

**IN THE COURT OF SH. LOKESH KUMAR SHARMA
DISTRICT JUDGE (COMMERCIAL COURTS)-05,
SOUTH DISTRICT, SAKET COURTS, NEW DELHI**

In the matter of
CS (COMM) 621/23
CNR No. DLST01-011705-2023

- 1. Rado Uhren AG**
Dielstrasse 45, Lengnau
Switzerland
- 2. Tissot SA (Tissot AG) (Tissot Ltd.)**
Chemin des Tourelles 17,
Le Locle, Switzerland
- 3. Omega SA (Omega AG) (Omega Ltd.)**
Jakob-Stampni-Strasse 96,
2502 Biel/Benne, Switzerland
- 4. Compagnie des Montres Longines,**
Francillon SA (Longines Watch Co.,
Francillon Ltd.)
2610, Saint Imier, Switzerland

**Through its
Constituted Attorney
Sh. Karthik Malhotra**
G-10, LGF, Nizamuddin West,
New Delhi

..... Plaintiffs

Versus

- 1. Sh. Lalit Jain**
Shop No. 224,
New Lajpat Rai Market,
(wrongly mentioned as Lajpat Nagar
in the amended memo of parties filed
by the Plaintiff on 06.12.2023)
Delhi-110006

Also as & at
Shop No. 274/2,

New Lajpat Rai Market,
Delhi-110006

2. Devesh Kumar Gupta,

Shop No. 386/7
New Lajpat Rai Market
Delhi-110006

(Matter stood settled with Defendant no. 2,
upon his statement made before the
court on 30.07.2024)

..... **Defendants**

Institution of the Suit : 23.11.2023

Arguments concluded on : 25.03.2026

Judgment pronounced on : 09.04.2026

J U D G E M E N T

1. This suit for permanent injunction is filed by the plaintiffs for restraining infringement of trademarks and copyrights and passing off, delivery up, damages, rendition of accounts, etc. against defendants.

2. **Brief facts:-** Plaintiffs were stated to be the sub brands of Swatch Group, and were stated to be engaged in the business of manufacturing and selling of finished watches, jewellery, watch movements and components and Ms. Surbhi Bansal was authorized by the Plaintiffs vide their General Power of Attorneys and Ms. Surbhi Bansal had further authorised, vide Power of Attorney dated 31.10.2023, Mr. Kartik Malhotra to do all necessary acts on behalf of the Plaintiffs.

The Trademark RADO was stated to have been adopted, through its proprietors and predecessors, and continuously used by the Plaintiffs since 1917 and considered as

a pioneer in the field of scratch- proof materials and production of about half a million watches annually with a staff of about 470. 'Rado' watches were stated to be obtainable in more than 150 countries at over 5,900 points of sale. The primary markets included Southeast Asia, Japan, China, India, Middle East as well as countries within Europe (Switzerland, Germany, Italy) and the USA.

The trademark/label RADO was stated to be duly registered in India under the Trade Mark Act, 1999, under different classes as mentioned in detail in para 5 of the plaint:

S. No.	Trade Mark	Application No.	Class	Status	Disclaimer
1	RADO	566427	1	Registered	No
2	RADO	566428	2	Registered	No
3	RADO	566430	5	Registered	No
4	RADO	552318	6	Registered	No
5	RADO	552319	8	Registered	No
6	RADO	552320	9	Registered	No
7	RADO	566432	10	Registered	No
8	R A D O	210065	14	Registered	No
9	RADO DIASTAR	283609	14	Registered	No
10	RADO	5912 69	14	Registered	Registration of this Trademark shall give no right to the exclusive use of the word FLORENCE
11	RADO	1450617	14	Registered	No
12	RADO FLORENCE	1496795	14	Registered	No
13	RADO	552321	16	Registered	No
14	RADO	566436	17	Registered	No
15	RADO	590354	20	Registered	No
16	RADO	590355	21	Registered	No
17	RADO	590356	22	Registered	No
18	RADO	590357	23	Registered	No
19	RADO	552324	25	Registered	No
20	RADO	552325	28	Registered	No
21	RADO	590360	29	Registered	No
22	RADO	590361	30	Registered	No
23	RADO	590362	31	Registered	No
24	RADO	590364	33	Registered	No
25	RADO	552326	34	Registered	No

