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

% *Judgment pronounced on: 4th January, 2016*

\+ **CS(OS) No.1317/2014**

CARTIER INTERNATIONAL AG & OTHERS ..... Plaintiffs
Through Mr.Pravin Anand, Adv. with Mr.Raunaq Kamath & Mr.Vishnu Rege, Advs.

versus

GAURAV BHATIA & ORS ..... Defendants
Through Defendants are *ex-parte.*

CORAM:
HON'BLE MR.JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. The plaintiffs have filed the present suit seeking *inter alia* permanent injunction restraining infringement of trademark, passing off, damages etc. It is alleged by the plaintiffs that the defendants are operating an e-commerce website where they are offering counterfeit products bearing the trademarks and logos of various luxury brands, including those of the plaintiffs, for sale. The defendants are ex-parte. The plaintiffs have produced the evidence by way of affidavit of Pankaj Pahuja as PW-1. The same was tendered in evidence as PW-1/A.

2. PW-1 has deposed that it has been signed on behalf of the plaintiffs by Mr. Flavio Mascetti in his capacity of the constituted, attorney of the plaintiff Companies. He identified the signatures of Mr. Flavio Mascetti on the plaint at the points marked 'C and 'D'. It is submitted that Mr. Flavio Mascetti is authorized to sign and verify the

plaint by virtue of Powers of Attorney executed in his favor by plaintiffs which may be exhibited as Ex. PW-1/2 (colly).

3. The detailed affidavit of PW-1 has been filed on the lines of averments made in the plaint. The plaintiff No.1, Cartier International A.G. is the holder and proprietor of the trademark CARTIER in relation to, *inter alia,* a wide range of luxury products including watches, jewellery, writing instruments and leather goods. Plaintiff No.1 has been engaged in manufacture and sale of luxury products under the trademark CARTIER since 1847. On account of long, continuous and extensive use coupled with the high quality standards maintained by the plaintiff No.1, the trademark CARTIER has acquired a distinct and distinguished reputation so much so that the CARTIER brand is one of the recognized luxury brands in the world. Apart from being plaintiff No.1's trademark, the word CARTIER also constitutes an integral and dominant part of plaintiff No.1's corporate name/ trading style. The trademark/name CARTIER has thus become distinctive of plaintiff No.1's business and products and is entrenched in the minds of the public, including the Indian population at large, all of whom instantly and unhesitatingly associate the mark/ name CARTIER with the products and business of plaintiff No.1. The CARTIER brand is an important source identifier of plaintiff No.1 and its business as well as a carrier of Plaintiff No.1's reputation and associated goodwill. Internet extracts pertaining to plaintiff No.1 and the CARTIER brand have been exhibited as Ex. PW-1/3 (colly).

4. The trademark CARTIER has also been recognized as a well-known mark as provided under Section 2(zg) of the Trademarks Act, 1999 and has consequently been incorporated in the list of well-known

marks maintained by the Trademarks Registry. A printout of the said list has been exhibited as Ex. PW-1/4.

5. Plaintiff No.2, Officine Panerai AG, is the holder and proprietor of the trademark PANERAI in relation to watches and other horological and chronometric instruments. Plaintiff No.2 has been engaged in manufacture and sale of watches under the trade mark PANERAI since 1860. On account of long, continuous and extensive use coupled with the high quality standards maintained by plaintiff No.2, the trademark PANERAI has acquired a distinct and distinguished reputation so much so that PANERAI is one of the most widely recognized luxury brands in the world and is associated in the minds of the public with a proud tradition of style, quality and craftsmanship. It is stated that PANERAI, apart from being plaintiff No.2's trademark, also constitutes an integral and dominant part of plaintiff No.2's corporate name/ trading style. The trademark PANERAI has thus become distinctive of plaintiff No.2's business and products and is entrenched in the minds of the public, including the Indian population at large, all of whom instantly and unhesitatingly associate the mark/ name PANERAI with the products and business of plaintiff No.2. PANERAI is therefore an important source identifier of plaintiff No.2 and its business as well as a carrier of plaintiff No.2's reputation and associated goodwill. Internet extracts pertaining to plaintiff No.2 and the PANERAI brand have been exhibited as Ex. PW-1/5 (colly).

6. Plaintiff No.3, Richemont International S.A., is the older and proprietor of the trademarks VACHERON CONSTANTIN and JAEGER LECOULTRE in relation to watches and other horological and chronometric instruments. Plaintiff No.3 has been engaged in manufacture and sale of watches under the trademark VACHERON

CONSTANTIN since 1819 and under the trademark JAEGER LECOULTRE since 1903. Owing to long, continuous and extensive use coupled with the high quality standards maintained by plaintiff No.3, the trademarks VACHERON CONSTANTIN and JAEGER LECOULTRE respectively have each acquired a distinct and distinguished reputation so much so that VACHERON CONSTANTIN and JAEGER LECOULTRE are two of the most widely recognized luxury brands in the world and are associated in the minds of the public with a proud tradition of style, quality and craftsmanship. Apart from being plaintiff No.3's trademark, the words VACHERON CONSTANTIN also constitutes an integral and dominant part of the corporate name/ trading style of one of plaintiff No.3's subsidiary companies viz. Vacheron & Constantin SA.

