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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(COMM) 318/2023, I.A. 9634/2023 & I.A. 24568/2023**
JOCKEY INTERNATIONAL INC Plaintiff

Through: Mr. Saif Khan, Mr. Prajwal
Kushwaha and Mr. Parveen Thakur,
Advs.

versus

M/S KHALSA ACCESSORIES & ORS. Defendants

Through: Mr. Abhishek Sharma, Adv. for D-1
to 7.

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

ORDER
25.04.2024

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I.A. 24568/2023 (under Order VIII Rule 10, CPC seeking judgment and decree due to parties failing to file the Written Statement)

1. This application has been filed under Order VIII Rule 10 of the Code of Civil Procedure, 1908 (“CPC”) seeking a decree in view of the fact that none of the defendants have filed their written statements and their right to file was closed by order dated 01st December, 2023. An *ex parte ad interim* injunction was granted in favour of the plaintiff by this Court on 18th May, 2023 in the following terms:



27. Accordingly, till the next date of hearing, Defendants 1 to 7 as well as all others acting on their behalf shall stand restrained from using the mark/name JOCKEY, the Jockey swirl logo  and/or any other mark which is identical or deceptively similar to the JOCKEY Trademarks of the plaintiff.

28. Additionally, the said defendants are directed to place on record, on affidavit, accounts of sales and purchases made by them, at present and in the past, using the plaintiff's registered JOCKEY marks as well as the figures of stocks of such goods which are presently lying with them.

2. The facts and circumstances on which the injunction was premised are also narrated in the said order in para 9 – 17, which are provided as under:



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9. By this suit, the plaintiff seeks injunction against use, by the Defendants 1 to 7, of the plaintiff's registered trade mark "JOCKEY" which already stand declared as a well-known trade mark by order dated 13th May 20214 in CS (OS) 253/2012 (*Jockey International Inc. & Anr. v. R. Chandra Mohan & Ors*).

10. The plaintiff claims to be one of the world leaders in the field of hosiery, undergarments and comfort apparel. Manufacture of innerwear under the name JOCKEY is stated to have been commenced, by the plaintiff, in 1934. The plaintiff also claims to have

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obtained its first trade mark registration for the mark JOCKEY in India in 1947.

11. Para 8 of the plaint sets out some of the registrations held by the plaintiff in classes 25 and 35, which are relevant for the present case, thus:

Registration No.	Registration Date	Mark	Class
131017	29/09/1947	<i>Jockey</i>	25
258773	14/08/1969	<i>Jockey</i>	25
684929	30/10/1995	JOCKEY OR NOTHING (with Device)	25
1327826	23/12/2004	JOCKY COMFIES	25
1327827	23/12/2004	JOCKY ELANCE	25
1327829	23/12/2004	JOCKEY GOLD EDITION	25
1344006	11/03/2005	JOCKEY	35
1401671	25/11/2005	 JOCKEY	25
1684809	07/05/2008	 JOCKEY	25
2275648	01/02/2012	JOCKEY	25

12. The plaintiff has also submitted that over the last five years, it has incurred promotional expenditure for its JOCKEY product in India, to the tune of ₹ 400 crores and cumulative sales of JOCKEY products over ₹ 15000 crores.

13. The plaintiff is also the proprietor of the domain names www.jockey.com and www.jockey.in.

14. Defendants 1 to 7 are stated to be making and selling imitation

and inferior quality counterfeit products, similar to those which are being made and sold by the plaintiff i.e., socks, innerwear etc., under the name JOCKEY.



15. The plaint also provides photographs of the products which are being made and sold by the defendants, thus:

Defendant No. 1 - M/s Khalsa Accessories	
Original Style #7036	Counterfeit Style #7036 sold by the Defendant No. 1
	
Stapler Pins are not used for packaging in original packing.	Stapler Pins are used for packaging in fake packing
	
The design of original product has no lines and no Jockey branding on the bottom part of the product.	The design in the counterfeit product is different from the original product.



