



\$~22

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

%

Date of Decision: 19.09.2024+ **CS(COMM) 666/2022 & I.A. 15685/2022****JK CEMENT LIMITED****.....Plaintiff**

Through: Mr. Prakhar Sharma and Ms. Piya
Uppal, Advs.
M: 9868206903

versus

ANKUR AGARWAL & ORS.**.....Defendants**

Through: None

CORAM:**HON'BLE MS. JUSTICE MINI PUSHKARNA****MINI PUSHKARNA, J (ORAL)**

1. None has appeared for the defendants. It is noted that defendant nos. 1 and 2 had put in appearance, after service. However, no written statement has been filed on their behalf. Defendant no. 3 was also served, as recorded in the order dated 16th February, 2024. However, none appeared for defendant no. 3, despite service and no written statement came to be filed on behalf of defendant no. 3 also. The rights of defendant nos. 1 and 2 to file their written statement, was closed vide order dated 21st September, 2023. The right of defendant no. 3 to file written statement was closed, vide order dated 8th May, 2024. Thus, no written statement has come to be filed on behalf of the defendants, despite lapse of statutory period. Accordingly, the defendants are proceeded *ex-parte*.

2. The present suit has been filed praying for permanent injunction for restraining the defendants from using, manufacturing or selling under the trademark J&K, trade name Jay Kay Industries and under any trademark/label/packaging/trade dress/trade name, which is identical with or deceptively similar to the plaintiff's trademark/label/packaging/colour



combination/ trade dress/ trade name 'JK' in relation to goods, i.e., cement, wall putty and other allied/cognate goods/business.

3. The facts canvassed in the plaint, are as follows:

3.1 The plaintiff is an affiliate of the multi-disciplinary industrial conglomerate JK organisation, which was founded over hundred years ago, by late Lala Juggilal Singhanian and late Lala Kamalapat Singhanian. The abbreviation 'JK' denotes 'Juggilal Kamalapat'.

3.2 The trademark JK was adopted and has been in use, since the year 1974 for various goods by the plaintiff, including, cement and other goods introduced time to time, such as wall putty, building materials, grey cement, white cement, gypsum plaster, tile adhesive, wood finishes, non-metallic rigid pipes for building, asphalt, pitch, bitumen, etc.

3.3 The plaintiff is associated with JK organisation, which is an eminent industrial group in India. The JK organisation has different companies for different businesses, apart from plaintiff-company. The trademark JK was adopted as a prefix to the names of manufacturing and trading companies of the family more than a century ago. The list of companies under the trademark JK, as given in the plaint, is as follows:

- a) JK Cement Limited
- b) JK Cotton Limited
- c) Jaykay Enterprises Ltd.,
- d) JK Traders Limited,
- e) JK Paints and Pigments Ltd.,
- f) JK Cement (Western) Ltd.,
- g) Jaykaycem (Central) Ltd.,
- h) Jaykaycem (Northern) Ltd.,
- i) Juggilal Kamalapat Holdings Ltd.,



- j) JK Tyre and Industries Ltd.
- k) JK Lakshmi Cement Limited
- l) JK Fenner India Limited
- m) JK Paper Limited
- n) JK Agri Genetics Limited
- o) JK Risk Managers and Insurance Brokers
- p) JK Lakshmipat University

3.4 The plaintiff is the registered proprietor of the trademark JK and its several variants in India. The list of trademark registrations, in favour of the plaintiff, as given in the plaint, is as follows:

S. No.	Registration Nos.	Date of Filing	Class	Trade Mark
01	567436	13-02-1992	19	
02	628123	16-05-1994	19	
03	371194	20.01.1981	19	
04	649263	20-12-1994	19	
05	746483	11-02-1997	19	
06	746484	11-02-1997	19	JK CEMENT Disclaimer on Cement
07	796632	26-03-1998	19	JK SAMRAT
08	796633	26-03-1998	19	
09	851203	13-04-1999	19	



2024:DHC:7282



				No right to the Exclusive use of the all the descriptive materials, the Device & ISI mark
10	873806	30-08-1999	1	 No right to the Exclusive use of Globe" and Expressions Water Proof
11	1018292	19-06-2001	19	
12	1090084	27-03-2002	19	 No right to the Exclusive use of the Device of Picture and word J.K. Cement
13	1124607	07-08-2002	19	 No right to the Exclusive use of the descriptive matter appearing on the label
14	1124608	07-08-2002	19	