The words JAEGER LECOULTRE in addition to being plaintiff No.3's trademark, similarly same is also dominant part of the corporate name of one of plaintiff No.3's subsidiary companies viz. Jaeger LeCoultre. The trademarks/ names VACHERON CONSTANTIN and JAEGER LECOULTRE have thus become distinctive of plaintiff No.3's business and products and are entrenched in the minds of the public, including the Indian population at large, all of whom instantly and unhesitatingly associate the marks/ names VACHERON CONSTANTIN and/ or JAEGER LECOULTRE with the products and business of plaintiff No.3. It is stated that VACHERON "CONSTANTIN and JAEGER LECOULTRE are important source identifiers of plaintiff No.3 and its business as well as carriers of plaintiff No.3 and the above mentioned subsidiaries' reputation and associated goodwill. Internet extracts pertaining to plaintiff No.3, its subsidiaries and the VACHERON CONSTANTIN and JAEGER LECOULTRE brands have been exhibited as Ex. PW-1/6 and Ex. PW-1/7 respectively.

7. The plaintiffs are a part of the world renowned Richemont Group, a group of companies comprising the world leaders in the field of luxury goods, with particular strengths in watches, writing instruments, jewellery, leather and accessories and clothing. They are engaged in the manufacture and sale of a wide range of luxury products under their respective trademarks. Plaintiff Nos.2 and 3 deal in watches and other horological and chronometric instruments while plaintiff No.1 deals in jewellery, writing instruments and leather goods as well. A list of the plaintiffs' popular product collections has been exhibited as Ex. PW-1/8.

8. The plaintiffs have successfully secured registrations of their respective trademarks and the names of their prominent product collections. The details of the plaintiffs' trademark registrations in India are as under:

S. No.	Reg. No.	Trade Mark	Class	Date
1.	253395	CARTIER	14	12/12/1968
2.	289891	CARTIER	18	02/08/1973
3.	551274	PASHA	14	17/05/1991
4.	1248639	CABOCHON	18	10/11/2003
5.	1246395	PANERAI	14	28/10/2003
6.	774844	OFFICINE PANERAI FIRENZE	14	19/09/1997
7.	1342959	MARINA MILITARE	14	07/03/2005
8.	774842	LUMIOR	14	19/09/1997
9.	551999	VACHERON CONSTANTIN	14	03/06/1991
10.	202130	JAEGER LECOULTRE	14	28/04/1961

The above trademarks are referred to as the ''suit trademarks". The extracts from the website of the Trade Mark Registry along with the corresponding registration certificates pertaining to the suit trademarks have been exhibited as Ex. PW-1/9, Ex. PW-1/10, Ex. PW-1/11, Ex. PW-1/12, Ex. PW- 1/13, Ex. PW-1/14, Ex. PW-1/15, Ex. PW-1/16, Ex. PW-1/17, Ex. PW-1/18 respectively.

The plaintiffs have also secured multiple registrations for the suit trademarks in several countries across the world. Details of the plaintiffs' WIPO International trade mark registrations in relation to the suit trademarks have been exhibited as Ex. PW-1/19.

9. It is deposed in the affidavit of PW-1 that on account of long and continuous use coupled with extensive sales spanning a wide geographical area, the plaintiffs' products and by extension the suit trademarks have acquired tremendous reputation and goodwill amongst consumers and the members of the trade all over the world. The well-known character of the plaintiffs' trademarks are reflected from the plaintiffs' worldwide sales from 2003 to 2013 which is collectively in excess of one billion USD. The plaintiffs have a successful presence in India as indicated by turnover in India from 2003 to 2013 which is collectively in excess of 100 million USD.

10. It is stated in the affidavit that the plaintiffs have incurred substantial expense towards the advertisement and promotion of their products sold under the suit trademarks through mediums of electronic and print media. The plaintiffs' worldwide consolidated advertisement expenses from 2003 to 2013 are collectively in excess of 500 million USD. With specific reference to India, the advertising expenses incurred by the plaintiffs from 2003 to 2013 are collectively in excess of 7 million USD.

