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

+ **CS(COMM) 1298/2018 & I.A. 8603/2023**

COTY GERMANY GMBHPlaintiff
Through: Mr. Rishi Bansal and Mr.
Rishabh Gupta, Advs.

versus

XERYUS RETAIL PRIVATE LIMITED & ANR.
..... Defendants
Through: Nemo

**CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR**

ORDER (O R A L)
21.07.2023

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I.A. 8603/2023 (under Order XIII A Rule 3 and 4 of CPC)

1. Summons were issued in the suit on 19 December 2018.
2. The written statements, filed by the defendants, were struck off the record on 8 November 2019.
3. On account of repeated non-appearance, the defendants have also been proceeded *ex-parte* by order dated 13 February 2023.
4. There has been no appearance on behalf of the defendants even thereafter and there is no appearance on behalf of the defendants today either.



5. In the circumstances, the plaintiff has moved IA 8603/2023, under Order XIII A of the Code of Civil Procedure 1908 (CPC) as amended by the Commercial Courts Act 2015, for passing a judgment and decree in terms of prayers in the suit.

6. The suit alleges infringement as well as passing off, by the defendants, of its products as the products of the plaintiff. It is alleged that the plaintiff is a reputed name in the field of, *inter alia*, perfumes, and is the holder of the following registrations in India:

Sl. No.	Trade Mark	Registration No.	Class	Registration/ Application Date
1.	CALVIN KLEIN (word)	566080	03	23.01.1992
2.	CK (Device)	610793	03	1.11.1993
3.	CALVIN KLEIN MAN (word mark)	1586015	03	31.07.2007
4.	CALVIN (word mark)	835952	03	11.01.1999
5.	Eternity (Device)	573011	03	12.05.1992
6.	OBSESSION (DEVICE)	468859	03	09.03.1987
7.	OBSESSION (word mark)	851117	03	13.04.1999
8.	EUPHORIA (word mark)	1363871	03	14.06.2005
9.	CK ONE (Device)	619415	03	14.02.1994
10.	CK ONE (word mark)	851272	03	13.04.1999
11.	CK ONE (Device)	1352503	03	21.04.2005
12.	CK ONE SHOCK (word mark)	2732972	03	07.05.2014

7. The plaint asserts that the plaintiff's trade mark "Calvin Klein" was founded and adopted on the basis of the name of its founder in 1967 since which time the plaintiff has been using the said mark, as

well as both in a whole, in its own as well as abbreviated “CK” form. The plaintiff has also been representing its mark in a particular fashion which has been indelibly associated with the identity of the plaintiff. The plaintiff’s marks are represented thus:

Sl. No.	Plaintiff’s Trade Mark
1.	
2.	
3.	Calvin Klein

8. The plaintiff claims that, under the afore-said marks, it sells a wide variety of fragrances which have become extremely popular, including “CK one” “CK one SHOCK”, “ETERNITY” and “Euphoria”.

9. It is also claimed that the special stylised manner in which the word “CK” and “Calvin Klein” are used constitute original artistic works within the meaning of the Indian Copyright Act 1957 and are entitled to protection.

10. The plaintiff also claims to be operating the website www.calvinklein.com, through which it disseminates information regarding its activities and its products.

11. The grievance of the plaintiff is that the defendants are, through the website www.perfumery.co.in and www.unboxed.in using the

plaintiff's mark for their products and are also selling, for commercial value, testers of the plaintiff's products which are only intended to enable a prospective customer to be able to sample the fragrance before deciding to purchase it. Such testers are never meant to be sold for commercial value and, by doing so, the defendants are indulging in an unfair trade practice. Besides, such testers are being sold by the defendants, masquerading them as perfumes of the plaintiff for sale, thereby, luring customers into paying money for such testers which are otherwise not to be commercially dispensed.

12. It is also alleged, in para 23 of the plaint, that the defendants have dishonestly and with malafide intent started adopting and using

the plaintiff's marks  ,  , ck one and Calvin Klein 



13. The defendants are stated to be marketing and selling their products using the said marks and specimen photographs of the said products have been filed along with the plaint.