2024:DHC:7282



				 No right to the Exclusive use of the numeral 48 and other descriptive features appearing on the label
15	1124609	07-08-2002	19	 No right to the Exclusive use of the numeral 53 and other descriptive features appearing on the label
16	1204126	05-06-2003	19	 No right to the Exclusive use of Words Sarvshaktiman and other descriptive matter appearing on the label
17	1204127	05-06-2003	19	
18	1510269	05-12-2006	19	 No right to the Exclusive use of the word Wall Putty,

Signature Not Verified

Digitally Signed
By: AMAN KUMAR
Signing Date: 20.09.2024
22:03:39

CS(COMM) 666/2022

Page 5 of 22



2024:DHC:7282



				Device of Globe and all descriptive matter appearing on the label
19	1734559	19-09-2008	19	
20	1968195	19-05-2010	19	
21	2010827	18-08-2010	19	 No right to the Exclusive use of the Supreme
22	2378142	13-08-2012	1	
23	2378143	13-08-2012	19	
24	2419769	30-10-2012	19	
25	2557944	02-07-2013	1	
26	2872566	31-12-2014	19	JK Champion Putty



2024:DHC:7282



27	2872567	31-12-2014	19	JK Wall Champ Putty
28	2951595	28-04-2015	19	 White Cement Based Putty
29	2992614	24-06-2015	2	 White Cement Based Wall Finishing
30	2992615	24-06-2015	19	
31	2996104	29-06-2015	19	 White Cement Based Wall Finishing
32	3320836	27-07-2016	19	JK
33	3399720	31-10-2016	19	
34	3399721	31-10-2016	19	JK SUPER CEMENT BUILD SAFE No right to the Exclusive use of

Signature Not Verified

Digitally Signed
By: AMAN KUMAR
Signing Date: 20.09.2024
22:03:39

CS(COMM) 666/2022

Page 7 of 22



2024:DHC:7282



				BUILD SAFE
35	3414649	21-11-2016	19	 Mark be used as a composite mark and there is no Exclusive right over the descriptive words in the logo
36	3509665	17-03-2017	19	JK SÜPER POLLUGÜARD
37	3509663	17-03-2017	19	JK SÜPER PREMIUM*
38	3509664	17-03-2017	19	JK SÜPER DÜRACRETE
39	3532551	24-04-2017	19	JK SÜPER CEMENT BUILD SAFE
40	3524040	11-04-2017	19	JK Super Strong
41	3567281	09-06-2017	19	JK SÜPER STRONG BUILD SAFE
42	3589245	11-07-2017	19	JK PrimaxX White Cement Based Primer
43	3601060	28-07-2017	19	PrimaxX

Signature Not Verified

Digitally Signed
By: AMAN UNIYAL
Signing Date: 20.09.2024
22:03:39

CS(COMM) 666/2022

Page 8 of 22



2024:DHC:7282



44	3888510	16-07-2018	19	JK Cement LTD.
45	3913423	10-08-2018	1	JK SUPER GRIP
46	3936613	06-09-2018	19	JK SUPER STRONG BUILD SAFE CONCRETE SPECIAL
47	3936614	06-09-2018	19	JK Superfine Wall Putty
48	4033639	21-12-2018	19	JK WalmaxX
49	4033640	21-12-2018	19	JK Cement WalmaxX
50	4033641	21-12-2018	19	JK Cement WallmaxX
51	4033643	21-12-2018	19	JK Cement PowermaxX
52	4033644	21-12-2018	19	JK Cement WhitemaxX
53	4033645	21-12-2018	19	JK Cement SUPER Build Safe
54	4033647	21-12-2018	19	JK GypmaxX

Signature Not Verified

Digitally Signed
By: AMAN KUMAR
Signing Date: 20.09.2024
22:03:39

CS(COMM) 666/2022

Page 9 of 22



2024 :DHC :7282



55	4033648	21-12-2018	19	JK PowermaxX
56	4033649	21-12-2018	19	JK WhitemaxX
57	4040073	28-12-2018	19	JK Cement GypsomaxX
58	4040074	28-12-2018	19	JK GypsomaxX
59	4081268	08-02-2019	19	JK CEMENT PrimeMaxX White Cement With Power
60	4081270	08-02-2019	19	JK CEMENT WhiteMaxX Premium White Cement
61	4081271	08-02-2019	19	JK CEMENT GypsoMaxX Premium Gypsum Based
62	4081273	08-02-2019	19	JK CEMENT WallMaxX White Cement With Putty
63	4151332	18-04-2019	1	JK Cement TileMaxX
64	4151333	18-04-2019	1	JK Cement GripMaxX
65	4295820	17-09-2019	19	JK CEMENT LevelMaxX White Cement Based