In order to identify the source, origin and sponsorship of their products, the plaintiffs have extensively employed, caused to be advertised and publicized certain distinct trade dress elements in relation to their products. The trademarks and trade dress of the plaintiffs' respective ranges of products are also promoted via the websites www.cartier.com, www.panerai.com, www.vacheronconstantin.com and www.jaeger-lecoultre.com. These websites were launched several years ago to facilitate public awareness and serve as comprehensive guides to the plaintiffs' business activities and products. The plaintiffs regularly host advertising, campaigns etc. and publish cautionary notices warning third parties about misuse of any of the suit trademarks in order to safe guard and monitor use thereof. As a result, the consumers as well as traders of such goods instantly recognize the shape and configuration of entire range of the plaintiffs' product lines and collections. On account of the plaintiffs' overwhelming presence and activities all over the world including in India, knowledge and awareness of the suit trademarks is implicit and use thereof by any other entity is bound to create, a connection, affiliation or association with the plaintiffs, in the minds of the consumer and the trade.

11. It is deposed in the affidavit of PW-1 that defendant No.4 is a company trading under the name and style of Digaaz e-Commerce Pvt. Ltd. and that defendant Nos.1 to 3 are the directors thereof. The defendants operate an ecommerce website www.digaaz.com where they offer lifestyle and fashion products for sale. The defendants' website www.digaaz.com has been found to be offering for sale and supplying counterfeit products bearing several registered trademarks of the plaintiffs including the suit trademarks. The domain name

<digaaz.com> is registered in the name of defendant No.1 and an extract from www.whois-search.com providing the details of this domain name has been exhibited as Ex. PW-1/20. The Articles of Association of the defendant No.4 Company has been exhibited as Ex. PW-1/21. An invoice evidencing that the defendants are carrying on business in New Delhi has been exhibited as Ex. PW1/22.

12. It is submitted in the plaint and deposed in the affidavit that in the month of February, 2014 the plaintiffs were informed by another related company of the Richemont Group viz. i.e. Montblanc Simplo Gmbh (hereinafter referred to as 'Montblanc'') that the defendants are selling and supplying counterfeit products of various luxury brands including those of the plaintiffs and Montblanc on their website www.digaaz.com. The plaintiffs were also informed that Montblanc had initiated a suit being CS (OS) No.2563 of 2013 for infringement of trademark, copyright and passing off against the defendants before this Court and an ex-parte injunction was granted in favor of Montblanc on 18th December, 2013 restraining the defendants, their partners, if any, officers, servants, its, distributors, stockists and representatives from manufacturing, selling and/or offering for sale, advertising, directly or indirectly dealing in writing instruments, wallets, watches, leather goods, jewelry or any other goods bearing the trademarks MONTBLANC, MEISTERSTUCK, the Three Ring Device and/or the Star Device or any similar trademark and/or device amounting to an infringement of registered Trademarks Nos.168115, 228166, 845371, 605697, 713587 749405 and 174504 and also from directly or indirectly infringing the copyright contained in the service guide accompanying the Montblanc's products and from doing any

other act amounting to passing off of their goods as those of Montblanc.

The plaintiffs immediately initiated enquiries which confirmed that the defendants are offering for sale and supplying counterfeit goods bearing the suit trademarks at heavily discounted prices on their website www.digaaz.com. The printouts from the defendants' said website prominently displaying the counterfeit products bearing the suit trademarks which are being offered for sale have been exhibited as Ex. PW-1/23. Printouts from third party websites pertaining to the defendants have been exhibited as Ex. PW-1/24.

13. In addition to offering for sale and supplying counterfeit goods bearing the suit trademarks through their website, the defendants are providing these goods with model names identical to those used in relation to the plaintiffs' original product lines and collections. The plaintiffs do not even manufacture corresponding original products or the counterfeit products bearing the suit trademarks being offered for sale on the defendants' website www.digaaz.com. A table of comparison between the counterfeit products being offered for sale by defendants and the corresponding original product of the plaintiffs has been exhibited as Ex. PW-1/25.

The following factors establish that the defendants are offering counterfeit products bearing the suit trademarks for sale on their website www.digaaz.com:

(i) The plaintiffs like all world class luxury brands do not sell their products at discounted rates whereas the defendants are offering discounts as high as 95% on the products bearing the suit trademarks being offered for sale on their website www.digaaz.com.

(ii) None of the plaintiffs have ever authorized the defendants to deal in products under their respective trademarks.

(iii) Some of the products bearing the suit trademarks being offered for sale on the defendants' website do not have a corresponding original product being sold by the plaintiffs.

It is alleged in the affidavit that these factors establish that the impugned products bearing the suit trademarks being offered for sale on the defendants' website www.digaaz.com do not originate from the plaintiffs and are in fact counterfeit.

14. The plaintiffs came to know in February, 2014 that the defendants were selling and supplying counterfeit products of various luxury brands including those of the plaintiffs on their website www.digaaz.com and issued cease and desist notices to the defendants on 20th February, 2014 which has been exhibited as Ex.PW-1/26. There has been no response to these notices.