The trademark “TISSOT” was stated to have been coined and adopted in the name of its founder and was being used by the Plaintiffs’ through its proprietors and predecessors since 1853 and the trademark/label TISSOT was stated to be duly registered in India under the Trade Mark Act, 1999, under class 14 as under:


S.No.	Trade Mark	Application No.	Class	Status	Disclaimer
1.	TISSOT ROCKWATCH	454853	14	Registered	No
2.	TISSOT VELOCI-T	1830179	14	Registered	No
3.	TISSOT COUTURIER	1830180	14	Registered	No
4.	TISSOT ATLAN-T	1830476	14	Registered	No
5.	TISSOT SAILING- TOUCH	1890925	14	Registered	No
6.	VISODATE TISSOT	1943106	14	Registered	No
7.	T TISSOT	237660	14	Registered	No

It was stated that “OMEGA” was founded in 1903 and the trademark/label “OMEGA” was stated to be duly registered in India under the Trade Mark Act, 1999, under different classes such as 6, 9, 14, 16, 21, 24, 25, 28, 34 and 35 as under:

S.No.	Trade Mark	Application No.	Class	Status	Disclaimer
1	OMEGA	646755	6	Registered	No
2	OMEGA	149294	9	Registered	No
3	OMEGA	99932	14	Registered	No
4	OMEGA CONSTELLATION	162334	14	Registered	No
5	OMEGA ART	474525	14	Registered	No
6	OMEGA (LABEL)	1041647	14	Registered	Registration of this Trademark shall give no right to the exclusive use of device of ‘GLOBE and EGGLE’ show on the label
7	OMEGA CERAGOLD	1891099	14	Registered	No
8	OMEGA	646753	16	Registered	No
9	OMEGA	1697359	16	Registered	No
10	OMEGA	646746	21	Registered	No
11	OMEGA	646747	24	Registered	No

12	OMEGA	1697358	25	Registered	No
13	OMEGA	646749	28	Registered	No
14	OMEGA	1697357	28	Registered	No
15	OMEGA	646750	34	Registered	No
16	OMEGA	1349010	35	Registered	No

It was stated that “LONGINES” was coined and adopted by its founder Auguste Agassiz in 1832 and the trademark/label was also stated to be duly registered in India under the Trade Mark Act, 1999, under class 9 and 14 as under:

S. No.	Trade Mark	Application No.	Class	Status	Disclaimer
1	 LONGINES DEVICE	533112	9	Registered	No
2	LONGINES	173620	14	Registered	No
3	Longines Dolcevita	1376031	14	Registered	No

It was averred that Plaintiffs had honestly, bonafidely, continuously started using the above mentioned trade

marks  , LONGINES,  , TISSOT, RADO

 OMEGA,  in relation to their goods and business and carrying on their said goods and business thereunder and had built up a worldwide goodwill and reputation thereunder and had acquired proprietary rights therein.

It was also stated that Plaintiffs had carried out their business activities under the above mentioned trademarks on the internet through their websites namely www.rado.com; www.omegawatches.com; www.tissotwatches.com; &

www.longines.com and the aforesaid domain names of the Plaintiffs contained extensive information about their goods and business under their trademarks.

It was stated further that the copyrights involved in plaintiffs' trademarks were original artistic works within the meaning of Indian Copyrights Act, 1957 and plaintiffs had been using the said copyrights in the course of trade in relation to their goods and business amongst other things, within the meaning of Section 14 of the Copyrights Act and the aforesaid trademarks were enforceable within the ambit of the Copyrights Act, 1957 as well as by virtue of India's membership to the Berne Convention, the Universal Copyrights Convention and The International Copyright Order, 1991.

It was stated that plaintiffs had built up a globally valuable trade under their trademarks and had conducted handsome business thereunder, running into millions of dollars worldwide and had acquired immense goodwill and reputation under the aforesaid trademarks.


It was stated further that plaintiffs had continuously promoted their trademarks and related goods and business through extensive advertisements, publicities, promotions and marketing & marketing research and plaintiffs' said trademarks/labels had become distinctive and acquired secondary significance with the plaintiffs.

Plaintiffs' trademarks and labels were stated to be well known trademarks within the meaning of Section 2(1)(zg) of the Trademarks Act.

