



2025:DHC:5622



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

+ CS(COMM) 801/2023 & I.A. 1741/2024, I.A. 31225/2024, I.A. 31226/2024, I.A. 1880/2025

JOHNSON & JOHNSON PTE. LTD.

.....Plaintiff

Through: Ms. Nancy Roy, Advocate with Mr.
Lalit Alley, Advocate.
Mob: 9711288594, 8376067286
Email: <mailto:nroy@indiaip.com>,
<mailto:lalley@indiaip.com>

versus

MR. ABBIREDDI SATISH KUMAR & ORS.

.....Defendants

Through: Mr. Kishore Babu Manne, Advocate
for defendant nos. 1 to 6.
Mob: 8610374697
Email: babumannefirst@gmail.com
Mr. Vinay Kumar, Advocate for
defendant nos. 2 and 5.
(M): 8096321409
Email: I.vinay@icloud.com

CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA

JUDGMENT
15.07.2025

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MINI PUSHKARNA, J:**I.A. No. 1880/2025 (Application under Order VIII Rules 1 & 10)**

1. The instant application has been preferred by the plaintiff under Order



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VIII Rules 1 and 10 of the Code of Civil Procedure, 1908 (“CPC”), for pronouncement of judgment and passing of a decree against the defendants, in the form of a permanent and mandatory injunction for restraining the defendants, and further to award damages and actual costs of litigation in favour of the plaintiff.

2. The present suit has been filed by the plaintiff under Section 134(1) of the Trade Marks Act, 1999 (“the Act”), read with Sections 27 and 29 of the Act and Section 20(c) of CPC, seeking permanent and mandatory injunction thereby restraining passing off and infringement of plaintiff’s

marks /trade dress, i.e., “ORS-L”/ “ORSL”/  /  /



3. The suit is filed on the grounds that the marks of the defendant no. 1,

 
Fruit Drink / Fruit Drink



i.e., “ORSI”/  ,  (“impugned trade marks/trade dress”) are deceptively similar to the plaintiff’s registered marks/trade dress.



4. **Facts, as canvassed in the plaint, are as follows:**

4.1 Plaintiff company is a manufacturer of consumer healthcare products and was incorporated in Singapore in the year 1974. It acquired the brand ORS-L, ORSL and its formatives from one Jagdale Industries Limited *vide* an Assignment Deed dated 07th November, 2014. Jagdale Industries Limited had first introduced the ORS-L brand by way of flavoured electrolyte drinks in 2003. The ORS-L Lemon flavour product has been used in India since as early as the year 2003 and the ORS-L Orange and Apple flavours since as early as the year 2005.

4.2 Since 2003 till December, 2013, Jagdale Industries Limited sold electrolyte drinks under the trademark, ORS-L, which was subsequently changed to ORSL in 2014, after acquisition by the plaintiff.

4.3 The plaintiff is the registered proprietor of the various formative marks associated with ORS-L and ORSL, with relevant registrations in Classes 30, 31, 32 and 33.

4.4 The defendants are involved in the business of *inter alia* energy and refreshment drinks. The defendant no. 1, trading as M/s Sree International India, operates from 1-183/1 Venkayammampeta, Kadiyam Mandal, East Godavari District, Andhra Pradesh – 533126, whereas, defendant nos. 2 to 5 are partners of M/s Pure Tropic which operates from S.F. No. 220, Viruandampalayam, Chengappalli, Tiruppur, Tamil Nadu – 638812.

4.5 Defendant no. 1 is the proprietor and marketer of the products bearing the impugned marks and impugned trade dress. It has obtained registration no. 5323696 dated 10th February, 2022 for the impugned mark,



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**ERSI**

Fruit Drink

, and has further applied for registration of its marks and trade dress under Class 32 on a '*proposed to be used basis*' in November, 2022. M/s Pure Tropic is the manufacturer of the products bearing the impugned marks and impugned trade dress and is the operator of the website, www.juscoco.com.

4.6 Plaintiff came across defendant no.1's products, bearing the impugned mark and trade dress, in September, 2022. Immediately upon gaining knowledge of the impugned marks and trade dress, a *Cease-and-Desist notice* was issued through plaintiff's counsel on 05th September, 2022 to defendant no. 1 and M/s Pure Tropic. However, the same could not be delivered to defendant no. 1. In view of this, the plaintiff sent a reminder letter dated 20th September, 2022, which again remained undelivered upon defendant no. 1.

4.7 Thereafter, in June 2023, during an internet check, plaintiff found that defendant no. 1 had filed an application no. 5525855 dated 12th July, 2022

ERSI

Fruit Drink

for registration of the impugned mark, , in Class 32, against which plaintiff filed an opposition on 13th June, 2023.

4.8 The plaintiff's subsequent market research and internet investigation revealed that the defendant no.1 had introduced a different product



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variation/ and submitted new applications for the registration of the impugned marks and trade dress in Class 32. To avoid detection by the plaintiff, the defendants substituted the letter ‘O’ with ‘E’, describing their marks as “ERSI FRUIT DRINK”, “ERSI FRUIT DRINK APPLE”, and “ERSI FRUIT DRINK ORANGE”.

4.9 Subsequently, in September, 2023, the plaintiff discovered that the defendant no.1 had started marketing and selling its goods bearing the impugned marks and trade dress on www.dhanalakshmiagency.in, an interactive website that distributes the impugned goods throughout India, including, Delhi. The aforementioned website exclusively represents only the defendant no.1, as it includes only two products belonging to defendant no.1.

4.10 The defendant nos. 2 to 5, have also posted listings of products bearing the impugned marks and trade dress on other third-party websites, such as IndiaMart.

5. Submissions on behalf of the plaintiff:

5.1 Plaintiff’s products under the marks ORSL and its formatives are marketed in a distinctive manner which is comprised of the unique packaging, the distinctive style of writing ORSL and its formatives, the colour combination, the stylized script, styling, and placement of information about the product, form a part of the trade dress of ORSL and its



formatives/variants.

5.2 Other than deriving vast revenue from sales of products containing the ORSL marks and trade dress, the plaintiff has also invested huge sums into advertising and promoting its marks. As a result, the ORSL marks of plaintiff have acquired substantial goodwill and are an extremely valuable commercial asset of the plaintiff.

5.3 It is evident from the bare comparison of the plaintiff's mark/trade dress and defendant no.1's impugned marks and trade dress that plaintiff's red and white colour scheme has been copied by the defendant no. 1.



Further, defendant no.1's mark is virtually identical to

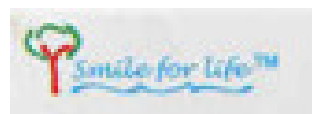
plaintiff's  mark and is a deliberate attempt to confuse the consumer by use of a particular font to represent the letter 'I' in ORSI, which can easily be confused as 'L'.

5.4 The placement of all the elements in the impugned trade dress, i.e., the brand name, the device of an apple, the descriptive matter, etc., are identical to the plaintiff's distinctive trade dress. Further, even content of descriptive matter in the impugned trade dress is almost identical to that of plaintiff's trade dress. The colour combination in which the text and device,



appears on the top left corner of the impugned trade dress

is similar to the tagline and device,



appearing on



plaintiff's trade dress.

5.5 Apart from the visual similarity, the *malafide* intent of the defendant no.1 is also evident from the fact that the products offered under the impugned marks and impugned trade dress are also identical to plaintiff's goods. A clear case of passing off and infringement is made out against the defendant no.1 as it has consciously sought to imitate the plaintiff's goods, including, the trademark and packaging.

5.6 No written statement has been filed by any of the defendants and therefore, the averments in the plaint, which have been adequately substantiated by way of documentary proof, and have not been refuted by the defendants, stand admitted. Therefore, there is no triable issue.

5.7 Defendants, in their reply to plaintiff's I.A. No. 1880/2025, have raised the plea of framing of issues by the Court. However, the same is not tenable as no written statement has been filed by the defendants. Moreover, the issue of jurisdiction has already been decided by this Court *vide* judgment dated 04th February, 2025, in I.A. 31224/2024.

6. **Submissions on behalf of defendant nos. 1 to 6:**

6.1 The Court ought to frame an issue on the question of jurisdiction under Section 20(c) of CPC. The law dictates that the question of territorial jurisdiction should ordinarily be decided at the outset. Even in terms of Section 21(1) of CPC, any objection relating to place of suing cannot be taken at the appellate or revisional stage if the same has not been agitated at the earliest possible opportunity, i.e., before the Court of first instance.

6.2 The suit instituted by the plaintiff is not in accordance with the CPC and Section 134 of the Act should not be violated.



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6.3 The plaintiff did not address the *Cease-and-Desist notice*, dated 05th September, 2022 and reminder letter, dated 20th September, 2022 to M/s Pure Tropic. Both the notice and reminder letter were addressed to defendant no.1 only. The answering defendants further submit that plaintiff's letter dated 05th September, 2022, was addressed to defendant no.1, whereas, M/s Pure Tropic was added as a recipient only by way of Carbon Copy ("CC"). Thus, it is submitted that even as per the plaintiff, M/s Pure Tropic has no relation to the present dispute.

6.4 Defendant no.1 is one of the many customers of M/s Pure Tropic and therefore, defendant nos.2 to 5 should not be dragged into the present *lis*.

6.5 The defendant nos. 2 to 5 being a third-party service provider for the defendant no.1 should not be made as a party to the suit in the first place as they are only a service provider to defendant no. 1, who is a customer of defendant nos. 2 to 5.

6.6 Based on the wrong representation by the plaintiff, the written statement by defendant nos. 2 to 5 was not taken on record by the Joint Registrar (Judicial) and the written statement was filed within 120 days, i.e., 21st November, 2023 to 20th March, 2024. Therefore, the written statement on behalf of defendant nos. 2 to 5 should be taken on record.

6.7 Defendant nos. 2 to 5 submit, that due to plaintiff's incorrect representation of the latest date of service upon the said defendants, their written statement has not been taken on record. It is contended that the plaintiff, on 27th May, 2024, wrongly stated before the Joint Registrar (Judicial) that the latest date of service was 19th November, 2023, whereas, the latest date of service upon the defendants was 20th November, 2023.



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6.8 M/s Pure Tropic has no relation to or involvement in trademarks/trade dress of products of defendant no.1, as it only provides services of mixing and blending, based on recipe/formulation given by customers for drinks, such as fruit juices, plant-based milk, carbonated soft drinks, etc. The packaging material, as well as the ingredients are also provided by the customers. Thus, the role of M/s Pure Tropic is strictly restricted to the edible matter inside the packaging, and not on the packet's mark/label.

