



2025:DHC:1670



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(COMM) 433/2024 & I.A. 30284/2024, I.A. 35522/2024, I.A. 46699/2024**
HIMALAYA GLOBAL HOLDINGS LTD. & ANR.Plaintiffs

Through: Mr. Vishal Nagpal, Ms. Suhrita Majumdar and Mr. Debjyoti Sarkar,
Advocates
Mob: 9810228369

versus

RAJASTHAN AUSHDHALAYA PRIVATE LIMITED & ANR.
.....Defendants

Through: Ms. Maheravish Rein, Advocate with
Ms. Shamsravish Rein, Mr. Aldanish Rein and Mr. Ankush Kalra,
Advocates
Mob: 9899210868
Email: shamsravish@gmail.com

CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA

% **ORDER**
25.02.2025

MINI PUSHKARNA, J (ORAL)

I.A. 46699/2024 (Application under Order VIII Rule 10 read with Section 151 CPC)

1. The present suit has been filed seeking permanent injunction restraining infringement of plaintiffs' trademarks and logo, 'Liv.52' and



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‘Himalaya’ against defendants’ use of the infringing marks,



‘Liv-333’ and ‘Rajasthan’, along with other incidental reliefs.

2. The present application under Order VIII Rule 10, read with Section 151 of the Code of Civil Procedure, 1908 (“CPC”), has been filed on behalf of the plaintiffs, seeking pronouncement of judgment against the defendants pursuant to closure of the defendants’ right to file written statement.

3. The case set up by the plaintiffs, is as follows:

3.1 The plaintiffs are a leading global herbal health and personal care organization founded in the year 1930 that deals in several well-known products and brands like Liv.52 under their reputed trademark HIMALAYA.



3.2 The fanciful HIMALAYA logo, was conceived, developed and adopted by the plaintiffs in the year 2001. The plaintiffs are the registered proprietors of the HIMALAYA trademarks and logos, the details of which, as given in the plaint, are reproduced as under:



Sl. No.	Trade Mark Application No. & Class	Trade Mark	Date of Application	Status
1.	1041625 in Class 30		03.09.2001	Registered
2.	2591096 in Classes 3, 5, 16 & 30		04.09.2013	Registered
3.	2967466 in Class 3		18.05.2015	Registered
4.	2967467 in Class 5		18.05.2015	Registered
5.	2967469 in Class 30		18.05.2015	Registered
6.	3319631 in Class 5		26.07.2016	Registered
7.	3319633 in Class 30		26.07.2016	Registered
8.	4123351 in Class 44		20.03.2019	Registered

3.3 The aforesaid HIMALAYA logos have become iconic in consumer consciousness and have garnered significant reputation and goodwill from their long, extensive and continuous use. Further, the plaintiffs have also



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obtained copyright registrations in their HIMALAYA marks, the details of which, as provided in the plaint, are reproduced as under:

Copyright Registration No.	Artistic Work
A-63897/2003	
A-63899/2003	
A-124891/2018	

3.4 The plaintiffs' product under the mark 'Liv.52', is a natural remedy for improving liver function, which was adopted by the predecessors-in-interest of the plaintiffs in the year 1955, and has been in open, continuous and extensive use ever since. The said product is sold under the HIMALAYA trademark and is available in the market in different variations such as Liv.52 Syrup, Liv.52 DS Syrup, Liv.52 Tablets, Liv.52 DS Tablets, Liv.52 Drops, Liv.52 HB Capsules, Liv.52 Protec Liquid, Liv.52 Protec-PPS, Liv.52 Pet Liquid, Liv.52 Vet, Liv.52 Protec Poultry, Liv.52 Protec, Liv.52 Furglow Liquid, etc.

3.5 The infringing goods bearing the impugned marks Liv-333 and



are manufactured by defendant no.2 which are then marketed and sold by defendant no. 1. Further, in January, 2024, the plaintiffs came across several listings for the goods, 'capsules and tonic'



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under the infringing Liv-333 mark and RAJASTHAN logo on various e-commerce websites such as Amazon, Flipkart, JioMart, IndiaMart, etc.

