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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 13th December, 2022

+ CS(COMM) 72/2020

MONTBLANC-SIMPLO GMBH Plaintiff

Through: Mr. Manish Biala and Mr. Devesh Ratan, Advocates.

versus

M/S JAI LAKSHMAN & ORS. Defendants

Through: Mr. Ashish K. Kulshreshtha and Ms. Seema Rani, Advocates for D-3 & 4.
Defendant No. 2 deleted from array of parties *vide* order dated 26th May, 2022.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

SANJEEV NARULA, J. (Oral):

I.A. No. 12522/2022 (application for summary judgment on behalf of Plaintiff under/Order XIII-A Rules 3 & 6 of CPC read with Chapter XVA Rule 1 of the Delhi High Court (Original Side) Rules, 2018)

1. Present suit seeks permanent injunction against Defendants No. 1-4, restraining them from dealing in any products bearing Plaintiff's trademarks "MONTBLANC", "", "MEISTERSTUCK", or the device " or any similar mark, amounting to infringement of its registered trademarks No. 168115, 174027, 228166, 605696, 617843, 845371, 3760195, 713587,

605697 and 174504; dilution, tarnishment, unfair trade competition, and passing off of Defendants' goods as those of the Plaintiff's; deceptive similarity amounting to infringement of copyright in artistic work of Plaintiff; damages, rendition of accounts, delivery-up, and other ancillary reliefs.

ABOUT THE PLAINTIFF

2. Founded in 1906 in Germany, Montblanc Simplo GmbH is a renowned name in luxury writing instruments, most famous for its MEISTERSTUCK pen. Its range of products encompasses watches, cufflinks, leather wallets, belts, briefcases, bags, organizers etc. Plaintiff's goods feature its trademark and trade name MONTBLANC in conjunction with its corporate symbol "  " – which is a white, stylized, six-pointed star with rounded edges [*hereinafter*, '**Star Device**']. The Star Device is found in its entire range of products. On account of its long, continuous and extensive use, both the public as well members of the trade exclusively identify and associate the trademark MONTBLANC and the Star Device with the Plaintiff's products.

3. In India, Plaintiff has successfully secured registration of the following trademarks:

MARK	T. M. NO.	CLASS	DATE OF APPLICATION	STATUS
	168115	16	4 th March, 1955	Registered & valid till 04.03.2024

MONTBLANC	174027	16	18 th April, 1956	Registered & valid till 18.04.2025
MONTBLANC	228166	16	5 th April, 1965	Registered & valid till 05.04.2027
	605696	16	1 st September, 1993	Registered & valid till 01.09.2027
MONTBLANC	617843	18	27 th January, 1994	Registered & valid till 27.01.2024
MONTBLANC	845371	25	15 th March, 1999	Registered & valid till 15.03.2029
MONTBLANC	3760195	9, 16	21 st February, 2018	Registered & valid till 21.02.2028
Star Device 	174504	16	29 th May, 1956	Registered & valid till 29.05.2025
MEISTERSTUCK	713587	9	18 th August, 1996	Registered & valid till 12.08.2023
MEISTERSTUCK	605697	16	1 st September 1993	Registered & valid till 01.09.2027

ABOUT THE DEFENDANTS

4. Defendants in the present suit operate a retail store “M/s. Jai Lakshman”, with two shops at 5277, Sindhi Market, Sadar Bazar, Delhi, [‘**Location 1**’] and 5622, Gandhi Market, Sadar Bazar, Delhi [‘**Location 2**’], purportedly engaged in sale of wholesale/retail products. Defendant No. 1 is a partnership firm, of which Defendant No. 2 was a partner. He passed away way back on 05th July 2011 (as per his death certificate produced by the other defendants) and was deleted from array of parties *vide* order dated 26th May, 2022. Thereafter no other partner was impleaded to represent Defendant No. 1. Defendants No. 3 and 4 are responsible for managing and operating the two premises on a day-to-day basis.

5. In February, 2020, Plaintiff's investigations revealed that Defendants were engaging in distribution and sale of products such as belts, wallets, buckles, etc., which were found to be bearing Plaintiff's trademarks "MONTBLANC" and the Star Device, but which did not originate from the Plaintiff. Sample products procured from the Defendants by the Plaintiff's investigator displayed identical marks and logo as that of the Plaintiff, and were found to be sold at a substantially lesser price than the Plaintiff's goods. Plaintiff claims these are counterfeit goods aimed at misleading consumers and members of the trade into believing that the products sold by the Defendants originate from the Plaintiff.

6. Right of Defendant No. 1 to file Written Statement was closed on 29th November, 2021. Defendants No. 3 and 4 filed their joint Written Statement on 26th September, 2020, and their joint Reply to the instant application on 01st September 2022.