14. It is in these circumstances that the plaintiff has instituted the present plaint before this Court, with the following prayers:

“39. Under the facts and circumstances of the present case, the Plaintiff most respectfully prays that this Hon'ble Court may kindly be pleased to pass a decree in favour of Plaintiff and against the Defendants detailed as hereunder:



a) For a decree of permanent injunction restraining

the Defendants by itself/themselves as also through his/their individual proprietors/partners, agents, representatives, distributors, assigns, heirs, successors, stockists and all others acting for and on their behalf from marketing, using, selling, soliciting, importing, exporting, displaying, advertising, purveying, intending to sell impugned goods on www.perfumery.co.in and www.unboxed.in or any other online marketplaces or web entity or through any social media channels or by any other mode or manner dealing in or using the impugned trade mark/logo/label

 ,  , and Calvin Klein

, or any other trademark/logo/label which may be identical with and/or deceptively similar to the Plaintiff's said trademark/ logo/ label or any other trademark/logo/label which may be Identical with and/or deceptively similar to the Plaintiff's said trademark/ logo/ label in relation to their impugned goods and business of Perfume Testers and other allied/related products and from doing any other acts or deeds amounting to or likely to:

i. Infringement of Plaintiff's aforesaid

 ,  , and Calvin Klein [as word mark or in label form with or without the logo/device];

ii. Infringing the Copyright involved in the artwork of the Plaintiff's trademark/logo/label;

iii. Passing off and enabling others to pass off their impugned goods and business as that of the Plaintiff, as well as diluting the Plaintiff's proprietary rights therein;

iv. Violation of Plaintiff's proprietary rights in its trade name i.e., CALVIN KLEIN or cK.

- v. Falsification, unfair and unethical trade practices.
- b) Restraining the Defendants from disposing off or dealing with their assets including their premises at the addresses mentioned in the Memo of Parties and their stocks-in trade or any other assets as may be brought to the notice of the Hon'ble Court during the course of the proceedings and on the Defendants disclosure thereof and which the Defendants are called upon to disclose and/or on its ascertainment by the Plaintiff as the Plaintiff is not aware of the same as per Section 135(2)(c) of the Trade Marks, Act, 1999 as it could adversely affect the Plaintiff's ability to recover the costs and pecuniary reliefs thereon;
- c) For an order for delivering of all the impugned goods bearing the above said impugned and violative trade mark/logo/label or any other word/mark which may be identical with or deceptively similar to the Plaintiff's said trademark/logo/label/tradename including blocks, labels, display boards, sign boards, trade literatures and goods etc. to the Plaintiff;
- d) For an order for rendition of accounts of profits earned by the Defendant by their impugned illegal trade activities and a decree for the amount so found in favour of the Plaintiff on such rendition of accounts;
- e) For the decree of grant of damages to the tune of Rs. 2,00,01,000/- (Rs. Two Crore and One thousand only) from all the Defendants jointly and severally to the Plaintiff;
- f) For an order to the Defendants to disclose the supply and procurement chain of the impugned goods bearing the Plaintiff's said trademark/logo/label;
- g) for an order for cost of proceedings; and
- h) for such other and further order as this Hon'ble Court may deem fit and proper in the facts and

circumstances of the present case.”

15. As the written statement filed by the defendants has been struck off the record and the defendants have chosen, thereafter, not to appear before this Court, all assertions and allegations in the plaint are deemed to be admitted. The assertions in the plaint clearly make out a case of infringement, by the defendants, of the plaintiff’s registered trade marks as well as of the defendants unlawfully passing off their own goods as well as testers of the plaintiff as the plaintiff’s goods for commercial sale and thereby defrauding the purchasing public.

16. The assertions in the plaint, accompanied by the documents filed therewith, entitles the plaintiff to a judgment and decree forthwith.

17. As such, there shall be a judgment and decree against the defendants in terms of prayer (a) in para 39 of the plaint. Additionally, in view of the fact that the assertions in the plaint have remained un rebutted and that the defendants have also chosen not to cooperate with the present proceedings and have abstained from participating in these proceedings, thereby indicating that they have no substantial defence to offer, the defendants have necessarily to be burdened with costs.

18. As such, the plaintiff would also be entitled to costs of ₹ 1,00,000/-, to be paid by the defendants within a period of four weeks from today.

19. The suit stands decreed in the aforesaid terms.
20. Let a decree sheet be drawn up by the Registry forthwith.

C. HARI SHANKAR, J.

JULY 21, 2023

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