3.6 Upon conducting online searches, the plaintiffs came across an invoice of the defendants dated 23rd April, 2015, which purportedly showed commercial use of the Liv-333 mark. A copy of the said invoice, as filed with the suit documents, is reproduced as under:

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RETAIL INVOICE

Original - Company's Copy

Rajasthan Herbs International Ayurveda Park Road, Wardhara, Jaipur (Rajasthan) Pho. 01592-250731/250740 www.rajasthanherbsinternational.com	Invoice No. 09 Delivery Mode Supplier's Ref Buyer's Order No. Despatch Document No. Despatch Through Terminal Delivery	Date: 23.04.2015 Card No. Other Reference (s) Dated: Dated: Dated:
Buyer: Rajasthan Herbal Products Pvt. Ltd. Derwaha Road, JPN (Raj.)	TERMS OF PAYMENT: 30 Days	
SCHEME:		
BUY ONE GET ONE FREE		
Description of Goods	Batch No.	Quantity Rate Amount
DANABUTI CHURNA 135GM	RAC138	800 38 25,600.00
DANABUTI CHURNA 135GM	RAC139	400 32 12,800.00
DANABUTI CHURNA 135GM	RAC140	455 27 12,285.00
DANABUTI CHURNA 135GM	RAC141	175 26 4,550.00
DANABUTI CHURNA 135GM	RAC142	250 82 20,500.00
DANABUTI CHURNA 135GM	RAC143	160 118 18,880.00
DANABUTI CHURNA 135GM	RAC144	160 115 18,400.00
DANABUTI CHURNA 135GM	RAC145	195 50 9,750.00
DANABUTI CHURNA 135GM	RAC146	120 52 6,240.00
DANABUTI CHURNA 135GM	RAC147	41 45 1,845.00
DANABUTI CHURNA 135GM	RAC148	700 35 24,500.00
DANABUTI CHURNA 135GM	RAC149	85 68 5,780.00
DANABUTI CHURNA 135GM	RAC150	144 65 9,360.00
DANABUTI CHURNA 135GM	RAC151	81 65 5,265.00
DANABUTI CHURNA 135GM	RAC152	167 30 5,010.00
DANABUTI CHURNA 135GM	RAC153	200 27 5,400.00
DANABUTI CHURNA 135GM	RAC154	440 25 11,000.00
DANABUTI CHURNA 135GM	RAC155	400 82 32,800.00
DANABUTI CHURNA 135GM	RAC156	150 60 9,000.00
DANABUTI CHURNA 135GM	RAC157	43 313 13,459.00
DANABUTI CHURNA 135GM	RAC158	48 32 1,536.00
DANABUTI CHURNA 135GM	RAC159	90 30 2,700.00
DANABUTI CHURNA 135GM	RAC160	56 36 2,016.00
Total		389,312.00
Discount 50%		194,656.00
Net 25%		291,656.00
NET TOTAL		162,336.00
IN R.O.B.		
Amount in Words: ONE LAKH TWO THOUSAND THREE HUNDRED THIRTY SIX AND SIX Paise ONLY		
Company's VAT TIN: 00573515674		
Supplier's VAT TIN / Sales Tax No.: 03411509901		
For Rajasthan Herbs International		
Authorized signature		

Signature Not Verified

Digitally Signed
By: AMAN UNYAL
Signing Date: 13.03.2025
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3.7 The plaintiffs sent a cease-and-desist notice dated 17th January, 2024, calling upon the defendant no. 1 to cease use of the infringing mark. Despite receipt of the said cease-and-desist notice, the said defendant failed to tender any response or stop the user of the impugned marks, constraining the plaintiffs to approach this Court by way of the present suit.

4. This Court notes that an *ex-parte ad-interim* injunction is in operation against the defendants in terms the order dated 24th May, 2024, whereby, the defendants were restrained from dealing in goods and packaging bearing the infringing mark 'Liv-333', and/or any other mark which is identical and/or deceptively similar to plaintiffs' registered mark 'Liv.52'.

5. This Court further notes that the right of the defendants to file written statement has already been closed by this Court *vide* order dated 23rd January, 2025. Though, learned counsel appearing for the defendants submits that written statement was filed on their behalf on 2nd August, 2024, however, it is to be noted that there is no such written statement which is on record before this Court.

6. Further, this Court also notes that neither any appeal has been filed against the order dated 23rd January, 2025, when the right to file written statement of the defendants was closed, nor any steps have been taken by the defendants to bring their written statement on record.

7. In the absence of any written statement on record, and the right of the defendants to file written statement having already been closed *vide* order dated 23rd January, 2025, there is no impediment in proceeding under Order VIII Rule 10 CPC.

