



\$~14

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

+ **CS(COMM) 831/2024**

CASTROL LIMITED & ORS.

.....Plaintiffs

Through: Mr. Peeyoosh Kalra, Ms. V. Mohini
and Mr. Udayvir Rana, Advocates

versus

MR ALI HUSSAIN AMIR ALI NAMDAR & ANR.

.....Defendants

Through: None

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

ORDER

%

06.11.2025

1. The Plaintiffs have filed the present suit under Sections 134 and 135 of the Trademarks Act, 1999 ['Trademarks Act'] and Section 51 of the Copyright Act, 1957 ['Copyright Act'], seeking permanent injunction against infringement of trademark, infringement of copyright, passing off, unfair competition, delivery up and other ancillary reliefs.

Case set up in the Plaintiff

2. Plaintiff Nos. 1, 2, and 3 form part of the BP Group. The BP Group is one of the world's largest international oil and gas companies, providing its customers with fuel for transportation, energy for heat and light, lubricants to keep engines moving, and petrochemical products used to make everyday items as diverse as paints, clothes and packaging.

3. The Plaintiffs sell/offer for sale their products/services through several distinctive trademarks. Plaintiff No.1 coined and adopted the mark CASTROL in the 1900s, and in the Indian market in the year 1911. The



Plaintiffs use the logos CASTROL



and

ACTIV/ **Activ** / **ACTIVE** [‘Plaintiffs’ marks’] in relation to their products and services.

4. Plaintiff No. 1’s earliest registration is for the wordmark CASTROL bearing TM no. 1494, application dated 29.06.1942 in class 4. Plaintiff No.1

also has registrations for the device mark  bearing TM no. 1240239 with application dated 29.09.2003 in classes 37 and 42. Details of Plaintiff No.1’s CASTROL trademarks have been set out in paragraph ‘22’ of the plaint.

5. The Plaintiffs have also been using the mark ‘ACTIV’ in India since 1999 in relation to motorcycle engine lubricants. Plaintiff No.1’s earliest registration is for the wordmark ACTIV bearing TM no. 838183 with application dated 25.01.1999 in class 4, and Plaintiff No.2 has registration

for the device mark  bearing TM no. IRDI-3355419 with application dated 08.04.2016 in class 4. Details of Plaintiffs’ ACTIVE trademarks have been set out in paragraph ‘24’ of the plaint.

Plaintiff Nos. 1 and 2 use these trademarks and other intellectual property in India through Plaintiff No.3.

6. Plaintiffs also use a distinctive artwork/packaging/trade dress/overall

get-up/shape in respect of their products  [‘Plaintiffs’ trade dress/packaging’].



7. The Plaintiffs' website contains information concerning the products/services offered under the Plaintiffs' marks. The registration of the domain name castrol.com dates back to 13.10.1995. The website of the Plaintiffs has contributed immensely to the popularity of the Plaintiffs' products/services offered under the Plaintiffs' marks.

8. Plaintiffs' products/services under the Plaintiffs' marks, and distinctive packaging/trade dress are marketed and advertised widely across the world, with the result that the same have achieved extensive recognition. Plaintiffs' sales figures for CASTROL for the year 2023 in India were Rs. 5074.61 crores.

9. The advertising/promotional expenses incurred by the Plaintiffs in India for the trademark CASTROL for the year 2022 were Rs. 129.15 crores.

Overview of the Defendants

10. Defendant No.1/Mr. Ali Hussain Amir Ali Namdar is the proprietor of Defendant No.2/M/s Z.R.H.Lubes. The Defendants are engaged in the business of manufacturing, exporting and supplying oils and automotive lubricants.

Knowledge about the Defendants

11. In November 2023, the Plaintiffs came across a trademark application



filed by Defendant No.1 for the mark under application no.



5667021 dated 02.11.2022 in class 4 in respect of automobile lubricants, industrial oils and greases, lubricants, non-chemical additives for coolants, crude oil products derived from the refining of crude.

12. Accordingly, a notice of opposition was filed by Plaintiff No.1 against the above trademark application on 10.11.2023, to which Defendant No.1 filed a counterstatement on 20.01.2024, wherein Defendant No.1 claimed to



be the honest adopter and user of the mark . Plaintiff No.1 filed its evidence in support of opposition on 28.03.2024, and Defendant No.1 filed its evidence in support of application on 27.05.2024.

13. Plaintiff No.1 also sent a cease-and-desist notice to the Defendants on 18.01.2024, calling upon them to give up the use of the marks 



and trade dress/packaging , to which the Defendants vide reply dated 20.02.2024 refused to give up the impugned mark and trade dress.

