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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 23rd November, 2022
 + **CS (COMM) 498/2021 & I.A.9047/2022**
DEERE AND COMPANY & ANR. Plaintiffs
 Through: Mr. Pravin Anand, Mr. Karan Kamra
 and Ms. Vaishali Mittal, Advocates.
 versus

JITENDER KUMAR GAUR & ANR. Defendants
 Through: Mr. Vijay Kasana, Advocate.
 (M:9873416665)

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

1. This hearing has been done through hybrid mode.
2. The present suit has been filed by the Plaintiffs i.e., Plaintiff No.1 - Deere & Company, USA based company and its Indian subsidiary - John Deere India Pvt. Ltd., Plaintiff No.2, against Defendant No.1 - Mr. Jitender Kumar Gaur, proprietor of M/s. Ansh Enterprises and Defendant No.2 - Mr. Vinay Bansal, proprietor of M/s. Global Sales.
3. The suit relates to the trademarks 'TORQ-GARD', 'JOHN DEERE' and the 'green and yellow' colour combination marks, details of which are as under:

Mark	Trademark Nos.	Date of Application	Class
TORQ-GARD	3409103	11th November, 2016	4
JOHN DEERE	950561	28th August, 2000	7

JOHN DEERE	271466	21st April, 1971	7
JOHN DEERE	1673730	8th April, 2008	4
	950570	28th August, 2000	7
	1675422	11th' April, 2008	4
	1551761	20th April, 2007	7

4. The Plaintiffs are in the business of manufacturing and selling of Agricultural Equipment, Commercial & Consumer Equipment, Turf Construction & Forestry and Finance and also deals in various other products of consumers such as Engines and Drive Train Components, Electronic Solutions, Government and Military Sales, Rental Sales, Parts and Services (Coolants, Lubricants, Engine Oil, Transmission Oil and Greases), Lubrication Equipment Accessories, Engine Parts and Support Services. Plaintiff No.1 is a USA-based Fortune 500 company and was at 88th position in the Fortune 500 ranking in 2021. The brand value of the Plaintiff is stated to be at USD 5,367 million.

5. The 'JOHN DEERE' series of marks are sought to be protected in the present suit. The mark 'JOHN DEERE' was adopted in 1837, along with the 'leaping deer' logo. The products of the Plaintiffs sold under these brands include consumer goods and accessories, indoor and outdoor home equipment, apart from agricultural equipment. As per the plaint, the

Plaintiffs are the global owners of all the 'JOHN DEERE' and 'TORQ-GARD' marks across the world including in India. The Indian subsidiary i.e. Plaintiff No.2 also deals with agricultural equipment and has more than 22 offices in India with 1200 dealers, exporting to more than 110 countries. The Plaintiffs also claim to be associated with farmers across the country, involved in frugal innovation at farms. Further, the Plaintiffs claim to be one of the leaders in the Indian tractor market and have partnered with the Government of Gujarat to benefit various marginalized farmers. The websites of the Plaintiffs operating through domain names www.deere.com, www.johndeereclassic.com and www.deere.co.in, also publicize and give details of the Plaintiffs' business across the world. The advertisement and promotional expenses of the Plaintiffs are stated to the tune of Rs.2802 million in the year 2018-19 and the sales in India are to the tune of Rs.63140 million Indian rupees in the same year.

6. In so far as the mark 'TORQ-GARD' is concerned, the said mark was launched by the Plaintiffs in respect of engine oil internationally since 1969 and in India since 2012. The same is marketed with a unique green-yellow colour combination along with the 'JOHN DEERE' leaping deer logo in the following manner:



7. The salient features of the said packaging, such as the use of a white font with a green background and a leaping deer mark on the top right corner, etc. have been highlighted in the plaint. The 'TORQ-GARD' branded products along with the leaping deer mark are stated to have achieved sales of over Rs.100 crores in the financial year 2020.