8. Learned counsel appearing for the plaintiffs has drawn the attention of this Court to the documents filed with the suit pertaining to listings of the



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defendants' impugned products on various e-commerce websites, such as, Flipkart, Amazon, JioMart, IndiaMart, etc., which are reproduced as under:

5/8/24, 4:00 PM RAJASTHAN HERBALS Liv 333 Syrup (Herbal Liver Tonic) Price in India - Buy RAJASTHAN HERBALS Liv 333 Syrup (Herbal Liver Tonic) 653

Flipkart
Discover the possibilities of modern commerce

Log in | Become a Seller | More | Cart

Electronics | TVs & Appliances | Men | Women | Baby & Kids | Home & Furniture | Sports, Books & more | Health | Offer Zone

Home > Health Care > Home Remedies > Liver Care > Syrup > RAJASTHAN HERBALS Liv 333 Syrup (Herbal Liver Tonic) (Pack of 2)

RAJASTHAN HERBALS Liv 333 Syrup (Herbal Liver Tonic) (Pack of 2)
100 ml (2 x 50 ml)

₹391 ₹499 (10% off)

Sold Out
This item is currently out of stock.

Quantity: 100 ml

Highlights:

- Quantity: 100 ml
- Pack of 2
- For Liver
- Apex (Export) Number: BTL-200
- Therapeutic: Blood Purifier

Seller: Indira Health 10.8 [View seller's profile](#)

Free delivery. Cash on delivery available. [View details](#)

Super Coin Get more rewards with Super Coins

Specifications

Brand	RAJASTHAN HERBALS
Model Name	Liv 333 Syrup (Herbal Liver Tonic)
Apex License Number	BTL-200
Treatment	Liver Disorders
Quantity	100 ml
Total Packets	100 ml
Form	Syrup
Strength	2
Prescription Required	No
Net Quantity	100 ml

View details, Packaging and Import Info

<https://www.flipkart.com/rajasthan-herbals-liv-333-syrup-herbal-liver-tonic/p/itm5816538c50c?pid=AYU9BUZAUZFPTX888-L8LW9BUZAUZF&...> 102

Signature Not Verified

Digitally Signed
By: AMAN UNIYAL
Signing Date: 13.03.2025
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Liv 333 Syrup, Rajasthan Aushdhalaya Pvt Ltd, Bottle at Rs 200/Bottle in Mumbai

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indiamart [VAT India](#) [Free Product Catalogue](#) [Search](#) [Get Latest Price](#)

[Add to Cart](#) [Compare](#) [Wishlist](#) [My Profile](#) [My Orders](#) [My Cart](#) [My Wishlist](#) [My Compare](#) [My Orders](#) [My Cart](#) [My Wishlist](#) [My Compare](#)

[Liv 333 Syrup, Rajasthan Aushdhalaya Pvt Ltd, Bottle at Rs 200/Bottle in Mumbai](#)

Liv 333 Syrup, Rajasthan Aushdhalaya Pvt Ltd, Bottle

₹ 200/ Bottle [Get Latest Price](#)

Manufacturer	RAJASTHAN AUSHDHALAYA PVT LTD
Brand	RAJASTHAN AUSHDHALAYA PVT LTD
Packaging Size	100ml
Prescription	Non-prescription
Indication	General remedy for liver disorder
Contraindication	None
Storage	Store in a cool, dry place

[View More Photos](#) [View Details](#)

Get Latest Price
Request a quote

Rajasthan Aushdhalaya Private Limited

[Request a quote](#) [View Details](#) [Contact Supplier](#)

Find products similar to Liv 333 Syrup, Rajasthan Aushdhalaya Pvt Ltd, Bottle near Mumbai

Liv 333 Syrup, Rajasthan Aushdhalaya Pvt Ltd, Bottle	Liv 333 Syrup, Rajasthan Aushdhalaya Pvt Ltd, Bottle	Liv 333 Syrup, Rajasthan Aushdhalaya Pvt Ltd, Bottle	Liv 333 Syrup, Rajasthan Aushdhalaya Pvt Ltd, Bottle	Liv 333 Syrup, Rajasthan Aushdhalaya Pvt Ltd, Bottle
View Details	View Details	View Details	View Details	View Details
₹ 65/ Bottle	₹ 200/ Bottle	Ask Price	₹ 240/ Bottle	₹ 275/ Bottle

<https://www.indiamart.com/product/liv-333-syrup-23863789762.html>

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Signature Not Verified

Digitally Signed
By: AMAN UNIYAL
Signing Date: 13.03.2025
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SKIN MAGAZINE 00328.343 DA A/TM/IN/MDIO 000008L



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5/1/24, 4:07 PM

Buy Rajasthan Herbs Liv 333 Syrup 180ml | ShopHealthy.in

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New Customers get Rs.1000 Extra Cash Credit with Coupon Code NEW1000. New Users get Rs.200 Extra Cash Credit with Coupon Code NEW200.

