2026:DHC:10019

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

Judgment Reserved on: 29.10.2026

% ***Judgment Delivered on: 06.11.2026***

\# **CNR No. DLHC010150842023**

\+ **CS(COMM) 243/2023 & IA No.7872/2023**

HERO INVESTCORP PRIVATE LTD. & ANR.....Plaintiffs

versus

VM LUBRICANT .....Defendant

Advocates who appeared in these cases

For the Plaintiffs : Mr. Pramod Kumar Singh, Advocate.

For the Respondent : None.

CORAM:
HON'BLE MR. JUSTICE TEJAS KARIA

JUDGMENT

TEJAS KARIA, J

IA No. 42169/2024

1. This is an Application filed on behalf of the Plaintiffs under Order XIII-A read with Section 151 of the Code of Civil Procedure, 1908 ("**CPC**"), seeking a Summary Judgment.

2. The Plaintiffs have filed the present Suit for a decree of permanent injunction restraining infringement of its Trade Marks, 'HERO',

Signature Not Verified
Signed By:NEELAM SHARMA
Signing Date:06.11.2026 20:07:10

‘’, ‘’, ‘’ and ‘’, (“**Plaintiffs’ Marks**”), damages, rendition of accounts, delivery up along with other ancillary reliefs.

3. The dispute between the Parties, essentially pertains to the Defendant’s use of the Marks, ‘HIRO / HERO’ (“**Impugned Marks**”) which are identical and / or deceptively, phonetically and visually similar to the Plaintiffs’ Marks.

PROCEDURAL HISTORY

4. By order dated 01.05.2023, this Court granted an *ex parte ad interim* injunction restraining the Defendant from using the Impugned Marks and allowed the Plaintiffs’ application under Order XXVI Rule 9 of the CPC, appointing a Local Commissioner. Pursuant to the appointment, the learned Local Commissioner visited the Defendant’s premises at Plot No. 35, Gandhi Estate, Navagam, Kamrej, Surat, Gujarat – 394180, on 08.05.2023, and seized and sealed 948 products bearing the Impugned Marks.

5. The Defendant was thereafter served with a copy of the Plaint along with all applications, the complete set of documents and the order dated 01.05.2023. Upon entering appearance, the Defendant filed its Written Statement along with an application seeking condonation of delay of 153 days in filing the same. However, the learned Joint Registrar (Judicial), *vide* order dated 03.07.2024, rejected the application for condonation of delay and declined to take the Written Statement on record, as the maximum

Signature Not Verified
Signed By:NEELAM SHARMA
Signing Date:06.11.2026 20:07:10

permissible period of 120 days for filing a Written Statement in a commercial suit had already expired.

6. Consequently, this Court, *vide* order dated 29.10.2026 recorded that neither the learned Counsel for the Defendant nor anyone else representing the Defendant had entered appearance and perusal of the ordersheets dated 18.08.2025, 20.08.2025, 25.08.2025, 09.02.2026 and 20.07.2026 also indicated that none have appeared on behalf of the Defendant. The Defendant was thereby directed to be proceeded *ex parte*.

SUBMISSIONS ON BEHALF OF THE PLAINTIFFS

7. The learned Counsel for the Plaintiff made the following submissions:

7.1. The Plaintiffs are a group of companies and Plaintiff No. 2, *Hero MotoCorp Ltd.*, formerly known as *Hero Honda Motors Ltd.*, is a company incorporated under the Companies Act, 1956 and is engaged in the business of manufacturing and sale of motorcycles, scooters and their parts and accessories under the Plaintiffs' Mark, 'HERO' since 09.04.1985. The Plaintiffs also use the Plaintiffs' Marks in relation to a diverse range of products, including industrial oils and lubricants.

7.2. Since the year 1985, the Plaintiffs have been continuously, extensively and widely manufacturing, marketing and selling their two-wheelers in India under its Plaintiffs' Mark, 'HERO'. All the Plaintiffs' products bear the Plaintiffs' Mark, 'HERO' and are sold across India and the globe, Plaintiff No. 2's two-wheelers prominently display the Plaintiffs' Mark, 'HERO'. The advertisement expenditure incurred by Plaintiff No. 2 in respect of

Signature Not Verified
Signed By:NEELAM SHARMA
Signing Date:06.11.2026 20:07:10

its product, 'Hero Genuine Oil', during Financial Year ("**FY**") 2021-2022 was ₹9.21 crores and the total sales of the said product during FY 2021-2022 was ₹483.14 crores.

