

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

% *Judgment Reserved on : 10th April, 2023*
Judgment Delivered on : 18th April, 2023

+ **CS(COMM) 635/2018**

LOUIS VUITTON MALLETIER Plaintiff

Through: Mr. Dhruv Anand, Ms. Udit Patro,
Ms. Sampurna Sanyal, Ms. Nimrat
Singh, Advocates.

versus

SANTOSH & ORS. Defendants

Through: None.

CORAM:

HON'BLE MR. JUSTICE AMIT BANSAL

JUDGMENT

AMIT BANSAL, J.

1. The present suit has been filed seeking relief of permanent injunction restraining the defendants from infringing the trademarks of the plaintiff, passing off their goods as that of the plaintiff's, dilution and other ancillary reliefs.

BRIEF FACTS

2. The case set up by the plaintiff in the plaint is that the plaintiff company, Louis Vuitton Malletier incorporated under the laws of France is a French luxury fashion and leather goods company owning the brand, Louis Vuitton. Louis Vuitton merged with Mötet Hennessy SA to form the LVMH Group, the luxury conglomerate.

3. The plaintiff opened its first store in India at the Oberoi Hotel in New Delhi in 2003. Currently, there are three Louis Vuitton stores in India, details of which have been filed along with the plaint.

4. The name “Louis Vuitton” is derived from the name of its founder, Mr. Louis Vuitton and has been used as a brand since 1854. In addition to the trademark “Louis Vuitton”, the initials “LV”, represented in an intertwined manner has also been used as a trademark by the plaintiff since 1896. The plaintiff has also continuously used the canvas design with a flower pattern and the intertwined initials of “Louis Vuitton”, which design is known as “Toile monogram” and is associated as an emblematic symbol of the House of Louis Vuitton.

5. The plaintiff got registered the “Louis Vuitton” word mark, the “LV” logo, the Toile monogram pattern, the Damier pattern and the LV flower pattern (collectively referred to as ‘Louis Vuitton trademarks’) in India in Classes 3, 14, 18 and 25 under registrations no. 441451, 448228, 448229B, 448230B, 448231, 441453B, 448233B, 448235, 448234, 861145, 1335385 and 1335386, details of which have been filed along with the plaint.

6. The plaintiff’s “Louis Vuitton” word mark, the “LV” logo and the Toile monogram pattern have acquired the status of ‘well-known trademarks’, which fact has been recognised in the judgments of this court in *Louis Vuitton Malletier v. Abdul Salim*, 2009 SCC OnLine Del 1312 and *Louis Vuitton Malletier v. Manoj Khurana*, 2015 SCC OnLine Del 11683. Further, the plaintiff’s “Louis Vuitton” trademark has also been included in the list of ‘well-known trademarks’ by the Indian Trademark Office.

7. During the periodical market surveys conducted by the plaintiff in January and February, 2018, the plaintiff found about the infringing and counterfeit activities of the defendants no.1 to 3. Defendant no.1, Mr. Santosh is the sole proprietor of the defendant no.2 entity. Defendant no.3 owns and operates a manufacturing unit.

8. It has been averred in the plaint that the defendants no.1 to 3 are engaged in manufacturing and selling and/or offering for sale, trading, advertising and directly dealing in goods bearing the plaintiffs registered trademarks. Pursuant thereto, the plaintiff availed the services of an investigator in January and February, 2018, to ascertain the business activities of the defendants. The investigation confirmed that the defendants are infringing the plaintiff's registered and 'well-known trademark' "Louis Vuitton" in relation to their business of counterfeit activities.

9. Accordingly, the present suit has been filed.

PROCEEDINGS IN THE SUIT

10. This Court, vide order dated 23rd February, 2018 granted an *ex parte* ad interim injunction in favour of the plaintiff, restraining the defendants no.1 to 3 from using the plaintiff's registered trademarks "Louis Vuitton", "LV" logo, the Toile monogram pattern, the Damier pattern and the LV flower pattern. The relevant portion of the said order is as under:

"Keeping in view the aforesaid, this Court is of the opinion that a prima facie case of infringement and passing off is made out in favour of the plaintiff and balance of convenience is also in its favour. Further, irreparable harm or injury would be caused to the plaintiff if an interim injunction order, is not passed.