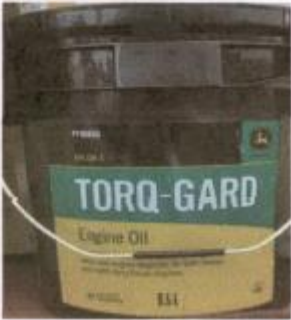
8. The Plaintiffs have over 1000 trademark registrations globally and in India for the 'TORQ-GARD' mark as also the 'JOHN DEERE' word mark and the leaping deer mark. The Plaintiffs also claim to have taken various actions to protect their rights in these marks including in **CS (OS) 3760/2014** titled **Deere & Co. & Anr. v. S. Harcharan Singh & Ors.** where the 'JOHN

DEERE' marks, including its  colour and the  logo have been held to be well-known marks under Section 2(1)(zg) of the Trade Marks Act, 1999. The relevant extract of the said order dated 5th March, 2015, reads as under:

"29. Having regard to the several factors referred to hereinabove, including the well known status of the "John Deere" trademark and trade dress, knowledge and recognition of the mark in the relevant section of the public, the duration, extent and geographical areas of use of the plaintiffs" trademark and the record of successful enforcement of the statutory and common laws rights vested in the plaintiffs throughout the world, including India, this Court is of the opinion that the plaintiffs have established beyond reasonable doubt that their John Deere trademarks including the colour marks and logo are extremely well known marks amongst the members of the trade and the public at large. The long duration for which the plaintiffs have put the aforesaid trademark, trade dress and logo to

use, the widespread geographical areas of the said use, knowledge in the public domain about the plaintiffs' trademark, the goodwill and reputation earned by them due to the extensive promotion and advertisement of their products, continuous use of the plaintiffs trademark and sales made under the said mark in India and in other countries and the numerous registrations obtained by the plaintiffs in respect of the said trademark all go to establish the fact that the trademark including the colour marks and logo used by the plaintiffs have indubitably acquired the status of well known marks."

9. The Plaintiffs are aggrieved by the sale of products using the Plaintiff's marks, by Defendant Nos.1 & 2, both through physical sales and also through e-commerce, on platforms such as 'INDIAMART'. The Plaintiffs' investigations revealed that the Defendants were using the marks 'TORQ-GARD' and 'JOHN DEERE' with the leaping deer logo. It is the case of the Plaintiffs that conversations between the investigator of the Plaintiffs and the Defendants reveal that bulk orders were being accepted by Defendant No.1 with regard to the impugned products. Insofar as Defendant No.2 is concerned, it also sent photographs of engine oil under the mark 'TORQ-GARD' to the Plaintiffs' investigator. The products procured from the Defendants had identical mark, logo, colour combination as that of the Plaintiffs and are, in fact, alleged by the Plaintiffs to be counterfeit products. A comparative chart comparing the images of the Plaintiffs' product with the images of the Defendants' products, as set out in the plaint, is as under:

Original Product of the Plaintiffs	Counterfeit Products of Defendant No.1
 	 
Original Product of the Plaintiff	Counterfeit Products of Defendant No.2
	



10. The investigator has also procured samples of the products from the Defendants. The manner in which the Defendants' products were identified to be counterfeit products by the Plaintiffs, is elaborated upon in paragraph 52 of the plaint, where the following discrepancies were stated to have been noticed in the Defendants' products:

- (i) LOT number were missing;
- (ii) Discrepancies in batch numbers;
- (iii) Textual representation such as the words 'INCL. OFF TAXES' was different; and
- (iv) The price of the Defendants' product was Rs.2195 as against the Plaintiffs' product, which was for Rs.2620.

11. The samples of the Defendants' products were also tested and the test report has been placed on record. As per the said test report, upon testing the relevant parameters, the quality of the Defendants' products was found to be inferior to the Plaintiffs' products. Moreover, the investigator had also visited the physical premises of the Defendants, where infringing products were being sold even as of August, 2021. Hence, the present suit was filed

seeking protection of the Plaintiffs' common law rights and statutory rights in the 'JOHN DEERE' mark as also 'TORQ-GARD' mark. The reliefs sought in the present suit are as under:

“(i) An order for permanent injunction restraining the Defendants, their partners or proprietors, principal officers, servants, agents and distributors and all others acting for and on its behalf as the case may be from manufacturing, offering for sale, selling, advertising, directly or indirectly dealing in engine oil products and/or any other goods and/or service using the Plaintiffs product name /registered mark 'TORQ-GARD'; Plaintiffs' registered and well-known

trademarks - 'JOHN DEERE',  , Green and

Yellow colour combination  and a product packaging identical or deceptively similar to the Plaintiff's products under the brand name/ mark 'TORQ-GARD', in any manner whatsoever including third party listings, references in social media and/or any representation made by the Defendants, their affiliates, subsidiaries and anyone acting for or on their behalf amounting to:

- a) Infringement of Plaintiffs registered 'TORQ-GARD' mark bearing registration no. 3409103 and registered and well-known 'JOHN DEERE' marks including registrations bearing nos.1673730, 1675422, ,155761, 271466, 950570 and 950561.and other trademark registrations as mentioned in paragraph 34 above;*
- b) Passing off the Defendants' engine oil products as emanating from the Plaintiff;*
- c) Dilution of Plaintiffs registered 'TORQ-GARD' and 'JOHN DEERE' marks and the unique product packaging of its product bearing*

the name/ mark 'TORQ -GARD';

d) Unfair Competition on part of the Defendants vis a vis. Plaintiff's business of engine oil products bearing its registered mark 'TORQ-GARD' as also its registered and well-known 'JOHN DEERE' marks -known 'JOHN DEERE' marks and the unique product packaging of its product bearing the name/ mark 'TORQ - GARD';

(ii) An order for the delivery-up of all infringing materials (all finished and unfinished materials), including products, product packaging, container boxes,

labels, wrappers, stickers, and stationery, signboard, accessories, business cards, promotional materials or any other material of the Defendants bearing the Plaintiffs registered 'TORQ-GARD' and 'JOHN DEERE' marks in any manner for the purposes of erasure and destruction;

(iii) An order for rendition of accounts of profits illegally earned by the Defendants on account of use of the name of the Plaintiff's product 'TORQ-GARD', the Plaintiffs registered and well-known 'JOHN DEERE' marks, the unique product packaging of its product bearing the name/ mark 'TORQ - GARD' and a decree for the amount so found be passed in favour of Plaintiff;

(iv) An order for damages in the present proceedings;

(v) An order for costs in the present proceedings

(vi) Any other order as this Hon'ble Court may deem fit in the facts and circumstances of the present proceeding”

12. Vide order dated 8th October, 2021, this Court had granted an *ex-parte* interim injunction in the following terms.

“10. Accordingly, till the next date of hearing, the defendants, their partners or proprietors, principal

officers, servants, agents and distributors and all such persons acting for and on their behalf are restrained from manufacturing, offering for sale, selling, advertising, directly or indirectly dealing in engine oil products and/or any other goods and/or service using the Plaintiffs' product name/registered mark 'TORQ-GARD' and 'JOHN DEERE', as also the Green and Yellow colour combination and a product packaging which is identical or deceptively similar to the Plaintiffs'

products under the brand name/mark 'TORQ-GARD', in any manner whatsoever including third party listings, references in social media and/or any representation made by the Defendants.”

13. Post the passing of the said injunction order, Defendant No.2/Sh. Vinay Bansal has entered appearance and has filed an affidavit dated 26th May, 2022. In the said affidavit, it has been deposed as under:

“1. That the deponent is the Defendant no. 2 in the aforesaid case.

2. That I affirm that I have no relations with Defendant No.1 and I have never received any products whatsoever from Defendant No.1 bearing identical trademarks as the Plaintiffs' registered 'TORQ-GARD' mark as also the 'JOHN DEERE' ('leaping deer' logo) and 'Green and Yellow' colour combination marks or any of the mark of the plaintiff.

3. That the deponent further states that neither the deponent deals with the trademark products of the plaintiff nor it intends to deal with it.

4. That the deponent states that on repeated requests of one of the customers, the deponent had arranged the aforesaid product from the open market source and sold it to the said customer for Rs.14,000/-. That the deponent was not aware that the said product was counterfeit product. The Deponent states that the

aforesaid transaction was the sole transaction which the deponent ever done .

5. That the deponent undertakes not to indulge in sale or marketing of the aforesaid products bearing identical trademarks as the Plaintiffs' registered 'TORQ-GARD' mark as also the 'JOHN DEERE' ('leaping deer' logo) and 'Green and Yellow' colour combination marks or any other mark of the plaintiff."

14. Considering the quantum of products which were sold by Defendant No.2 and the undertaking which has been given, Id. Counsel for the Plaintiffs submits that the suit may be decreed *qua* Defendant No.2 in terms of paragraphs 85 (i) of the prayer clause.

15. Insofar as Defendant No.1 is concerned, he had initially in December, 2021, appeared through his counsel, Mr. R.K. Burman and thereafter, once was represented through a proxy counsel on some hearings. Thereafter, there has been no appearance on most occasions on behalf of Defendant No.1. It is brought to the notice of the Court that the written statement has also been filed by Defendant No.1 on 7th December, 2021. A perusal of the said written statement would reveal that almost all paragraphs have a standard, repetitive reply to the following effect:

"5. That the contents of the para no.5 of the plaint are false wrong hence denied due to wants of knowledge.