15. The defendants has falsely claimed on their website www.digaaz.com that *"…We cover world's most coveted brands and guarantee 100% authenticity to offer you safe and secure shopping…"* Moreover the Defendants quote exorbitant prices for these counterfeit goods for eg: The defendants indicate on their website that a '**PANERAI** LUMINOR MARINA WATCH' originally costs INR 7,02,000/- (approximately Seven Lakh Rupees) but the defendants are offering the said watch for sale at an alleged '*discount*' for INR 92,000/-. The watch however is a counterfeit product which is not even worth INR 2000. The customers however are duped into buying the defendants' counterfeit products under the mistaken belief that these are original

while the defendants make massive illegal profits from these transactions.

16. Many customers have already been cheated as per evidence produced by the defendants who have purchased large quantities of counterfeit products including those bearing the plaintiffs' trademarks, from the defendants' website www.digaaz.com for exorbitant sums of money.

17. Upon learning about the defendants' infringing activities, the plaintiffs instructed their attorneys to issue a cease and desist letter to the defendants calling upon them to cease and desist from selling counterfeit products under the suit trademarks on their website www.digaaz.com.

18. The cease and desist notices were sent to the defendants on behalf of each of the plaintiffs on 20th February, 2014 and has been exhibited as Ex.PW-1/26 (colly). The defendants however chose to ignore the said notices though the same were delivered to the defendants on the same day. On enquiries conducted on behalf of the plaintiffs confirmed that, despite receipt of the plaintiffs' notices, the defendants continued to offer for sale counterfeit products under the suit trademarks on their website www.digaaz.com.

19. After delivery of the product, the customers usually discovered that the defendants' product is in fact counterfeit and lodged complaints with the defendants. The defendants however always refused to refund the money or to replace the counterfeit product with a corresponding original product. This has come on record that many consumer complaints have been lodged by the customers who have

been cheated by the defendants and purchased counterfeit products from the website www.digaaz.com.

Document (s)	Exhibit No(s)
Printouts from www.digaaz.com showing counterfeit products bearing plaintiffs' trademarks	Ex-PW 1/23
Sample consumer complaints	Ex-PW1/28

20. It is deposed that the adoption and use of the suit trademarks and model names by the defendants on their products makes it evident that by offering such goods for sale on their website, the defendants are aiming to mislead consumers and members of the trade into believing that the products sold by the defendants have originated or are endorsed, and/or are authorized by the plaintiffs. The defendants state as follows on the website www.digaaz.com:

> "At Digaaz.com, we strive to bring to you the latest in lifestyle and consumer merchandise products through lively sales and aspiring deals and discounts. We cover world's most coveted brands and guarantee 100% authenticity to offer you safe and secure shopping."

The defendants thus made an obvious misrepresentation on their website since the products offered for sale and supplied are counterfeits bearing the plaintiffs' trademarks.

21. It is also alleged in the affidavit of PW-1 that apart from dealing in the counterfeit goods bearing the suit trademarks, the defendants also offered for sale and supply of counterfeit goods of other luxury brands through their website www.digaaz.com. Some of the

counterfeit products on the defendants' website are being offered for sale under various other luxury brands including Montblanc, Louis Vuitton, Burberry, Hermes, Chanel, D&G, Prada, Givenchy, Dior, Bvlgari, Tory Burch, Fendi, Bottega Veneta, etc.

22. The volume of counterfeit goods sold by the defendants demonstrates that the defendants are seasoned infringers and counterfeiters with a regular supply of counterfeit goods. Many of the right holders of these brands have instituted proceedings against the defendants before this Court and have obtained orders restraining the defendants from selling counterfeit products bearing their respective trademarks and logos. The orders granting interim injunctions in favour of Montblanc, Louis Vuitton and Burberry have been exhibited as Ex.PW-1/27 (colly).

23. It is stated in the affidavit of PW-1 that unlawful nature of the defendants' infringing activities is further demonstrated by the numerous consumer complaints lodged against the defendants which shows that hundreds of consumers have been duped by the defendants into believing that the goods offered on its website are genuine goods of various luxury brands including those sold under the suit trademarks. Sample consumer complaints have been exhibited as Ex.PW-1/28 (colly).

24. It is also deposed in the affidavit that one of the many customers who was cheated by the defendants and had purchased counterfeit watches from the website www.digaaz.com lodged a complaint before the Cyber Crime Cell of the Chandigarh Police which was registered as Case FIR No.397 dated 24th September, 2014 under Section 406,420 IPC and 66 (A) IT Act of P.S. - Sector 39, Chandigarh. The FIR has been exhibited as Ex.PW- 1/29.