INTERIM ORDER & LOCAL COMMISSIONER'S REPORT

7. This Court granted *ex-parte, ad-interim* injunction in favour of the Plaintiff on 14th February, 2020, in the following terms:

"The defendants, till further orders are restrained from selling, exporting, importing, offering for sale, distributing, advertising directly or indirectly dealing in goods and/or services under the marks MONTBLANC or MEISTERSTUCK Star Device  or  or any other similar mark or device."

8. *Vide* the same order, a Local Commissioner was also appointed to visit the premises at Location 1 and Location 2, to inspect, seize and seal all goods bearing Plaintiff's trademarks. In the report of the Local

Commissioner filed on 5th March, 2020, it is recorded that the commission was conducted on 18th February, 2020 at both the Locations, where the following goods bearing the Plaintiff's trademarks were found, sealed and returned to the Defendants on *superdari*:

(a) Location 1:

S. No.	Goods	Quantity
1.	Loose Buckles	63
2.	Belts	210
3.	Wallets	778
4.	Carry Bag	49
5.	Loose Wallets	103
6.	Empty Box	1
	TOTAL	1,204

(b) Location 2:

S. No.	Particulars	Quantity
1.	Cloth Covers	12
2.	Wallets	164
3.	Loose Buckles	51
4.	Sling Bag	4
5.	Empty Boxes	2
6.	Belts	54
	TOTAL	287

DEFENDANTS' CONTENTIONS:

9. Defendants No. 3 and 4, in their Written Statement as well as in their Reply to the present application, have made the following submissions:

- a. In paragraph 4 of the Written Statement, Defendants admitted that they are sellers of impugned products, in the following words:

"4. (...) Defendants are only the retail seller of the impugned products. Even defendants did not know about the origin of the impugned products. Majority of defendant's customers are random foot fall in the said market and in their retail sale shop. Even defendants are themselves victim, because majority of retail shopkeepers here in the said market place have stock of impugned products which plaintiff claimed to be counterfeit."

- b. Further, in paragraph 5 of the Written Statement, Defendants have admitted that *“Defendants themselves are like the customer of the same impugned products, who do not know the origin, authenticity and genuineness of the impugned products.”* In fact, Defendants claim that they have neither depicted nor claimed that the impugned products originated from Plaintiff company, and they are neither manufacturers nor suppliers of impugned products, and thus should not be held liable.
- c. In paragraph 6 of the Written Statement, they have admitted that the impugned products seized from the premises are “me too products”, generally originated and imported by suppliers from China and sold as “copies” of originals, and claim to be unaware of Plaintiff’s brand, in the following words:

“It is also denied that the impugned products are counterfeit, it may be “me too” products rather counterfeit, which are generally originated and imported by the suppliers from the outside of country like China etc. and sold them by claiming “copy of the products” in the whole market of Sadar Bazar, Delhi, where every small retail sale outlet have the stock of the impugned products due to trend. Even defendants neither depicted themselves and claimed that the impugned products are originated by the plaintiff company nor sold impugned products at the higher price of plaintiff’s products. The defendants are itself first time customer of the impugned products and it is the duty of plaintiff to chase the importers, suppliers, ecommerce websites and manufacturers of the impugned products who provide “copy products” rather instituting false cases against the innocent small retail sale shop owners or end users or consumers. Defendants are innocent and do not aware about the branding, design and other specifications of the plaintiff’s actual products.”

- d. It is further averred in paragraph 3 that Defendant No. 1’s business is likely to be closed for operation due to death of Defendant No. 2, while Defendant No. 3 and Defendant No. 4 operate their businesses separately.

e. Defendants, state that, being low-profile of retail sellers, they are not competitors of Plaintiff, which manufactures high-profile luxury products, and thus no cause of action arises. The consumer base of the Plaintiff and Defendants are separate. The latter operates wholly out of Sadar Bazar market, which, they state, is frequented by suppliers, importers and manufacturers of inexpensive products, such as the impugned products. Therefore, it is impossible for Defendants to capture any market share of Plaintiff's products.

10. Mr. Manish Biala, counsel for the Plaintiff states that in view of the categorical admissions made by the Defendants No. 3 and 4 in their Written Statement, that the impugned products were indeed being offered for sale by them as 'copies'; and further considering the seizure of infringing goods made by the Local Commissioner at the premises of the Defendants, there is sufficient evidence of illegal activities of the Defendants. In view of the irrefutable evidence of infringement and passing off, it is evident that the Defendants have been unlawfully and dishonestly using the trademarks of the Plaintiff in relation to identical goods, with an intention to pass off such fake/counterfeit goods as that of the Plaintiff, by riding upon the tremendous reputation and goodwill enjoyed by the Plaintiff. In light of the foregoing, the instant application has been filed seeking summary judgment. He presses for decree as to permanent injunction, cost and damages.