7. **Proceedings before the Court:**

7.1 It is noted that *vide* judgement dated 07th December, 2023 (“injunction order”), this Court granted an interim injunction in favor of the plaintiff and against the defendants, in the following manner:

“xxx xxx xxx

21. As such, pending disposal of the suit, the defendants as well as all others acting on their behalf shall be restrained from using the



marks, **or any other confusingly or deceptively similar marks, for fruit drinks or any other allied or cognate goods or services.**

22. Though the Court is not interfering with the products which may already have been released in the market, the defendants shall also stand restrained from releasing into the market any stock of manufactured infringing goods which may have already been manufactured by them and lying in stock.

23. The defendants are also directed to forthwith remove, from all physical and virtual sites, reference to the impugned marks ORSI/



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ORSI ORSI
Fruit Drink / Fruit Drink



xxx xxx xxx”

(Emphasis Supplied)

7.2 Subsequently, *vide* order dated 24th January, 2024, notice was issued to defendant no. 6, i.e., M/s G International India, which is said to be marketing the products of defendant no. 1 under a newly discovered mark,

i.e.,  .

7.3 Thereafter, *vide* order dated 09th February, 2024, notice was issued to defendant nos. 7 and 8, i.e., M/s Kalluri Traders and M/s Venkata Sai General Agencies, respectively.

7.4 Further, by way of the same order dated 09th February, 2024, on account of claims by the plaintiff that the defendants along with others were violating the injunction order dated 07th December, 2023, this Court appointed six Local Commissioners to carry out local commissions in the premises of the defendants.

7.5 Consequently, *vide* order dated 29th February, 2024, defendant nos. 6, 7 and 8 were impleaded as parties based upon the findings of the Local Commissioners.

7.6 It is noted that an application, i.e., I.A. 30216/2024, was filed by defendant nos. 2 to 5, seeking condonation of delay of 89 days in filing their written statement, however, the same was dismissed *vide* order dated 27th



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May, 2024, with the observations that the written statement was filed beyond a period of 120 days. Therefore, by way of the said order, the right of defendant nos. 2 to 5 to file their written statement was closed. Further, by way of the same order, the right of defendant no. 1 to file its written statement was closed as well.

7.7 This Court also notes that defendant nos. 6 and 7 were served with summons on 22nd March, 2024, and defendant no. 8 was served on 27th March, 2024, as recorded *vide* order dated 27th May, 2024. However, the written statement has not been filed on their behalf, and thus, the permissible time period as prescribed under the CPC, as amended by the Commercial Courts Act, 2015, stands expired as well. Therefore, the right of defendant nos. 6 to 8 to file their written statement already stands closed.

7.8 On account of the rights being closed for all the defendants in filing their written statements, the present application has been filed by the plaintiff under Order VIII Rules 1 and 10 of CPC.

7.9 It is also noted that during the course of the proceedings, defendant no. 1 filed an application, i.e., *I.A. 31224/2024*, under Order VII Rule 11 CPC, seeking rejection of the plaint. The said application was dismissed by this Court *vide* judgement dated 04th February, 2025, holding that this Court has jurisdiction to entertain the present suit proceedings and that there exists a clear cause of action against defendant no. 1.

8. In view of the aforementioned, this Court has proceeded with the matter, *whilst* taking into consideration the non-filing of the written statements by the defendants, the consequent filing of Order VIII Rule 10 CPC application, and the reply filed on behalf of defendant nos. 1 and 6, along with defendant



nos. 2 to 5, to the present application.

9. Thus, while elucidating upon the scope of Order VIII Rule 10 CPC, this Court, in the case of ***The Christian Broadcasting Network, INC Versus CBN News Private Limited, 2018 SCC OnLine Del 11666***, held as follows:

“xxx xxx xxx

13. The scope of Order 8 Rule 10 CPC in commercial suits particularly under the New Commercial Courts, Commercial Division and Commercial Appellate Division of the High Court Act, 2015 has been examined by this court in *Nirog Pharma Pvt. Ltd. v. Umesh Gupta*, (2016) 235 DLT 354. This court held as follows:

“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.

.....

28. The present suit is also a commercial suit within the definition of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 and it was the clear intention of the legislature that such cases should be decided expeditiously and should not be allowed to linger on. Accordingly, if the defendant fails to pursue his case or does so in a lackadaisical manner by not filing his written statement, the courts should invoke the provisions of Order VIII Rule 10 to decree such cases.”

xxx xxx xxx”

(Emphasis Supplied)

Findings and Analysis:

10. At the outset, this Court notes that the present suit is filed for infringement and for passing off of the marks of the plaintiff and the trade dress of its products sold under its registered marks.

11. It is noted that the marks/trade dress of defendant no. 1, as shown in



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the plaintiff, which are alleged to have caused infringement and passing off of the plaintiff's marks/trade dress, are as follows:

S.No .	Application/ Registration No.	Impugned Mark (Word/Device)	Particulars
1.	5323696		Registered <i>vide</i> certificate dated 19.09.2022 and valid/renewed upto 10.02.2032. Currently, a rectification is filed before the Registry by M/s NUTRIMENTO PVT.LTD.
2.	5525855		Application filed on 12.07.2022 on a ' <i>proposed to be used basis</i> '. Currently, the same is reflected as ' <i>abandoned</i> '.



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3.	5695523		Application filed on 23.11.2022 on a ' <i>proposed to be used basis</i> '. Currently, the same is reflected as ' <i>abandoned</i> '.
4.	5695524		Application filed on 23.11.2022 on a ' <i>proposed to be used basis</i> '. Currently, the same is reflected as ' <i>abandoned</i> '.

12. This Court notes that defendant no. 1's mark under registration no.

ERSI

5323696, i.e., **Fruit Drink** /ERSI Fruit Drink (logo), is currently registered and a rectification before the Trade Marks Registry is filed towards the same. However, it is to be noted that if this Court decides in favour of the plaintiff, an action for passing off can nevertheless be maintainable against the said mark.

13. It is further noted that *vide* order dated 09th February, 2024, submissions of plaintiff were recorded with regard to several other



marks/trade dress of defendant no.1, which the plaintiff came across, that continued to be deceptively similar and confusing in comparison to plaintiff's marks/trade dress. Submission on behalf of the plaintiff was noted that the defendants were continuing to manufacture goods under the newly discovered infringing marks/trade dress, despite the injunction order restraining the defendants from using "*any other confusingly or deceptively similar marks*". Therefore, it was submitted that the usage of the newly discovered marks/trade dress is in violation of the injunction order. The newly discovered marks of defendant no. 1, as brought to the notice of this Court, are reproduced as under:

Appl. No./Reg. No.	Application Date	Trade mark	Class	Current Status
5695510	November 23, 2022	ARSI FRUIT DRINK arsl Fruit Drink	32	Opposed
5695522	November 23, 2022	BRSI FRUIT DRINK BRSI Fruit Drink	32	Opposed
5525841	July 12, 2022	DRSI Fruit Drink DRSI Fruit Drink	32	Registered
5525850	July 12, 2022	QRSI Fruit Drink QRSI Fruit Drink	32	Registered
5525836	July 12, 2022	CRSI Fruit Drink CRSI Fruit Drink	32	Registered
5525845	July 12, 2022	GRSI Fruit Drink GRSI Fruit Drink	32	Registered
		ELECTROORS Fruit Drink		
4894743	March 8, 2021	ELECTROORS FRUIT DRINK Electroors Fruit Drink	5	Objected

Plaintiff's Marks/Trade Dress and Goodwill:

14. At this stage, it would be relevant to examine the rights vested in the



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plaintiff with respect to its marks/trade dress. The plaintiff is the proprietor of several registered marks under Classes 30, 31, 32 and 33, which are valid and subsisting, earliest of which has been in use in India since the year 2003, details of which, are reproduced as under:

Trade Mark	Trade Mark Number	Application Date/ User Claim	Class	Status
ORS	1202213	May 29, 2003 User: Proposed to be used.	32	Registered
<i>Goods:</i> Mineral and aerated waters and other non-alcoholic drinks, beer, ale and porters, syrups, beverages and preparations for making beverages, fruit juices, soft drinks, sherbets, soda water included in class 32.				
ORS-O	1218294	July 28, 2003 User: July 28, 2003	32	Registered
<i>Goods:</i> Mineral and aerated waters and other non-alcoholic drinks, beer, ale and porter, syrups, beverages and preparations for making beverages, fruit, juices, soft drinks, sherbets, soda water.				
ORS-P	1218295	July 28, 2003 User: July 28, 2003	32	Registered
<i>Goods:</i> Mineral and aerated waters and non-alcoholic drinks, beer, ale and porter, syrups, beverages and preparations for making beverages, fruit juices, soft drinks, sherbets, soda water.				
ORS-L	1590455	August 14, 2007 User: October 1, 2003	32	Registered
<i>Goods:</i> Mineral and aerated waters and other non-alcoholic drinks; beer, ale and porter; syrups, beverages and preparations for making beverages, fruit juices, soft drinks, sherbets, soda water				
ORSL	2580046	August 14, 2013 User: Proposed to be used	32	Registered
<i>Goods:</i> Aerated water; non-alcoholic beverages; sherbets [beverages] soda water; syrups for beverages; preparations for making beverages; powders for effervescing beverages; mineral water [beverages]; fruit juices; waters [beverages]				



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ORS-L Smile for life 	1823685	May 29, 2009 User: April 1, 2009	32	Registered
<i>Goods:</i> Mineral and aerated waters and other non-alcoholic drinks, beer, ale and porter, syrups, beverages and preparations for making beverages, fruit juices, soft drinks, sherbets, soda water, concentrates, syrups or powders used in the preparation of non-alcoholic drinks				
ORS-L Lemon Drink 	2351431	June 20, 2012 User: July 1, 2003	32	Registered
<i>Goods:</i> Fruit juices; beverages (non-alcoholic), beverages concentrates, powders for making beverages; fruit extracts (non-alcoholic), fruit juice beverages (non-alcoholic); energy drinks [not for medical purposes], energy drinks [not for medical purposes] enhanced with vitamins, minerals, nutrients or fruit-flavors; concentrates and powders used in the preparation of energy drinks; coconut drink; mineral and aerated waters; packaged drinking water; soft drinks, sherbets, soda water				
ORSL Smile for life 	2658288	January 13, 2014 User: December 5, 2013	32	Registered
<i>Goods:</i> Aerated water; non-alcoholic beverages; sherbets [beverages]; soda water; syrups for beverages; preparations for making beverages; powders for effervescing beverages; mineral water [beverages]; fruit juices; waters [beverages]				
ORS-L Plus Orange Drink 	2351429	June 20, 2012 User: June 1, 2008	32	Registered



