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

% Judgment delivered on: 24/11/2025

+ **CS(COMM) 716/2021 & I.A. 17569/2021**

HERMES INTERNATIONAL & ANR.Plaintiffs

versus

**MACKY LIFESTYLE PRIVATE LIMITED
& ANR.**Defendants

Advocates who appeared in this case

For the Plaintiffs : Mr. Pravin Anand, Ms. Tusha Malhotra and
Ms. Sugandha Yadav, Advocates.

For the Defendants : Mr. Amit Gaurav Singh and Mr. Abhishek
Yadav, Advocates.

**CORAM:
HON'BLE MR. JUSTICE TEJAS KARIA**

JUDGMENT

TEJAS KARIA, J

1. The present Suit has been filed by the Plaintiffs for infringement and passing off the trade mark, infringement of copyright, passing off, dilution, tarnishment, rendition of accounts, damages, delivery up, unfair competition, misappropriation etc. against the Defendants alleging that the Defendants were allegedly found to be without any authorization manufacturing; using, advertising, offering for sale and selling identical products as that of the Plaintiffs, infringing the three dimensional shape mark of the Plaintiffs' 'Birkin' Bag and the Trade Mark 'Hermes' and



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stylized Marks ‘**HERMES**’, and ‘**HERMES**’, (“**Subject Marks**”) leading to infringement of trade marks, passing off, infringement of copyright, dilution and tarnishment of the reputation and goodwill earned by the Plaintiffs.

2. Plaintiff No. 1 is an entity incorporated under the laws of France and engaged in the business of luxury bags and accessories. Plaintiff No. 2 is a subsidiary of Plaintiff No. 1 incorporated in India, which is engaged in the business of the Plaintiffs in India.

3. Defendant No. 1 is a company incorporated under the laws of India. Defendant No. 2 is a director of Defendant No. 1. The Defendants are engaged in the business of leather bags and accessories.

4. This Court *vide* order dated 15.04.2025 observed that:

“2. As per learned counsel for the plaintiff, despite the reply to the present application filed by the defendants way back on 14.03.2022 as also the affidavit filed by the same defendants subsequently on 28.02.2025 in compliance of order dated 10.01.2025, there is no mention about [i] the name of vendor from whom the alleged infringing material was procured (page no. 663 of the plaintiff’s documents filed on 23.12.2021); and [ii] the alleged supplier of the plaintiffs who gave the information to the defendants (page no. 752 of the plaintiff’s documents filed on 23.12.2021); [iii] the sole transaction made by the defendants on India Mart (page no. 18 of the defendant’s documents filed on 14.03.2022), in neither of them.

3. Learned counsel for the defendants, in response thereto submits that all the relevant documents necessary for adjudication of the present suit have already been provided/ detailed, especially in the subsequent affidavit filed on 28.02.2025 and that there is/ are no further information qua any of the aforesaid. Be that as it may, he seeks, and is granted two weeks for filing an affidavit qua each of the aforesaid after obtaining instructions.”



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5. Pursuant to the order dated 15.04.2025, Defendant No. 2 filed an Affidavit dated 18.06.2025. The learned Counsel for the Plaintiffs submitted that a copy of the Affidavit dated 18.06.2025 filed by Defendant No. 2 has already been served on the Plaintiffs and a copy of the same has been placed on record along with an application for condonation of delay of 32 days in filing the Affidavit dated 18.06.2025. The said Affidavit is directed to be taken on record and the delay in filing the same is hereby condoned for the reasons stated in the accompanying application.

6. The Affidavit dated 18.06.2025 filed by Defendant No. 2, *inter alia*, states that:

“2. That the Defendants started the operation in June, 2021 and did not earn any revenue from the business till the closing of the business. I say that the deponent is not conducting any business under the Company name Macky Lifestyle Private Ltd, Defendant No. 1 herein and has closed down the business.

