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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision :25th July, 2018

+ **CS (COMM) 211/2018 & I.A. 14144/2014**
M/S LVMH FRAGRANCE BRANDS SA Plaintiff
Through: Mr. S. K. Bansal, Mr. Pankaj Kumar
& Mr. Kapil Kumar Giri, Advocates
(M-9810438450).

versus

M/S SMART COLLECTION & ORS Defendants
Through: Mr. H. P. Singh, Advocate for D-1 to
6&8 (M-9810008116).

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (ORAL)

1. The Plaintiff – LVMH Fragrance Brands SA. (*hereinafter*, ‘Plaintiff’), is a multinational luxury goods conglomerate, headquartered in Paris. The company was formed by the merger of Louis Vuitton with Moët Hennessy in 1987. It controls 60 subsidiaries across the globe, ‘GIVENCHY’ being one of them. ‘GIVENCHY’ is a French fashion, accessories and perfume brand, founded by Count Hubert de Givenchy in 1952. M/s Parfums Givenchy S.A. France, the predecessor of the Plaintiff company, was established in 1957 and since then ‘GIVENCHY’ has become renowned brand for fragrances, perfumery and other cosmetics worldwide. The Plaintiff’s products are claimed to be sold in more than 100 countries in the world. In India, the Plaintiff’s mark ‘GIVENCHY’ is registered in several classes including classes 3, 18, and 25, as stated in paragraph 7 of the plaint. It is the case of the Plaintiff that the mark ‘GIVENCHY’ is also an essential part of the domain name and website www.givenchy.com.

2. The Plaintiff avers that in the last week of April, 2014, it came across various counterfeit products with the trademark '*GIVENCHY*' and came to know that the said products are being promoted through various social media platforms. The original Plaint impleaded Defendant No.1 as M/s. Smart Collection. Mr. Yasin Sayani original Defendant no.2 claimed that he was the owner of the trade mark '*SMART COLLECTION*'. Hence M/s. Smart Collection was deleted vide order dated 6th October, 2015. An amended memo of parties was thereafter filed. Mr. Yasin Sayani, Mr. Danish Sayani, Ms. Yasina Sayani, M/s Floressence Perfumes Pvt. Ltd, M/s CrisModa Perfumes Pvt. Ltd., are defendants 1-5. Defendant No.6, is M/s Singh Collection and Defendant no.7 is M/s Cosmic International. There are no allegations against Defendant Nos. 6 and 7.

3. The claim of the Plaintiff is that the sale and promotion of these products is violative of the Plaintiff's rights in the trade mark '*GIVENCHY*', and since the products are counterfeit, an injunction is liable to be granted.

4. In a common written statement filed on behalf of the Defendant Nos.1-5, & 7, it was claimed that the Defendant No.1 – M/s. Smart Collection does not exist, but is a trademark owned by Defendant No.2 i.e. Mr. Yasin Sayani. Thus, the Defendants did not dispute that the mark '*SMART COLLECTION*' emanated from their stable of products. The Defendants, however, challenged the territorial jurisdiction of this Court. It was claimed that the Defendant No.5 – Cris Moda Perfumes Pvt. Ltd. is not a company. It is actually a sole proprietary concern of Mr. Danish Sayani by the M/s. Cris Moda Parfums. It is claimed to a small scale industry which manufactured and marketed its own perfumes under their registered trademark '*Cris Moda Parfums*'. It is also claimed that the mark '*Cris Moda*

Parfums’ was assigned by Defendant no.4 to Defendant no.5. According to the Defendants, M/s. Singh Collections has been impleaded only for the purposes of vesting territorial jurisdiction in this Court. There is no connection between the other Defendants and M/s. Singh Collections. The Defendants also categorically stated in the written statement as under:

“25 to 31. The Contents of paras 25 to 31 of the plaint are incorrect, wrong and denied. Plaintiff is put to strict proof thereof. It is submitted by the Defendants that the suit is bad on account that the present Defendants have never sold any products with the trademark GIVENCHY. Therefore, the Defendants have no reason to sell goods with a false description or have ever indulged in counterfeiting of the Plaintiff products. The question of selling products with phonetically, visually and structurally similar marks of the Plaintiff products does not arise, nor have the Defendants copied the artistic work or copyright of the Plaintiff or have tried to give false description or have ever tried to link themselves with the customers of the Plaintiff. The Defendants have their own trademark to bank upon and do not require any leave or licence from the Plaintiff nor have the Defendants have ever violated the trademarks of the Plaintiff to lead to infringement or passing off. The present suit is an ill founded suit and has been filed with ulterior motives. The averments made in these paragraphs are absolutely ill founded and are liable to be rejected. Any chance of confusion or deception cannot arise. The Defendants have never tried to cash upon the goodwill and reputation of the Plaintiff, if any. It is submitted by the Defendants that the Plaintiff have not produced any document of the sales in India or the accounts to show that they have suffered huge losses and business reputation. It is submitted by the Defendants that the Plaintiff have miserably failed to show any kind of damage suffered by them.”

5. In the written statement filed by Defendant No. 6 (earlier Defendant No. 7), i.e., M/s Singh Collection, they have categorically denied having any association with the other Defendants in the suit, and contended that they have been wrongfully impleaded in the suit. Defendant No.6 denied all allegations of dealing in any counterfeit products, as also any goods manufactured by the other Defendants. They further averred that the Plaintiff had failed to produce any documentary evidence to show that the impugned goods are being manufactured/sold by Defendant No.6.

6. Initially, on 1st August, 2014, an ex-parte ad-interim injunction was granted. Mediation was also explored between the parties, however the same failed. The matter was listed for case management hearing on 25th July, 2018.