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<i>Goods:</i> Fruit Juices; Beverages (Non-Alcoholic), Beverages Concentrates, Powders For Making Beverages; Fruit Extracts (Non-Alcoholic), Fruit Juice Beverages (Non-Alcoholic); Energy Drinks [Not For Medical Purposes], Energy Drinks [Not For Medical Purposes] Enhanced With Vitamins, Minerals, Nutrients Or Fruit-Flavors; Concentrates And Powders Used In The Preparation Of Energy Drinks; Coconut Drink; Mineral And Aerated Waters; Packaged Drinking Water; Soft Drinks, Sherbets, Soda Water				
ORS-L	2382432	August 21, 2012 User: Proposed to be used	30	Registered
<i>Goods:</i> Protein foods and food additives not included in classes 29 & 32; pulses of all kinds; spices, flour & preparations made from cereals; edible articles for human consumption; bread, cakes, pastry & confectionery; biscuits; tea, coffee, coffee substitutes; grains; desserts; puddings; corn flour powder; wafers (biscuits); cooked food & snacks; glucose; condiment; noodles & other pasta products; sphagetti; sugar, sweets; sweetmeats, toffees; breakfast food made from wheat, maize & rice.				
ORS-L	2382433	August 21, 2012 User: Proposed to be used	31	Registered
<i>Goods:</i> Agricultural, horticultural and forestry products and grains not included in other classes; live animals; fresh fruits, fruit nuts, and vegetables, peas, seeds. natural plants and flowers, mushrooms; foodstuffs for animals; malt; scented supari (betalnut); pan masala; mukhwas; mouth fresheners.				
ORSL REHYDRATE	3606825	August 4, 2017 User: Proposed to be used	32	Registered
<i>Goods:</i> Mineral and aerated waters and other non-alcoholic drinks; beer, ale and porter, syrups, beverages and preparations for making beverages; fruit juices, soft drinks, sherbets, soda water, concentrates, syrups or powders used in the preparation of non-alcoholic drinks.				
ORS-L	2382434	August 21, 2012 User: Proposed to be used	33	Registered
<i>Goods:</i> All alcoholic beverages including whisky, brandy, gin, rum, vodka, wines, spirits and liquors included in class 33; fruit extracts with alcohol not included in class 32				

15. It is noted that for marks bearing registration nos. 1202213, 1218294, 1218295 and 1823685, under Class 32, the plaintiff, by way of Assignment



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Deed dated 07th November, 2014, has procured the rights towards the said marks through its predecessor-in-interest, i.e., Jagdale Industries Limited. Further, the mark of the plaintiff for ORS-L Apple Drink, i.e.,



, bearing no. 2351430 under Class 32, is currently under opposition before the Trade Marks Registry, amongst other marks.

16. Further, the plaintiff is the registered proprietor of several marks in its favour and has obtained registrations for its marks, across various jurisdictions in the world, including, but not limited to Bhutan, Kenya, Philippines, Singapore, Vietnam, Tanzania, Zanzibar, Malaysia and Myanmar. Documents corroborating the same are on record.

17. Moreover, the plaintiff has made substantial sales and earned significant revenue through the ORSL and its formative marks. A statement of annual sales in India for the period of 2014 (*fourth quarter*) to 2023, as shown in the plaint, is as follows:



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Financial Year	Revenue (Net Total Sales in INR Crs)
2014 (Fourth quarter)	20
2015	135
2016	204
2017	262
2018	314
2019	423
2020	430
2021	699
2022	744
2023	749

18. Furthermore, the plaintiff has incurred considerable expenditure in relation to marketing and promotion in India for its ORSL and its formative marks. Documents, in relation to promotion and advertisement, are placed on record. The sales figures for the period of 2014 (*fourth quarter*) to 2023, as shown in the plaint, are as follows:

Year	India Marketing and Promotional Expenditure (in INR Crs)
2014 (Fourth quarter)	0.8
2015	10.0
2016	8.3
2017	14.2
2018	13.1
2019	13.8
2020	11.4
2021	12.2
2022	13.8
2023	15.8



19. This Court notes that the plaintiff's products bearing the plaintiff's mark, i.e., ORSL/ORS-L, are sold over the counter at pharmacies, as well as through several e-commerce platforms, such as, Apollo Pharmacy, 1mg, NetMeds, Amazon India, etc.

20. This Court further notes the submission on behalf of the plaintiff that they have a distinctive packaging/trade dress for the products under their registered marks, and the said packaging and its colour combination, the stylized script, styling, and placement of information about the product, form a part of the trade dress of ORSL and its formative variants.

21. This Court also takes into account that the plaintiff has been continuously and *bonafidely* using its ORSL and other formative marks in India since the year 2003, whereas, the earliest registration in favour of defendant no.1 is granted from its date of application, i.e., 10th February, 2022 for its mark, ERSI.

22. Thus, on account of prior use as well as the revenue and expenditure of the plaintiff in relation to its ORSL and formative marks, the goods of the plaintiff are associated with the plaintiff company itself. Therefore, if this Court comes to the conclusion that products bearing the impugned marks/trade dress are indeed deceptively similar and confusing in comparison to the plaintiff's marks/trade dress, it would behove upon this Court to protect the rights and goodwill associated with the plaintiff in the said marks/trade dress.

Comparison of Plaintiff and Defendant no. 1's marks/packaging:

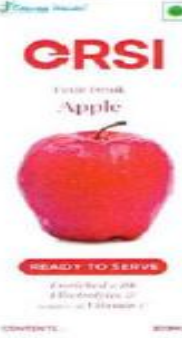
23. At this stage, it would be pertinent to compare the marks and packaging/trade dress of both the parties. A comparative table towards the



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same, as given in the plaint, is as under:

PLAINTIFF'S EARLIER AND WELL-KNOWN TRADEMARKS AND TRADE DRESS	DEFENDANT'S IMPUGNED MARKS/IMPUGNED TRADE DRESS
ORSI-L ORSL ORSI™ ORSI®	ORSI ORSI / ERSI ORSI / ERSI ORSI Fruit Drink ORSI Fruit Drink
	
	



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24. A perusal of the aforesaid makes it evident that the defendant no.1 has attempted to come as close as possible to the marks and the packaging/trade dress of the plaintiff. The misappropriation on part of the defendant no. 1 is writ large, and in the first instance can be seen in the packaging itself, wherein, the placement of the information and pictorial representation of the fruit is similar to that of the plaintiff's packaging. Further, the colour scheme used in the trade dress of the plaintiff's product has been adopted *in toto* by the defendant no. 1. Moreover, even though the defendant's mark is 'ERSL', however, the manner in which the 'E' is presented in the mark, with a round shape, is similar to an 'O', and the addition of an unnoticeable cut in the middle of the letter 'E', nevertheless throws the impression that the 'E' is an 'O'.

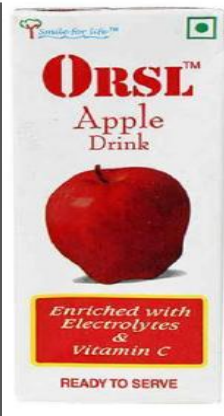
25. Furthermore, this Court cannot ignore the newly discovered marks of



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the defendant no. 1, as recorded in order dated 09th Febraury, 2024. Thus, it would be apposite to reproduce the marks/packaging of the plaintiff, i.e., ORSL and the newly discovered mark/packaging of the defendant no.1, i.e., ElectroORS. A comparative table of the plaintiff's marks/trade dress, defendant no.1's marks/trade dress, including, the newly discovered marks/trade dress, are reproduced as under:

PLAINTIFF'S EARLIER AND WELL-KNOWN TRADE MARKS AND TRADE DRESS	DEFENDANTS' IMPUGNED MARKS/IMPUGNED TRADE DRESS RESTRAINED INJUNCTION ORDER DATED 07.12.2023	DEFENDANTS PRODUCTS UNDER THE NEW IMPUGNED MARK / IMPUGNED TRADE DRESS
ORS-L ORSL  	ORSI ORSI / ERSI  Fruit Drink  Fruit Drink	ELECTRO ORS   Fruit Drink  Fruit Drink
		

26. Upon perusal of the above, it can be seen that in relation to the newly discovered marks and its reproduction thereof, the packaging/trade dress is deceptively similar to both the plaintiff's packaging and the earlier packaging of the defendant no. 1.



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27. It is noted that the injunction order restrained the usage of any similar mark/trade dress/packaging by the defendants. By way of usage of a packaging similar to the plaintiff's and only making minor alterations in the new packaging, the defendant no.1 has not changed the likelihood of confusion and deception that can occur.

28. It is further noted that in the written submissions filed by defendant no.1, defendant no.1 has categorically admitted that production and distribution of the impugned products bearing the infringing marks/trade dress for defendant no.1's products, including, ElectroORS, were stopped.

29. Therefore, on account of the aforesaid observations, it becomes clear that the marks and packaging/trade dress adopted by the defendant no. 1, would lead to confusion and deception amongst the consumers. Thus, while discussing the aspect of confusion that can occur with consumers, the Division Bench of this Court, in the case of ***South India Beverages Pvt. Ltd. Versus General Mills Marketing Inc., 2014 SCC OnLine Del 1953***, held as follows:

“xxx xxx xxx

39. *It is also a settled proposition of law that where products are virtually identical, as they are in the present case, ‘the degree of similarity in the marks necessary to support a finding of infringement is less than in the case of dissimilar, non-competing products.’ [Eaton Allen Corp. (Supra)]*

xxx xxx xxx

49. *Since time immemorial the Supreme Court has consistently sounded a note of caution that the competing marks have to be compared keeping in mind an unwary purchaser of average intelligence and imperfect recollection. [AIR 1963 SC 449 Amritdhara Pharmacy v. Satyadeo Gupta]*

50. Consumers of any product do not deliberately memorize marks. They only retain a general, indefinite, vague, or even hazy



impression of a mark and so may be confused upon encountering a similar mark. Consumers may equate a new mark or experience with one that they have long experienced without making an effort to ascertain whether or not they are the same marks. The consideration therefore is whether one mark may trigger a confused recollection of another mark. Thus, if the marks give the same general impression confusion is likely to occur.

51. With a view to further foster our understanding of the concept of similarity and likelihood of confusion arising in trademark jurisprudence, we may profitably take cue from the analogous principle of 'observability' which is applied in the context of copyright laws.