Defendant No. 2 - M/s K.K. Enterprises	
Original Style #7036	Counterfeit Style #7036 sold by the Defendant No. 2
	
Stapler Pins are not used for packaging in original packing.	Stapler Pins are used for packaging in fake packing

Defendant No. 3 - M/s Mama Bhunja	
Original Style #7036	Counterfeit Style #7036 sold by the Defendant
	

	
No lines and no Jockey branding on the bottom part of the product.	Counterfeit product is different from the original product style.



Defendant No. 4 - M/s Satguru Krupa	
Original Style #7052	Counterfeit Style #7052 sold by the Defendant
 Supter Plus are not used for packaging in original packing	 Supter Plus are used for packaging in counterfeit product
 There is no logo/mark as chest print in the original garment	 Logo/mark as chest print in the counterfeit product

Defendant No. 5 - M/s Gauri Krupa Enterprises	
Original Style #7052	Counterfeit Style #7052 sold by the Defendant
 only 2 pcs packing available	 3 pcs packing in counterfeit product

This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above.

The Order is downloaded from the DHC Server on 01/05/2024 at 12:20:29

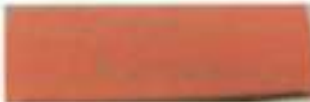
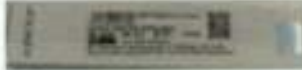


Defendant No. 6 - M/s Arden Garments	
Original Style #7052	Counterfeit Style #7052 sold by the Defendant
	
Original packaging	Packaging in a different manner

Defendant No. 7 - M/s Do Bharyon Ki Dukan	
Original Style #FP01FC	Counterfeit Style : # FP01FC sold by the Defendant

	
#FP01FC style the model is wearing blue garment on the original packaging.	A different model is wearing black garments on the counterfeit
	



The original packaging with original font and size	Counterfeit has different font face and size, and incomplete style code.
	
Complete code written on the sticker	Different fonts on the size label and the style code is incomplete.
	
Accurate addresses of social media handles of Jockey	The bottom side of the packet uses incorrect font sizes and inaccurate addresses of social media handles of Jockey.
	
The side view of the original product has Jockey branding and complete style code.	wrong image on the side view and incomplete style code.
	
All details on the label with scannable QR Code	The label is incomplete without a QR Code and a fake hologram is used.

16. The sale of counterfeit products using the plaintiff's registered trade mark, it is submitted, has resulted in tremendous loss of goodwill and reputation to the plaintiff. These activities also compromise the integrity of the plaintiff's brand and may result in customers being duped into purchasing sub-standard goods.

17. It is in these circumstances that the plaintiff has filed the present suit, seeking a permanent injunction against the defendants from dealing in products using the mark/name JOCKEY, registered in CS(COMM) 318/2023



favour of the plaintiff and declared as a well-known trade made within the meaning of Section 2(1)(zg) of the Trademarks Act 1999.

3. The Court has perused the same, as well as, the pleadings and documents on record.

4. Counsel for defendant Nos.1 to 7 appears through VC and state, on instructions, that the defendants are collectively willing to pay an amount of Rs.2.5 Lacs towards costs and damages to the plaintiff.

5. Mr. Khan, counsel for the plaintiff, points out to the Local Commissioner's report and to the seizures which were made during the execution of the Commission.

6. Taking note of these submissions and in view of the following decisions on aspects that need to be taken into account in respect of costs and damages viz. *Koninlijke Philips N.V. v. Amazestore*, 2019 SCC OnLine Del 8198 as also in the decision in *Inter Ikea Systems BV v. Sham Murari*, 2018 SCC OnLine Del 11221.