During the investigation the Cyber Cell received several more complaints from other consumers who had purchased counterfeit products from the defendants and also ascertained that apart from the website www.digaaz.com, the defendants were also selling their counterfeit products on the website www.watchcartz.com, and www.luxecart.com. On 24th September, 2014 raids were conducted at the defendants' premises in Chandigarh where thousands of counterfeit products bearing the trademarks of various luxury brands including the suit trademarks were seized. The seizure memo along with a clear typed copy has been exhibited as Ex.PW-1/30 (colly). Printouts from third party websites containing news articles about the defendants and the pending criminal proceedings have been exhibited as Ex.PW-1/31 (colly).

25. The Chandigarh Cyber Cell's investigation and raid confirm that the defendants are offering for sale of counterfeit products including those bearing the suit trademarks on the impugned websites www.digaaz.com, www.watchcartz.com and www.luxecart.com. The Cyber Cell also confirmed that the defendants procure the counterfeit products from New Delhi, Ludhiana and Chandigarh at throw away prices and sell these at exorbitant rates cheating both customers and brand owners and making enormous illegal profits in the process.

26. On 8th October, 2014 defendant Nos.1 and 2 were arrested by the Cyber Cell and were remanded in judicial custody for 14 days. The matter is still pending against them and is at the stage of filing charge sheet.

27. Apart from the defendants' counterfeit products, the Cyber Cell has seized/ sealed movable property as well as immovable properties belonging to the defendants.

Document (s)	Exhibit No(s)
FIR lodged against the defendants	Ex-PW 1/29
Seizure memo (along with clear typed copy) indicating details of seized counterfeit goods.	Ex-PW1/30
News articles pertaining to the criminal proceedings against the defendants, seizure of counterfeit products and the defendants arrest.	Ex-PW1/31

28. The defendants have not filed any written statement in this suit. They have also failed to admit or deny the documents of the plaintiffs. They have also failed to cross-examine PW-1. The evidence of the plaintiffs' has gone unrebutted. Therefore, the evidence of the plaintiffs and documents filed by the plaintiffs are deemed to be admitted under the provision of Order XII Rule 2-A CPC.

29. The plaintiff No.1, Cartier International A.G. is the proprietor of the trade mark/ name CARTIER in relation to a wide range of luxury products including watches, jewellery, writing instruments and leather goods. The trade mark/ name CARTIER was adopted in 1847. The trade mark CARTIER has been declared as a well-known mark.

Document (s)	Exhibit No(s)
Internet extracts about Plaintiff No.1 and relevant CARTIER product collections	Ex-PW 1/3
Plaintiff No.1's registrations	Ex-PW1/9 to Ex-PW1/12, Ex-PW1/15 and Ex-PW1/16
List of well-known marks including CARTIER	Ex-PW 1/3

30. It is a matter of fact that plaintiff No.2, Officine Panerai AG, is the holder and proprietor of the trade mark/ name PANERAI in relation to luxury products viz. watches and other horological and chronometric instruments. The trade mark PANERAI was adopted in 1860.

Document (s)	Exhibit No(s)
Internet extracts about Plaintiff No.2 and relevant PANERAI product collections	Ex-PW 1/5
Plaintiff No.2's registrations	Ex-PW1/13 and Ex-PW1/14

31. It has come on record that the plaintiff No.3 Richemont International S.A., is the holder and proprietor of the trademarks VACHERON CONSTANTIN and JAEGER LECOULTRE in relation to luxury products viz. watches and other horological and chronometric instruments. The trademarks VACHERON CONSTANTIN and JAEGER LECOULTRE were adopted in 1819 and 1903 respectively and also constitute the trading style of plaintiff No.3's wholly owned subsidiary companies viz. Vacheron & Constantin SA. and Jaeger LeCoultre respectively.

Document (s)	Exhibit No(s)
Internet extracts about Plaintiff No.3 and relevant VACHERON CONSTANTIN product collections	Ex-PW 1/6
Internet extracts about Plaintiff No.3 and relevant VACHERON CONSTANTIN product collections	Ex-PW 1/7
Plaintiff No.3's registration	Ex-PW1/17 and Ex-PW1/14

32. All the plaintiffs admittedly are a part of the world renowned Richemont Group and are engaged in the manufacture and sale of a wide range of luxury products under their respective suit trademarks. Apart from above registrations obtained by the plaintiffs for the suit trademarks in India, the plaintiffs have also obtained international WIPO registrations for these marks. As a result, in addition to strong common law rights resulting from long, continuous and extensive use, the plaintiffs also assert strong statutory rights in the suit trademarks, both in India and abroad.

Document (s)	Exhibit No(s)
Plaintiffs' popular product collection	Ex-PW 1/8
The plaintiffs' WIPO international trade mark registrations.	Ex-PW 1/19

33. The plaintiffs' worldwide sales turnover from 2003 to 2013 was collectively in excess of one billion USD. The plaintiffs' sales turnover in India from 2003 to 2013 was collectively in excess of 100 million USD. The plaintiffs' worldwide consolidated advertisement expenses from 2003 to 2013 were collectively in excess of 500 million USD. The advertising expenses incurred by the plaintiffs in India from 2003 to 2013 are collectively in excess of 7 million USD.