52. The 'ordinary observer' test is applied to determine if two works are substantially similar. The Court will look to the response of an 'average lay observer' to ascertain whether a copyright holder's original expression is identifiable in the allegedly infringing work 274 F.2d 487 (2nd Cir. 1960) Peter Pan Fabrics Inc. v. Martin Weiner Corp. Since it is employed to determine qualitative and quantitative similarity in visual copyright work, the said test can also be usefully applied in the domain of trademark law as well.

53. The Courts have reiterated that the test for substantial similarity involves viewing the product in question through the eyes of the layman. A layman is not expected to have the same 'hair-splitting' skills as an expert. A punctilious analysis is not necessary. A layman is presumed to have the cognition and experiences of a reasonable man. Therefore, if a reasonable observer is likely to get confused between the two products then a copyright violation is said to take place.

54. Transposing the said principles in the context of trademark infringement, one may venture to assess similarity and likelihood of confusion between rival marks on the touchstone of the impression gathered by a reasonable observer, who is a layman as opposed to a connoisseur.

xx xxx xxx”

(Emphasis Supplied)

30. Moreover, the present case is a clear example, wherein, the Triple Identity Test is satisfied. The marks/trade dress of the parties, are similar. The areas of operation/business are the same, and the target consumers are



also similar. Therefore, there is a complete likelihood that deception and confusion will occur with the consumers. Thus, this Court in the case of ***Heifer Project International Versus Heifer Project India Trust, 2024 SCC OnLine Del 2847***, held as follows:

“xxx xxx xxx

30. Indeed, the present case is a classic instance of ‘triple identity.’ The Impugned trademarks are nearly identical, as are the areas of operation, and the segments of the public they target. Therefore, the Defendants’ use of these nearly identical and deceptively similar marks is certain to cause deception and confusion among the general public. Besides, the Defendants have persistently engaged in activities that unlawfully exploit Plaintiff’s reputation and goodwill. Even after the termination of their contractual relationship and the explicit withdrawal of rights to use the Plaintiff’s trademarks and logos, Defendants have unauthorisedly continued use of their deceptively similar marks. This defiance not only violates the agreement but also misleads the public and the relevant stakeholders regarding the nature of Defendants’ affiliation with Plaintiff. Defendants have further compounded their infringement by falsely representing their relationship with Plaintiff. They have insinuated to the public and stakeholders that they remain affiliated or integrally connected with Plaintiff, thereby undermining Plaintiff’s brand/trademark integrity and causing confusion about its unique identity in the marketplace. Defendants lack any legal right or justification to the use of contested marks, or applying for their registration of identical marks for conducting any business activities.

xxx xxx xxx”

(Emphasis Supplied)

31. Therefore, this Court is of the considered opinion that the impugned marks/trade dress/packaging used by defendant no. 1 will cause confusion and deception to any unwary purchaser, especially, *qua* goods which are easily available as over-the-counter products, and readily available on e-commerce platforms, as well. The fact that the products of both the parties are catering to a similar customer base, with a similar trade channel, and on



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account of the deceptive similarity of defendant no. 1's marks/trade dress, it is in all likelihood that the impugned marks/trade dress of defendant no. 1 will cause confusion and deception amongst the consumers. Thus, the defendant no.1's marks/trade dress will constitute infringement and passing off of the marks/trade dress of the plaintiff.

Use of Prefix or Suffix in the Word ORS:

32. At this stage, this Court notes the order dated 02nd February, 2024, that has been issued by the Food Safety and Standards Authority of India ("FSSAI"), wherein, it is stipulated that 'ORS' along with other prefix or suffix may be used as a whole in consonance with Section 17 of the Act. The said order states that the product in question shall provide a prominent declaration on their front of pack that, "*The product is NOT a ORS formula as recommended by WHO*". The order dated 02nd February, 2024 issued by the FSSAI, as on record before this Court, is reproduced as under:

File No.RCD-15001/6/2021-Regulatory-FSSAI

RCD-15001/6/2021-Regulatory-FSSAI [E-1475]
Food Safety and Standards Authority of India
(A Statutory Authority established under the Food Safety and Standards Act, 2006)
Regulatory Compliance Division (RCD)
FDA Bhawan, Kotla Road, New Delhi-110002

Dated: 02nd February, 2024

ORDER

Subject: Usage of the term "ORS" along with brand names-reg.

Reference is invited to FSSAI order dated 14th July, 2022 on the subject cited above vide which it was decided to allow those FBOs having valid trademarks for the product names similar to 'ORS' to manufacture such products under their respective Trademarked names till the decision of the Office of the Controller General of Patents Designs and Trade Marks (CGPDTM) is received, which shall be binding and final on all such FBOs.

2. In this regard, it is to inform that the matter was taken up with O/o Controller General of Patents, Designs and Trademarks (CGPDTM) and it has been informed by the CGPDTM that "as far as the word *"ORS along with other prefix or suffix"* is concerned the same may be used by the applicant as a whole in view of Section-17 the said Act." (Trade Marks Act, 1999)

3. Further, in light of above, the matter was further examined and all the concerned FBOs are directed to ensure compliance with the following conditions for manufacturing of such products-



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- (a) FBOs may use the word “ORS along with other prefix or suffix” as a whole in consonance with Section 17 of the Trade Marks Act, 1999.
- (b) All such FBOs shall provide prominent declaration on their Front-of-Pack that *‘The product is NOT a ORS formula as recommended by WHO’*, or any similar meaning phrases without changing the intent to avoid any confusion or misleading the consumers. The font size of the above disclaimer shall not be less than 1.5 mm for principal display panel up to 100 Sq. cm, not less than 2 mm for principal display panel between 100-200 Sq. cm and not less than 3 mm in case of principal display panel above 200 Sq. cm.
- (c) In addition to above, FBOs shall also comply with the provision made under subregulation 4 (7) of the FSS (Advertising and Claims) Regulations, 2018, while clearly stating the disclaimer on the front of pack of the product i.e. *“This is only a brand name or trademark, or fancy name and does not represent its true nature; (relevant one may be chosen as applicable)”* in specified font size mentioned under the said provision.
- (d) All the concerned FBOs shall ensure compliance with the above directions w.e.f 01st April, 2024.
4. This issues with the approval of Competent Authority.

(Rakesh Kumar)
Director (Regulatory Compliance Division)

33. Thus, it is manifest that the only restriction on the use of ‘ORS’ as a mark, is that the same has to be used with a prefix or a suffix, with the disclaimer that the same is not an ORS formula as recommended by the World Health Organization (“WHO”).

34. In the present case, the plaintiff has adopted the mark in consonance with the aforesaid guidelines, by adopting a suffix and also by clearly stating on its pack that the same is a, *“Ready To Serve Fruit Beverage”* and *“NOT AN ORS”*. Images of the product of the plaintiff, is reproduced as under:



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35. It is to be noted that though the guidelines of the FSSAI stipulate regarding using ORS along with prefix or suffix, the same does not imply that a party can adopt a deceptively similar mark or trade dress as noted above, that may amount to infringement or passing off. It is evident in the present case that the defendant no.1's marks/trade dress, constitute infringement and passing off of the marks/trade dress of the plaintiff.

Territorial Jurisdiction:

36. This Court notes the submissions on behalf of defendant nos. 1 to 6, that there is no territorial jurisdiction vested with this Court. The said defendants have substantiated the said challenge of jurisdiction as the major part of their arguments before this Court and the reply to the present application. Moreover, a prayer with respect to taking on record the written statements has been made in addition to the challenge of territorial jurisdiction.

37. At this juncture, this Court notes that the said challenge to the territorial jurisdiction of this Court has already been dealt with by way of the judgment dated 04th February, 2025, which was passed in the Order VII Rule 11 application filed by defendant no. 1. Relevant portions of the



judgment dated 04th February, 2025, is reproduced as under:

“xxx xxx xxx

15. The use of a mark, has been defined in Section 2(2)(c) of the Trademarks Act, which has been construed as a reference to the use of the mark upon, or in any physical or in any other relation whatsoever, to such goods. Thus, offering the goods for sale or advertising the goods for sale, would be construed as use of the goods.

16. Considering the aforesaid, the averment of the defendants that this Court does not have territorial jurisdiction, has essentially to be rejected. The defendants have raised a plea that their products are not sold in Delhi. However, when the plaintiff has categorically averred, and shown that it has been able to successfully place order for the products of the defendants, subject matter of the suit, from within the territorial jurisdiction of this Court, even though the products may not have been delivered to the plaintiff, this Court would have territorial jurisdiction.

xxx xxx xxx

19. Considering the averments made in the plaint, it is manifest that this Court has jurisdiction in the present matter. The plaintiff has made categorical averments in the plaint as regards placing an order for the products of the defendants in Delhi. Thus, when the website marketing the goods of the defendants is accessible from Delhi, though the said website may have stopped its operation subsequently, and products may not have been ultimately delivered in Delhi, the very fact that the said website could be accessed with the products of the defendants shown online, at the time of filing of the suit, this Court would have territorial jurisdiction. The same would constitute use in relation to goods, as the goods of the defendants were promoted and advertised through the third-party website, within the jurisdiction of this Court, at the time of filing of the suit.

xxx xxx xxx

21. It is clear from the averments made in the plaint that the cause of action has arisen in Delhi and therefore, this Court has jurisdiction to entertain the present suit proceedings.

22. By a bare perusal of the averments made in the plaint, it is clear that there is a clear cause of action, against inter alia, the defendant no.1. The said defendant has failed to establish any ground for rejection of plaint under Order VII Rule 11 CPC, whereas, on the contrary the plaintiff has raised triable issues before this Court.



23. *Considering the detailed submission hereinabove, the present application is found devoid of any merits. The same is accordingly dismissed.*

xxx xxx xxx”

(Emphasis Supplied)

38. By way of the aforesaid judgement, it has already been held that this Court has territorial jurisdiction to adjudicate upon the present matter. Thus, if any challenge has to be raised by the defendants in that regard, the same has to be done primarily by way of appeal or under the normal recourse of law. However, the said challenge cannot be reiterated and raised time and again, when the findings towards the same have attained finality.

39. As regards the prayer for bringing on record the written statements, this Court cannot accede to the same, as the defendants, despite having the recourse available to them for challenging the order closing their rights to file the written statements, failed to do so. Therefore, the submission in that regard is irrelevant for adjudication at this stage, and for the present application.

Local Commissioner Reports:

40. It would also be pertinent to refer to the findings of the Local Commissioners appointed by way of the order dated 09th February, 2024 to visit the premises of the defendants, in order to ascertain whether any infringing goods in violation of the injunction order, were manufactured and stored at the said premises.

