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

+ **CS(COMM) 606/2021**

EXXON MOBIL CORPORATION

..... Plaintiff

Through: Mr. Zeeshan Khan and Mr. Sharika
Vijh, Advocates.

versus

M/S BIKE ZONE / SIDDHIVINAYAK AUTOLINE & ORS.

..... Defendants

Through: Mr. Ankur Gupta, Advocate through
VC for D-1 & 2.

CORAM:

HON'BLE MR. JUSTICE ANISH DAYAL

ORDER
07.05.2024

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1. Pursuant to the previous order dated 11th January, 2024, Court had heard plaintiff and defendant no.1 and 2.
2. Counsel for defendants states on instructions that they are ready to suffer permanent injunction since they had not been suppliers of the alleged counterfeit products, and they are not in a position to pay the costs, as is being claimed by plaintiff.
3. Counsel for defendants also draws attention to the fact that Local Commissioner which had inspected the premises of defendant no.1 reported that no counterfeit goods were found, even though, counsel for plaintiff states that there was a hoarding which was outside defendant no. 1's shop, and on that basis, it is stated that the product was being sold.



4. As regards defendant no.2, the Local Commissioner report states that 40 bottles were found, however, counsel for defendant nos. 1 and 2 points out to the written statement that GST invoices have been placed on record stating that the products were sourced from Pooja Sales.

5. The Court has perused the said invoices. Defendant no. 3 has been proceeded *ex-parte*.

6. It is noted that *ex-parte ad interim* injunction was granted on 26th November, 2021 and subsequently made absolute on 01st March, 2023 pending disposal of the present suit.

7. In these circumstances, the suit is decreed in terms of prayer in para 38 (i) of the plaint, which is extracted as under:

I. A decree of permanent injunction against the Defendants from manufacturing, wholesaling and/or retailing counterfeit MOBIL / MOBIL SUPER MOTO /  products which would amount to infringement of the Plaintiff's registered trademarks and/or passing off of the Defendants goods as that of the Plaintiff.

8. This Court has taken note of the above submissions, especially in light 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.

9. 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.”*

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

11. In view of the same, costs of Rs. 25,000/- [*Rupees Twenty-Five Thousand only*] to be paid by defendant n. 2, which may be deposited in Delhi High Court Lawyers Welfare Fund; the same to be done within a period of four



weeks from today.

12. Decree sheet be drawn up accordingly.

13. Suit is therefore disposed of in the above terms. Pending applications, if any, are rendered infructuous.

14. The good which were seized and deposited under *superdari* be released to the plaintiff through their representative/counsel by the defendants in presence of their counsel, on an agreed date.

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

ANISH DAYAL, J

MAY 7, 2024/RK/sc