14. In April 2024, the Plaintiffs came across another trademark application filed by Defendant No.1 for the mark CREMESTROL under



application no. 5829564 dated 28.02.2023 in class 4, to which Plaintiff No. 1 filed a notice of opposition on 26.04.2024.

15. In August 2024, the Plaintiffs yet again came across another



trademark application filed by Defendant No.1 for the mark under application no. 5667019 dated 02.11.2022 in class 4.

16. Around August 2024, the Plaintiffs also came across the products of the Defendants in the market and procured sample products under the marks

CREMESTROL, ,  and

ACTION/  ['impugned marks'] and objectionable packaging/trade dress/get-up/colour scheme/layout/shape, i.e.,



['impugned trade dress/packaging'].

17. On a routine check on the internet to ascertain use of the products under the impugned marks, and came across use of the impugned trademarks as well as impugned trade dress/packaging used in respect thereof being sold on a third-party online portal, IndiaMart.

Submissions on behalf of the Plaintiffs

18. Mr. Peeyoosh Kalra, learned counsel for the Plaintiffs, states that



Plaintiffs in the past have initiated a number of criminal actions against the Defendants involving different trademarks and trade dress/packaging that were similar to the Plaintiffs' trademarks and trade dress/packaging. Thus, the Defendants are habitual infringers who continue to violate and sue identical and deceptively similar trademarks of the Plaintiffs.

19. He states that no business relationship and/or distribution agreement has been executed inter se parties, and thus the Defendants are not the authorised sellers/distributors of the Plaintiffs' products. The genuineness and quality of the Defendants' products cannot be verified.

20. He states that, being in the same line of business, it is evident that the Defendants are well aware of the Plaintiffs' established reputation and goodwill in it prior to and registered trademarks and distinctive trade dress/packaging, and cannot feign ignorance. Adoption of near identical mark and trade dress/packaging that too in respect of identical products, i.e., lubricants, is not a mere coincidence, but a testimony to their dishonest and fraudulent intentions to derive unjust pecuniary benefits therefrom.

21. He states that after service of the advance paper-book, the Defendants had issued an email dated 05.11.2024 and agreed to surrender the use of the impugned mark CREMESTROL, ACTION, as well as the logo MADMAXX ACTION.

22. He states that, therefore, a reasonable cause has been made out by the Plaintiffs to pass a judgment against the Defendants who have entered an appearance only once, i.e., on 11.12.2024, and failed to file their written statements despite service.

23. He prays in view of the aforesaid facts and circumstances, an ex parte decree may be passed in favour of the Plaintiffs herein in terms of the prayer



clauses (a), (b) and (c), as well as their legal costs of approximately Rs. 15,00,000/- [Fifteen Lakhs].

24. He relies upon the written submissions filed by the Plaintiffs on 24.09.2025.

Court's Findings and Analysis

25. This Court has heard the learned counsel for the Plaintiffs and perused the record of the case.

26. The predecessor bench of this Court vide order dated 06.11.2024 issued summons in the present suit, and an ad interim injunction was granted in favour of the Plaintiffs, restraining the Defendants from using the marks

CREMESTROL, ,  and ACTION/ or any other mark or marks, identical or deceptively similar to or containing Plaintiff No.1's registered trademarks CASTROL,  and ACTIV/ and Plaintiff No.2's registered trademarks .

27. The learned Joint Registrar (J), vide order dated 17.02.2025, recorded that the Defendants had been served on 26.10.2024. However, no appearance was entered on their behalf on the said date. The Defendants subsequently entered appearance on 11.12.2024 and sought time to file their written statement; however, despite the same, no written statement was filed thereafter, and there was no further appearance on their behalf. Subsequently, on 15.04.2025, the learned Joint Registrar (J) closed the Defendants' right to file their written statements. Thereafter, vide order



dated 01.05.2025, the predecessor Bench of this Court directed that the Defendants be proceeded ex-parte in the present suit, and vide order dated 11.09.2025, the ad interim injunction earlier granted was made absolute.

28. The Plaintiffs pray for a decree of permanent injunction and legal costs. The Plaintiffs are not pressing for their remaining reliefs, including the relief of damages.

29. At this stage, it would be apposite to refer to Order VIII Rule 10 of the Code of Civil Procedure, 1908 ['CPC']. The said rule reads as under: -

“10. Procedure when party fails to present written statement called for by Court.— Where any party from whom a written statement is required under rule 1 or rule 9 fails to present the same within the time permitted or fixed by the Court, as the case may be, the Court shall pronounce judgment against him, or make such order in relation to the suit as it thinks fit and on the pronouncement of such judgment a decree shall be drawn up.”

