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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CS(OS) 229/2015

**HETTICH MARKETING UND-
VERTRIEBS GMBH & ANR.**

..... Plaintiffs

Through: Mr. Siddhant Chamda with Ms. Vaishali
Mittal, Advocates.

versus

ANUSHKA GILL & ORS.

..... Defendants

Through: None

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Date of Decision: 12th July, 2017

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J (oral):

1. The present suit has been filed for permanent injunction, restraining passing off, damages, rendition of accounts and delivery up. The prayer clause in the suit is reproduced hereinbelow:-

- i. *“An order for permanent injunction restraining the Defendants, their partners or proprietor as the case may be, their principal officers, servants and agents, distributors, their sister entities and all other acting on their behalf, from manufacturing, selling, offering for sale, advertising, importing or exporting directly or indirectly dealing in any manner with respect to furniture fittings and any cognate or allied goods and services under the trademarks **Quadro** and **Innotech**, or any other trademark deceptively similar*

thereto amounting to

- a. *Passing off of the Defendant's products and services as those emanating from the Plaintiffs by using the trademarks **Quadro** and **Innotech** or any other trademarks deceptively similar thereto as set out in paragraph 28 above;*
- b. *Dilution of the Plaintiffs' trademarks **Quadro** and **Innotech** as set out in paragraph 29 above;*
- c. *Unfair competition on part of the Defendant vis a vis the Plaintiff's trademarks **Quadro** and **Innotech** as set out in paragraph 29 above;*
- ii. *An order for the delivery-up to the Plaintiffs of all goods of the Defendants including the products, their packaging, container, boxes, labels, wrappers, stickers, and stationery or any other material of the Defendants bearing the Plaintiffs' trademarks **Quadro** and **Innotech**;*
- iii. *A order for rendition of accounts of profits illegally earned by the Defendant on account of use of the Plaintiff's trademarks **Quadro** and **Innotech**, and a decree for the amount so found be passed in favour of the Plaintiff;*
- iv. *An order for damages; and*
- v. *An order for costs in the present proceeding; and*
Any other orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case".

2. On 28th January, 2015, this Court granted an ad interim ex parte order restraining the defendants from manufacturing, selling, offering for sale, advertising, directly or indirectly dealing in any manner including as part of a domain name with furniture fittings, hardware products and/or any other goods and/or services under the trademarks 'Innotech' and 'Quadro'.

3. Since despite service, the defendants did not enter appearance, they were proceeded ex parte vide order dated 25th May, 2016.

4. The relevant facts are that plaintiff No.1, Hettich Marketing and Vertriebs GmbH is a company incorporated under the laws of Germany. It is the registered proprietor of the trade mark HETTICH and  (HETTICH logo). Plaintiff No.1 commenced its operations in 1888 and started manufacturing furniture fittings in 1928. Plaintiff No.2, HETTICH India Pvt. Ltd., incorporated in India is a subsidiary of plaintiff No.1. It was formed as a result of a joint venture agreement between a group company of plaintiff No.1 and another Indian Company.

5. Today, plaintiffs and their Hettich Group of Companies are stated to be global leaders in the furniture fitting industry and have a wide product range including drawer systems, telescopic channels etc.

6. The present suit concerns two trade marks of the plaintiffs, namely, INNOTECH (used in relation to drawer systems) and QUADRO (used for runner extensions for furniture fittings). These marks have been adopted and used by the plaintiffs since 1995 and 1980 respectively and the applications filed in India for these trade marks are as follows:-

S.No.	Relevant Mark	Application No.	Date of Application
1	QUADRO	1777974	27 th January, 2009
2	INNOTECH	2779369	25 th April, 2014

7. Plaintiffs have also secured numerous registrations for these trade marks in several countries of the world. Evidence has been led in support of registration of QUADRO in twelve countries and that of INNOTECH in nine countries respectively. Plaintiffs have also secured registrations in other countries for these marks. While Ex.PW1/10 (Colly) are International

registration certificates for the marks in question; Ex.PW1/19 is an application for registration of the mark QUADRO in India and Ex.PW1/18 is application for registration of the mark INNOTECH in India.