ANALYSIS

11. The reliefs sought by the Plaintiff in the present suit are as follows:

"31. In view of the above, it is respectfully prayed that the following reliefs

maybe granted to the Plaintiff:

- (i) A decree of 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 bearing the trademarks MONTBLANC or MEISTERSTUCK or the Star Device  or  or any other mark deceptively similar or identical thereto, amounting to infringement of the Plaintiff's registered trade mark nos. 168115, 174027, 228166, 605696, 617843, 845371, 3760195, 713587, 605697 and 174504;
- (ii) A decree 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 bearing the trademarks MONTBLANC or MEISTERSTUCK or the Star Device  or  or any other mark deceptively similar or identical thereto, amounting to dilution, tarnishment, unfair trade competition and passing off the Defendants' goods and services as those of the Plaintiff;
- (iii) A decree of 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 bearing the Star Device  or  or any other mark deceptively similar or identical thereto, amounting to infringement of copyright of the Plaintiff in the said artistic works;
- (iv) An order for delivery-up of all the impugned materials including the infringing products, signage, goods, stickers, cartons, packing, dies, articles, papers or any other material bearing the Plaintiff's trade marks MONTBLANC or MEISTERSTUCK or the Star Device  or  or any other mark deceptively similar or identical thereto for the purpose of their destruction/ erasure at the cost of Defendants;
- (v) An order declaring the Plaintiff's trademarks MONTBLANC, MEISTERSTUCK, the Star Device  and  as well-known trademarks under Section 2(1)(zg) of the Trade Marks Act, 1999;
- (vi) 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;

- (vii) *An order for damages to the sum of Rs. 2,00,01,000/- (Rupees two crore one thousand only) in favour of the Plaintiff, jointly and severally against all 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 Plaintiff;*
- (viii) *An order for the cost of these proceedings;*
- (ix) *Any further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case may also be passed in favour of the Plaintiff."*

12. Plaintiff is the registered proprietor of the trademarks noted-above, and its registrations are valid and subsisting. No evidence to the contrary has been produced by the Defendants. By virtue of provisions of Section 28 of the Trade Marks Act, 1999, Plaintiff has the exclusive right to use the trademarks in relation to its goods in respect of which it is registered, as well as to obtain relief in respect of infringement.

13. The Court has examined the defence sought to be raised by the defendants in their pleadings. Written Statement of Defendants No. 3 and 4 is replete with bald denials and even balder allegations. They have questioned the authorisation of the Plaintiff's attorney to sign, file, institute and represent the present case. They have raised doubts regarding impartiality of plaintiff's private investigator, veracity of bills produced in its report, etc. They have denied the allegations in the plaint on a simpliciter basis without providing any cogent defence thereto. They have also averred that they are trading under their own separate trademark/logo "LARA"; they never received any legal notice from the Plaintiff; and that their business is in financial hardship – as grounds to contest infringement. Similar assertions are also made in the Reply to the present application, which need not be

reiterated. The said Defendants have also filed their affidavit of admission/denial where, again on mere suspicions and lacking any cogent reasons, they have denied all the documents adduced by the Plaintiff (except for extracts of Plaintiff's registration from the website of the Trade Marks Registry).

14. In the opinion of the Court, no plausible defence has been raised. There is no cogent explanation forthcoming for using Plaintiff's trademark, except for feigning ignorance. Even if Defendants are not the manufactures of the impugned products and only traders/ re-sellers, yet they are liable for infringement under Section 29 of the Act. They cannot escape the liability under the disguise of being low-profile re-sellers, who are engaged in selling luxury brand items. It is settled law that admission need not be express. It can be gleaned from vague and unspecific pleading. The Written Statement uses both express and constructive admission, which also entitles the Plaintiff to invoke Order 12 Rule 6 of the CPC.

15. Next, the Court has also examined an affidavit dated 12th February 2020 filed by the investigator engaged by the Plaintiff, who states that, on 06th February 2020, he visited Defendant's premises at Location 1 and purchased, among others, "3 *mont blanc* wallets" for Rs. 120/- each from Defendant No. 4. He paid Defendant No. 4 on his mobile number registered with PayTM e-wallet. Photographs of the purchased goods are attached, along with a bill, a payment receipt, and a visiting card of the shop.

16. Photographs of goods seized by the Local Commissioner, annexed in

the Commissioner's Report dated 5th March, 2020, also show that Defendants are indulging in sale and distribution of products which display deceptively similar/ identical mark as that of the Plaintiff's.