7. In *Koninlijke Phillips* (*supra*), this Court has stated as under:

“41. Keeping in view the aforesaid, this Court is of the view that the rule of thumb that should be followed while granting damages can be summarised in a chart as under:—

#	<i>Degree of mala fide conduct</i>	<i>Proportionate award</i>
(i)	<i>First-time innocent infringer</i>	<i>Injunction</i>
(ii)	<i>First-time knowing infringer</i>	<i>Injunction + Partial Costs</i>



(iii)	<i>Repeated knowing infringer which causes minor impact to the Plaintiff</i>	<i>Injunction + Costs + Partial damages</i>
(iv)	<i>Repeated knowing infringer which causes major impact to the Plaintiff</i>	<i>Injunction + Costs + Compensatory damages.</i>
(v)	<i>Infringement which was deliberate and calculated (Gangster/scam/mafia) + wilful contempt of court.</i>	<i>Injunction + Costs + Aggravated damages (Compensatory + additional damages)</i>

42. It is clarified that the above chart is illustrative and is not to be read as a statutory provision. The Courts are free to deviate from the same for good reason.”

The said decision was cited with approval also in ***Puma SE v. Ashok Kumar*** 2023 SCC OnLine Del 6764.

8. In ***Inter Ikea Systems BV*** (supra), the issue of damages has been dealt with *inter alia* in para 20 wherein reference to ***Hindustan Unilever Limited v. Reckitt Benckiser India Limited***, ILR (2014) 2 Del 1288 was made. It has been noted that the Courts have upheld the procedure of using rough and ready calculation for award of damages.

9. In view of these facts and circumstances, it would be appropriate that the defendant Nos.1 to 7 will pay an amount of Rs.2.5 Lacs to counsel for the plaintiff within the next four weeks, and a decree be passed in terms of Prayer contained in paras 46 (a) – (d), which are as under:



- a) An order for permanent injunction restraining the Defendants Nos. 1 to 7, their principal officers, proprietor/partners, servants, agents, their affiliates, subsidiaries, distributors, and all others acting for and on their behalf from using the name/mark JOCKEY and/or any other mark which is identical or deceptively similar to the JOCKEY Trademarks of the Plaintiff, including as part of packaging material, raw material, tags, domain, email ID, business papers, listing products on e-commerce marketplaces or in any manner in the course of trade, leading to infringement of the Plaintiff's registered trademark JOCKEY.



b) An order for permanent injunction restraining the Defendants Nos. 1 to 7 their principal officers, proprietor/partners, servants, agents, their affiliates, subsidiaries, distributors, and all others acting for and on their behalf from using the name/mark JOCKEY and/or any other mark which is identical or deceptively similar to the trademark JOCKEY of the Plaintiff or doing any act representing an association of the Defendants with the Plaintiff thereby leading to passing off;

c) An order for permanent injunction restraining the Defendants Nos. 1 to 7 their principal officers, proprietor/partners, servants, agents, their affiliates, subsidiaries, distributors, and all others acting for and on their behalf from using the name/mark JOCKEY and/or any other mark which is identical or deceptively similar to the trademark JOCKEY of the Plaintiff in any manner and for any



goods and services leading to unfair competition, tarnishment and dilution of the Plaintiff's trademark JOCKEY;

d) An order for permanent injunction restraining the Defendants Nos. 1 to 7 their principal officers, proprietor/partners, servants, agents, their affiliates, subsidiaries, distributors, and all others acting for and on their behalf from reproducing any JOCKEY copyright work without authorization from the Plaintiff leading to infringement of Copyright;

10. Decree-sheet be drawn up accordingly.
11. Considering the settlement arrived at between the parties, early on the suit proceedings, the plaintiff is entitled to 100% refund of the Court Fees.
12. Registry is directed accordingly.
13. The goods were sized by the Local Commissioner and deposited in *superdari* with the defendants.
14. The said goods be handed over to the Authorized Representative of the plaintiff/company along with their counsel on or before 30th April, 2024.
15. The plaintiff will be entitled to modify/remove the labels on the said products and has volunteered to donate to an NGO. The same may be donated to **Sapna Anandam NGO**, B-80, B-Block, Sector 31, Noida, U.P. - 201301 (Registered Address: Flat No. 8086, Pocket D-8, Vasant Kunj, New Delhi-110070; Contact details: <https://sapnaindia.org/contact-us/>).
16. Suit is disposed of. Pending applications, if any, also stand disposed of as being rendered infructuous.



17. Order be uploaded on the website of this Court.

ANISH DAYAL, J

APRIL 25, 2024/MK/ig