41. The findings of the Local Commissioners in their respective reports with respect to the quantity of infringing goods found, and invoices or bills raised after the injunction order dated 07th December, 2023, are noted as under:



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S.No.	Particulars of the Reports	Infringing Goods/Material Found
1.	Date: 21.02.2024 Premises of: Defendant No. 6 – M/s G International India	1. Total Apple ERSI & Orange ERSI Drinks = 31,560 tetra packs. 2. Damages and spoilt tetra packs = 12 cases 3. Unused cartons (packaging material) = 24 bundles 4. Three samples of tetra packs with manufacturing dates noted as 24.11.2023, 04.12.2023, 08.12.2023. 5. E-way bill dated 31.01.2024 valid till 01.02.2024, in the name of defendant no. 6 and recipient being defendant no. 7 for the product ElectroORS Apple Fruit Drink having value of goods of Rs. 1,72,500/-.
2.	Date: 21.02.2024 Premises of: Defendant No. 7 – M/s Kalluri Traders	1. 293 boxes of with each box having 60 tetra packs. 2. 28 boxes each with around 30 tetra packs. 3. 8 tetra packs of ElectroORS. 4. Invoices from 2022-23. 5. Invoice dated 05.01.2024 for purchase by defendant no. 7 from defendant no. 6 for goods worth Rs. 2,80,698/-. 6. Samples found with manufacturing date as 01.01.2024.
3.	Date: 26.02.2024 Premises of: Defendant nos. 2 to 5 – M/s Pure Tropic (Partners)	1. ERSI Fruit Drink Apple = 1,32,240 packs (boxes) and 29,400 packs (trays) 2. ElectroORS Fruit Drink Apple = 27,000 packs 3. ERSI Fruit Drink Orange = 66,630 packs 4. Packaging material bearing the impugned marks through which the number of tetra packs that can be made = 20,03,187 packs. 5. Empty Carton Boxes and Trays bearing the infringing marks = 34,600. 6. Samples found with manufacturing dates as 16.11.2023, 28.11.2023, 12.12.2023, 30.01.2024, 12.02.2024. 7. Invoices from 2022-23. 8. Invoice raised by defendants nos. 2 to 5 to defendant no. 1 dated 12.12.2023 for an amount of Rs.



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		46,67,979.01/- for packaging paper of ERSI, CRSI and ElectroORS. 9. Invoice raised by defendant nos. 2 to 5 to defendant no. 1 dated 13.12.2023 for an amount of Rs. 2,54,880/- for packaging charges of ERSI Apple and Orange. 10. Invoice raised by one <i>Arulmurugan Packaging</i> to defendant no. 1 dated 22.12.2023 for an amount of Rs. 63,498.75/- for ElectroORS Apple, wherein defendant nos. 2 to 5 are the consignee. 11. Invoice raised by <i>Arulmurugan Packaging</i> to defendant no. 1 dated 10.02.2024 for an amount of Rs. 1,02,295.38/- for ERSI Apple wherein defendant nos. 2 to 5 are the consignee. 12. Invoice raised by <i>Arulmurugan Packaging</i> to defendant no. 1 dated 12.02.2024 for an amount of Rs. 76,267.53/- for ERSI Apple wherein defendant nos. 2 to 5 are the consignee.
4.	Date: 01.03.2024 Premises of: Defendant no. 8 – M/s Venkata Sai General Agencies	1. Approximately 2000 boxes with 60 pieces each, i.e., 1,20,000 infringing goods found. 2. Invoice dated 31.01.2024 for purchase from defendant no. 1 by defendant no. 8 for an amount of Rs. 15,12,000/- for 1,08,000 pieces for ElectroORS Apple drinks.
5.	Date: 16.03.2024 Premises of: Defendant nos. 2 to 5 – M/s Pure Tropic (Partners)	No products of infringing nature were found as the premises are only for receipt of posts and other communications of defendant nos. 2 to 5.
6.	Date: 19.03.2024 Premises of: Defendant no. 1 – Mr. Abbireddi Satish Kumar trading as M/s Sree International India	1. ElectroORS Apple dated 01.01.2024 = 12,720 + 94 packs 2. ERSI Fruit Drink Orange Zero Sugar = 2 loose packs 3. ERSI Fruit Drink Apple = 12 loose packs 4. ElectroORS Fruit Drink Apple = 6 loose packs



42. Perusal of the above findings of the Local Commissioners brings to the fore that despite passing of the injunction order dated 07th December, 2023, products bearing the infringing marks/trade dress of defendant no. 1, were still being manufactured, and supplied to the distributors. Furthermore, bulk quantities of goods bearing the impugned marks/trade dress were found at the premises of the defendants.

43. It has been held time and again that under Order VIII Rule 10 CPC, the Court is empowered to take into consideration the reports of the Local Commissioners as evidence and pass a judgement. Thus, this Court, in the case of ***Sandisk LLC and Another Versus Laxmi Mobiles and Others, 2023 SCC OnLine Del 432***, held as follows:

“xxx xxx xxx

17. Since there is no written statement on behalf of Defendants, despite service of summons, this Court is empowered to pass a judgment in terms of Order VIII Rule 10 of Civil Procedure Code, 1908. The report of the Local Commissioner can be read in evidence in terms of Order XXVI Rule 10(2) of CPC. [See : ML Brother LLP v. Maheshkumar Bhuralal Tanna]. Therefore, in light of the Reports of Local Commissioners, and evidence collected by them, as well as non-filing of written statements, this Court is of the opinion that no ex parte evidence is required to be led. This view is supported by decisions of this Court in *Disney Enterprises Inc. v. Balraj Muttneja*, and *Cross Fit LLC v. RTB Gym and Fitness Centre*. As regards claim of damages, this Court is convinced that this is not a case of innocent adoption, and Defendants’ conduct invites the award of damages. Taking a reasonable assessment of the volume of seizure made, nature of counterfeiting indulged into by Defendants, in the opinion of the Court, Plaintiffs are entitled to nominal damages, purpose of which has been laid out in the judgment of this Court in *Indian Performing Right Society v. Debashis Patnaik*.

xxx xxx xxx”

(Emphasis Supplied)

44. Thus, in consideration of the Local Commissioner Reports and the



averments made on behalf of the plaintiff, this Court is of the view that evidence is not required to be led in the present matter. Moreover, in order to ascertain the culpability of the defendants with respect to the infringing goods, the reports of the Local Commissioners shall be considered by this Court.

Culpability of the Defendants:

A. Defendant nos. 2 to 5:

45. Defendant nos. 2 to 5, who are the partners in M/s Pure Tropic, have made a challenge that they are only the service providers to defendant no. 1, who is one of many of the customers of defendant nos. 2 to 5. Therefore, they are absolved from any liability towards the actions on the part of defendant no. 1.

46. This Court notes that the said defendant nos. 2 to 5 were served upon with the *Cease-and-Desist notice* dated 05th September, 2022, and a reminder letter dated 20th September, 2022, was also served upon defendant nos. 2 to 5, on behalf of the plaintiff. However, it is the case of defendant nos. 2 to 5 that they were only in ‘CC’ to the *Cease-and-Desist notice* sent to defendant no. 1, to whom the notice was addressed to.

47. Even if this Court was to accept the said argument on behalf of defendant nos. 2 to 5, regardless, the said defendants were served with summons *vide* order dated 06th November, 2023, and notice was also served upon them in the application under Order XXXIX Rules 1 & 2 CPC.

48. It is noted that defendant nos. 2 to 5 are manufacturers of the goods, which are sold under the infringing marks/packaging of the defendant no. 1. Therefore, on account of the several intimations and notices, and the fact



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that they are the manufacturers of the goods in question, *albeit*, a service provider, the same does not absolve their liability in aiding defendant no.1 in carrying out the infringing activities. The said defendants cannot be ignorant towards the rights of the plaintiff, nor towards the orders and directions passed by this Court.

49. This Court notes that despite the said defendants having been restrained from using the impugned marks and packaging/trade dress by way of the injunction order, they were found to have violated the injunction order by continuing to manufacture the infringing products. The same is evidenced from the '*date of manufacturing*' recorded by the Local Commissioners in several of the infringing goods found at the premises of the defendants, that bore the manufacturing dates for the months of January and February, 2024.

50. Furthermore, as recorded above in Sr. No. 3 of the aforesaid table of findings of Local Commissioners, products with manufacturing date of 12th December, 2023, 30th January, 2024 and 12th February, 2024 were found, which are beyond the period of the injunction order dated 07th December, 2023, and a substantial number of products bearing the infringing marks/trade dress have been found. Moreover, invoices in relation to business dealings for substantial amounts, and for the products under the infringing marks/trade dress dated 12th December, 2023, 13th December, 2023, 22nd December, 2023, 10th February, 2024, and 12th February, 2024, were also found.

51. This Court in no manner can disregard the findings of the Local Commissioners with respect to the infringing goods found at the premises of the defendants. The fact that the summons and various notices were served



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upon defendant nos. 2 to 5 is indisputable, and therefore, any contention with respect to not being aware of the injunction order or its directions, cannot be accepted.

52. This Court also notes the conduct of defendant nos. 2 to 5 with respect to the present proceedings. The said defendants, despite being served the summons, failed to file the written statement in the prescribed period, and further even failed to reply to the application under Order XXXIX Rules 1 & 2 of the CPC. Further, the argument on behalf of defendant nos. 2 to 5 that they played no role in the present infringing activity and that they are the service providers, cannot be held to be tenable. The said defendants were made aware of the nature of the present proceedings and the injunction order time and again, and despite being the manufacturer of defendant no. 1's infringing products, the defendant nos. 2 to 5 did not stop the manufacturing, and the same is corroborated by the products that were found at their premises, which had the date of manufacturing after the injunction order.

53. In this regard, it would be useful to refer to the reply filed on behalf of defendant nos. 2 to 5, to the present application, wherein, it has been stated as follows:

“xxx xxx xxx

2. M/s Pure Tropic provide services of mixing and blending based on recipe or formulation given by the customers for drinks like fruit juices, plant-based milk, carbonated soft drinks and other beverages for our customers. **The customers supply all the raw material, packing material and all the ingredients required. M/s Pure Tropic does process the raw materials and fill in the packages provided by the customers.** M/s Pure Tropic is never involved in trademarks/trade dress or labelling of the packages. M/s Pure Tropic never engages in promoting or marketing or selling of the products of our customers. The customers take delivery of the finished good from our factory. M/s Pure Tropic's limited role and



responsibility are strictly restricted to edible matter inside the packages not the labelling on the packages. M/s Sree International India, Defendant 1 of one of many customers. M/s Pure Tropic has nothing to do with the present suit. M/s Pure Tropic should not be dragged into the suit.

xxx xxx xxx''

(Emphasis Supplied)

54. Therefore, the submission on part of defendant nos. 2 to 5 that they are absolved from any blame with regard to the present proceedings, when they continued to manufacture products despite the injunction order, is fallacious. Moreover, the fact that they continued to manufacture would resultantly mean that defendant no. 1 continued to order for the same, and defendant nos. 2 to 5, in non-compliance with the order of this Court, continued to manufacture the products, and as per their own admission, filled in the packages with the impugned marks and trade dress/packaging, provided by defendant no.1.