3. That the Deponent is working as Assistant Manager with BKVR Associates posted at Agilitas Logistics India Private Limited, Siliguri, West Bengal.

4. That the Deponent had submitted in Para No. 13 (h) & (i) of the reply to application under O. X. R. 2 & 3 of the Commercial Courts Act, 2015 read with section 151 of the Code of Civil Procedure, 1908 read with Section 165 of the Indian Evidence Act. 1872 that "Defendants have not made any transaction till date pertaining to infringing products. Defendants deal in leather watch strap and leather raw hide. It is submitted that Defendants made some transaction pertaining to buying and selling of leather watch strap and Leather Hide during FY 2020-21, but the Defendants do not maintain any books of account for recording the buying and selling on day-to-day basis because of low transaction volume as the Defendants started operations in June 2021 and are fairly new in the business."

5. That the Defendant No.1 being Macky Lifestyle Private Ltd is an MSME and does not have a GST number as the deponent had just



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started the operation in June, 2021 and there were no substantial sale of products apart from few sampling pieces and raw material.

xxxxxx

THE NAME OF VENDOR FROM WHOM THE ALLEGED INFRINGING MATERIAL WAS PROCURED (PAGE NO. 663 OF THE PLAINTIFF'S DOCUMENTS FILED ON 23.12.2021)

7. That, in reply to the submission of the Plaintiff, Clause (i) of the order dated 15.04.2025, the Deponent has persistently submitted in the written statement and specifically at Para No. 66 and 67 which is as follows:

66. It is submitted that the Defendants are manufacturers of Leather watch straps and still haven't started the production of bags and still trying to enter into the market of bags. The Defendants have not manufactured Plaintiffs identical and deceptively similar and registered three-dimensional shape trademark of the "Birkin" bag nor have sold any piece till date. It is submitted that the Plaintiff itself states that no piece of the said bags infringing the trademark of the Plaintiffs were ever recovered from the workshop or from open market. It is denied that there is any infringing products which conceptually and visually identical to the Plaintiff's "Birkin" bag or that "it gives the impression that the Defendants are authorised to manufacture and sell the same. It is submitted that Defendants have never manufactured any conceptually and visually identical "Birkin" bag and has never sold the same to anyone. It is further submitted that Defendants do not have the skill. Know-how and the equipment to manufacture the similar and identical products to that of Plaintiffs. It is submitted that the graphical representation of the Defendants impugned product are the images downloaded from the internet.

67. It is submitted that the said images are not the Defendants products and merely images downloaded from the internet and were used for reference only for the bags that Defendants can manufacture without any dishonest intent to create a similar or identical bags as that of Plaintiffs. It is submitted that no infringing



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product has been recovered either from the workshop or from the residence of the Defendants.

8. That the deponent submits that the Deponent has been reiterating the fact that Deponent has never manufactured any conceptually and visually identical "Birkin" bag or Hermes Bag and has never sold the same to anyone. Therefore, there is no vendor from whom the Deponent could have purchased the infringing material. It is submitted that the Deponent have never purchased any infringing material to manufacture any infringing product assumed to be manufactured by the Defendants.

*9. Further, in the affidavit dated 20.02.2025 filed on 28.02.2025 pursuant to an order dated 10.01.2025, the Defendants have submitted and stated from Para No. 9 to 18 therein, all the bank transaction details to show that no infringing products were neither manufactured nor sold by the Defendants. The said Paras also shows names and details of all the vendors from whom the raw material was purchased to manufacture belts and wallets being the products of the Defendants to clearly show that no vendor of the Plaintiffs supplied any material pertaining to the Plaintiffs Products to the Defendants. It is yet again submitted that no vendor supplied any infringing material or products to the Defendants. The details of the vendor from whom the Defendants purchased products for the manufacture of its own goods is attached herewith as **Annexure R-1.**"*