34. There is no denial on behalf of the defendants that defendant No.4 is a company viz. Digaaz e-Commerce Pvt. Ltd and defendant Nos.1 to 3 are the directors thereof. The defendants are operating an e-commerce website www.digaaz.com where they are offering for sale products bearing the trademarks of various luxury brands. The domain name <digaaz.com> is registered in favor of defendant No.2.

Document (s)	Exhibit No(s)
Whois Search results providing details of domain name <digaaz.com>	Ex-PW 1/20
Articles of Association of Defendant No.4 Company	Ex-PW1/21
Third party websites pertaining to the defendants	Ex-PW1/24

35. The defendants have been found to be offering for sale and supplying massive quantities of counterfeit products bearing several registered trademarks of various luxury brands including the plaintiffs on their website www.digaaz.com.

Document (s)	Exhibit No(s)
Printouts from www.digaaz.com showing counterfeit products bearing plaintiffs' trademarks	Ex-PW 1/23
Table of Comparison between the defendants' counterfeit products and plaintiffs' original corresponding product	Ex-PW1/25

36. Many third party luxury brands including Montblanc, Louis Vuitton and Burberry have instituted proceedings against the defendants and obtained injunction orders from this Court restraining the defendants from selling counterfeit products bearing their respective trademarks and logos.

Document (s)	Exhibit No(s)
Third party orders restraining the defendants	Ex-PW 1/27

from selling counterfeit products bearing the trademarks, Mount Blanc, Louis Vuitton, Burberry etc.	

37. The adoption and use of the suit trademarks by the defendants in relation to the counterfeit products being offered for sale on their website amounts to infringement of registered trade mark Nos.253395, 98671, 551274, 1246395, 774844, 1342959, 774842, 551999 and 202130 in class 14 and trademark Nos.289891 and 1248639 in class 18.

38. The purchasing public is bound to assume some sort of association or connection between the defendants' products and the plaintiffs thereby leading to confusion as to the source of origin of the defendants' goods and passing off of the defendants' goods as those of the plaintiffs.

39. The defendants have used the plaintiffs' registered trademarks on and/or in relation to their goods with a view to trade their business on the reputation and goodwill enjoyed by the plaintiffs. The use of the same suit trademarks along with the copying of various styles of the plaintiffs are a tell tale sign of the defendants' attempts at deception.

40. Thus, the use of the suit trademarks by the defendants, on their counterfeit products amounts to a deliberate and wilful infringement of the plaintiffs' proprietary rights by the defendants. The plaintiffs have made classic case of infringement of trademark and passing off.

41. The other important factors in the present case are that the website www.digaaz.com is owned and operated by identified entities in India viz. Digaaz e-Commerce Pvt. Ltd. and its directors.

41.1 The defendants are selling counterfeit products of various luxury brands on their website www.digaaz.com. These products are sourced

and sold directly to the customers by the defendants who have been caught in possession of massive quantities of counterfeit products. Defendant Nos.1 and 2 were arrested by the Cyber Crime Cell, Chandigarh.

41.2 The defendants were selling their counterfeit products on not one but 3 websites viz. www.digaaz.com, www.watchcartz.com and www.luxecart.com.

42. The defendants have made huge profits from their counterfeiting activities and have cheated thousands of customers in the process.

43. As per the case of the plaintiffs, the defendants have purchased sufficient immovable property with the profits made from their illegal activities including those involving the plaintiffs' trademarks and this immovable property has already been sealed by the Chandigarh police.

44. It is alleged by the plaintiffs that they have suffered irreparable loss and injury on account of the defendants' acts of selling counterfeit products bearing the plaintiffs' trademarks. It is submitted on the behalf of the plaintiffs that the following factors to be considered by assessing the damages payable by the defendants to the plaintiffs. The details provided by the plaintiffs are as follows:

(i) Actual illegal and unfair profits earned by the defendants from selling counterfeit products bearing the suit trademarks of the plaintiffs;

(ii) Actual revenue lost by the plaintiffs due to loss of sales of their original products on account of the illegal/infringing activities of the defendants;

(iii) Damage to plaintiffs' valuable reputation and goodwill due to the availability of spurious products of the defendants in the market.

(iv) The punitive component of the damages i.e. a multiplier of the above figure.

(v) Attorney fees, costs and legal expenses.

