



2025:DHC:9084



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

+ **CS(COMM) 723/2024**

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*Date of Decision : 08.10.2025*

**CASTROL LIMITED**

.....Plaintiff

Through: Mr. Urfee Roomi, Ms. Janaki Arun,  
Ms. Vanshika Bansal & Mr. Ritesh  
Kumar, Advocates.

versus

**MALANG HAJI SHAIKH AND ANR.**

.....Defendants

Through:

**CORAM:**

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

**TEJAS KARIA, J. (ORAL)**

**I.A. 24959/2025**

1. This is an Application filed by the Plaintiff under Order VIII Rule 10 of the Code of Civil Procedure, 1908 ('CPC') seeking pronouncement of judgement against the Defendants / Non-Applicants.
2. The Plaintiff has filed the present Suit seeking permanent injunction restraining the Defendants from infringement of Trade Mark, Copyright, passing-off and other ancillary reliefs.
3. *Vide* order dated 28.08.2024, this Court granted an *ex-parte ad interim* injunction in favour of the Plaintiff restraining the Defendants from manufacturing, offering for sale, selling, displaying, advertising, marketing, whether directly or indirectly, any engine oils, coolants, gear oils and



2025:DHC:9084



lubricants and/or similar/related/allied/cognate goods, bearing the registered Trade Marks of the Plaintiff, and/or Marks and/or packaging that are nearly identical/similar to the Plaintiff's registered Trade Marks. Further, this Court also appointed a Local Commissioner to conduct a commission at the Defendants' premises.

4. The learned Local Commissioner conducted the said commission on 09.09.2024, wherein it was discovered that the Defendants were also using new infringing Marks and packaging. Accordingly, the Plaintiff filed an application under Order VI Rule 17 of the CPC for amendment of the Plaint, which was allowed by this Court *vide* order dated 21.01.2025 and the amended Plaint was taken on record and fresh summons were issued. Further, the Defendants were also restrained from using the newly found infringing Marks and packaging.

5. Defendant No.2 filed its Written Statement *vide* Diary No. 6017439/2024, however, the same was lying under objections. *Vide* order dated 03.02.2025, the learned Joint Registrar directed Defendant No.2 to remove the defects as per the law and bring the Written Statement on record.

6. *Vide* order dated 28.04.2025, the learned Joint Registrar recorded that since Defendant No. 1 remained unserved and issued fresh summons to him. Further, Defendant No.2 was directed to remove the defects as per the law and bring its Written Statement on record.

7. *Vide* order dated 05.05.2025, this Court noted that despite being initially served on 07.10.2024 *via* speed-post and issuance of fresh summons on 28.04.2025, Defendant No.1 has neither entered appearance nor filed its Written Statement.



2025:DHC:9084




8. *Vide* order dated 22.07.2025, the learned Joint Registrar closed Defendant No. 1's right to file its Written Statement as the statutory period to file the same had expired. Further, Defendant No. 2 was again directed to remove objections from its Written Statement.

9. *Vide* order dated 02.09.2025, the learned Joint Registrar noted that the Written Statement filed by Defendant No. 2 had been lying under objections since 14.12.2024, and the objections had not been cleared. Further, it was noted that the application for amendment of the Plaint was allowed *vide* order dated 21.01.2025 and no amended Written Statement was filed by Defendant No.2. Accordingly, the right of Defendant No. 2 to file its Written Statement was closed.

10. Accordingly, the Defendants' right to file the Written Statements has been closed and Defendant No.1 has not appeared in the present proceedings despite service. In view of the same, the present Application has been filed by the Plaintiff seeking pronouncement of Judgment against the Defendants.