Home | Contact Us | Sell Contact Us | Shop Healthy

WhatsApp | Login | Register | Order History | Wish List

Search product name from category

ShopHealthy.in

2 items - ₹0

[Ayurveda](#)
[Herbal](#)
[Health Conditions](#)
[Supplements](#)
[Dietary](#)
[Weight Loss](#)
[Sports Nutrition](#)
[Food & Drink](#)
[Folk Remedies](#)

[Bath & Body](#)
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[Hair Care](#)
[Home & Living](#)
[Health Devices](#)
[Gardening](#)
[Bio](#)
[Health Consultation](#)
[Gift Items](#)

[Rajasthan Herbs Liv 333 Syrup 180ml](#)



Click image to enlarge

Dose:



1/2 tsp 3-4 times daily

Product Code:

18000

Availability:

In Stock

Container Type:

Plastic Bottle

Shelf Life:

3 yrs

International Delivery:

Yes, Worldwide Delivery

₹170

15% off

Cash Back

5% Wallet Cash Back

Seller ID:

18000 (Rajasthan Herbs)

Pure Plant:

Yes

Quantity of Mfg:

100g

Payment on Delivery:

Yes, Cash on Delivery (COD)

Carriage Fee:

Yes, Rajasthan

Seller Rating:

5.0 (100% Positive)

SEND ENQUIRY

Add to Wish List | Add to Cart

100% Genuine | 100% Quality

Product Categories: Liver Health

[Dietary](#)
[Herbal](#)
[Health](#)

Rajasthan Herbs Liv 333 Syrup 180ml

- Rajasthan Herbs Liv 333 Syrup is designed to promote liver health and function.
- Contains a blend of natural ingredients to support liver detoxification, metabolism, and overall liver health.
- May help support liver detoxification, reduce inflammation, and enhance overall liver function.
- Helps to neutralize the negative effects of harmful substances and toxins.
- Helps to neutralize the negative effects of harmful substances and toxins.
- The hepatoprotective action of the Liv 333 Syrup helps to aid in the detoxification, repair, and regeneration of liver cells.
- Helps to neutralize the negative effects of harmful substances and toxins.
- Improves liver enzymes and metabolism.
- Helps to neutralize the negative effects of harmful substances and toxins.

Ingredients:

- Triphala (Triphala)
- Shilajit (Shilajit)
- Manjistha (Manjistha)
- Neem (Neem)

<https://www.shophealthy.in/rajasthan-liv-333-syrup-180ml>

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9. This Court observes that despite multiple opportunities to file an affidavit disclosing the revenue earned from the sale of products bearing the



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Liv-333 mark since the grant of the injunction on 24th May, 2024, as well as the pendency of a contempt application filed by the plaintiffs under Order XXXIX Rule 2A CPC, the defendants belatedly filed the requisite details in February, 2025.

10. The relevant extracts from the affidavit of compliance filed on behalf of defendant no. 1, with respect to the sales of the products in question, after the injunction order dated 24th May, 2024, is reproduced as under:

“xxx xxx xxx

4. That in compliance of Court Order dated 05.08.2024, the sales figures for the period starting from 24th May, 2024, till date are as under:

Sl.	Product Name	Sale Quantity
1.	LIV 333 CAPSULE (15 CAP)	6198 Pcs
2.	LIV 333 CAPSULE (60 CAP)	4080 Pcs
3.	LIV 333 SYRUP (60 ML)	1586 Pcs
4.	LIV 333 SYRUP (180 ML)	8099 Pcs

The stocks sold for the period starting from 24th May, 2024, till date are as under:

Sl.	Product Name	Balance Stock
1.	LIV 333 CAPSULE (15 CAP)	1460Pcs
2.	LIV 333 CAPSULE (60 CAP)	717 Pcs
3.	LIV 333 SYRUP (60 ML)	1241 Pcs
4.	LIV 333 SYRUP (180 ML)	38 Pcs



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5. That the details of the revenue earned by from the sale of the abovementioned allegedly infringed products from the date of the injunction order, i.e., 24th May, 2024, till date is as under:

Sl.	Product Name	Purchase Quantity	Sale Quantity	Balance Stock	Revenue Including GST
1.	LIV 333 CAPSULE (15 CAP)-Free Sample For Distributor, Doctors and Patient.	7099 Pcs	6198 Pcs	1460Pcs	00.00
2.	LIV 333 CAPSULE (60 CAP)	4354 Pcs	4080 Pcs	717 Pcs	Rs. 6,85,522.3 8/-
3.	LIV 333 SYRUP (60 ML)- Free Sample For Distributor,	1940 Pcs	1586 Pcs	1241 Pcs	00.00
	Doctors and Patient.				
4.	LIV 333 SYRUP (180 ML)	7596 Pcs	8099 Pcs	38 Pcs	Rs. 8,25,644.0 3

xxx xxx xxx”



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11. Similarly, the affidavit filed on behalf of defendant no. 2 regarding sale of the products after the date of injunction order dated 24th May, 2024, reads as under:

“xxx xxx xxx

6. That in compliance of court direction dated 24.05.2024 and 29.09.2024 the details of quantum of stock manufactured and sold under the banner of the defendants.