Defendants were stated to be engaged in the business of wholesale distribution, and were using, selling, soliciting and trading watches and other allied/related products. The Plaintiffs had though expressed their lack of awareness and knowledge regarding the exact constitution of the creators of the Defendants.

Defendants were stated to have dishonestly adopted and had started using the Plaintiffs' trademarks/labels,



OMEGA,  OMEGA, in relation to their impugned goods and businesses of watches and related products and had been using the same individually or in combination of each other in mark/logo/label form.

It was stated that in the second week of October, 2023, Plaintiffs had come across the impugned products of the Defendants being sold by them in the markets of South Delhi area and in an inquiry, it was revealed that Defendants had carried out their impugned activities under the impugned Trademarks/Labels in a clandestine and surreptitious manner and that too without issuing any formal bills.

Defendants were also stated to have not only made the retail sales, but also, supplied the impugned goods to the various other dealers/shopkeepers/retailers.

It was stated that the impugned trademarks/labels adopted and being used by the defendants in relation to their impugned goods and business, were identical with and deceptively similar to the Plaintiffs' aforesaid trademark/label in each and every aspect including phonetically, visually, structurally, in its basic idea and in its essential features.

It was stated further that Defendants had adopted and started using the impugned trademarks in relation to their impugned goods and business without the plaintiffs' permission, thereby using and adopting the impugned trade marks of the Plaintiffs, the defendants were violating the Plaintiffs' trade rights, passing off and enabling others to pass off their impugned goods and business as that of the Plaintiffs as well as diluting the Plaintiffs' proprietary rights therein.

Defendants had been passing off their goods as those of plaintiffs' goods and were also deriving and getting the benefits from the goodwill and reputation of plaintiffs.

It was averred further that defendants' marketing and advertising of their products was deceiving and misleading the public at large as buyers believed that those products were of the Plaintiffs, due to which, Plaintiffs had suffered significant losses and injury in their business, goodwill and reputation.

It was stated that the loss of money or injury sustained or likely to be sustained by the Plaintiffs due to erroneous actions and conduct of defendants could not have been calculated in terms of money.


3. The cause of action was stated to have arisen firstly in the second week of October, 2023, when plaintiffs had come to know that the defendants were indulging in wholesale, marketing, soliciting, offering for sale, selling and trading the impugned goods under the Plaintiffs' said trademarks/labels in the markets of South Delhi areas and the cause of action was stated to be still continuing and subsisting in favor of the Plaintiffs and against the Defendants.



4. Since the defendants were soliciting, networking and had intended to sell their impugned goods and business under the impugned trademark/label in the markets of South Delhi viz. Hauz Khas, Malviya Nagar, INA, Saket, Sangam Vihar and adjoining areas, which were situated within the jurisdiction of this Court and since the Plaintiffs were also selling goods to consumers through various interactive websites, which could have been accessed from all over India, including the territory of South Delhi and since the defendants were also committing the impugned acts of infringement and passing off in the markets of Delhi by soliciting trade and by distribution of the impugned goods within the territorial jurisdiction of this Court, hence this court was stated to have territorial jurisdiction to try and decide


the present *lis* by virtue of Section 134(2) of the Trade Marks act, 1999 and also u/s 62(2) of the Copyright Act of 1957.

5. In the light of the aforesaid facts and circumstances, the plaintiffs had prayed for passing off a decree in their favour and against the defendants detailed as hereunder:-

(a) A decree of permanent injunction restraining the defendants by themselves as also through their individual proprietors/partners, agents, representatives, distributors, assigns, heirs, successors, stockists and all others acting for and on their behalf from soliciting, networking, importing, exporting, manufacturing, marketing, using, selling, displaying, advertising, purveying, intending to sell/solicit or on online marketplaces or online websites or through social medias or by any other mode or manner dealing in or using the

impugned trademarks/labels “  ,

LONGINES,  TISSOT , TISSOT, RADO,  RADO

 OMEGA, **OMEGA**, or any other word/ house mark/ trademark/label which might be identical with and/or deceptively similar to the plaintiffs' registered trademark/label in relation to their impugned goods and business of using, trading, selling, manufacturing, marketing etc. or from

doing any other acts or deeds amounting to or likely to:-

- i. Infringement of plaintiffs' aforesaid registered trademarks.
- ii. Passing off and violation of the plaintiffs' rights in the said trade marks/labels.
- iii. Infringement of Plaintiffs' copyrights in

Plaintiff's said trademarks/ labels Mark 

LONGINES,  TISSOT, RADO, 

OMEGA, 

- iv. Falsification and misrepresentation of Plaintiffs' trademarks/labels.