8. Defendant No.3 and defendant No.4 are sister concerns engaged in the hardware furniture industry. Defendant No.1 is the business head of defendant No.3, while defendant No.2 is the Director of defendant No.4 company.

9. Mr. Siddhant Chamda, learned counsel for plaintiffs states that the plaintiffs have taken steps towards promoting and advertising their furniture fittings under the said trade marks. Documents in support of such promotional activities relied upon by him are as follows:-

- (i) Ex.PW1/14 (Colly) - plaintiffs' brochures advertising their products INNOTECH and QUADRO for furniture fittings.
- (ii) Ex.PW1/15 (colly) - Catalogues, diaries and other promotional material of the plaintiffs in relation to their QUADRO and INNOTECH products.

10. Consequently, according to him, plaintiffs' products under these trade marks enjoy tremendous goodwill and reputation amongst the consuming public, so much so that these marks are associated solely and exclusively with the plaintiffs. According to him, the numerous positive reviews and recognition of plaintiffs' products under these marks stand testament to such goodwill. He, in particular, relies upon Ex.PW1/16 which is an extract from the website www.larson.co.za and Ex.PW1/17 which is an article published in Panel, Wood and Solid Surface.

11. Mr. Siddhant Chamda also states that the plaintiffs have made extensive sales of these products in India. He states that in 2014, plaintiffs

earned revenues of INR 35 crores and INR 28 crores from the sale of QUADRO and INNOTECH respectively. Therefore, according to him, the extensive market presence and goodwill enjoyed by the plaintiffs under these trade marks stand to suffer harm and injury through actions of third party entities who misuse these trade marks for their products. Documents in support of sales made by plaintiffs are Ex.PW1/20 (colly), Ex.PW1/21 (colly) and Ex.PW1/22 (colly).

12. Mr. Siddhant Chamda states that the plaintiffs first learnt of defendants in October, 2014 and their use of QUADRO and INNOTECH marks for furniture fittings.

13. Mr. Siddhant Chamda points out that plaintiffs had purchased a product under the mark QUADRO from defendants as well as catalogues and price lists which show the use of both the trade marks in relation to furniture fittings. These products were also advertised on third party websites by the defendants. Documents filed in support of the same are Ex.PW1/23, Ex.PW1/24 and Ex.PW1/25.

14. Mr. Siddhant Chamda states that plaintiffs had addressed cease and desist letters to the defendants requiring them to stop making use of the plaintiffs' trade marks. The defendants admitted the plaintiffs' proprietary rights and assured that references to these marks will be removed from third party websites as well as their brochures and other stationery. He, however, states that the defendants did not act upon these assurances and misuse of the plaintiffs' trade marks continued on third party websites.

15. He states that a visit to the defendants' premises in January 2015 confirmed that defendants were continuing to use the QUADRO trade mark and were making sales of products despite having assured the plaintiffs

otherwise. In support of his contention, he relies upon Ex.PW1/27 which is the correspondence exchanged between the parties before the suit and Ex.PW1/29 which is an extract from a website showing continued advertisement of the mark QUADRO despite assurances given by defendants and sale invoice dated 19th January, 2015 wherein the runner extension has been mentioned as Sairento but the product bears the label QUADRO.

16. Having heard learned counsel for the plaintiffs and having perused the paper book, this Court is of the view that the plaintiffs have satisfied the test for passing off, as the plaintiffs have established the existence of goodwill and reputation in their trademarks as well as misrepresentation by the defendants, inasmuch, as though the defendants admitted plaintiffs' proprietary rights in the trade marks, yet they chose to continue misusing them commercially. Consumers were bound to be confused into thinking that defendants' products emanate from the plaintiffs since the marks were used for identical good (QUADRO for runner extensions and INNOTECH for drawer systems), which cater to the same class of customers.

17. Also damage has been caused to plaintiffs as not only would consumers be mistaken into purchasing the defendants' products (leading to a shrinking market size for plaintiffs), but any dissatisfactory performance in quality of defendants' products would also be attributed to plaintiffs. (See Ex.PW1/30).

18. This Court is also of the view that defendants abovementioned actions as well as their wilful misuse of plaintiffs' marks despite assurances to the contrary, amounts to unfair competition.