Products Name	Open Balance (01.04.24)	Mfg Quantity (Before 24.05.24)	Mfg Quantity (After 24.05.24)	Sold Quantity (Before 24.05.24)	Sold Quantity after 24.05.2024	Balance Stock
LIV 333 CAPSULE (15 CAP)	1921	9825	0	2957	7099	
Total	11746		0	10056		1690
LIV 333 CAPSULE (60 CAP)	1008	8350	0	3310	4354	
Total	9358		0	7664		1694
LIV 333 SYRUP (60 ML)	1941	1967	0	980	1940	
Total	3908		0	2920		988
LIV 333 SYRUP (180 ML)	2389	10162	0	4955	7596	
Total	12551		0	12551		00

7. That in compliance of court direction dated 24.05.2024 and



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29.09.2024, the details of quantum of stock which is lying with the defendant

Products Name	Balance Stock
LIV 333 CAPSULE (15 CAP)	1690
LIV 333 CAPSULE (60 CAP)	1694
LIV 333 SYRUP (60 ML)	988
LIV 333 SYRUP (180 ML)	00

8. That the details of the revenue earned by from the sale of the abovementioned allegedly infringed products from the date of the injunction order, i.e., 24th May, 2024, till date is as under:

Products Name	Sold Quantity after 24.05.2024	Revenue Including GST
LIV 333 CAPSULE (15 CAP)	7099	Rs. 159018/-
LIV 333 CAPSULE (60 CAP)	4354	Rs. 321848/-
LIV 333 SYRUP (60 ML)	1940	Rs. 34765/-
LIV 333 SYRUP (180 ML)	7596	Rs. 348809/-
Total Revenue		Rs. 864440/-

xxx xxx xxx”

12. A perusal of the sales figures furnished in the aforesaid affidavits, reveal that the defendants have continued to sell products under the impugned Liv-333 mark, in direct contravention of the *ad-interim* injunction subsisting against them.

13. It is further noted that the defendants had offered to settle the matter on the last date of hearing, i.e., 30th January, 2025, by making a payment of Rs. 3 lacs. However, the said offer was refused by the plaintiffs on account



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of the defendants' aforementioned violation of the injunction order and their wilful disobedience.

14. At this stage, it is imperative to compare the marks of the plaintiffs with the impugned marks of the defendants. A tabular comparison of the rival marks is as under:

PLAINTIFFS' MARKS	DEFENDANTS' MARKS
 LIV.52	 LIV-333

15. Upon a bare perusal of the comparison of plaintiffs' HIMALAYA logo and defendants' RAJASTHAN logo, hereinabove, it is manifest that no claim of infringement can be carved out with respect of these two marks. Both the marks are entirely distinct - visually, phonetically and structurally. Accordingly, the plaintiffs' claim of similarity of green-orange colour scheme and the leaf device cannot be upheld.

16. However, upon comparison of the plaintiffs' "Liv.52" mark with the defendants' "Liv-333" mark, it is evident that the mark LIV forms the essential feature of the plaintiffs' "Liv.52" mark and the defendants have clearly infringed upon the said mark by adding a numeral "333", that does not sufficiently distinguish their mark from that of the plaintiffs. The use of the term "LIV" as the essential element in both marks creates a high degree of similarity, leading to a likelihood of confusion among consumers. The



mere addition of the numeral “333” does not alter the overall impression of the mark, as the primary and most recognizable component remains identical.

17. Reference may be made to the decision of a Division Bench of this Court in the case of *Himalaya Drug Company Versus S.B.L. Limited, 2012 SCC OnLine Del 5701*, wherein, the respondent therein was restrained from using the mark LIV as part of its trade mark LIV-T in respect of medicinal preparations. It was held that the use of the expression ‘LIV’, even in isolation, is an infringement of the prominent feature of the plaintiffs’ registered trademark. The relevant portion of the aforesaid judgment, is reproduced as under:

“xxx xxx xxx

94. The plaintiff in the present case was able to prove that the Liv.52 is still distinctive. The customers purchase the product of the plaintiff by asking Liv.52 which is being used for the last more than 57 years. It has also come in evidence that the mark LIV is the essential feature of the registered trade mark Liv.52. On the other hand, the defendant was unable to prove that it is a generic word and becomes common to the trade. It is also pertinent to mention here that on one hand, the defendant's entire case is that mark ‘LIV’ is a generic word and is unprotectable in law, but on the other hand, the defendant itself applied for registration of ‘LIV-T’ in the Trademarks Registry for getting the exclusive right before filing of the written statement, however in written statement word LIV is a generic mark and has become publici juris. Therefore, the findings arrived at by the learned single judge in relation to issue no. 12 are not correct and the same are set aside.