17. As rightly contended by the Plaintiff, affixation of Plaintiff's marks on Defendants' goods have been done with the intention to profit off of the significant goodwill and reputation of the Plaintiff. Defendants were deceiving public into purchasing their counterfeit goods. The likelihood of confusion and deception is clearly made out. The triple identity test is satisfied, as the Defendants have made use of identical trademarks, in relation to identical goods (belts, bags etc.), having an identical trade channel (being imported from abroad and sold to the same end-use consumer base). It is obvious that there is a dishonest adoption by the Defendants, and a clear case for trademark infringement and passing off is made out.

18. Therefore, in view of seizure of impugned products from their premises by the Local Commissioner, as well as their admissions in the Written Statement on record, there is no other compelling reason to record oral evidence in the present suit.

19. It is settled legal position that the Local Commissioner's report can be read in evidence in terms of Order XXVI Rule 10(2) of CPC.¹ In view of the above and considering the judgements of this Court in *Disney Enterprises*

¹ *ML Brother LLP v. Maheshkumar Bhuralal Tanna*, 2022 SCC OnLine Del 1452.

Inc. and Anr. v. Balraj Muttneja and Ors.,² *S. Oliver Bernd Freier GMBH & Co, KG. v. Jaikara Apparels and Ors.*³ and *United Coffee House v. Raghav Kalra and Ors.*,⁴ the Court is of the opinion that Plaintiff has made out a case for grant of decree of permanent and mandatory injunction, as prayed for.

20. This Court is further of the view that the Plaintiff is entitled to a decree under Order XIII-A of the Commercial Courts, Commercial Division and Commercial Appellate Division of the High Court Act, 2015, read with Rule 27 of the Delhi High Court Intellectual Property Rights Division Rules, 2022, as the said provisions empower this Court to pass a summary judgment, without recording evidence, if it appears that the Defendants have no real prospect of defending the claim.

21. Consequently, the present case is found fit for passing of summary judgement.

22. The application is allowed and disposed of.

CS(COMM) 72/2020 & I.A. No. 2160/2020 (under Order XXXIX Rules 1 & 2 read with Section 151 of CPC)

23. In view of the foregoing, the suit is decreed in favour of the Plaintiff and against the Defendants, in terms of paragraphs 31 (i) to (iv) of the plaint.

² CS(OS) 3466/2012 dated 20th February, 2014.

³ 210 (2014) DLT 381.

24. The counterfeit goods handed over to the Defendants on *superdari* by the Local Commissioner, details whereof are recorded in the Commissioner's Report dated 5th March, 2020, are directed to be destroyed by the Defendants forthwith, in the presence of Plaintiff's representative.

25. As regards damages in terms of paragraph 31 (vii) of the plaint, Plaintiff hands over a cost sheet, premised on the number of stocks recovered from the two Locations. However, considering that the yearly profit figures calculated therein is, at best, mere guesswork, this Court is not entirely convinced by the said calculations for assessing damages, especially keeping in mind the scale of the Defendants' business. However, undoubtedly Defendants were selling counterfeit products depicting the Plaintiff's mark, which act invites the award of damages as a punitive measure. In the opinion of the court, Plaintiff is entitled to nominal damages, purpose of which has been laid out in the judgment of this Court in ***Indian Performing Right Society v. Debashis Patnaik***.⁵ Accordingly, Defendants No. 3 and 4 are held liable to pay damages of Rs. 2,00,000/- each, to the Plaintiff.

26. In addition to the above, on the aspect of awarding of cost *qua* prayer (viii), considering the fact that Plaintiff has deposited court fees and also incurred the expense of executing the commission, and further in view of the judgment of the Supreme Court in ***Uflex Ltd. v. Government of Tamil***

⁴ 2013 (55) PTC 414 (Del).

⁵ (2007) 34 PTC 201.

Nadu,⁶ as well as in terms of the Commercial Courts Act, 2015 and Delhi High Court (Original Side) Rules, 2018 read with Delhi High Court Intellectual Property Division Rules, 2022, Plaintiff is entitled to actual costs, recoverable jointly and severally from Defendants No. 3 and 4. Plaintiff shall file its bill of costs in terms of Rule 5 of Chapter XXIII of the Delhi High Court (Original Side) Rules, 2018 on or before 28th February 2023. As and when the same is filed, the matter will be listed before the Taxing Officer for computation of costs.

27. Suit is decreed in these terms. Registry is directed to draw up the decree sheet.

28. Suit and pending applications are accordingly disposed of.

SANJEEV NARULA, J

DECEMBER 13, 2022

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(Corrected and released on 14th January, 2023)

⁶ 2021 SCC Online SC 738.