7. Mr. Pravin Anand, the learned Counsel for the Plaintiffs submitted that he has instructions from the Plaintiffs to accept the statements made by Defendant No. 2 in the Affidavit dated 18.06.2025 on behalf of the Defendants that the Defendants did not earn any revenue since the commencement of the business in 2021 and have closed down the business, and that the Defendants have neither manufactured nor sold any goods identical or deceptively similar to the Plaintiffs' products bearing the Subject Marks and that the images used by Defendant No. 2 are not the Defendants' products and merely images downloaded from the internet and used for reference only for the bags that Defendants were proposing to



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manufacture without any dishonest intent to create a similar or identical bags to the Plaintiffs' 'Birkin' Bag using the Subject Marks. The learned Counsel for the Plaintiffs submitted that, accordingly the Suit may be decreed in terms of Prayers (a) to (d) of the Plaint.

8. The learned Counsel for the Plaintiffs further submitted that the Plaintiffs seeks prayer (e) of the Plaint for declaration of the Subject Marks as well-known Trade Marks under Section 11 (6) of the Trade Marks Act, 1999 (“**Act**”).

9. Section 11(6) of the Act sets out the factors which are to be taken into consideration by the Registrar while determining whether a trade mark is a well-known. Section 11(6) of the Act reads as under:

“(6) The Registrar shall, while determining whether a trade mark is a well-known trade mark, take into account any fact which he considers relevant for determining a trade mark as a well-known trade mark including—

(i) the knowledge or recognition of that trade mark in the relevant section of the public including knowledge in India obtained as a result of promotion of the trade mark;

(ii) the duration, extent and geographical area of any use of that trade mark; (iii) the duration, extent and geographical area of any promotion of the trade mark, including advertising or publicity and presentation, at fairs or exhibition of the goods or services to which the trade mark applies;

(iv) the duration and geographical area of any registration of or any application for registration of that trade mark under this Act to the extent they reflect the use or recognition of the trade mark;

(v) the record of successful enforcement of the rights in that trade mark; in particular, the extent to which the trade mark has been recognised as a well-known trade mark by any court or Registrar under that record.”



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10. The learned Counsel for the Defendants submitted that the Defendants do not object if the Subject Marks are declared as well-known Trade Marks.

11. The learned Counsel for the Plaintiffs submitted that the material with respect to each of the five factors enumerated in Clauses (i) to (v) of Section 11(6) of the Act as being relevant for deciding whether a Trade Mark is eligible for being declared a well-known Trade Mark is already on record, which is as follows:

11.1 **Factor 1:** The knowledge or recognition of that Trade Mark in the relevant section of the public including knowledge in India obtained as a result of promotion of the Trade Mark:

a. The Plaintiffs have stores in Mumbai and Delhi and the Plaintiffs' products bearing three-dimensional shape mark of



the Plaintiffs' 'Birkin' Bag ' ', are displayed at the stores.

b. The Plaintiffs have mentioned retail distributions and revenue generated in its activity report for the year 2020.

c. Several articles and magazines such as The Economic Times, Printfriendly, Harpar Bazaar etc. have reviewed and recognised the Plaintiffs' products bearing the Subject Marks.

11.2 **Factor 2:** The duration, extent and geographical area of any use of that Trade Mark:

a. The Plaintiffs designed the 'BIRKIN' bag in 1984, when Jean-Louis Duman, sat next to British actress Jane Birkin.

b. The Plaintiffs are the proprietor of the Trade Mark 'HERMES', which is also an integral part of the Plaintiffs'



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Trade Name. The Trade Mark 'HERMES' was adopted from the name of the Plaintiffs' founder, Thierry Hermes, who in 1837 laid foundations of the Plaintiffs in Paris.



- c. The stylized Mark 'HERMES' is described as 'HERMES avec attelage' which is also described as the 'duc-carriage-with-horse logo' adopted by the Plaintiffs in 1938.