(b) Restraining the defendants from disposing off or dealing with their assets including their premises at the addresses as mentioned in the Memo of Parties and their stocks-in-trade or any other assets as might be brought to the notice of the Court during the course of the proceedings and on the defendants' disclosure thereof and which the defendants would be called upon to disclose and/or on their ascertainment by the plaintiffs as the plaintiffs were not aware of the same as per Section 135(2)(c) of the Trade Marks Act, 1999, as it could have adversely effected the plaintiffs'

ability to recover the costs and pecuniary reliefs thereon.

(c) For an order for delivery up of all the impugned finished and unfinished materials bearing the impugned and violative trade marks/labels or any other word/mark which might be identical with or deceptively similar to the plaintiffs' said trade mark/label/trade name including its blocks, labels, display boards, sign boards, trade literatures and goods etc. to the plaintiffs for the purposes of destruction and erasure.

(d) For an order for rendition of accounts of profits earned by the defendants by their impugned illegal trade activities and a decree for the amount so found in favour of the plaintiffs on such rendition of accounts.

(e) for the decree of grant of damages to the tune of Rs. 5,10,000, along with costs of suit.

6. Upon service of notice upon them, the defendants had also appeared to contest the case of plaintiffs on its merits and had also filed their written statements on record, wherein they had taken a preliminary objection that plaintiffs were guilty of concealment of material facts as well as for not approaching

the court with clean hands. No cause of action was stated to have arisen in favour of the plaintiffs and against the defendants.

7. In their written statement both Defendants no. 1 and 2 had also stated that this court had no territorial jurisdiction to try and entertain the present suit as Defendant no. 1 was conducting his business from Chandani Chowk, Delhi.

It was also stated that Plaintiffs had also failed to provide information about their personage in the plaint as to whether they were proprietorship, partnership, LLP, Corporation, trust etc. as concept of legal person and personality were well established principles within realm of jurisprudence.

It was also stated by the Defendant No. 1 that although the Plaintiffs had claimed themselves to be a sub-brand of Swatch Group, however, they had conspicuously failed to disclose the identity and constitutional framework of the Swatch Group itself. There was stated to be a glaring absence of any documentary evidence on record to substantiate the existence of the Plaintiffs as distinct entities within the purported Swatch Group.

AR Sh. Kartik Malhotra, was stated to be having no actual interests in the subject and no appropriate steps were taken by the Plaintiffs to appoint him as their Authorized Representative.

It was averred further that as per Order XXIX Rule 1 CPC, only the Secretary, Director, or the Principal Officer of a company was deemed to be duly authorized to initiate legal proceedings on behalf of that company, however, Plaintiffs had failed to provide any documentation on record to establish the authority of the alleged Constituted Attorney to act in either of the aforesaid capacities.

It was further stated that as per Section 2 of the Power of Attorney Act, 1882, the Plaintiffs' Attorney or instrument had not been duly authorized by its Principal with appropriate identification under its own name, signature, and seal, hence, the Power of Attorney executed in favour of the present AR was not effectual in law.

Reference was also made to Provisions of Section 2(30) of the Companies Act, which provided that where a person other than a Director or Secretary was appointed as a constituted attorney, such appointment must have been backed by a resolution from the Board of Directors or through a power of attorney executed pursuant to a valid resolution passed in his favour.

It was stated further that the present AR Sh. Kartik Malhotra was authorized by Ms. Surbhi Bansal, however, the said Ms. Bansal, herself appeared to be authorized by one Dr. Hanspeter Rentsch and Laurent Potylo, both of whom were not demonstrated to possess the requisite authority to delegate the

powers. Reference in this regard was also made to Order X and Order XXIX CPC.

It was averred further that Plaintiffs' representative herein had no rights in the Trademarks/ Copyrights involved either under the statutory law or under the common law and due to non-joinder of Swatch Group India Pvt. Ltd. the suit was bad for non-joinder and mis-joinder of the necessary parties and thus was liable to be dismissed.