55. Therefore, this Court is of the view that defendant nos. 2 to 5, despite not being the proprietors of the infringing marks, nevertheless, played a substantial part in supporting and aiding defendant no. 1 in manufacturing the products with the infringing marks/trade dress, despite having knowledge of the present proceedings and the injunction order passed by this Court.

B. Defendant No. 6:

56. This Court notes that notice was issued to defendant no. 6 *vide* order dated 24th January, 2024. Further, the submission of the plaintiff is noted that they had, by way of communication dated 19th January, 2024, intimated to defendant no. 6, with regard to the present proceedings.



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57. It is noted that in Sr. No. 1 of the aforesaid table of findings of Local Commissioners, it was observed that substantial goods bearing the infringing marks/trade dress were found at the premises of defendant no. 6, however, the samples as collected by the Local Commissioner from defendant no.6's premises, bore the dates, i.e., 24th November, 2023, 04th December, 2023 and 08th December, 2023. Thus, one sample indicated the manufacturing date of 08th December, 2023, which is beyond the date of the injunction order dated 07th December, 2023. It is also observed that an E-way Bill dated 31st January, 2024 which was valid till 01st February, 2024 was also found in relation to products bearing the infringing marks/trade dress at the premises of defendant nos. 6.

58. Therefore, on account of the aforementioned, this Court is of the view that defendant no. 6, is also liable as it undertook business activity which is clearly indicated by the E-way bill dated 31st January, 2024, which was subsequent to even the plaintiff's intimation dated 19th January, 2024, received by it regarding the present proceedings.

C. Defendant Nos. 7 and 8:

59. It is noted that this Court *vide* order dated 09th February, 2024, observed the submissions of the plaintiff that defendant nos. 7 and 8 are the distributors of the infringing products that were manufactured by defendant nos. 2 to 5. Further, it was noted that products with the manufacturing date past the date of the injunction order, were also found at the premises of defendant nos. 7 and 8. The relevant portion of order dated 09th February, 2024 in this regard, is reproduced as under:

“xxx xxx xxx



4. Said distributors, being two in number, were identified by plaintiff as under:

(i) M/s Kalluri Traders – Mentada Road, Near New Bipass Road, Gajapathinagaram – 535 270, Andhra Pradesh;

(ii) M/s Venkata Sai General Agencies – Opposite Sri Vidya School, D.No. 35—46- 4, Rly. Station road, Tanuku – 534421, Andhra Pradesh.

5. They were intimated about injunction order and subsequently, on 30th January, 2024, an investigator, upon request by the plaintiff, visited the premises of these two agencies and it was found that numerous cartons of products bearing the marks



(“impugned marks”) were available for purchase.

6. Pursuant to the sample purchase of the said products, the manufacturing dates were of December, 2023 and January, 2024, which happen to be post the passage of the injunction order dated 7th December, 2023.

7. Counsel for plaintiff contends that by manufacturing and distributing any product bearing the impugned marks or having the trade dress similar to plaintiff’s trade dress (which is registered as a trademark in favour of plaintiff) is a violation of the injunction order.

xxx xxx xxx”

(Emphasis Supplied)

60. As recorded above in Sr. Nos. 2 and 4 of the aforesaid table of findings of Local Commissioners, upon visit to the premises of defendant nos. 7 & 8, a substantial number of products bearing the infringing marks/trade dress were found, along with invoices in relation to purchase by defendant nos. 7 & 8, of the products under the infringing marks/trade dress dated 05th January, 2024 and 31st January, 2024.

61. This Court notes that defendant nos. 7 & 8 were impleaded as parties



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vide order dated 29th February, 2024. However, as per the submissions of plaintiff recorded in order dated 09th February, 2024, defendant nos. 7 & 8 were informed of the current proceedings on 30th January, 2024 itself. Despite the same, there exists a purchase by defendant no. 8 from defendant no. 1, which is corroborated by the invoice dated 31st January, 2024. Thus, it becomes apparent that defendant no. 8 is also required to face liability, on account of being aware of the proceedings before this Court, and still continuing to place an order with defendant no. 1.

62. In regard to defendant no. 7, the latest invoice that was found was dated 05th January, 2024, which was for a purchase from defendant no. 6. However, defendant no. 7 was the recipient/purchaser of goods in question from defendant no. 6 and an E-way bill dated 31st January, 2024 corroborates the same. Therefore, defendant no. 7 must also be held liable on account of being aware of the present proceedings and still conducting business activities in relation to the infringing marks/trade dress.

D. Defendant No. 1:

63. Defendant no. 1 is the primary defendant in the present matter and the proprietor/applicant of the impugned marks/trade dress/packaging. This Court has already made the finding that the impugned marks and the trade dress/packaging of defendant no. 1, are infringing and constitute passing off of the marks/trade dress used in the plaintiff's goods.

64. This Court makes reference to Sr. No. 6 in the aforesaid table of findings of Local Commissioners, noting that substantial products were found bearing the infringing marks and trade dress/packaging in the premises of defendant no. 1.



65. This Court also notes that defendant no. 1 continued to not only use the infringing marks/trade dress in question, but had continued to violate the injunction order as well. Moreover, as pointed out by the plaintiff in relation

to the newly discovered mark/trade dress, i.e., , this Court has given the finding that the products under the said mark, clearly bear deceptively similar packaging to the plaintiff's trade dress/packaging.

66. The defendant no. 1, by way of its infringing activity, not only had the knowledge of the present proceedings, the plaintiff's product and the injunction order, but despite the same, continued to engage the other defendants for manufacturing, distributing and marketing of the infringing products.

67. Any infringing goods and invoices in relation to manufacturing by defendant nos. 2 to 5 for the said goods, would be with the awareness and approval of defendant no. 1. Further, any marketing by defendant no. 6 or distribution by defendant nos. 7 & 8, along with invoices indicating purchase towards the same, would also be with the assent and approval of defendant no. 1. Therefore, all the observations as made above regarding culpability of infringement and passing off by other defendants, is due to the invocation of the same by defendant no. 1.

68. The other defendants are liable for their part with regard to the conduct of business activity despite knowledge of the orders and proceedings before this Court. However, defendant no. 1 has time and again, despite being aware, either attempted to circumvent the orders of this Court, or directly violated the orders of this Court and rights of the plaintiff in its



marks and trade dress/packaging.

69. The *malafide* on part of defendant no. 1 is further indicated by the fact that they sought registration of several marks, similar to 'ERSI', wherein, only the first letter of the mark was changed, i.e., 'ARSI', 'BRSI', 'DRSI', etc. A table showing details of the said marks, as noted earlier also, is reproduced as under:

Appl. No./Reg. No.	Application Date	Trade mark	Class	Current Status
5695510	November 23, 2022	ARSI FRUIT DRINK arSI Fruit Drink	32	Opposed
5695522	November 23, 2022	BRSI FRUIT DRINK BRSI Fruit Drink	32	Opposed
5525841	July 12, 2022	DRSI Fruit Drink DRSI Fruit Drink	32	Registered
5525850	July 12, 2022	QRSI Fruit Drink QRSI Fruit Drink	32	Registered
5525836	July 12, 2022	CRSI Fruit Drink CRSI Fruit Drink	32	Registered
5525845	July 12, 2022	GRSI Fruit Drink GRSI Fruit Drink	32	Registered
		ELECTROORS Fruit Drink		
4894743	March 8, 2021	ELECTROORS FRUIT DRINK Electroors Fruit Drink	5	Objected

70. At this stage, this Court notes that defendant no. 1 in its written submissions dated 22nd March, 2025, categorically admitted that it had stopped the usage of the infringing marks and trade dress since April, 2024. The said averment is reproduced as under:



“xxx xxx xxx

14. The moment the defendant no. 1 approached his counsel to represent him, he got two advices from the counsel (i) to absolutely abide by the injunction order (ii) "good wine needs no bush". The defendant followed the advice fully. The production and distribution of the impugned products were stopped immediately. **The defendant completely changed the trade dress for his product ELECTROORS and started the business afresh from April 2024. The defendants completely abandoned the impugned trade mark and trade dress and no intention at all to revive it.**

xxx xxx xxx”

(Emphasis Supplied)

71. Thus, by way of defendant nos. 1’s own admission, the said defendant stopped the usage of the impugned marks and trade dress since April, 2024, whereas, the injunction order was dated 07th December, 2023. The said averment further corroborates and confirms the findings of the Local Commissioners regarding discovery of products bearing infringing marks/trade dress.

72. Therefore, defendant no. 1 is liable, as it has carried out infringing activities under the marks which have been held to have either infringed or passed off the marks and packaging/trade dress of the plaintiff’s products. Further, defendant nos. 2 to 5, being the manufacturers, have continued to manufacture the goods sold under the infringing marks, despite the injunction order and despite being aware of the injunction order. Moreover, defendants nos. 7 & 8 being the distributors of the goods under the infringing marks and defendant no. 6 being the marketer, are liable as well. The involvement and roles of the other defendants, makes apparent the *malafide* intent of defendant no. 1 with regard to conduct of business under the infringing marks/trade dress.



Costs and Damages:

73. On the aspect of costs and damages, this Court notes the submission of the plaintiff that they ought to be awarded the actual litigation costs, along with damages for the infringing acts of the defendants, and punitive damages for the violations of the interim order of this Court by the defendants.

74. The present is a case of blatant infringement and passing off on part of defendant no. 1. The conduct of defendant no.1 is all the more egregious on account of the factum of continued usage in relation to the infringing marks and trade dress/packaging, despite the injunction order passed by this Court. As noted above, the other defendants in their roles as manufacturers, distributors and involved in marketing of the infringing products, are also held to be liable. Thus, in the facts of the case, it would be appropriate to grant damages and cost in the present matter.