Signature Not Verified

Digitally Signed
By: AMAN KUMAR
Signing Date: 20.09.2024
22:03:39

CS(COMM) 666/2022

Page 10 of 22



66	4295822	17-09-2019	19	JK CEMENT LevelMaxX Leveling Wall Putty
67	4305506	27-09-2019	19	JK LevelMaxX PLUS - White Cement Based Plaster
68	4305507	27-09-2019	19	JK PlastoMaxX - One Coat Gypsum Plaster
69	4306066	27-09-2019	19	JK CEMENT LevelMaxX White Cement Based Leveller
70	4309368	01-10-2019	19	JK CEMENT LevelMaxX White Cement Based Wall Leveller
71	4387568	24-12-2019	2	JK Paints
72	4496347	06-05-2020	19	JK Cement RepairMaxX
73	4496348	06-05-2020	19	JK Cement LevelMaxX Advanced
74	4496349	06-05-2020	19	JK Cement WallMaxX Advanced
75	4496350	06-05-2020	19	JK CEMENT LevelMaxX Single Coat Wall Plaster
76	4496351	06-05-2020	19	JK CEMENT RepairMaxX Emergency Cement for Cracked & Spalling



2024:DHC:7282



77	4496352	06-05-2020	19	JK CEMENT WallMaxX Super Smooth and Putty
78	4497051	07-05-2020	19	JK Cement WallMaxX Professional Wall Putty
79	4497052	07-05-2020	19	JK CEMENT WallMaxX
80	4542844	24.06.2020	19	JK CEMENT WhiteMaxX White Portland Cement
81	4582950	27.07.2020	19	JK CEMENT GypsoMaxX Premium Gypsum Plaster
82	4582952	27.07.2020	19	JK CEMENT GypsoMaxX Premium Gypsum Plaster
83	4582955	27.07.2020	19	JK CEMENT LevelMaxX
84	4916111	22.03.2021	19	JKcement
85	4916113	22.03.2021	19	JKcement
86	4916114	22.03.2021	19	JKcement
87	4916218	22.03.2021	35	JKcement

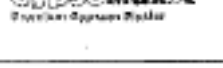
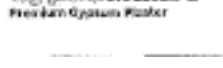
Signature Not Verified

Digitally Signed
By: AMAN UNIYAL
Signing Date: 20.09.2024
22:03:39

CS(COMM) 666/2022

Page 12 of 22



88	4916219	22.03.2021	35	 JKcement
89	4916222	22.03.2021	35	JKcement
90	4916223	22.03.2021	35	JKcement
91	5033070	06.07.2021	19	
92	5033072	06.07.2021	19	
93	5033075	06.07.2021	19	
94	5033077	06.07.2021	19	
95	5033078	06.07.2021	19	
96	5033079	06.07.2021	19	
97	5033080	06.07.2021	19	
98	5033081	06.07.2021	19	



2024:DHC:7282



99	5033164	06.07.2021	19	JKcement LevelMaxX White Cement Based Putty
100	5033165	06.07.2021	19	JKcement LevelMaxX White Cement Based Putty
101	5033166	06.07.2021	19	JKcement LevelMaxX White Cement Based Putty
102	5033167	06.07.2021	19	JKcement LevelMaxX White Cement Based Putty
103	5033168	06.07.2021	19	JKcement PlastoMaxX One Coat Gypsum Plaster
104	5033169	06.07.2021	19	JKcement PlastoMaxX One Coat Gypsum Plaster
105	5033170	06.07.2021	19	JKcement PlastoMaxX One Coat Gypsum Plaster
106	5033171	06.07.2021	19	JKcement PlastoMaxX One Coat Gypsum Plaster
107	5034919	07.07.2021	19	JKcement PrimaMaxX White Cement Based Putty
108	5034920	07.07.2021	19	JKcement PrimaMaxX White Cement Based Putty
109	5034921	07.07.2021	19	JKcement RepairMaxX Heavy Compound for Crack Repair

Signature Not Verified

Digitally Signed
By: AMAN UNIYAL
Signing Date: 20.09.2024
22:03:39

CS(COMM) 666/2022

Page 14 of 22



110	5034923	07.07.2021	19	JACKMART RepairMaxX Emergency repairment for wall and plaster
111	5034930	07.07.2021	19	JACKMART WhiteMaxX White Portland Cement
112	5034931	07.07.2021	19	JACKMART WhiteMaxX White Portland Cement
113	5037563	09.07.2021	19	JACKMART TileMaxX Waterproof adhesive for tiles
114	5037564	09.07.2021	19	JACKMART TileMaxX Waterproof adhesive for tiles
115	5037565	09.07.2021	19	JACKMART TileMaxX Waterproof adhesive for tiles
116	5037566	09.07.2021	19	JACKMART TileMaxX Premium epoxy grout

3.5 By virtue of the excellent quality and extensive sales of the products of the plaintiff, the trademark JK has acquired a handsome and valuable goodwill and reputation. The intending purchasers identify and recognize the products of the plaintiff by the trademark JK.