19. The fact that defendants chose not to enter appearance in the suit despite receipt of summons as well as having written to plaintiffs' counsel complaining against the filing of the present lawsuit also goes against them.

20. Consequently, the plaintiffs are entitled not only to compensatory damages, but also to punitive damages owing to the defendants illegal acts of passing off and infringement.

21. In fact, this Court in ***Disney Enterprises, Inc. Vs. Mr. Rajesh Bharti & Ors., CS (OS) 1878/2009*** decided on ***13th February, 2013*** has held as under:-

*“16. Further, this Court in **Microsoft Corporation Vs. Rajendra Pawar & Anr., CS(OS) 530/2003** decided on 27th July, 2007 has held “Perhaps it has now become a trend of sorts, especially in matters pertaining to passing off, for the defending party to evade court proceedings in a systematic attempt to jettison the relief sought by the plaintiff. Such flagrancy of the defendant’s conduct is strictly deprecatory, and those who recklessly indulge in such shenanigans must do so at their peril, for it is now an inherited wisdom that evasion of court proceedings does not de facto tantamount to escape from liability. Judicial process has its own way of bringing to tasks such erring parties whilst at the same time ensuring that the aggrieved party who has knocked the doors of the court in anticipation of justice is afforded with adequate relief, both in law and in equity. It is here that the concept of awarding punitive damages comes into perspective.”*

*17. This Court is also of the view that before award of damages it is not necessary that the plaintiff must show some particular benefit has accrued to the defendant or that the plaintiff must satisfy the Court by leading evidence that it has suffered actual loss. In **Microsoft Corporation Vs. Ms. K. Mayuri & Ors., 2007 (35) PTC 415 Del.**, this Court has held “The practice of grant of exemplary damages needs to be strengthened particularly in those cases where flagrant*

infringement is found. Such an exercise of power is not to be fettered by any requirement that the plaintiff must show some particular benefit which has accrued to the defendant or that the plaintiff must satisfy the court by leading evidence that he has suffered actual loss. In a case where the plaintiff proves such actual loss, he would be entitled to the same. However, even without such a proof, in case of flagrant infringement, the court has the complete discretion to make such award of damages as may seem appropriate to the circumstances, so that it acts as deterrent. In some cases, it is not possible to prove the actual damages, namely, that there is a normal rate of profit or that there is a normal or establish licensed royalty. Yet, clearly, the damages have to be assessed.”

18. In *Disney Enterprises Inc. & Anr. Vs. Harakchand Keniya & Ors.*, CS (OS) 1254/2007 decided on 24th October, 2011 wherein the defendants were engaged in selling the counterfeit party hats and other party decoration products bearing the DISNEY characters, this Court while stating that the plaintiffs are the proprietor of the trademark in question and the said trademarks have been infringed by the defendants, awarded damages to the tune of Rs. 2,00,000/- against the defendants.

19. In fact, punitive damages have the effect of deterring not only the defendant from repeating the offence, but also deterring others from committing the same, preserving peace, inducing private law enforcement; compensating victims for otherwise uncompensable loss and payment of the plaintiff's counsel fees. In *Time Incorporated Vs. Lokesh Srivastava & Anr.*, 2005 (30) PTC 3 (Del.) while awarding punitive damages of Rs. 5 lakhs in addition to compensatory damages also of Rs. 5 lakhs, Justice R.C. Chopra observed that “time has come when the Courts dealing in actions for infringement of trademarks, copy rights, patents etc., should not only grant compensatory damages but also award punitive damages with a view to discourage and dishearten law breakers who indulge in violation with impunity out of lust for money, so that they realise 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 the said case the court

held that the defendants' magazine which used the Hindi translation of the word 'Time' with the distinctive red border, was a slavish imitation of the plaintiff's trademark and held the defendants are liable for infringement."

22. Accordingly, the present suit is decreed in accordance with para 34(i)(a) as well as cost assessed by the plaintiff in its cost form. The plaintiffs are also held entitled to compensatory damages of Rs.50,000/- and punitive damages of Rs.50,000/-. Registry is directed to prepare a decree sheet accordingly.

JULY 12, 2017

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MANMOHAN, J