75. Furthermore, this Court has time and again reiterated and granted damages in cases of both passing off and infringement. Thus, this Court in the case of ***Koninlijke Philips N.V. and Another Versus Amazestore and Others, 2019 SCC OnLine Del 8198***, provided a rule of thumb that should be followed while granting damages. Further, the Court in this case granted compensatory and aggravated damages in view of the defendants violating the order of the Court and the rights of the plaintiff, and accordingly held as follows:

“xxx xxx xxx

PLAINTIFFS ARE ENTITLED TO COMPENSATORY DAMAGES

26. A Coordinate Bench of this Court in Inter Ikea Systems



B.V. v. Sham Murari, 2018 SCC OnLine Del 11221 has awarded compensatory damages in favour of the Plaintiffs, after considering the principles enshrined in Hindustan Unilever (supra) in the following terms:—

*“24. In the present case, the Plaintiffs do not claim direct damages on account of any actual losses suffered by them. **The losses claimed by the Plaintiffs are intangible loss, dilution, loss of confidence and trust of customers and exemplary damages due to disregard of the principle of fair trading. Under Section 73 of the Indian Contract Act, 1872, damages can be both direct and indirect. However, the nature of damages claimed in the present case, are for violation of trademark rights.** While this Court does not wish to encourage any party, which misleads the trademark authorities, the question is whether a false affidavit filed before the trademark office can by itself form the basis of grant of exemplary damages. The documents placed on record point to the fact that the Defendants had actually registered the domain name www.ikeaindustries.com only on 7th May, 2014. The Defendant No. 3 firm was formed on 2nd May, 2014 and the VAT registration was obtained on 11th September, 2014. Clearly, the user claimed by the Plaintiffs in its trademark application filed by Defendant No. 4, Shilpa Metal Industries was completely incorrect. Thus as on the date when the ex-parte injunction was granted, i.e., 22nd December, 2014, the Defendants may have merely used the mark for a few months. Thus, on the basis of the inventory prepared by the Local Commissioner, which according to the Plaintiffs is worth Rs. 67,44,800/- and according to the Defendants is worth approximately Rs. 25,00,000/-, the Court takes the value of the said products to be in the range of Rs. 25 lakhs to Rs. 30 lakhs, as the said products were not sold. Even treating the said stock to be the stock of one month, the total turnover of the Defendants for three months from September to December 2014, could not have been more than Rs. 1 crore. This is a rough and ready estimate on the basis of the seizure made. Since the Defendants would have had to sell these products with proper dealer/retailer margins, the profit is estimated at 15% of the total value of the products, which comes to about Rs. 15 lakhs. In view of the tests laid down in Rookes and Cassell, the present is not a case for award of punitive damages.*



25. The Defendants' conduct has been far from bonafide. The manner in which misleading statements have been made and a false affidavit has been filed before the trademark registry also calls for the award of exemplary costs, as the trademark authority is a quasi-judicial authority and any party filing an affidavit before the said authority should do so with a complete sense of responsibility. Under the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 read with the Delhi High Court (Original Side) Rules, 2018, actual costs can be awarded to the party. The cost sheet has been placed on record by the Plaintiff. This Court is of the opinion that costs of Rs. 10 lakhs are liable to be imposed upon the Defendants. Half of the said sum would be paid to the Plaintiff and the other half shall be deposited in favour of the 'Controller General of Patents, Designs and Trade marks'. The amount of Rs. 5 lakhs shall be retained in a fund by the Controller General and shall be utilised for providing legal assistance for those trade mark applicants and patent applicants who require legal aid or assistance for paying official fees or other fees.

26. The suit is thus decreed for damages of Rs. 15,00,000/- and costs of Rs. 10,00,000/-. Out of the cost of Rs. 10,00,000/-, Rs. 5,00,000/- would be payable to the Plaintiffs. Remaining amount of Rs. 5,00,000/- shall be deposited with the Controller General of Patents, Designs and Trademarks. Thus the Plaintiffs are entitled to a sum of Rs. 20,00,000/- towards general damages and costs."

XXX XXX XXX

29. As the Defendants have wilfully and repeatedly infringed the Plaintiffs' rights as vested in their copyright, trade dress and design, the Plaintiffs are entitled to an award of compensatory damages to the extent of Rs. 69,96,000/- payable by M/s. Omni Exim Private Limited and Rs. 1,45,75,000/- which is to be paid jointly and severally by M/s. Nova Manufacturing Industries Limited (NOVA) and M/s. Badri Electro Supply and Trading Company (BESTCO) LLC.

PLAINTIFFS ARE ALSO ENTITLED TO AGGRAVATED/EXEMPLARY DAMAGES

30. This Court is of the opinion that the degree of misconduct by Defendants in a civil suit is often determinative of the nature of



relief to be granted by a Court to the Plaintiffs. The law is well-settled that the degree of mala fide conduct has a direct impact on the quantum and nature of damages that could be awarded in addition to a claim for actual/compensatory damages.

31. The Hindustan Unilever Limited (supra) judgment relied upon by learned counsel for Plaintiffs with regard to punitive and aggravated damages in turn relies on the decisions of the House of Lords in *Rookes v. Barnard*, (1964) 1 All ER 367 and *Cassell & Co. Ltd. v. Broome*, [1972] A.C. 1027 as is apparent from the following extract reproduced hereinbelow:—

“65. As far as punitive damages are concerned, the learned Single Judge relied in Lokesh Srivastava and certain other rulings. Here, since the Court is dealing with a final decree - and a contested one at that (unlike in the case of trademark and intellectual property cases, where the courts, especially a large number of Single Judge decisions proceeded to grant such punitive damages in the absence of any award of general or quantified damages for infringement or passing off), it would be necessary to examine and re-state the governing principles.

66. Rookes v. Barnard, (1964) 1 All ER 367, is the seminal authority of the House of Lords, on the issue of when punitive or exemplary (or sometimes alluded to as “aggravated”) damages can be granted....”

The later decision in Cassell & Co. Ltd. v. Broome, [1972] A.C. 1027, upheld the categories for which exemplary damages could be awarded, but made important clarificatory observations.....”

(emphasis supplied)

32. The House of Lords in *Rookes v. Barnard* (supra) defines three categories of cases in which punitive/exemplary damages might be awarded as under:—

- a. Oppressive, arbitrary or unconstitutional action by the servants of the government;
- b. Wrongful conduct by the defendant which has been calculated by him to make profit for himself which may well exceed the compensation payable to the claimant; and



c. Any case where exemplary damages are authorized by the statute.

(emphasis supplied)”

XXX XXX XXX

35. The present cases clearly satisfy all these conditions, as is evident from the following:

(i) **It is clear that the Plaintiffs are the victims of the Defendants' unlawful activities since not only have their statutory rights been violated, but they have also suffered loss of goodwill and reputation at the hands of the Defendants;**

(ii) The evidence in the present proceedings clearly showcases the high profits enjoyed by the Defendants on the sale of infringing trimmers, and those figures need to be taken into consideration while quantifying aggravated damages.

XXX XXX XXX

41. Keeping in view the aforesaid, this Court is of the view that the rule of thumb that should be followed while granting damages can be summarised in a chart as under:—

#	Degree of <i>mala fide</i> conduct	Proportionate award
(i)	First-time innocent infringer	Injunction
(ii)	First-time knowing infringer	Injunction + Partial Costs
(iii)	Repeated knowing infringer which causes minor impact to the Plaintiff	Injunction + Costs + Partial damages
(iv)	Repeated knowing infringer which causes major impact to the Plaintiff	Injunction + Costs + Compensatory damages.
(v)	Infringement which was deliberate and calculated (Gangster/scam/mafia) + wilful contempt of court.	Injunction + Costs + Aggravated damages (Compensatory + additional damages)

42. It is clarified that the above chart is illustrative and is not to be read as a statutory provision. The Courts are free to deviate from the same for good reason.

43. In the present suits, the activities of the Defendants warrant the payment of aggravated damages in favour of the Plaintiffs. Not only is M/s. Nova Manufacturing Industries Limited (NOVA), a



subsidiary of M/s. Badri Electro Supply and Trading Company (BESTCO) LLC., in contempt of the injunction order, but the said Defendants have also deliberately changed their modus operandi and routed the impugned products through M/s. Omni Exim Private Limited. In fact, M/s. Omni Exim Private Limited's activities furthered the contemptuous acts of M/s. Badri Electro Supply and Trading Company (BESTCO) LLC. as well as M/s. Nova Manufacturing Industries Limited (NOVA). The mala fide actions of the Defendants prove that they fall in the last category in the chart hereinabove, and that compensatory damage is inadequate to punish the Defendants for their outrageous conduct and therefore to deter them from repeating it, the Court awards some larger sum, i.e. aggravated/exemplary damages.

44. Accordingly, this Court is of the view that the actions of the Defendants merit an award of aggravated damages. M/s. Nova Manufacturing Industries Limited (NOVA) and M/s. Badri Electro Supply and Trading Company (BESTCO) LLC. are directed to pay additionally Rs. 50 lakhs jointly and severally. M/s. Omni Exim Private Limited is directed to pay additionally Rs. 50 lakhs.

45. Consequently, the Plaintiffs are held entitled to decree in terms of paragraph 50(i) of the plaint in CS(COMM) 1170/2016 as well as paragraph 49(i) of the plaint in CS(COMM) 737/2016. The Plaintiffs are also held entitled to a decree of Rs. 1,19,96,000/- (Rs. 69,96,000/- + Rs. 50,00,000/-) against M/s. Omni Exim Private Limited and Rs. 1,95,75,000/- (Rs. 1,45,75,000/- + Rs. 50,00,000/-) jointly and severally against M/s. Nova Manufacturing Industries Limited (NOVA) and M/s. Badri Electro Supply and Trading Company (BESTCO) LLC. The Plaintiffs are further held entitled to actual costs of litigation including lawyer's fees. The Plaintiffs are given liberty to file on record the exact cost incurred by them in adjudication of the present suit. Registry is directed to prepare decree sheets accordingly.

xxx xxx xxx”

(Emphasis Supplied)

76. In the context of a Court proceeding under Order VIII Rule 10 CPC, while granting punitive damages, wherein, the defendants were held to have infringed the marks of the plaintiff, along with committing the tort of passing off, this Court in the case of *Nirog Pharma Pvt. Ltd. Versus Umesh*



Gupta & Anr., 2016 SCC OnLine Del 5961, held as follows:

“xxx xxx xxx

22. Having held that the defendants have infringed the registered trademarks of the plaintiff as well as committed the tort of passing off, the only other issue which remains in the present suit is damages.

23. A coordinate bench of this court in the case of Relaxo Rubber Limited v. Selection Footwear, AIR 2000 Del 60 which while granting injunction also granted damages under Order VIII Rule 10 in a case for infringement of copyright and trade mark.