30. It would be relevant to refer to the dicta of **Satya Infrastructure Ltd. & Ors. v. Satya Infra & Estates Pvt. Ltd.**¹, wherein the Co-ordinate Bench of this Court held that in matters where the defendant is proceeded ex parte, the Court, upon its satisfaction, can pass a decree for permanent injunction on the basis of the pleadings filed on affidavit. The relevant part of the order reads as under: -

“3. The plaintiffs have given the address of the defendant of Bangalore, Karnataka. The affidavit of service dated 26.11.2012 has been filed by the Court Clerk of the Advocate for the plaintiffs to the effect that notice was sent to the defendant by Blue Dart Courier on 15.11.2012 and was delivered on 16.11.2012. There is no reason for this Court to disbelieve the said affidavit emanating from the chamber of the Advocate for the plaintiffs and it has to be presumed that the shipment which has been reported to be delivered to the defendant contained the

¹ 2013 SCC OnLine Del 508



summons of the suit and notice of the application together with copies of the plaint, application and other documents etc. If it is discovered otherwise, of course the Advocate for the plaintiffs would be accountable. The defendant is thus proceeded against ex-parte.

4. The next question which arises is whether this Court should consider the application for interim relief and direct the plaintiffs to lead ex parte evidence. The counsel for the plaintiff's states that the plaintiffs are willing to give up the reliefs of delivery, of rendition of accounts and of recovery of damages, if the suit for the relief of injunction alone were to be heard today.

5. 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. I have therefore heard the counsel for the plaintiffs on merits qua the relief of injunction."

(emphasis supplied)

31. A table showing comparison of the marks/packaging/trade-dress/shape being used by the Plaintiffs and Defendants upon and in relation to their oil lubrication products, which have been impugned in this plaint, is as under: -

<u>PLAINTIFFS</u>	<u>DEFENDANTS</u>
CASTROL	CREMESTROL
	



	
ACTIV	ACTION
	
	
	

32. The Court vide ad-interim order dated 06.11.2024, which was confirmed on 11.09.2025, has already injuncted the Defendants from using the impugned marks. While issuing the ad-interim order, the Court took note of the contents of the e-mail dated 05.11.2024 issued by the Defendants agreeing to withdraw their applications for registrations of their impugned marks. The contents of the e-mail dated 05.11.2024 read as under: -

“To,



Remfry & Sagar

Sub: Email for acceptance of your all objection raised in your petition

Ref. hearing in Delhi High Court on dated 06th NOV.2024 for infringement of plaintiff trade mark.

Respected Sir/ Madam,

as per the telephonic conversation with advocate of plaintiff and my trade mark Agent Mr. Nitin Bhusari, I Ali Hussain Amir Ali Namdar assuring you that I am ready to surrender the use of trade mark "CREMESTROL" bearing TM Application No. 5829564 and word "ACTION" along with LOGO of our proposed TM "MADMAXX ACTION" having TM Application No. 5667019 subject to condition that I will not bear any kind of cost.

So I request you that please withdraw your litigation charge against me.”

33. In the considered opinion of this Court, on a bare perusal, the impugned marks adopted by the Defendants and the packaging are deceptively similar to the Plaintiffs’ trade dress/package and trademark registrations.

34. The averments in the plaint and the evidence on record indicate that the Defendants are engaging in acts of unfair competition by manufacturing and marketing their products using trademarks, packaging, trade dress, colour schemes, and get-up deceptively similar to those of the Plaintiffs. Such use amounts to infringement of the Plaintiffs’ trademark, copyright, and trade dress rights. The Defendants’ actions are calculated to mislead consumers into believing that their products originate from or are associated with the Plaintiffs, thereby unlawfully encroaching upon the goodwill and proprietary rights that the Plaintiffs have built through years of business and



marketing efforts.

35. Since the Defendants have failed to take any requisite steps to contest the present suit despite having been afforded sufficient opportunities and being bound by the ad-interim injunction order, their conduct demonstrates a clear lack of intent to defend the present proceedings. Moreover, vide their email dated 05.11.2024 noted above, the Defendants have expressly admitted and agreed to discontinue the use of the impugned marks CREMESTROL bearing TM no. 5829564, word mark ACTION, and the logo MADMAXX ACTION bearing TM no. 5667019. Such admission and inaction on their part unequivocally establishes that they have no substantive defence to advance on merits, and they admit to the contents of the plaint.