11. The learned Counsel for the Plaintiff has made the following submissions:


11.1 The Plaintiff sells engine oil and lubricants under its Marks and packaging all around the world, including in India. The Plaintiff is the proprietor of various Marks ('**Plaintiff's Marks**') in India under which its goods are sold, the details of which are as under:

S. No.	Reg/App No.	Mark	Class	Reg/App Date	Status
1.	1494	CASTROL	4	29/06/1942	Registered
2.	373759	CASTROL	4	23/03/1981	Registered
3.	909193		4	10/03/2000	Registered



2025:DHC:9084



4.	838183	ACTIV	4	25/01/1999	Registered
5.	2709612		4	31/03/2014	Registered
6.	6153641		4	17/10/2023	Registered
7.	2498568		4	19/03/2013	Registered
8.	2498567		4	19/03/2013	Registered



11.2 The Plaintiff is the prior adopter and user of the Plaintiff's Marks. The table below sets out the years in which the Plaintiff first used each of the Plaintiff's Marks in India:

S No.	Mark	Year of First Use
1.	CASTROL	1911
2.		1998
3.	ACTIV	1999
4.		2012
5.		2012



2025:DHC:9084



6.		2013
7.		2014

11.3 Plaintiff's Marks and packaging are also original artistic works as defined in the Copyright Act, 1957 and the said Marks and packaging were created by the Plaintiff's employees during the course of their employment with the Plaintiff. Accordingly, the Plaintiff is the owner of the Copyright in the artistic works comprised in such Marks and packaging.

11.4 Defendant No. 1 is Malang Haji Shaikh trading as TSA Enterprises/Exstrol Lubricants. Defendant No. 2 is Kalos Oil Refinery Private Limited. The Defendants are related persons/entities, who are involved in the manufacture, marketing, and sale of engine oils, lubricants, etc.

11.5 In July 2024, the Plaintiff came across Defendant No. 1's Trade Mark Application bearing No. 5229844, for the Device of 'EXSTROL LUBRICANTS' in Class 4, claiming use since 15.11.2021. A picture of the said Mark of Defendant No.1 is as under:



11.6 The Plaintiff found that Defendant No.1, through its retailers, is engaged in selling engine oil bearing, *inter alia*, the 'EXSTROL



2025:DHC:9084



LUBRICANTS' and 'ACTIVE' Device Marks, on the e-commerce platform, Meesho. The pictures of the said product is attached below:



11.7 The Plaintiff also found a sachet of grease bearing the 'EXSTROL' Device Mark, which was identical to that of the Plaintiff's grease packaging,



2025:DHC:9084



and the same was listed on third-party business listing website, IndiaMart, through another retailer. A picture of the grease sachet bearing the ‘EXSTROL’ Device Mark is attached below:



11.8 A comparison of the competing Marks and packaging, along with the changes made by the Defendants to their Marks and packaging, is as under:

S.No.	The Defendants’ Marks and/or the Defendants’ Packaging	The Plaintiff’s Marks and/or the Plaintiff’s Packaging	Changes made by the Defendants
1.	<p><b>EXSTROL</b></p>	<p><b>CASTROL</b></p>	The Defendants have merely removed the letters ‘CA’ from the Plaintiff’s CASTROL mark and replaced them with the letters ‘EX’. Further, the Defendants have copied the Bullet Device completely and













2025:DHC:9084




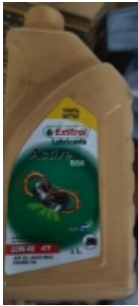




			slightly modified the Roundel Device of the CASTROL Device mark to arrive at the EXSTROL Device mark.
2.	<p><b>EXSTROL</b> LUBRICANTS</p> 	<p><b>CASTROL</b></p> 	The Defendants have merely removed the letters 'CA' from the Plaintiff's CASTROL mark and replaced them with the letters 'EX'. Further, the Defendants have copied the Bullet Device completely and slightly modified the Roundel Device of the CASTROL Device mark, and have added the descriptive word LUBRICANTS, to arrive at the EXTROL LUBRICANTS Device mark.
3.	<p><b>ACTIVE</b></p> 	<p><b>ACTIV</b></p> 	The Defendants have merely added the letter 'E' to the Plaintiff's ACTIV mark to arrive at the Defendants' ACTIVE mark.
4.			The Defendants have copied the Plaintiff's Oil in Action with Bearing Device in its entirety.
5.			The Defendants have copied the Plaintiff's Oil in Action with Rod Device in its entirety.