45. It is deposed in the affidavit of PW-1 that the defendants have made massive illegal profits from the sale of counterfeit products bearing the suit trademarks on their websites. All such profits convert into losses suffered by the plaintiffs since the success of the defendants' e-commerce websites and the sale of counterfeit goods on the websites are attributable to the immense reputation of the plaintiffs' brands viz. CARTIER, PANERAI, VACHERON CONSTANTIN and JAEGER LECOULTRE. The defendants have deliberately stayed away from the proceedings and have not provided their accounts of the illegal profits earned by them.

46. It is submitted that the period can safely be assumed as three years as the defendants' website www.digaaz.com has been operational for at least 3 years which is evidence by :

- The domain name <www.digaaz.com> was created on 3rd April, 2012.
- The website www.digaaz.com was operational as early as at least 29th June, 2012 which is evidenced by internet extracts from www.web.archive.org which has been exhibited as Ex.PW-1/32 (colly).

47. The number of visitors to the defendants' website www.digaaz.com which can be assessed as under;

- The website www.alexa.com which is run by Alexa (an amazon.com company), a world leading web traffic analysing company specialized in evaluating traffic received by individual websites, had ranked the defendants' website as 4500th among

30 million websites surveyed. This rank indicates that the defendants' website received a high amount of traffic, which can be estimated at around 100,000 visitors or hits per month.

- Based on this high amount of traffic, the defendants' website can be estimated to have received approximately 36 lakh hits in three years that this website was operational.
- Even if it is assumed that as little as 1% of these hits converted into sales and that each such sale was for Rs.10,000/- the turnover of this website for the two years that it has been operational would have been at least Rs.36 crores.

48. The plaintiffs submit that even if 10% of this turnover is attributed to the revenue generated from the sale of counterfeit products bearing any of the suit trademarks viz. CARTIER, PANERAI, VACHERON CONSTANTIN or JAEGER LECOULTRE, then the illegal profits made by the defendants' under the suit trademarks would amount to Rs. 3.6 Crores.

49. It is submitted that the other way which can be used for computing damages payable by the defendants is by assessing the number of counterfeit products which are likely to have been sold by the defendants since at least June 2012. This can be assessed using the recording of a telephone conversation which took place in August 2013 between the defendants' sales representative with a customer who had purchased a counterfeit product bearing the MONTBLANC trademark from the defendants. The compact disk containing the recording of the telecon along with a transcript of the conversation has been exhibited as Ex. PW-1/33 (colly).

50. The plaintiffs have provided other way of methodology of computation of damages is as under:

- In the transcript, the sales representative confirms that the defendants have sold more than 1000 MONTBLANC pens through the website www.digaaz.com.
- Even though over 2 years have lapsed since this telecom when the defendants confirmed that they had already sold 1000 counterfeit MONTBLANC pens, using their sales figure as a basis, if it is presumed that the defendants have till date sold at least 1000 counterfeit products under each of the brands CARTIER, PANERAI, VACHERON CONSTANTIN or JAEGER LECOULTRE, amounting to a total of 4000 counterfeit products bearing the suit trademarks and if the cost of each of such product is estimated to be Rs. 63,000/- (being the average price quoted by the defendants for the counterfeit products under the suit trademarks being offered for sale on the website www.digaaz.com) the total illegal turnover of this website from the sale of counterfeit products under the suit trademarks amounts to Rs. 25 Crores.

51. It is stated that the volume of consumer complaints against the defendants clearly establishes that the defendants have made extensive sales and consequently massive profits by virtue of their illegal activities.

52. It is established on record that the defendants were found in custody of thousands and thousands of counterfeit products including those bearing the suit trademarks. Over 730 watches were recovered from the defendants' premises and around one third of these depicted the suit trademarks. The average price quoted for counterfeit watches bearing the suit trademarks being offered for sale on the defendants' website www.digaaz.com was Rs. 75,000 and it therefore stands to reason that the defendants were found in possession of approximately

1.82 crore worth of counterfeit watches alone under the suit trademarks on a single day.

53. It is stated that the above computing methods reveal that the defendants have amassed several crores of rupees worth of profits by unauthorizedly using the suit trademarks on their website www.digaaz.com and by selling counterfeit products under the suit trademarks through the said website. The defendants on account of sale of counterfeit products bearing the plaintiffs' trademarks are also representative of the loss of sales of the plaintiffs.

54. The defendants were selling their counterfeit products at relatively exorbitant prices which is indicated by the average price quoted by the defendants for the products available on their website under the suit trademarks which is approximately Rs. 63,000/-. It is alleged that the consumers who have been duped into purchasing counterfeit products from the defendants' website have the financial capacity to purchase the original luxury products sold by the plaintiffs and would have done so had they not purchased the counterfeit products from the defendants' website.

55. It appears from the conduct of the defendants who have deliberately stayed away from the present proceedings with the result that an enquiry into their accounts for determination of damages could not take place.