24. With regard to the relief of damages as claimed by the plaintiffs in paragraph 26(h) of the plaint, the plaintiffs relied in *Time Incorporated v. Lokesh Srivastava*, 2005 (30) PTC 3 (Del) : 2005 (116) DLT 599, while awarding punitive damages of Rs. 5 lakhs in addition to compensatory damages also of Rs. 5 lakhs, Justice R.C. Chopra observed as under:

“8. This Court has no hesitation on saying that the time has come when the Courts dealing actions for infringement of trade marks, copy rights, patents etc. should not only grant compensatory damages but award punitive damages also with a view to discourage and dishearten law-breakers who indulge in violations 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. In Mathias v. Accor Economy Lodging Inc., 347 F.3d 672 (7th Cir. 2003) the factors underlying the grant of punitive damages were discussed and it was observed that one function of punitive damages is to relieve the pressure on an overloaded system of criminal justice by providing a civil alternative to criminal prosecution of minor crimes. It was further observed that the award of punitive damages serves the additional purpose of limiting the defendant's ability to profit from its fraud by escaping detection and prosecution. If a tortfeasor is caught only half the time he commits torts, then when he is caught he should be punished twice as heavily in order to make up for the times he gets away. This Court feels that this approach is necessitated further for the reason that it is very difficult for a plaintiff to give proof of actual damages suffered by him as the defendants who indulge in such activities never maintain proper accounts of their transactions since they



know that the same are objectionable and unlawful. In the present case, the claim of punitive damages is of Rs. 5 lacs only which can be safely awarded. Had it been higher even, this Court would not have hesitated in awarding the same. **This Court is of the view that the punitive damages should be really punitive and not flea bite and quantum thereof should depend upon the flagrancy of infringement.**”

xxx xxx xxx

28. The present suit is also a commercial suit within the definition of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 and it was the clear intention of the legislature that such cases should be decided expeditiously and should not be allowed to linger on. Accordingly, if the defendant fails to pursue his case or does so in a lackadaisical manner by not filing his written statement, the courts should invoke the provisions of Order VIII Rule 10 to decree such cases.

29. Resultantly, having been satisfied with the averments made and duly supported by documents, report of the local commissioner and no written statement being on record, I deem it a fit case to for invoking the provisions of Order VIII Rule 10 of the Code of Civil Procedure.

xxx xxx xxx”

(Emphasis Supplied)

77. Therefore, at this stage, this Court *whilst* keeping in view that the marks and trade dress/packaging are infringing and passing off the marks and trade dress/packaging of the plaintiff, along with the aspect of violation of the injunction order dated 07th December, 2023, will proceed to determine the liability of the defendants.

78. To ascertain the liability and to assess the damages, this Court will keep into account the judgement of ***Koninlijke Philips N.V. and Another (Supra)***, and the present factual matrix. Thus, the relevant factors applicable in the instant case, are as follows:

- i. The number of products bearing the infringing marks/trade dress,



found at the premises of the respective defendants.

- ii. The value of the products bearing the infringing marks/trade dress, found at the premises of the respective defendants.
- iii. The invoices or any other proof showing business activity in relation to the infringing marks/trade dress, found at the premises of the respective defendants.
- iv. The severity of the *malafide* conduct on part of the defendants.

79. Before proceeding to rely upon the evidence collected by the Local Commissioners to assess damages based on the factors aforementioned, this Court reiterates that, it is settled law that, the Court can take into consideration the reports of the Local Commissioners to ascertain/assess the quantum of damages, as the suit and the averments thereof, remain un rebutted. Thus, this Court in the case of ***Puma Se Versus Ashok Kumar, 2023 SCC OnLine Del 6764***, held as follows:

“xxx xxx xxx

23. In view of Order 26 Rule 10(2) CPC and the judgments discussed above, the settled legal position that emerges is that the report of the Local Commissioner can be treated as evidence in the suit where it is not challenged by any party. **Accordingly, in the present case the report of the Local Commissioner and the contents therein can be relied upon by the Court as evidence to assess the damages, as the same stands unchallenged.**

xxx xxx xxx”

(Emphasis Supplied)

80. This Court notes that the defendants have deliberately flouted the injunction order of this Court and continued to conduct business activity along with violation of the rights of the plaintiff. Thus, in view of the principles underscored in ***Koninlijke Philips N.V. and Another (Supra)***, a



proportionate award in the present case would be to grant an injunction, costs, aggravated damages (compensatory + additional damages).

81. Thus, holding that punitive damages are aimed at deterring a wrong doer and the like minded from indulging in unlawful activities, this Court in the case of *Hindustan Lever Ltd. & Anr. Versus Satish Kumar*, 2012 SCC OnLine Del 1378, held as follows:

“xxx xxx xxx

22. As regards the prayer for cost, rendition of accounts and damages which includes loss of business, reputation and goodwill in the market, since, the above claimed amount is based on the assessments made by the plaintiffs, I am of the view that a sum of Rs. 10 lac can be reasonably awarded to the plaintiffs as punitive damages in view of the judgment passed in the case titled as *Time Incorporated v. Lokesh Srivastava*, 2005 (30) PTC 3(Del.), wherein, this Court expressly recognized a third type of damages as punitive damages, apart from compensatory and nominal damages. The Court has made some relevant observations discussion on the aspect of punitive damages. It was observed:—

“The award of compensatory damages to a plaintiff is aimed at compensating him for the loss suffered by him whereas punitive damages are aimed at deterring a wrong doer and the like minded from indulging in such unlawful activities...”

“This Court has no hesitation in saying that the time has come when the Courts dealing actions for infringement of trademark, copy rights, patents etc. should not only grant compensatory damages but award punitive damages also with a view to discourage and dishearten law breakers who indulge in violations with impunity out of lust for money so that they realize 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.”

xxx xxx xxx”

(Emphasis Supplied)

82. At this stage, this Court takes note of the total number of infringing products/goods, based upon the findings of the Local Commissioners, that were found at the premises of the defendants and is relevant for the



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assessment of damages. A table indicating the number of infringing goods found at the premises of the defendants, is as under:

S.No.	Relevant Defendant	Number of Goods	Total (Tetra packs)
1.	Defendant no. 1	ElectroORS Apple Fruit Drink packs = 12,814	12,814
2.	Defendant nos. 2 to 5	i. ERSI Apple Drink packs = 1,61,640 ii. ElectroORS Apple Drink packs = 27,000 iii. CRSI Orange Drink packs = 66,630	2,55,270
3.	Defendant no. 6	ERSI Apple & Orange Drink packs = 31,560	31,560
4.	Defendant no. 7	i. 293 boxes with 60 packs each = 17,580 ii. 28 boxes with 30 packs each = 840 iii. ElectroORS Drink packs = 8	18,428
5.	Defendant no. 8	2000 boxes with 60 packs each = 1,20,000	1,20,000
FINAL TOTAL			4,38,072

83. This Court also notes that at the premises of defendant nos. 2 to 5, packaging material bearing the impugned marks were found which had the capacity of packing 20,03,187 tetra packs.

84. At this juncture, this Court takes note of the invoice dated 31st January, 2024, for the sale of ElectroORS by defendant no. 1 to defendant no. 8 for the price per piece as Rs. 12.50/-, and the invoice dated 05th January, 2024 between defendant nos. 6 and 7, for sale of ElectroORS for a price per piece as Rs. 11.52/- and Rs. 13.96/- for sale of ERSI Apple drink. It is also noted that all the products sold under the infringing marks have an 'M.R.P.' of Rs. 40/-. Therefore, it would be in fitness of things if an average price of Rs. 12/- is taken for the purposes of calculation of damages.

85. Considering the aforesaid capacity of infringing products found, i.e., 4,38,072, multiplied by Rs. 12/-, the amount arrived at would be Rs.



52,56,864/-. Therefore, an amount of Rs. 52,56,864/- (Rupees Fifty-Two Lacs Fifty-Six Thousand Eight Hundred and Sixty-Four) is the considerate amount of compensatory damages, that are hereby granted in favor of the plaintiff and against defendant no. 1.

86. Further, as noted above and in accordance with the principles put forth in *Koninlijke Philips N.V. and Another (Supra)*, the present is a fit case to grant punitive damages, as the defendants are liable for violating the injunction order of this Court. Therefore, punitive damages to the tune of Rs. 50,00,000/- (Rupees Fifty Lacs) are granted in favour of the plaintiff and against the defendant no.1.

87. Further, on account of the discussion hereinabove, costs/damages are levied upon the other defendants, in the following manner:

- i. Defendant nos. 2 to 5: Rs. 15,00,000/- (Rupees Fifteen Lacs)
- ii. Defendant no. 6: Rs. 1,00,000/- (Rupees One Lac)
- iii. Defendant no.7: Rs. 1,50,000/- (Rupees One Lac Fifty Thousand)
- iv. Defendant no.8: Rs. 1,50,000/- (Rupees One Lac Fifty Thousand)

Conclusion:

88. In view of the detailed discussion hereinabove, a decree of permanent and mandatory injunction is passed in favour of the plaintiff and against the defendants, in terms of prayer clauses A (i), (ii), B (ii), (iii), (iv) and D of the suit.

89.1 As noted above, compensatory damages to the tune of Rs. 52,56,864/- (Rupees Fifty-Two Lacs Fifty-Six Thousand Eight Hundred and Sixty-Four) is awarded in favor of the plaintiff, to be paid by defendant no. 1.

89.2 Further, punitive damages of Rs. 50,00,000/- (Rupees Fifty Lacs) is



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awarded in favor of the plaintiff and against the defendant no.1.

89.3 Further, damages of Rs. 15,00,000/- (Rupees Fifteen Lacs) is awarded in favour of the plaintiff and against defendant nos. 2 to 5.

89.4 Further, damages of Rs. 1,00,000/- (Rupees One Lac) is awarded in favour of the plaintiff and against defendant no. 6.

89.5 Further, damages of Rs. 1,50,000/- (Rupees One Lac Fifty Thousand) is awarded in favour of the plaintiff and against defendant no. 7.

89.6 Further, damages of Rs. 1,50,000/- (Rupees One Lac Fifty Thousand) is awarded in favour of the plaintiff and against defendant no. 8.

90. The plaintiff is also held entitled to actual costs of litigation, in terms of the Commercial Courts Act, 2015 and Delhi High Court (Original Side) Rules, 2018, read with IPD Rules, recoverable from defendant no.1. The plaintiff shall file its bill of costs in terms of Rule 5 of Chapter XXIII of the Delhi High Court (Original Side) Rules, 2018, within a period of two months from today. As and when the same is filed, the matter will be listed before the Taxing Officer for Computation of costs.

91. The suit is decreed in the aforesaid terms. Decree sheet be drawn up.

92. Accordingly, the present suit, along with the pending applications, stands disposed of.

**(MINI PUSHKARNA)
JUDGE**

JULY 15, 2025/KR