6.			The Defendants have copied the Plaintiff's Oil in Action with Sphere Device in its entirety.
7.	  	  	The overall colour scheme, get-up and layout of the rival packaging are nearly identical. The Defendants have only made minor alterations, such as replacing the CASTROL ACTIV mark with the EXSTROL DEVICE/EXSTROL LUBRICANTS Device and adding the ACTIVE/RACER/GEAR MAX marks. Moreover, the Defendants have copied the Oil in Action with the Bearing Device, ACTIV mark, Oil in Action with Rod Device and Oil in Action with Sphere Device marks in their entirety. Besides this, the Defendants have also copied the overall colour scheme of the Plaintiff's container, i.e., grey and red. All in all, the overall colour scheme, get-up and layout of the rival packaging are evidently nearly identical.





	   	 	
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2025:DHC:9084



8.			<p>The overall colour scheme, get-up and layout of the rival packaging are identical. The Defendants have only made minor alterations, such as replacing the CASTROL Device mark with the EXSTROL Device mark. Moreover, the Defendants have copied the entire product and taglines on the product. Besides this, the Defendants have also copied the overall colour scheme of the Plaintiff's sachet, i.e., white and green. All in all, the overall colour scheme, get-up and layout of the rival packaging are evidently nearly identical.</p>
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11.9 The Defendants' Marks and packaging are deceptively similar/nearly identical to the Plaintiff's Marks and packaging and the Parties are involved in the same trade. Therefore, it is clear that the Defendants have adopted their infringing Marks and packaging with the *mala fide* intention to ride upon the goodwill and reputation attached to the Plaintiff's Marks and packaging.

12. The Court's powers to pronounce a judgment under Order VIII Rule 10 of the CPC is explained by this Court in **Nirog Pharma Pvt. Ltd. v. Umesh Gupta**, 2016 SCC OnLine Del 5961 as under:

*"11. Order VIII Rule 10 has been inserted by the legislature to expedite the process of justice. The courts can invoke its provisions to curb dilatory tactic, often resorted to by defendants, by not filing the written statement by pronouncing judgment against it. At the same time, the courts must be cautious and judge the contents of the plaint*



*and documents on record as being of an unimpeachable character, not requiring any evidence to be led to prove its contents....”*

13. In the present case, the Defendants have not put up any defence and the right of the Defendants to file the Written Statements stands closed. Therefore, in the absence of any defence by the Defendants, this is fit case for exercising power under Order VIII Rule 10 of the CPC to pronounce a judgment against the Defendants. No purpose shall be served by putting the matter for trial, when no defence has been raised by the Defendants. Further, considering the facts and circumstances of the present case and documentary evidence on record, the Defendants do not appear to have any real prospect of successfully defending this Suit.

14. Based on the documents placed on record, the Plaintiff is the registered proprietor of the Plaintiff's Marks and has amassed significant goodwill and reputation for its products sold under the Plaintiff's Marks.

15. In ***Under Armour Inc v. Anish Agarwal***, 2025 SCC OnLine Del 3784, the Division Bench of this Court held that if the customer looking at the infringing Marks associates the same with the plaintiff's marks even for a brief period, the said marks of the plaintiff would be infringed under Section 29 of the Trade Marks Act, 1999 ('Act'). It was further held that the Initial Interest Confusion Test proceeds on the principle that even if the infringing mark causes confusion, *albeit* limited to the initial stage only, it is sufficient to satisfy the condition of deceptive similarity as contemplated under Section 29 of the Act.

16. The Defendants' Marks and packaging are nearly identical / deceptively similar to the Plaintiff's Marks and packaging, such that an unwary consumer of average intelligence is likely to be confused regarding



the source or origin of the infringing product and may associate the same with the Plaintiff.