3.6 On account of continuous, regular, open, extensive and use of the registered trade mark JK and its said variants, label/packaging/artistic work and trade name in respect of its goods and services, the said trade mark JK, its variants, its said label/packaging/artistic work, and trade name, have come to be associated with the name of the plaintiff. People in trade as well as general public consider the said goods under the trade mark JK, its variants and its said label/packaging/artistic work/trade name as the goods manufactured and marketed by the plaintiff and none-else.

3.7 The unwary purchasers recognizes the products, i.e., Cement, White Cement, Wall Putty, Gypsum Plaster, Tile Adhesives, Grouts and Wood



Finishes and many more products of the plaintiff under their respective mark JK and its variants through the trademark as well as through its visual appearance of the label/packaging, original artistic work, colour combination, getup, layout, placement, trade name etc. of the plaintiff.

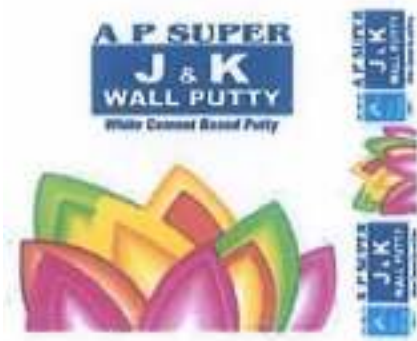
3.8 On 01st September, 2022, the plaintiff from its marketing team through its distributors received complaints of and enquiries about the goods i.e., Cement/Wall Putty being sold by defendant nos. 1 & 2 under the impugned identical/deceptively similar trade mark 'J&K' under impugned deceptively similar label/packaging/colour combination/trade dress over which the name of defendant no. 3 under impugned trade name Jay Kay Industries, is mentioned as manufacturer on the impugned label/packaging and which are being sold by the defendants in clandestine and surreptitious manner without issuing invoice and causing confusion in the markets as to be associated with the plaintiff.

3.9 Further the plaintiff on 09th September 2022 came across the website on which defendant nos. 1 and 2 are soliciting, marketing and selling their impugned goods, i.e., Cement/Wall Putty under the impugned trademark 'J&K' under impugned deceptively similar label/packaging/colour combination/trade dress on website www.ankurpaints.com which is an interactive website of the defendant nos. 1 and 2 connecting buyers and sellers. The defendants are working in connivance and nexus with each other for the manufacturing and sale of the impugned goods under the impugned mark/label/colour combination/trade name.

3.10 A trade mark application, bearing no. 4783607 in Class 19, was filed by defendant nos. 1 & 2 on the 'proposed to be used' basis for registration of



2024:DHC:7282



, in respect of goods, i.e., Wall Putty, Cement, Cement for Building and Plasters. The plaintiff herein filed opposition application, in respect of the said application of the defendants, vide Opposition No. 1103314.

3.11 The defendants are not the proprietor of impugned trade mark 'J&K' and impugned label/packaging/colour combination/trade name, which is deceptively similar to the registered trademark JK, its label/packaging/colour combination/trade name.

3.12 The defendants' dishonest and malafide intentions are further apparent and evident from the fact that in order to come as close as possible to the trademark JK of the plaintiff and create complete deception and association with the plaintiff's goods and business, the defendants have also adopted the impugned deceptively similar label/packaging/colour combination, as well as impugned trade name Jay Kay Industries. Hence, the present suit has been filed.

4. This Court notes that despite service, no written statement has been filed on behalf of the defendants. The statutory period for filing the written statement is already over. No plausible defence has come on record on behalf of the defendants. Thus, this Court has proceeded to hear the matter.

5. At the outset, this Court notes the comparison between the two packaging/label of the plaintiff as well as the defendants, which is as follows:



Plaintiff's Trade Mark/Label	Defendant's Trade Mark/Label

6. It is noted that on a plain comparison of the products of the plaintiff and defendants, it is evident that the defendants have adopted the trademark 'J&K', and trade name Jay Kay Industries, which is identical/deceptively similar to the label/trade name/package/colour combination/trade dress of the plaintiff. Such deceptive similarity is likely to deceive the public into purchasing the defendants' products, under the impression that it is emanating from the plaintiff's source. Thus, the malafide and dishonest intention of the defendants, to ride upon the goodwill and reputation of the plaintiff, is apparent.