11.3 **Factor 3:** The duration, extent and geographical area of any promotion of the trade mark, including advertising or publicity and presentation, at fairs or exhibition of the goods or services to which the Trade Mark applies:

- a. The Plaintiffs have undertaken extensive promotional activities with respect to the Plaintiffs products bearing the Subject Marks and the same are evidenced by the Plaintiffs' promotional and advertising expenditure.
- b. The Plaintiffs products bearing the Subject Marks have been taken note of and publicized in several international magazines globally, which is evident from the advertisement and listing of the Plaintiffs' products bearing the Subject Marks on the Plaintiffs' website, publications in international magazines, news etc.

11.4 **Factor 4:** The duration and geographical area of any registration of or any application for registration of that trade mark under this Act to the extent that they reflect the use or recognition of the trade mark.



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- a. The Plaintiffs filed for registration of the three-dimensional



shape mark of the Plaintiffs' 'Birkin' Bag '  ' in India on 29.07.2008.

- b. The Plaintiffs also enjoy international registrations and / or national registrations for the three-dimensional shape mark of



the Plaintiffs' 'Birkin' Bag '  ', in over 40 countries such as Canada, Hong Kong, Japan, etc.

- c. The Plaintiffs have also filed for registrations of the Trade

Marks 'Hermes' , '  ', and '  ' in India.

- d. The Plaintiffs also enjoy international registrations and / or National Registrations for the Trade Marks 'Hermes' ,

'  ', and '  ', in countries such as Canada, United States, Switzerland, Germany etc.

11.5 **Factor 5:** The record of successful enforcement of the rights in that trade mark, in particular the extent to which the trade mark has been recognised as a well-known trade mark by any court or Registrar under that record.

- a. The Plaintiffs have been vigilant in protecting and safeguarding its rights in the Subject Marks from misuse by third parties.



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- b. Pursuant to the same the Plaintiffs had instituted proceedings for the Subject Marks before the Courts in India and internationally, wherein the Plaintiffs had obtained a preliminary injunction against several third parties.
- c. The three-dimensional shape mark of the Plaintiffs' 'Birkin'



Bag ' ' has also been declared as well-known by the President of the French Federation of Leather and Travel Case makers Leather Bands.

- d. The well-known nature of the Subject Marks has also been recognized in the INTA Bulletin dated 15.04.2008 Volume 63 No. 8.

12. Having considered the submissions made by the learned Counsel for the Plaintiffs and the material placed on record, the Subject Marks have acquired extensive recognition and association within the relevant section of the public engaged in or familiar with the fashion industry. The Plaintiffs' long-standing reputation and consistent use of the Subject Marks across jurisdictions establishes a continuous and significant commercial presence. The documents on record also indicate that the Subject Marks have been used and promoted for several decades, supported by considerable promotional expenditure and consistent visibility in the fashion industry worldwide.

13. The recognition accorded to the Subject Marks by industry associations in foreign jurisdictions, evidence of consistent enforcement of the Plaintiffs' rights in the Subject Marks before the Courts in India and



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foreign jurisdictions reinforces the Subject Marks' distinctiveness and reputation.

14. In view of the criteria set out in Section 11(6) read with Section 11(7) of the Act, the Subject Marks being three dimensional shape mark of the



Plaintiffs' 'Birkin' Bag ' ' and the Trade Mark 'Hermes' and



stylized Marks 'HERMES' and 'HERMES.' satisfy the criteria for being declared as well-known Trade Marks in India. Accordingly, the Subject Marks merit recognition as well-known Trade Marks within the meaning of Section 2(1)(zg) of the Act. Hence, it is declared accordingly.

15. Accordingly, the Suit is decreed in favour of the Plaintiffs in terms of prayers (a) to (e) of the Plaint. Let a Decree Sheet be drawn accordingly.

16. The Suit and pending Applications, if any, stand disposed of. No orders as to costs.

TEJAS KARIA, J

NOVEMBER 24, 2025

'HK'