 though no documents were filed by the defendants.

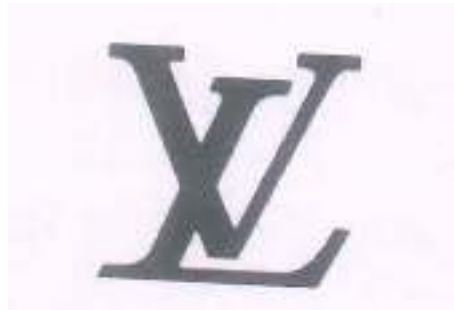
4. When the matter was listed before this Court for further proceedings, counsel for the defendants had reaffirmed his statement that let a decree for permanent injunction be passed except for damages and costs. The matter was discussed in the Court. Counsel for the plaintiff foregoes the said reliefs including relief of damages but presses for the relief of costs.

5. Brief facts of the case as per plaint are that the plaintiff is a company duly incorporated and existing under the laws of France. The name "Louis Vuitton" as the name of a company was used for the first time in the year 1854 and is derived from the name of its founder, Mr. Louis Vuitton. Apart from being the trading style of the plaintiff, the name "Louis Vuitton" has also been used as a trademark ever since 1854 and is associated exclusively with goods of the plaintiff's manufacture.

6. The plaintiff is the originator of the mark "Louis Vuitton" which is neither a common surname nor has a dictionary meaning and thus, has all the trappings and characteristics of an invented word. Thus, the name "Louis Vuitton" is the exclusive property of the plaintiff and has become a source identifier for the plaintiff's products.

7. It is stated that in addition to the use of the name "Louis Vuitton" as a trademark, the initials of Louis Vuitton namely "LV", represented in an intertwined manner has also been used as a trademark by the

plaintiff since 1890 which appears on a number of the plaintiff's products and the mark has become a signature symbol of the plaintiff. A representation of this trademark has been given herein below:-



8. It is stated that since 1896, the plaintiff has also continuously and uninterruptedly used a canvas design with a flower pattern and the intertwined initials of Louis Vuitton (LV). The said pattern is exclusively associated as an emblematic symbol of the House of Louis Vuitton. The first trademark application for this pattern was filed in the year 1905. This design is known as the "Toile Monogram".

The "Louis Vuitton" word mark, the "LV" logo and the monogram pattern (the latter two being graphic marks) are registered in India in classes 3, 14, 18 and 25 under the Registration Nos. 441451, 448229B, 441452B, 448230B, 448231, 441453B, 448233B, 448235, 448234 and 861145 the details of which have been provided in Annexure A. A representation of Toile Monogram has been given herein below:-



9. It is averred that by virtue of having coined the trademark “Louis Vuitton” and devised the “LV” logo and the “Toile Monogram” and due to priority in adoption, long and continuous use and extensive sale and advertising, the said trademarks have come to connote the goods of the plaintiff.

10. It is further averred that the adoption and extensive use of these trademarks has led to an association of the said trademarks as source identifiers of the products of the plaintiff. The use of the said trademarks or any trademarks similar to the said trademarks, by any entity without the consent or license of the plaintiff will cause confusion as to source or origin.

11. The case of the plaintiff against the defendants is that the defendants are allegedly in the business of unauthorised selling of counterfeit products under multiple registered trademarks of the plaintiff.

12. It is stated that during a periodical market check in April 2013 the plaintiff through investigator came to know of the defendant’s involvement in infringing and illegal activities of selling counterfeit Louis Vuitton products. The sample product purchased from the defendants bears the mark that infringe the registered trademarks of the plaintiff namely, “Louis Vuitton”, the LV logo and the LV “Damier pattern”. The proof of infringing activities was established by the photographs of the infringing products purchased by the investigator, the affidavit of the investigator and even the sales invoice which mentioned the price at which one such counterfeit good was sold to the investigator. The defendants in this case were found to be dealing

in counterfeit goods bearing the exclusive Damier pattern of the plaintiff which is evident from the following:-

Counterfeit sold by the defendants

Plaintiff's Registered Trademarks being infringed



13. During the local commissioner proceedings on 3rd September, 2013, a total of 165 counterfeit goods were found in the possession of the defendants at his 2 out of 3 outlets/premises. Some photographs of the counterfeit goods seized during the local commission at pages 11 to 18 of the report have been filed with the report of Mr. Prasanna dated 3rd September, 2013.

14. As per the plaintiff, only Exclusive retail outlets of the plaintiff are authorized to sell original Louis Vuitton goods. At present there are only 4 boutiques that sell authentic LV products in India with one such boutique situated in New Delhi at the DLF Emporio Mall, Vasant Kunj. Printouts from the LV international website showing the

boutiques operating at the time of filing of the suit have been placed on record.

15. Therefore, the plea raised by the defendants totally appears to be false that he was selling the goods under wrong belief that the said products were owned by the plaintiff. It is apparent that where LV goods are found to be sold outside the exclusive LV stores, an *adverse inference* is to be drawn under the Indian Evidence Act, 1872 that the goods are counterfeit beyond any doubt whatsoever. This Court is empowered under Section 144 of the Trade Marks Act, 1999 under which it shall admit evidence of the usages of the trade concerned. Thus, the arguments of the plaintiff have a force.

16. The Court has declared “Louis Vuitton” word mark, Toile Monogram pattern and the “LV” logo as well- known mark vide the following orders:

- i. Order dated 31st March, 2014 as passed by this Court in ‘Louis Vuitton Malletier v. Arif Khatri & Anr.’ in CS (OS) No. 270 of 2014;
- ii. Order dated 9th May, 2009 as passed by this Court in ‘Louis Vuitton Malletier v. Abdul Salim & Ors.’ in CS (OS) No. 90 of 2006; and
- iii. Order dated 22nd December, 2011 as passed by this Court in ‘Louis Vuitton Malletier v. H. Sawhney & Anr’. in CS (OS) No. 2239 of 2007.

17. The trademarks exclusively associated with the plaintiff, including the “LV” logo, the Toile Monogram and the Damier pattern are well- known throughout the world. The Damier pattern is in fact

registered under No. 861145 in class 25 as evidenced from Annexure – A of the plaint and the trademark registration certificate dated 5th August, 2015.

18. In view of the above averments made in the plaint and material placed on record, it is clear that even in India LV logo, the Toile Monogram and the Damier pattern are well-known mark under Section 11(6) of the Trademarks Act, 1999.

19. Therefore, a decree for permanent injunction in terms of para clause 41 (a) to (c) of the plaint is passed in favour of the plaintiff and against the defendants.

20. The plaintiff is also entitled for costs of Rs.50,000/-. The other reliefs are not pressed by the counsel for the plaintiff and the same are accordingly rejected.

21. Decree be drawn accordingly.

(MANMOHAN SINGH)
JUDGE

AUGUST 20, 2015