7.3. The Plaintiffs carry on its business activities under the Plaintiffs' Mark, 'HERO' and Plaintiff No. 1 has been granted registration for the Plaintiffs' Mark, 'HERO' and its variants in India under Classes 4, 9, 12, 16, 25, 35, 36, 37, 41, 42 and 99 which are being used continuously and uninterruptedly by the Plaintiffs till date. The details of the registrations of the Plaintiffs' Marks are set out hereunder:

Trade Mark	Class(es)	Application No.	Date of Registration	Valid upto
HERO (word mark)	4	2205777	15.09.2011	15.09.2031
HERO (word mark)	12	235780	13.06.1966	13.06.2028
(H device)	9, 12, 16, 25, 35, 36, 37, 4, 42	2191293	16.08.2011	16.08.2031
Hero (Device Mark)	9, 12, 16, 25, 35, 36, 37, 41, 42 and 99	2191294	16.08.2011	16.08.2031
Hero (Device Mark)	4	2314273	12.04.2012	12.04.2032

Signature Not Verified
Signed By:NEELAM SHARMA
Signing Date:06.11.2026 20:07:10

 (H device)	4	2314274	12.04.2012	12.04.2032

7.4. The Defendant, *VM Lubricant*, is engaged in the business of manufacturing and sale of lubricants bearing the Impugned Marks which are deceptively, phonetically and visually similar to the Plaintiffs' Marks. A comparison of the products bearing the Plaintiffs' Mark and Impugned Marks is as under:

Plaintiffs' product	**Defendant's product**
	

7.5. The Defendant's Written Statement has not been taken on record and, consequently, there is no specific denial of the Plaintiffs' allegations or any material placed by the Defendant to establish that its use of the Impugned Marks constitutes fair use or is

Signature Not Verified
Signed By:NEELAM SHARMA
Signing Date:06.11.2026 20:07:10

otherwise lawful. Reliance was placed upon the decision in ***Balraj Taneja v. Sunil Madan***, (1999) 8 SCC 396, to submit that in the absence of specific denials, the allegations of Trade Mark infringement, read with the supporting evidence on record, would constitute deemed admissions of the facts pleaded in the Plaint. The Defendant has, therefore, failed to establish any legitimate basis for adopting and using the Impugned Marks.

7.6. The Defendant, by adopting the Impugned Marks, which are identical and / or deceptively similar to the Plaintiffs' Marks, is deceiving and misleading the public and consumers by representing that its products are in some manner associated with the Plaintiffs, despite no such association existing. Such adoption is intended to enable the Defendant to earn unlawful profits by misusing the goodwill and reputation vested in the Plaintiffs' Marks, thereby causing wrongful loss to the Plaintiffs and depriving them of legitimate business opportunities.

7.7. The report dated 10.05.2023 ("**LC Report**") filed by the learned Local Commissioner, along with the supporting photographs, establishes that the Defendant was engaged in the manufacture and sale of industrial oils and lubricants bearing the Impugned Marks. Reliance was placed upon the decision in ***ML Brother LLP v. Mahesh Kumar Bhuralal Tanna***, 2022 SCC OnLine Del 1452, to submit that the unchallenged LC Report of the learned Local Commissioner constitutes cogent evidence of the Defendant's use of the Impugned Marks in relation to products deceptively similar to

Signature Not Verified
Signed By:NEELAM SHARMA
Signing Date:06.11.2026 20:07:10

those of the Plaintiffs, thereby establishing infringement of the Plaintiffs' Marks.

ANALYSIS AND FINDINGS

8. In view of the fact that the Defendant has not entered appearance and no Written Statement has been filed on behalf of the Defendant, all the averments made in the Plaint have to be taken to be admitted. Further, since no Affidavit of Admission / Denial has been filed on behalf of the Defendant in respect of the documents filed with the Plaint, in terms of Rule 3 of the Delhi High Court (Original Side) Rules, 2018, the same are deemed to have been admitted.

9. Having considered the submissions advanced by the learned Counsel for the Plaintiffs, the pleadings and the documents placed on record, the Plaintiffs have established their rights in the Plaintiffs' Marks. Plaintiff No. 1 is the registered proprietor of the Plaintiffs' Marks across various classes, and Plaintiff No. 2 is an authorised user of the Plaintiffs' Marks.