Consequently, till further orders, the defendants, their partners, if any, officers, servants, agents, distributors, stockiest and representatives are restrained from importing, manufacturing, warehousing, selling and/or offering for sale, advertising, directly or indirectly dealing in any manner in any goods bearing the plaintiffs registered trademarks LOUIS VIJITTON, LV Logo, the Toile monogram pattern, the Damier pattern and the LV Flower patterns or any other similar trade marks."

11. Vide the aforesaid order, three Local Commissioners were also appointed by this Court to seize and make an inventory of the infringing products bearing the name/mark “Louis Vuitton” trademark, the “LV” logo, the Toile monogram pattern or any mark similar to that of the plaintiff’s mark. The Local Commissions were carried out on 27th February, 2018. The Local Commissioners found a large stock of infringing goods at the premises of the defendants no. 1 to 3, which was inventoried by them and seized and handed over on *superdari* to the defendants. The reports of the Local Commissioners are on record.

12. Vide order dated 17th September, 2018, the *ex parte* ad interim injunction order dated 23rd February, 2018 was confirmed till the final adjudication of the suit.

13. Subsequently, Mr. Ankit Rastogi and Mr. Wasim Khan were impleaded as the defendants no.4 and 5 in the present suit vide orders passed by the Joint Registrar on 21st November, 2019 and 19th December, 2019 respectively.

14. None has been appearing on behalf of the defendants no.1 and 2 after 20th March, 2019. None has been appearing on behalf of the defendant no.3 despite having been served by way of publication on 7th May, 2019. None has been appearing on behalf of the defendants no.4 and 5 since 6th October, 2020. Consequently, the defendants no.1 to 5 were proceeded against *ex parte* on 23rd May, 2022.

15. *Ex parte* evidence by way of affidavit was filed on behalf of the plaintiff on 12th September, 2022. Written submissions have also been filed

by the plaintiff.

16. In view of the above, the counsel for the plaintiff prays for a decree of permanent injunction and damages along with costs in the suit.

ANALYSIS AND FINDINGS

17. I have heard the counsel for the plaintiff and perused the record of the case.

18. At the outset, it may be relevant to note that the defendants no. 1, 2, 4 and 5 entered their appearance in the present suit, however, subsequently, chose not to appear any further and hence, were proceeded against *ex parte*. No written statement has been filed by any of the defendants.

19. Since the defendants have failed to take requisite steps to contest the present suit, despite having suffered an ad interim injunction order, it is evident that they have no defence to put forth on merits.

20. The evidence by way of affidavit has been filed on behalf of the plaintiff in support of the averments made in the plaint, which has not been rebutted and therefore, it has been established that the plaintiff is the registered owner of the the name/mark “Louis Vuitton” trademark, the “LV” logo, the “Toile monogram” pattern, “Damier” pattern and the “LV flower” pattern and the said registrations are valid and subsisting. The plaintiff has also been able to show its goodwill and reputation in respect of the aforesaid trademarks. Plaintiff has established statutory as well as common law rights on account of long usage of its Louis Vuitton trademarks.

21. The reports of the Local Commissioners show that the defendants are indulging in manufacturing and sales of counterfeit products, which bear the identical marks as that of the plaintiff. A total of 9554 infringing products

were found at the premises of the defendants no.1 to 3 including labels, buttons, tags, apparels bearing the trademarks of the plaintiff. The manufacturing and selling of the counterfeit products by the defendants not only amount to infringement of the registered trademarks of the plaintiff but also to passing off the goods of the defendants as that of the plaintiff. The defendants have taken unfair advantage of the reputation and goodwill of the plaintiff's marks and have also deceived the unwary consumers of their association with the plaintiff by dishonestly adopting the plaintiff's registered marks without any plausible explanation. Such acts of the defendants would also lead to dilution of the plaintiff's marks.