95. As we have arrived at the finding that the LIV written in isolation is an essential feature of the trade mark Liv.52 and also noticed the rules of comparison which is that the marks are to be compared as whole. Therefore, the presence of the mark LIV which is an essential feature of the mark Liv.52 shall be considered for the purposes of comparison with that of LIV-T.

96. Following the dictum of Cadila (supra) and tests laid down by the Supreme Court from time to time and also the material available on record,



it can be said that for the purposes of comparison of the mark Liv.52 and LIV-T, the word LIV represented in a particular form cannot be excluded for the purposes of measuring the deceptive resemblance. This is more so when we have arrived at the finding that there is no sufficient material showing the user of the word LIV written in isolation which establishes the generic nature of the component and there is no also non establishment of material facts leading up to generic nature of the word.

97. Once we arrive at the finding that the Liv.52 mark is conclusive in registration without any challenge as per section 32, then the conclusion would be that the use of the expression LIV in isolation is an infringement of the prominent feature of the plaintiff's registered trade mark. As the defendant is using the mark LIV in isolation, therefore, the defendant is not entitled to use the same. However, we permit the defendant, if so advised, that the defendant may use the mark containing the expression LIV not written in isolation and is accompanied by suffixes, examples of which are given in the written statement i.e. LIVOGEN, Livpar, Livosin, LIVAPLEX, LIVOFIT, LIVA, LIVOL, LIVDRO, LIVAZOL, LIVERITE, LIVERJET, LIVERNUT, LIVERPOL, LIVUP. At this stage, we wish to recall the submission of the Mr. Hemant Singh, learned counsel that the plaintiff that the plaintiff has no objection if the defendant may use the word LIV along with suffixes which may not be visually, phonetically or structurally similar to the trade of the plaintiff.

xxx xxx xxx”

(Emphasis Supplied)

18. Furthermore, considering that the goods in question are medicinal products, even a minimal degree of confusion can have serious consequences for public health, as mistaken identity of the products may lead to adverse medical effects or improper treatment. Therefore, the risk of deception must be assessed with greater caution, and the defendants' unauthorised use of the impugned mark cannot be permitted, as it creates a likelihood of confusion among consumers, medical practitioners, and pharmacists. (See: *Cadila Healthcare Ltd. Versus Cadila Pharmaceuticals Ltd.*, (2001) 5 SCC 73)

19. This Court takes note of the details of the trademark registrations with respect to the Liv.52 mark of the plaintiffs', which are reproduced as under:



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Sl. No.	Application No. & Class	Application Date	Trade Mark	Status
1.	180564 in Class 05	10/07/1957	LIV. 52 (Word Mark)	Registered
2.	290061 in Class 05	10/08/1973		Registered
3.	401959 in Class 05	25/02/1983		Registered
4.	839263 in Class 05	01/02/1999	LIV.52 PROTEC (Word Mark)	Registered
5.	1115539 in Class 05	01/07/2002		Registered
6.	1813135 in Class 05	30/04/2009	LIV.52 HB (Word Mark)	Registered
7.	5738547 in Class 05	26/12/2022	Liv.52 HAEMOTEC	Registered

20. Accordingly, upon careful consideration of the aforesaid discussion, it is noted that the plaintiff's claim of infringement is well-founded, as the defendants' use of "Liv-333" is likely to deceive or cause confusion among



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the members of trade and public. The unauthorized use of the “LIV” element in a manner that does not materially differentiate the defendants’ mark from the plaintiffs’ well-established “Liv.52” mark amounts to a violation of the plaintiffs’ statutory rights. This position is further fortified by the aforesaid decision in *Himalaya Drug Company (Supra)*. Thus, it is manifest that the defendants’ mark ‘Liv-333’, with the word ‘Liv’ appearing in isolation followed by a numeral, is nearly identical/deceptively similar to plaintiffs’ registered and prior used trademark ‘Liv.52’.