17. In view of the above, the Plaintiff is entitled to a decree of permanent injunction against the Defendants. The learned Counsel for the Plaintiff also presses for the relief of damages and costs.

18. In *Inter Ikea Systems BV v. Imtiaz Ahamed*, 2016 SCC OnLine Del 6717, this Court observed as under:

*“20. The court is mindful of the fact that in such a situation where the defendant chooses to stay away from the court proceedings, he should not be permitted to enjoy the benefits of such an evasion. Any view to the contrary would result in a situation where a compliant defendant who appears in court pursuant to summons being issued, participates in the proceedings and submits his account books, etc., for assessment of damages, would end up on a worse footing, vis-a-vis a defendant who chooses to conveniently stay away after being served with the summons in the suit. That was certainly not the intention of the Statute. Section 135(1) of the Trademarks Act, 1999 provides that relief that may be granted in any suit for infringement of or for passing off includes injunction and at the option of the plaintiff, either damages or an account of profits. The plaintiffs in the present case have opted for claiming damages and have established beyond doubt that they have suffered damages on account of the conduct of the defendants which are a result of infringement of their trademark and copyright.”*

19. In *Strix Ltd. v. Maharaja Appliances Ltd.*, 2023 SCC OnLine Del 7128, this Court held that in a case where the evidence is not led, the damages shall be notional and are to be granted on a reasonable and fair basis. It was further held that in such cases, the Court can only make a broad assessment based on the evidence on record.

20. In *Levi Strauss & Co. v. Rajesh Agarwal*, 2018 SCC OnLine Del 6421, this Court held that the Local Commissioner is a representative of the Court and it is for this reason that Order XXVI Rule 10(2) of the CPC clearly



2025:DHC:9084



provides that the evidence and the report of the Local Commissioner shall be treated as evidence in the Suit and shall form part of the record.

21. While the learned Counsel for the Plaintiff conceded that the exact data of sales of the Defendants' infringing products is not available, the learned Local Commissioner's Report indicates that a total of 1718 infringing filled bottles were recovered from the Defendants' premises during the Local Commission, along with infringing empty bottles, stickers and cartons in large numbers.

22. The Plaintiff has also filed an Affidavit claiming that the costs incurred for the legal proceedings in the present case is Rs. 17,72,378.44/-. However, the Plaintiff has not filed the bills corresponding to the said claim owing to their confidential nature.

23. Considering the conduct of the Defendants of dishonest adoption of the Marks that are deceptively similar / identical to the Plaintiff's Marks to gain unfair advantage and ride on the goodwill and reputation of the Plaintiff in the present case, imposition of both costs and damages is warranted.

24. Accordingly, the present Application is allowed.

**CS(COMM) 723/2024**

25. The Suit is decreed in terms of Prayer contained in Paragraph No. 62(a) to (d) of the Suit.

26. The infringing goods seized by the learned Local Commissioner, which were subsequently handed over to the Defendants on *superdari*, shall be destroyed by the Defendants within a period of four weeks and a Representative of the Plaintiff shall be allowed to oversee the destruction of the said infringing goods.



2025:DHC:9084



27. The Defendants are liable to pay an amount of ₹25,00,000/- (Rupees Twenty-Five Lakhs Only) as damages to the Plaintiff. Let the Decree Sheet be drawn.
28. The Plaintiff is held entitled to actual costs, in terms of the Commercial Courts Act, 2015 and Delhi High Court (Original Side) Rules, 2018 read with Delhi High Court Intellectual Property Rights Division Rules, 2022 recoverable from the Defendants. Plaintiff shall file its Bill of Costs in a sealed cover in terms of Rule 5 of Chapter XXIII of the Delhi High Court (Original Side) Rules, 2018, within a period of four weeks.
29. As and when the same is filed, the matter will be listed before the Taxing Officer for the computation of costs.
30. The Suit, along with the pending application, stands disposed of.

**TEJAS KARIA, J**

**OCTOBER 8, 2025/ 'A'**