10. The comparison of the Plaintiffs' Marks with the Impugned Marks, establishes that the Defendant has adopted the identical Mark, 'HERO' and the deceptively similar Mark, 'HIRO' in relation synthetic engine oil for motorcycles, namely, 'Hero Genuine Oil'. Such use is likely to cause confusion and deception amongst consumers and members of the trade, who may associate the Defendant's products with the Plaintiffs or believe that the Defendant has some commercial connection with them. A perusal of the LC Report and the inventory shows that the Defendant is selling infringing products bearing the Impugned Marks which are identical to the Plaintiffs' Marks.

Signature Not Verified
Signed By:NEELAM SHARMA
Signing Date:06.11.2026 20:07:10

11. This is a case of triple identity, where the Impugned Marks are identical, the product category is identical and the trade channel as also the consumer base is identical to the Plaintiff's Marks. The Impugned Marks adopted and used by the Defendant is visually, phonetically, structurally and deceptively similar to the Plaintiffs' Marks. To an unwary consumer of average intelligence and imperfect recollection, the Marks are likely to appear identical, thereby leading to confusion regarding the source or origin of the goods.

12. Order XIII-A of the CPC empowers this Court to pass a Summary Judgment without recording evidence if it appears that the defendant has no real prospect of defending the claim. In the present case, the Defendant's Written Statement was not taken on record and the Defendant was subsequently proceeded *ex parte* on 29.10.2026. No material has been placed before this Court to explain or justify the adoption and use of the Impugned Marks. The Plaintiffs' evidence, including the registration particulars and the LC Report, has thus remained unrebutted. Upon consideration of the material on record, this Court finds that no triable issue arises and that the Defendant has no real prospect of successfully defending the Plaintiffs' claim of infringement. The present Suit is, therefore, fit to be proceeded against in terms of Order XIII-A of the CPC.

13. Insofar as the prayer for damages / costs is concerned, Rule 20 of the Delhi High Court Intellectual Property Rights Division Rules, 2022 ("**IPD Rules**") provides for consideration of various factors while determining damages, including the lost profits suffered by the injured party, profits earned by the infringing party, the quantum of income which the injured

Signature Not Verified
Signed By:NEELAM SHARMA
Signing Date:06.11.2026 20:07:10

party may have earned through royalties or licence fees, the duration of infringement, the degree of intention or neglect underlying the infringement and the conduct of the infringing party to mitigate the damages being incurred by the injured party.

14. Accordingly, the Plaintiffs have claimed for damages of ₹3,31,800/- on the basis of the price of the seized products bearing the Impugned Mark recovered by the learned Local Commissioner, and costs of ₹7,69,873/- of the Court fees, fees of the learned Local Commissioner and the legal fees incurred, along with punitive damages worth ₹10,00,000/-. As the exact profits earned by the Defendant or the loss suffered by the Plaintiffs cannot be ascertained from the material placed on record, the quantum of seized goods and the degree of intention underlying the infringement, as contemplated under Rule 20 of the IPD Rules, this Court considers it appropriate to award damages of ₹3,00,000/- (Rupees Three Lakh Only) and reasonable legal costs of 5,00,000/- (Rupees Five Lakh Only) to the Plaintiffs.

15. In view of the above, the present Application is allowed.

CS(COMM) 243/2023

16. In view of the order passed in IA 42169/2024 above, the present Suit is decreed in terms of Prayers in Paragraph No. 59 (a), (b) and (g) of the Suit.

17. Accordingly, the Defendant, directors, proprietors, partners, assignees in business, associates, affiliates, franchisees, licensees, distributors, dealers, stockists, retailers, agents and all others acting for and on their behalf are restrained from manufacturing, selling and offering for sale advertising in any manner including on the internet, e-commerce platforms and social

Signature Not Verified
Signed By:NEELAM SHARMA
Signing Date:06.11.2026 20:07:10

media platforms, or directly or indirectly dealing in industrial oils, lubricant and accessories bearing Impugned Marks, 'HIRO / HERO', and / or any other Mark identical or deceptively similar to the Plaintiffs' Marks, 'HERO', ' ', ' ', ' ' and ' ', so as to cause infringement and / or passing off of the Plaintiffs' Marks.

18. The Defendant shall pay to the Plaintiffs damages of ₹3,00,000/- (Rupees Three Lakhs Only) and reasonable legal costs of ₹5,00,000/- (Rupees Five Lakhs Only). Let the Decree Sheet be drawn up accordingly.

19. The present Suit along with the pending Application stands disposed of.

TEJAS KARIA, J

NOVEMBER 06, 2026
Vn

Signature Not Verified
Signed By:NEELAM SHARMA
Signing Date:06.11.2026 20:07:10