7. Thus, the defendants are guilty of violating the statutory as well as common law rights of the plaintiff, by subsequently using impugned identical/deceptively similar trade mark, impugned identical/deceptively similar label/package/colour combination/trade dress/trade name, in relation to the same, cognate and allied goods.



2024:DHC:7282



8. This Court also notes that the defendants had filed application for registration of their trademark device with the Trademark Registry, with the user detail as 'proposed to be used'. The said application has since been abandoned. The status of the application of the defendant, showing the same as abandoned, is reproduced as under:

1000 22672 19/09

(NOTE FOR LEGAL USE)

Avail Date : 18/09/2024
Status : Abandoned [View Examination Report](#)

TM Application No.	4241607
Class	19
Date of Application	16/12/2010
Appropriate Office	DELHI
State	UTTAR PRADESH
Country	India
Filing Mode	e-Filing
TM Applied For	AP SUPER J & K WALLPUTTY WHITE CEMENT BASED PUTTY (WITH DEVICE)
TM Category	TRADE MARK
Trade Mark Type	DEVICE
User Detail	Proposed to be used
Certificate Detail	
Valid upto/ Renewed upto	
Proprietor name	1) ANKUR AGARWAL Single Firm
Proprietor Address	6-3 PARSARHERA, INDUSTRIAL AREA, BAREILLY- 243502, UTTAR PRADESH, INDIA
Email Id	****aag@gmail.com
Attorney name	PRITYA CONSULTANCY & REGISTRATION CO (P) LTD
Attorney Address	B-1, NO-87, KAILASH PARK, ARTSILA, MOHAN NAGAR, GHAZIABAD, U.P.
Goods & Service Details	(CLASS : 19) WALL PUTTY, CEMENT, CEMENT FOR BUILDING, PLASTERS
Associated Trademarks	3521274
Publication Details	Published in Journal No : 1981-0 Dated : 04/01/2011

Trade Mark Image (1)

PRINT

PR Details | Correspondence & Notices | Uploaded Documents | EXT

WARNING: PLEASE NOTE: THE DATA OF TRADE MARKS REGISTRY IS UNDER THE PROCESS OF DIGITIZATION. IF ANY DISCREPANCY IS OBSERVED IN THE DATA PLEASE CONTACT OR SURELY AS APPROPRIATE TRADE MARKS REGISTRY ALONG WITH A PROOFING.





9. Considering that no written statement has been filed on behalf of the defendants, despite lapse of statutory period, this Court exercises its authority under Order VIII Rule 10 of the Code of Civil Procedure, 1908 (“CPC”).

10. A Coordinate Bench of this Court in the case of *The Christian Broadcasting Network, INC Versus CBN News Private Limited, 2018 SCC OnLine Del 11666*, has propounded the scope of Order VIII Rule 10 CPC in relation to commercial suits, the relevant portion of which, reads as under:

“xxx xxx xxx

13. The scope of Order 8 Rule 10 CPC in commercial suits particularly under the New Commercial Courts, Commercial Division and Commercial Appellate Division of the High Court Act, 2015 has being examined by this court in Nirog Pharma Pvt. Ltd. v. Umesh Gupta, (2016) 235 DLT 354. This court held as follows:

“11. Order VIII Rule 10 has been inserted by the legislature to expedite the process of justice. The courts can invoke its provisions to curb dilatory tactic, often resorted to by defendants, by not filing the written statement by pronouncing judgment against it. At the same time, the courts must be cautious and judge the contents of the plaint and documents on record as being of an unimpeachable character, not requiring any evidence to be led to prove its contents.

.....

28. The present suit is also a commercial suit within the definition of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 and it was the clear intention of the legislature that such cases should be decided expeditiously and should not be allowed to linger on. Accordingly, if the defendant fails to pursue his case or does so in a lackadaisical manner by not filing his written statement, the courts should invoke the provisions of Order VIII Rule 10 to decree such cases.”

14. In my view, it is a suitable case to pass a decree under Order 8 Rule 10 CPC in favour of the plaintiff and against the defendant.

xxx xxx xxx”

(Emphasis Supplied)



2024:DHC:7282



11. Accordingly, it is directed as follows:
 - I. Suit is decreed in favour of the plaintiff and against the defendants, in terms of prayer clauses (a) to (e) of Para 50 of the plaint.
 - II. Plaintiff is entitled to costs of ₹ 1.5 lacs, payable by defendant no. 1.
12. Decree sheet be drawn up.
13. The present suit, along with the pending application is accordingly disposed of.

MINI PUSHKARNA, J

SEPTEMBER 19, 2024
Ak/kr