36. The Plaintiffs have also pleaded at paragraph '37' of the plaint and in their written submissions at paragraph 'IV(C)' that the Defendants in 2021 and 2024 had similarly indulged in infringing actions by using deceptively similar trademarks and trade dress, compelling the Plaintiffs to initiate criminal actions. The Plaintiffs have placed on record supporting documents with the plaint in furtherance of the same. The Plaintiffs have also placed on record the oppositions filed by it before the Trademark Registry to the applications of the Defendants for the impugned mark, putting the Defendants to notice of the opposition. They have also placed on record the cease-and-desist notice dated 18.01.2024 issued to the Defendants. The Plaintiffs have pleaded that it was compelled to institute this suit as the Defendants launched the impugned product using the impugned marks and impugned packaging in the market in or about August 2024.

37. The facts in the plaint show that Plaintiffs were compelled to file the present suit as a last resort after the Defendants launched the impugned



products bearing the impugned marks and packaging in the market in August 2024, having exhausted the options of cease-and-desist notice as well as oppositions before the Trademark Registry.

38. The assertions of the Plaintiffs with respect to Defendants' past conduct in 2021 and 2024, which led to criminal actions, also justify the Plaintiffs' apprehension in approaching the Court to seek an injunction against the Defendants from dealing with the impugned marks and impugned packaging.

39. In light of the fact that the plaint has been duly verified and is supported by the affidavit of the Plaintiffs, and considering the circumstances set out hereinabove, this Court is of the considered view that no triable issues arise in the present matter. Consequently, the suit is fit to be decreed in favour of the Plaintiffs under the provisions of Order VIII Rule 10 of the CPC.

40. In view thereof, this Court is of the view that the Plaintiffs are entitled to a relief of permanent injunction as claimed in the plaint. Accordingly, a decree of permanent injunction is hereby passed in favour of the Plaintiffs and against the Defendants, in terms of prayer clauses (a), (b), (c), (d) and (e) of paragraph '54' of the plaint.

41. The remaining prayer clauses (f) and (g) of the Plaintiffs are dismissed as not pressed.

42. With respect to the relief of costs sought under prayer clause 54(h) of the plaint, relating to the legal expenses incurred in the present suit, it is relevant to refer to the judgment of the Hon'ble Supreme Court in **Uflex**



Ltd. v. State of Tamil Nadu², wherein the Court elucidated the principles governing the award of costs in commercial litigation. Although the said proceedings originated from a writ petition under Article 226 of the Constitution of India, the dispute in question was commercial in nature, making the principles laid down therein apposite to the present case.

43. Additionally, the Co-ordinate Benches of this Court in **Hindustan Lever Ltd. v. Satish Kumar**³ and **Ebay Inc. v. Mohd. Waseem T/AS Shopibay and Ors.**⁴ have held that a defendant who elects not to participate in the suit proceedings despite due service cannot be rewarded and would be liable to pay punitive damages. In this case, although the Court is not considering the issue of punitive damages, the said observations of the Court would apply for the award of legal costs to compensate the Plaintiffs who have been compelled to initiate these proceedings, incur Court fees and legal costs. This Court is of the view that the actions of the Defendants in selling the impugned products bearing the impugned marks and impugned trade dress, which is deceptively similar to the Plaintiffs' trade dress/packaging and registered marks and electing to abstain in these proceedings despite service, are not bona fide and invite award of legal costs.

44. In view of the principles laid down in the aforesaid judgments, lump sum legal costs of Rs. 5,00,000/- [Five Lakhs] are being awarded to the Plaintiffs vis-à-vis the Defendants.

45. Plaintiffs will be at liberty to approach the trademark registry for seeking appropriate directions with respect to TM Nos. 5829564 and 5667019, in view of the e-mail dated 05.11.2024 and the decree passed

² (2022) 1 SCC 165 [Paragraph Nos. 53 to 59]

³ 2012 SCC OnLine Del 1378 [Paragraph No. 23]



today.

46. Let the decree sheet be drawn up accordingly.

47. With the aforesaid directions, this suit, along with pending applications (if any), stands disposed of.

48. All future dates stand cancelled.

49. The digitally signed copy of this order, duly uploaded on the official website of the Delhi High Court, www.delhihighcourt.nic.in, shall be treated as a certified copy of the order for the purpose of ensuring compliance. No physical copy of order shall be insisted by any authority/entity or litigant.

MANMEET PRITAM SINGH ARORA, J

NOVEMBER 6, 2025/rhc/aa

⁴ 2020 SCC OnLine Del 3879 [Paragraph Nos. 30-32]