21. This Court further takes note of the reply filed by defendant no.1 to the I.A. 35522/2024 filed under Order XXXIX Rule 2A CPC by the plaintiffs, wherein, the defendant has stated that after the passing of the injunction order, the defendants had stopped the manufacturing of the impugned products, i.e., Liv-333 Capsules and Liv-333 Syrup, on 23rd May, 2024. It is noted that the sale of the said impugned products was stopped w.e.f. 31st July, 2024 and 08th August, 2024 for Liv-333 Capsules and Liv-333 Syrup, respectively. It is further noted that the defendant has removed the infringing listings from the third party e-commerce platforms on 04th August, 2024.

22. As discussed above, the defendants’ right to file written statement was closed *vide* order dated 23rd January, 2025. Further, the said order was never challenged nor any steps were taken by the defendants to bring their written statement on record. Thus, the defendants’ failure to file its written statement within the maximum statutory period of 120 days and the closure of defendant’s right to file the written statement, demonstrates the lack of defence of its infringing activities with respect to the plaintiffs’ “LIV” mark.

23. Holding that if a defendant fails to pursue its case and does not file its



written statement, the courts should invoke the provisions of Order VIII Rule 10 CPC to decree such cases, this Court in the case of ***Impresario Entertainment & Hospitality Pvt. Ltd. Versus Mocha Blu Coffee Shop, 2018 SCC OnLine Del 12219***, has held as follows:

“xxx xxx xxx

6. This Court while dealing with a similar application under Order VIII Rule 10 CPC in CS (OS) 873/2015 Samsung Electronics Company Limited v. Mohammed Zaheer Trading As Gujarat Mobiles has culled out the relevant law as under:—

“10. The Supreme Court in C.N. Ramappa Gowda v. C.C. Chandregowda, (2012) 5 SCC 265 has interpreted the Order VIII Rule 10 CPC as under:—

“25. We find sufficient assistance from the apt observations of this Court extracted hereinabove which has held that the effect [Ed.: It would seem that it is the purpose of the procedure contemplated under Order 8 Rule 10 CPC upon non-filing of the written statement to expedite the trial and not penalise the defendant.] of non-filing of the written statement and proceeding to try the suit is clearly to expedite the disposal of the suit and is not penal in nature wherein the defendant has to be penalised for non-filing of the written statement by trying the suit in a mechanical manner by passing a decree. We wish to reiterate that in a case where written statement has not been filed, the court should be a little more cautious in proceeding under Order 8 Rule 10 CPC and before passing a judgment, it must ensure that even if the facts set out in the plaint are treated to have been admitted, a judgment and decree could not possibly be passed without requiring him to prove the facts pleaded in the plaint.

26. It is only when the court for recorded reasons is fully satisfied that there is no fact which needs to be proved at the instance of the plaintiff in view of the deemed admission by the defendant, the court can conveniently pass a judgment and decree against the defendant who has not filed the written statement. But, if the plaint itself indicates that there are disputed questions of fact involved in the case arising from the plaint itself giving rise to two versions, it would not be safe for the court to record an ex parte judgment without directing the plaintiff to prove the facts so as to settle the factual controversy. In that event, the ex parte judgment although may appear to



have decided the suit expeditiously, it ultimately gives rise to several layers of appeal after appeal which ultimately compounds the delay in finally disposing of the suit giving rise to multiplicity of proceedings which hardly promotes the cause of speedy trial.”

11. A Coordinate Bench of this Court in *Nirog Pharma Pvt. Ltd. v. Umesh Gupta*, (2016) 235 DLT 354 has held as under:—

“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.

xxxx xxxx xxxx

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.”**

12. Another Coordinate Bench of this Court in *Satya Infrastructure Ltd. v. Satya Infra & Estates Pvt. Ltd.*, 2013 III AD (Delhi) 176 has held as under:—

“4. I am of the opinion that no purpose will be served in such cases by directing the plaintiffs to lead ex parte evidence in the form of affidavit by way of examination-in chief and which invariably is a repetition of the contents of the plaint. The plaint otherwise, as per the amended CPC, besides being verified, is also supported by affidavits of the plaintiffs. I fail to fathom any reason for according any additional sanctity to the affidavit by way of examination-in-chief than to the affidavit in support of the plaint or to any exhibit marks being put on the documents which have been filed by the plaintiffs and are already on record.....”

xxx xxx xxx”

(Emphasis Supplied)



24. Therefore, the assertions made in the plaint remain unchallenged by the defendants by failing to file any written statement, despite being granted sufficient opportunities by this Court. Hence, the averments in the plaint are deemed to be admitted.

25. Considering the fact that the plaintiffs are the registered owner of the 'Liv.52' trademark, the adoption of a deceptively similar mark, i.e., 'Liv-333' by the defendants, is dishonest and amounts to infringement and passing off of plaintiffs' registered and reputed mark, 'Liv.52', which has been in use in India since the year 1955.