7. The documents filed by the Plaintiffs on record in order to show misuse of the trademark '*GIVENCHY*' are printouts of the packagings bearing the mark '*GIVENCHY*' and '*SMART COLLECTION*'. The screenshots are clearly visible on the record. The fact, that the word '*GIVENCHY*' is being used along with the trademark '*SMART COLLECTION*', clearly shows that the Defendants were misusing the word and mark '*GIVENCHY*'. This shows that the complaint of the Plaintiff is not completely baseless. Images of the packagings and the screen shots of the posts, which show the use of the mark '*GIVENCHY*' along with the Defendants' mark '*SMART COLLECTION*', go to show that there is more than what meets the eye.

8. The Defendants are in the identical trade i.e., manufacturing/selling perfumes, fragrances, etc. There is no reason as to why the images ought to have appeared online with the mark '*GIVENCHY*' along with the mark

'SMART COLLECTION'. Thus, it appears that the Defendants did make an attempt to sell the products co-branding the same as *'GIVENCHY'* along with their own mark *'SMART COLLECTION'*. Such a use even with co-branding is completely illegal and unlawful and cannot be permitted. The Defendant no.6 has merely denied that he sells the products of the other defendants.

9. When the suit was taken up for case management hearing, learned counsel for the Defendants, apart from challenging the jurisdiction of this Court, did submit that the Defendants have not sold the products under the mark *'GIVENCHY'*. Insofar as jurisdiction is concerned, the Defendants' website, videos and images are accessible from within Delhi. They are being actively promoted in Delhi and hence there is illegal 'use' of the mark, which confers jurisdiction on this Court, as 'Use' constitutes cause of action in a trade mark infringement suit. Since the Defendants admit that they don't intend to use the mark *'GIVENCHY'* and also because there is no proof of actual sales but the documents show use of the mark and there is no serious dispute as to the same, no useful purpose would be served in sending the matter to trial. Both Ld. Counsels for the Plaintiff and the Defendants do not have an objection in this Court disposing of the matter finally.

10. The Defendants appear to be adopting various marks of third parties, as is evident from the records wherein the injunctions have been granted against them from using the trademarks Tommy Hilfiger, Lacoste, Calvin Klein, Christian Dior and other well known brands. The Defendants also appear to be clandestinely making the sales. The images of the Defendants' co-branded product, using the mark *'GIVENCHY'* and *'SMART COLLECTION'* are:



Defendants' use of the Plaintiff's mark

11. The Plaintiff's proprietary rights are not in dispute. A perusal of the product images of the Defendants' infringing products as also the Facebook page screenshot shows that the products being promoted and sold by the Defendants are virtually identical to the Plaintiff's product packaging, except for the appearance of the mark '*SMART COLLECTION*' in logo form. Moreover, the screenshot of the Facebook page shows that this is a Facebook page of the Defendants under the name and style "*Smart Collection Perfumes*". The Defendants do not deny that this Facebook page belongs to them. A perusal of the actual online Facebook page with this name also shows that several products of the Defendants are being offered for sale and promotion. They all bear the mark '*SMART COLLECTION*'. Thus, the averment of the Defendants that they are not selling the infringing products is unconvincing. Promotion and sales through social media is almost untraceable. The manner, in which social media pages can be immediately changed or taken down, makes it difficult for any IP owner to keep track. Moreover, pages on social media platforms can be uploaded by anyone. In such cases, it is to be seen as to who is the ultimate beneficiary

of the said publicity and advertising. In the case of online sales, promotion and advertising, due to the fluid nature of the internet i.e., that changes can be made instantly, the '*Beneficiary test*' would have to be adopted. Inference would have to be drawn that the person who ultimately benefits is the person who has directly put up the said page or is instrumental in getting the same put up. In the present case, there is a clear admission that the mark '*SMART COLLECTION*' belongs to the Defendant No.1 and all the Defendants are related to each other. There can be no reason for the co-branding images appearing on Facebook and other websites with the mark '*GIVENCHY*' being used with '*SMART COLLECTION*'. The only persons who would benefit from such use and promotion would be the Defendants. Hence they should be held to be liable.

12. These leave no manner of doubt that the Defendants were using the Plaintiff's mark '*GIVENCHY*'. Ld. Counsel for the Defendants however clearly submits that the Defendants do not intend to use the mark '*GIVENCHY*'. Thus, a permanent injunction is liable to be granted against the Defendants from using the mark '*GIVENCHY*'. However, since there is no evidence of sales and the entire evidence appears to be a clandestine business, and further, keeping in view the fact that the Defendants completely denied that they sold products bearing the mark '*GIVENCHY*', permanent injunction as prayed for is granted.

13. The Defendants, while having their own brands, appear to have clearly made an attempt to co-brand their products under the '*SMART COLLECTION*' range with the mark '*GIVENCHY*', at least as per the online images filed on record. It is thus clear that the defendants are liable to pay nominal damages and costs of the litigation. The sales being clandestine, the

damages are assessed for an amount of Rs.1 Lakh, along with costs of Rs.50,000/-. The suit is decreed in terms of para 37 (a), (d) & (e). Further decree of damages for Rs.1.5 Lakhs is granted in favour of the Plaintiff against the Defendants. The present order be communicated by the Plaintiff to the Customs Authorities to ensure that counterfeit products bearing the mark ‘GIVENCHY’ are not permitted to be either imported or exported.

14. Suit is decreed in the above terms. Decree sheet be drawn up accordingly. All pending applications are also disposed of.

PRATHIBA M. SINGH, J.
JUDGE

JULY 25, 2018/dk