RELIEF

22. The various registrations and the long usage of the "Louis Vuitton" trademarks by the plaintiff, as also the goodwill vesting in the "Louis Vuitton" trademarks, entitles the plaintiff for grant of permanent injunction and decree in terms of the amended plaint.

23. Since, no infringing products were found at the premises of the defendants no.4 and 5 as they were only operating manufacturing units, counsel for the plaintiff only presses for reliefs in terms of prayer clauses 52 (i), (ii) and (iii) against the defendant no. 4 and 5.

24. Accordingly, the present suit is decreed against the defendants no.1 to 5 in terms of the relief of permanent injunction as sought in prayer clauses 52 (i), (ii) and (iii).

25. Insofar as delivery up for the purpose of erasure/destruction, as sought in prayer clause 52 (iv) is concerned, the goods seized by the Local Commissioners, which are lying in *superdari* with the defendants no.1 to 3, the details of which are given in the reports dated 27th February, 2018 are

directed to be handed to the representatives of the plaintiff forthwith for the purpose of destruction, in compliance with extant rules/regulations.

26. Counsel for the plaintiff does not press for reliefs as sought in prayer clauses 52 (vi), (vii) and (viii) against the defendants no. 1 to 5.

27. Insofar as the relief of damages as sought in prayer clause 52 (v), is concerned, reference may be made to the judgment in ***Hindustan Lever Ltd. v. Satish Kumar***, 2012 SCC OnLine Del 1378. The relevant observations are set out below:

“23. One of the reasons for granting relief of punitive damages is that despite of service of summons/notice, the defendant had chosen not to appear before the court. It shows that the defendant is aware of the illegal activities otherwise, he ought to have attended the proceedings and give justification for the said illegal acts. Since, the defendant has maintained silence, therefore, the guilt of the defendant speaks for itself and the court, under these circumstances, feels that in order to avoid future infringement, relief of punitive damages is to be granted in favour of the plaintiff.”

28. In the present case, the defendants no.1 to 3 have blatantly infringed the Louis Vuitton trademarks of the plaintiff and has also failed to appear before this Court. The Local Commissioners found a total number of 9554 infringing and counterfeit products at the premises of the defendants no.1 to 3, which were inventoried by them and seized and handed over on *superdari* to the defendants no.1 and 3. Out of the aforesaid goods 2735 infringing products were seized from the premises of the defendants no.1 and 2 and 6819 infringing products were seized from the premises of the defendant no.3. I am convinced that this is not a case of innocent adoption and therefore, the plaintiff is entitled to damages of Rs.5,00,000.

29. Taking into account the volume of the seizure made and nature of counterfeiting indulged into by the defendants no. 1 to 3, in the opinion of the Court, the defendants no. 1 and 2 shall be liable to pay damages of Rs.1,50,000/- in favour of the plaintiff and the defendant no. 3 shall be liable to pay damages of Rs.3,50,000/- in favour of the plaintiff.

30. As regards prayer clause 52 (ix), the present suit is governed by the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 as also the Delhi High Court (Original Side) Rules, 2018. Counsel for the plaintiff has filed a statement of costs. The statement of costs shows that Rs.3,22,500/- has already been incurred for court fees and the fees of the Local Commissioners. In addition, it is claimed that expenses to the tune of Rs. 35,698/- have been incurred and Rs.6,01,214/- is the legal fees. This Court is convinced that this is a fit case for award of actual costs to the plaintiff. Accordingly, Rs.9,59,413/- is awarded to the plaintiff as costs, which shall be paid by the defendants 1 to 3. Costs of Rs.3,00,000/- shall be paid by the defendants no. 1 and 2 and costs of Rs.6,59,414/- shall be paid by the defendant no.3.

31. Let the decree sheet be drawn up.

32. All pending applications are disposed of in the above terms.

AMIT BANSAL, J.

APRIL 18, 2023

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