6. That the contents of the para no.6 of the plaint are false wrong hence denied due to wants of knowledge..."

16. The entire written statement i.e., from paragraphs 2 to 40, is identically worded and is replete with bald denials. The conversations with the investigator are denied. All the allegations in the plaint are simply denied, without giving any defence whatsoever. Defendant No.1 has also denied that the samples procured by the Plaintiffs belong to the said Defendant. The allegations of copying, imitation and counterfeiting are simply denied. Under these circumstances, the Plaintiffs have moved an application being **I.A.9047/2022** seeking summary judgment. The said application was filed on 30th May, 2022. Notice was issued on 1st June, 2022 and time for filing a reply was granted. However, no reply to the said application has been placed on record. Defendant No.1 has also stopped appearing in the matter. The said Defendant is, accordingly, proceeded *ex-parte*.

17. Moreover, in view of the above, following the judgment in ***Disney Enterprises Inc. & Anr. v. Balraj Muttneja & Ors. [CS (OS) 3466/2012 decided on 20th February, 2014]***, this Court is of the opinion that no *ex parte* evidence would be required in this matter. The same has been reiterated by the Court in ***S. Oliver Bernd Freier GMBH & CO. KG v. Jaikara Apparels and Ors. [210 (2014) DLT 381]***, as also in ***United Coffee House v. Raghav Kalra and Ors. [2013 (55) PTC 414 (Del)]***.

18. In so far as the merits of the case are concerned, this Court has heard the Plaintiff and Defendant no.2 and perused the extensive details of the impugned products placed on record. The physical products purchased from the Defendants have also been shown to the Court. On a perusal of the same, the differences highlighted between the Plaintiffs' original products and the Defendants' products, as stated in the Plaint are made out. The same

are extracted below:

Sl.no.	Product Description	Point of difference in the MRP label:
1.	 MRP label of Plaintiff's Original 'TORQ-GARD' Product	1. LOT number missing: The MRP label printed on the product packaging of the spurious engine oil products of Defendant Nos. 1 and 2 do not contain a LOT number as is present on the MRP label of the original and genuine 'TORQ-GARD' product of the Plaintiffs.
2.	 MRP label of Defendant No.1's Infringing 'TORQ-GARD' Product	2. Batch number differences and discrepancies: (i) The MRP label printed on the product packaging of the spurious engine oil products of Defendant No.1 bears the batch number represented as 'B. NO TTJ13495491317' which differs from the batch number as are borne on the Plaintiff's genuine engine oil product represented as 'BATCH NO. M2-21-D-854'
3.	 MRP label of Defendant No.2's Infringing 'TORQ-GARD' Product	(ii) Likewise the batch number printed on the MRP label of the spurious engine oil product of Defendant No.2 is represented as 'BATCH NO. M2-20-F-448' which is different from the batch number mentioned on the Plaintiff's genuine 'TORQ-GARD' engine oil product represented as 'BATCH NO. M2-21-D-854'. 3. Difference in textual representation: (i) The MRP label printed on the product packaging of the spurious engine oil products of

		Defendant No.1 reads 'Incl. of all taxes' as opposed to the MRP label borne on the Plaintiff's genuine 'TORQ-GARD' engine oil product which reads 'INCL OFF TAXES'. (ii) The MRP label printed on the product packaging of the spurious engine oil products of Defendant No.2 reads 'INCL ALL OF TAXES' which is a misspelling as opposed to the MRP label borne on the Plaintiff's genuine 'TORQ-GARD' engine oil product which reads 'INCL OFF TAXES'. 4. Price Difference: The MRP label printed on the product packaging of the spurious engine oil products of Defendants bears a MRP of INR 2195/- as opposed to the Plaintiff's genuine 'TORQ-GARD' product, which bears the MRP of INR 2620/-
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19. The Court has also perused the Internal Testing Report dated 29th July, 2021 of the impugned 'JOHN DEERE' product, as also the test report of HPCL, which is the manufacturer of the Plaintiff's products. In fact, the conclusions of HPCL are as under:

“Dear Mr. Gambhir,

As per the test results of samples, only Entity 2 is meeting the specifications. For Entity 1 & 3, neither the batches belong to us nor product of these buckets meets the specification. The test reports are herewith enclosed. The comparison of test results is as below:

Sl No.	Test Description	Units	Test Method	Specifications	ENTITY 1	ENTITY 2	ENTITY 3
					batch no not as per HPC	M2-21-D-804	batch no not as per HPC
1	JD SUP ENG OIL APPEARANCE		VISUAL	B&C	CLEAR	CLEAR	CLEAR
2	JD SUP ENG OIL DENSITY @ 29.5 °C	gm/cc	P 16 D 1298 IP 180	To be reported	0.878	0.865	0.8562

3	JD SUP ENG OIL FLASHPOINT	* C	P 69 92 D IP 36	190 min	244	234	230
4	JD SUP ENG OIL KV @ 100	cSt	P 25 71 D 445 IP	14-15.2	13.13	15.11	14.86
5	JD SUP ENG OIL KV @ 40	cSt	P 25 71 D 445 IP	To be reported	108.1	115.33	101.33
6	JD SUP ENG OIL POUR POINT	* C	P 10 15 D 97 IP	-21 max	-6	-24	-15
7	JD SUP ENG OIL VI		0	120 min	117.5	136.2	153
8	JD SUP ENG OIL TBN	mg KOH/gm	D 2896	9.0 min	2.5	10.2	0.05
9	JD SUPREME ENGINE OIL SULF ASH	%Wt	P 4 IP 163	1.34-1.74	0.343	1.6595	0.007
10	JD SUPREME ENGINE OIL ZINC	%Wt	P 77 EDTA	0.1070-0.1370	0.026	0.129	0.001

With respect to the other 2 queries, we hereby submit our reply as under:

1. First Line printed on Bucket depicts MRP of Products (Inclusive of Taxes) & Month of Manufacturing. Second Line has internal coding for the batch number. & MRP Lot No. thru which HPCL tracks all manufactured lots.

2. This is to confirm that HPCL is not using any Moldtek Buckets for John Deere packaging. Indeed HPCL is not procuring any buckets from Moldtek since last 18 months.

20. It is clear from the perusal of this report that these products are not manufactured by HPCL and owing to the discrepancies and differences which have been highlighted in the plaint, they clearly appear to be counterfeit products.

21. Considering the nature of the product i.e. engine oil, which is used in automobiles, the safety and security of the customers who are using these products is a matter of concern to the Court. The reputation of the Plaintiffs' marks is also very well-established, their marks having been recognized as well-known marks. The Defendants obviously cannot be permitted to sell these counterfeit products using the 'JOHN DEERE' mark, leaping deer logo, 'TORQ-GARD' mark and/or the Plaintiffs' trade dress, either

physically or through any online platform. Moreover, Defendant No.1 has, after being served and having filed the written statement which lacks in defence, neither appeared nor raised any plausible defence in the matter. No reply to the application seeking summary judgment has been filed either. Defendant No.2 has also filed an affidavit undertaking not to sell the impugned products. It is also clear to this Court that the Defendants have no real prospect of successfully defending the claim, owing to the contents in the written statement and fact that Defendant No.1 has already been proceeded *ex-parte*. There is no compelling reason for keeping the suit pending in this matter. Accordingly, the application for summary judgment deserves to be allowed.

22. The said application seeks the following reliefs:

“In light of the foregoing, it is humbly prayed that this Hon'ble Court may be pleased to:

- a) Pass a summary judgment in favour of the Plaintiffs in the present suit in CS. (COMM No. 498 OF 2021*
- b) A decree for permanent injunction be passed in favour of the Plaintiffs, in terms of Prayer Clause 85 (i) to (vi) of the Plaint;*
- c) Any such order as this Hon'ble may deem fit and proper in the facts and circumstances of the present case.”*

23. Ld. counsel for the Plaintiffs submits that he does not press for the relief of damages, however he prays for the relief of actual costs. In this regard, reliance is also placed on the judgment of a Ld. Single Judge of this Court in ***EBAY Inc. v. Mohd. Waseem T/AS Shopibay & Ors. [CS(COMM) 466/2019, decision dated 17th November, 2022]***. By the said decision, the Court granted damages and actual costs in the suit, when the defendants did

not enter appearance despite having knowledge of the suit. The relevant portion of the said judgment reads as under:

*“30. As far as the relief of damages and rendition of accounts is concerned, this Court in **Intel Corporation v. Dinakaran Nair & Ors.**, 2006 SCC OnLine Del 459 has held as under:*