26. On the issue of costs and damages, this Court, in the case of *Microsoft Corporation Versus Rajendra Pawar and Others, 2007 SCC OnLine Del 1973*, has held that punitive and exemplary damages shall be granted to discourage disobedient parties and hold them accountable for the damages and loss caused to the other party by their acts of infringement. The relevant portion of the said judgment, reads as under:

“xxx xxx xxx

26. Particularly relevant to note is the case of *Mathias v. Accor Economy Lodging, Inc.* cited at 347 F. 3d 672 (7th Cir. 2003), where this Court, while elucidating the factors underlying the grant of punitive damages, observed that one of the functions of punitive damages is to relieve the pressure on an overloaded Criminal Justice System by providing a civil alternative to criminal prosecution of minor crimes. It was further observed that the award of punitive damages serves the additional purpose of limiting the Defendant's ability to profit from its fraud by escaping detection and prosecution.

27. Our discussion on punitive damages will remain incomplete without revisiting the landmark case of *Time Incorporated v. Lokesh Srivastava*, (2005) 30 PTC 3 (Del). The said case can be rightfully acknowledged as a harbinger of the practice of awarding punitive damages in intellectual property rights matters in India, a trend which all Courts are zealously endorsing and following today. In the said case, while awarding punitive damages Rs. 5 lakhs in addition to compensatory damages also of Rs. 5



lakhs, R.C. Chopra, J. observed that it was about time the Courts dealing actions for infringement of trade marks, copyrights, patents, etc. should not only grant compensatory damages but also award punitive damages with a view to discourage and dishearten law-breakers who indulge in violations with impunity out of lust for money so that they realize that in case they are caught, they would be liable not only to reimburse the aggrieved party but would be liable to pay punitive damages also, which may spell financial disaster for them. Following observations of the learned single Judge in paragraph 7 of the said case, incarnating the jurisprudence underlying the practice of awarding punitive damages in India, are reproduced as under:

7. Coming to the claim of Rs. 5 lacs as punitive and exemplary damages for the flagrant infringement of the Plaintiff's trade mark, this Court is of the considered view that a distinction has to be drawn between compensatory damages and punitive damages. The award of compensatory damages to a Plaintiff is aimed at compensating him for the loss suffered by him whereas punitive damages are aimed at deterring a wrongdoer and the like minded from indulging in such unlawful activities. Whenever an action has criminal propensity also the punitive damages are clearly called for so that the tendency to violate the laws and infringe the rights of others with a view to make money is curbed. The punitive damages are founded on the philosophy of corrective justice and as such in appropriate cases these must be awarded to give a signal to the wrong doers that law does not take a breach merely as a matter between rival parties but feels concerned about those also who are not party to the lis but suffer on accounts of the breach. In the case in hand itself, it is not only the Plaintiff, who has suffered on account of the infringement of its trade mark and Magazine design but a large number of readers of the Defendant's Magazine "TIME ASIA SANSKARAN" also have suffered by purchasing the Defendants' Magazines under an impression that the same are from the reputed publishing house of the Plaintiff company.

xxx xxx xxx"

(Emphasis Supplied)

27. In view of the defendants' continued and willful infringement of the plaintiffs' "Liv.52" mark despite the subsistence of an *ad-interim* injunction, this Court finds it appropriate to impose costs and damages to compensate the plaintiffs for the losses suffered and to deter such unlawful conduct. The defendants, having derived undue commercial benefit from the unauthorized



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use of the impugned “Liv-333” mark, are liable to compensate the plaintiffs for the loss of goodwill, dilution of trademark rights, and unjust enrichment.

28. This Court has taken note of the affidavit of costs which was handed over by the learned counsel for the plaintiffs and taken on record during the course of arguments, as per which, the plaintiffs have incurred a cost of Rs. 10,91,567/- in pursuing the present legal proceedings.

29. Accordingly, the present application is allowed and the following directions are issued:

I. The suit is decreed in favour of the plaintiffs and against the defendants in terms of Para 69 (a) and (b) of the plaint.

II. Cost of the suit, i.e., ₹ 10,91,567/- is granted in favour of the plaintiffs.

III. Plaintiffs are further entitled to damages to the tune of ₹ 20 Lacs, payable by defendant nos. 1 and 2, i.e., ₹ 10 Lacs each.

30. Payment shall be made by defendant nos. 1 and 2 to the plaintiffs within a period of four months.

31. Let decree sheet be drawn up.

32. The present suit, along with the pending applications, stands disposed of.

MINI PUSHKARNA, J

FEBRUARY 25, 2025

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