56. It is well settled that damages in such cases must be awarded and a defendant, who chooses to stay away from the proceedings of the Court, should not be permitted to enjoy the benefits of evasion of court proceedings. Any view to the contrary would result in a situation where the defendant who appears in Court and submits its account books would be liable for damages, while a party which chooses to

stay away from court proceedings would escape the liability on account of failure of the availability of account books.

57. A party who chooses not to participate in court proceedings and stay away must, thus, suffer the consequences of damages as stated and set out by the plaintiffs as the Court in the present case are dealing with counterfeiting products. It is rank case of dishonesty where the piracy committed by the defendants is apparent on the face of the record. It is just like printing of duplicate currency. The counterfeiter can never be allowed to do such illegal activities. Cheating can never be condoned by the Court unless the accused is punished.

58. Sub-Section (1) of Section 135 of the Trade Marks Act, 1999 provides that relief may be granted in any suit for infringement or for passing off includes injunction and at the option of the plaintiff, either damages or an account of profits. The plaintiffs have chosen the route of damages. The plaintiffs in the present matter while establishing in evidence have been able to prove the damages suffered by them. Materials have been filed and proved accordingly. The damages which they claim are attributable to flagrant infringement.

Punitive damages

59. With regard to the relief of damages as claimed by the plaintiffs in para 44 (g) of the plaint, this Court has previously granted both exemplary and punitive damages against the defendants in ex-parte matters of similar nature. In ***Time Incorporated v. Lokesh Srivastava & Anr.,*** (supra) while awarding punitive damages of Rs. 5 lakhs in addition to compensatory damages also of Rs. 5 lakhs, Justice R.C. Chopra observed that "time has come when the Courts dealing in actions for infringement of trademarks, 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 violation with impunity out of lust for money, so that they realise 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."

60. Further, this Court in ***Microsoft Corporation v. Rajendra Pawar & Anr.,*** 2008 (36) PTC 697 (Del.) decided on 27th July, 2007 has held "Perhaps it has now become a trend of sorts, especially in matters pertaining to passing off, for the defending party to evade court proceedings in a systematic attempt to jettison the relief sought by the plaintiff. Such flagrancy of the Defendant's conduct is strictly deprecatory, and those who recklessly indulge in such shenanigans must do so at their peril, for it is now an inherited wisdom that evasion of court proceedings does not de facto tantamount to escape from liability. Judicial process has its own way of bringing to tasks such erring parties whilst at the same time ensuring that the aggrieved party who has knocked the doors of the court in anticipation of justice is afforded with adequate relief, both in law and in equity. It is here that the concept of awarding punitive damages comes into perspective."

61. In light of the above and reasons explained in earlier paras, a decree for permanent injunction is also passed in favour of the plaintiffs and against the defendants in terms of the prayer contained in paragraph 44 (a) to (e) of the plaint. The same reads as under:-

a) Decree for permanent injunction restraining the Defendants, their partners, if any, officers, servants, agents, distributors, stockists and representatives from manufacturing, selling and/or offering for sale, advertising,

directly or indirectly dealing in writing instruments, wallets, watches, leather goods, jewelry or any other goods bearing the suit trademarks or any similar trademark and/or device amounting to infringement of trade mark.

b) Decree for permanent injunction restraining the Defendants, their partners, if any, officers, servants, agents, distributors, stockists and representatives from manufacturing, selling and/or offering for sale, advertising, directly or indirectly dealing in watches, writing instruments, wallets, leather goods, jewelry or any other goods bearing the suit trademarks or any similar trademark and/or device or doing any other act amounting to passing off of the Defendants' goods as those of the Plaintiffs;

c) Decree for permanent injunction restraining the Defendants, their principal officers, servants, agents, their affiliates, subsidiaries, distributors, and all others acting for and on their behalf from using trademarks, patterns, label, logo or device, which are identical or deceptively or confusingly similar to the suit trademarks or any similar trademark and/ or device so as to misrepresent its quality/ origin and take unfair advantage of the Plaintiffs' reputation and goodwill in the suit trademarks or any similar trademark amounting to unfair competition, and/ or causing dilution of the suit trademarks;

d) Decree for furnishing to the Plaintiffs by the Defendants the data of all transactions undertaken (including the data of the suppliers, the number of purchases, etc.) during the course of their business relating to goods bearing the suit trademarks;

e) Decree declaring the trademarks PANERAI, VACHERON CONSTANTIN and JAEGER LECOULTRE as well-known trademarks;

62. In view of the facts of the present case, this Court is of the opinion that in the present case Rs.1 Crore as punitive damages be granted in favour of the plaintiffs and against the defendants in terms of para 44 (g) of the plaint. Ordered accordingly.

63. The other relief is not pressed. The same is accordingly rejected.

64. The plaintiffs are also entitled for cost.

65. Decree sheet be drawn accordingly.

(MANMOHAN SINGH)
JUDGE

JANUARY 04, 2016