*“13. The only other question to be examined is the claim of damages of Rs. 20 lakh made in para 48(iii) (repeated) of the plaint. In this behalf, learned Counsel has relied upon the judgments of this Court in *Relaxo Rubber Limited v. Selection Footwear*, 1999 PTC (19) 578; *Hindustan Machines v. Royal Electrical Appliances*, 1999 PTC (19) 685; and CS (OS) 2711/1999, *L.T. Overseas Ltd. v. Guruji Trading Co.*, 123 (2005) DLT 503 decided on 7.9.2003. In all these cases, damages of Rs. 3 lakh were awarded in favour of the plaintiff. In *Time Incorporated v. Lokesh Srivastava*, 2005 (30) PTC 3 (Del) apart from compensatory damages even punitive damages were awarded to discourage and dishearten law breakers who indulge in violation with impunity. In a recent judgment in *Hero Honda Motors Ltd. v. Shree Assuramji Scooters*, 125 (2005) DLT 504 this Court has taken the view that damages in such a case should be awarded against defendants who chose to stay away from proceedings of the Court and they should not be permitted to enjoy the benefits of evasion of Court proceedings. The rationale for the same is that while defendants who appear in Court may be burdened with damages while defendants who chose to stay away from the Court would escape such damages. The actions of the defendants result in affecting the reputation of the plaintiff and every endeavour should be made for a larger public purpose to discourage such parties from indulging in acts of deception.*

*14. A further aspect which has been emphasised in *Time Incorporated* case (supra) is also material that the object is also to relieve pressure on the*

overloaded system of criminal justice by providing civil alternative to criminal prosecution of minor crimes. The result of the actions of defendants is that plaintiffs, instead of putting its energy for expansion of its business and sale of products, has to use its resources to be spread over a number of litigations to bring to book the offending traders in the market. Both these aspects have also been discussed in CS(OS) No. 1182/2005 titled Asian Paints (India) Ltd. v. Balaji Paints and Chemicals decided on 10.3.2006. In view of the aforesaid, I am of the considered view that the plaintiff would also be entitled to damages which are quantified at Rs. 3 lakh.”

31. In the case of *Hindustan Lever Ltd. and Anr. V. Satish Kumar*, 2012 SCC OnLine Del 1378, this Court again held as under that:

“23. One of the reasons for granting relief of punitive damages is that despite of service of summons/notice, the defendant had chosen not to appear before the court. It shows that the defendant is aware of the illegal activities otherwise, he ought to have attended the proceedings and give justification for the said illegal acts. Since, the defendant has maintained silence, therefore, the guilt of the defendant speaks for itself and the court, under these circumstances, feels that in order to avoid future infringement, relief of punitive

33. Damages is to be granted in favour of the plaintiff.”

32. Applying the above principles and taking into account that the defendants first chose not to reply to the cease-and-desist notices sent by the counsel of the plaintiff but expanded the scope of their commercial activity from the e-commerce space to brick-and-mortar stores; the defendants have in the meantime failed to appear before this Court, the plaintiff is entitled to damages of a sum of Rs. 2 Lakh (Rupees Two Lakh only) in addition to the costs of the Suit.

33. The learned counsel for the plaintiff has filed her

Bills of Costs, which I find to be reasonable. The plaintiff shall be entitled to a decree to the said sum as well.”

24. Under the facts and circumstances and discussed law, the suit is decreed against the Defendant No.1 -Mr. Jitender Kumar Gaur, proprietor of M/s. Ansh Enterprises and anyone else acting on his behalf in terms of paragraph 85(i) of the prayer clause of the plaint. Additionally, the cost statement has been annexed to the application for summary judgment, which shows that the Plaintiff has incurred a total cost of Rs.9,28,978/-. Considering that these are counterfeit engine oil products depicting Plaintiffs' mark and even damages have been awarded in previous cases where *ex-parte* decisions are rendered, actual costs of Rs.9,28,978/- are awarded in favour of the Plaintiffs.

25. In addition the suit is decreed *qua* Defendant No.2 in terms of paragraphs 85 (i) of the prayer clause. The said defendant shall be bound by the undertakings and assurances given in the affidavit extracted above.

26. The suit is decreed in these terms. Decree sheet be drawn accordingly.

27. All pending applications are disposed of.

PRATHIBA M. SINGH, J.

NOVEMBER 23, 2022/dk/ms/sk