Lastly, it was contended that Plaintiff had come up with a false and concocted story before the Court as Defendant no. 1 had never indulged into any such activities at any point of time whatsoever, as were alleged against him.

Similar such pleas were also raised by the Defendant No. 2 in his written statement, except for having taken an objection as to territorial jurisdiction of this Court.

The remaining contents except those which were either expressly admitted or constituted the matter of record, were denied by the defendants for want of knowledge and also being patently false and incorrect.

8. To this written statement of the Defendant No. 1, plaintiffs had also filed their replication, wherein all the preliminary objections taken by the defendant No.1 were denied by them and the contents of plaint were reiterated on merits.

Since Defendant no. 2 had made a statement before the court on 30.07.2024, that he would not deal with the spurious goods violating the trademark of Plaintiff in future and had also undertaken to destroy the consignment lying with him on superdari, hence, in view of this statement, the present suit qua him stood disposed off and his name was deleted from the array of parties vide order dated 30.07.2024.

9. On the pleadings of the parties, this court vide order dated 14.11.2024, had framed the following issues for determination:

(i) *Whether the plaintiff is entitled to decree for permanent injunction, as prayed ? OPP.*

(ii) *Whether the plaintiff is entitled to delivery up of infringing material and decree for rendition of accounts, if so, from whom? OPP.*

(iii) *Whether the Plaintiff is entitled to any damages, if so, the quantum thereof? OPP.*

(iv) *Whether the Plaintiff is guilty of suppression and concealment of material facts ? OPD.*

(v) *Whether the suit of the Plaintiff is bad in terms of provision of order XXIX rule 1 CPC ? OPD*

(vi) *Whether the suit of the Plaintiff is bad for violation of Section 2 of Power of Attorney Act, 1882 ? OPD*

(vii) Whether the Suit of the Plaintiff is bad for violation of provisions of Section 2 (30) of Companies Act, OPD.

(viii) Whether this Court has no territorial jurisdiction to try and entertain the present suit? OPD

(ix) Relief.

10. In order to prove their case by preponderance of probabilities, plaintiffs had examined their AR Sh. Kartik Malhotra, S/o Sh. Sushil Malhotra, aged about 32 yrs, R/o A-128, Yojana Vihar, Delhi-92, having his office at G-10, Nizamuddin West, LGF, Delhi-13, who had placed on record, affidavits PW1/A and Ex. PW1/A1, in his examination-in-chief, reiterating the factual averments of plaint on solemn affirmation. Besides this, he had also placed on record the following documents:-

(i) Ex.PW1/1 (colly)- Representation of the Plaintiffs' Trademarks/labels.

(i) Ex.PW1/2 (colly)- Representation of the products bearing the trademark/label of the Plaintiffs.

(iii) Ex. PW1/3 (colly)- Representation of the Defendants products bearing the impugned Trademark/label of the Plaintiffs.

(iv) Ex. PW1/4 (colly) – Authentication cum analysis report dated 16.10.2023 of the Defendants impugned trademark/labels.

(v) Ex. PW1/5A to Ex. PW1/5S (colly)- Copies of Status Pages, Registration Certificates Journal of the Plaintiff's Trademark Applications No. 210065, 283609, 591269, 1450617, 1496795, 454853, 1830179, 1830180, 1830476, 1890925, 1943106, 237660, 99932, 474525, 1041647, 162334, 1891099, 173620 and 1376031 all dated 16.10.2023 in Class 14.

(vi) Ex. PW1/6 (colly) - Copy of legal proceeding certificates of the Plaintiff's said trademark/label all dated 11.01.2021.

(vii) Ex. PW1/7- Screenshots of the website/domain name of the Plaintiff No.1, i.e., Rado Uhren.

(viii) Ex. PW1/8- Screenshots of the website/domain name of the Plaintiff No.2, i.e., Tissot.

(ix) Ex. PW1/9- Screenshots of the website/domain name of the Plaintiff No.3, i.e., Omega SA.

(x) Ex. PW1/10- Screenshots of the website/domain name of the Plaintiff No.4, i.e., Companies des Montres Longines.

(xi) Ex. PW1/11- Screenshots of the domain/website page of Swatch Group i.e. the parent company.

(xii) Ex. PW1/12 (colly)- Advertisements, articles, promotional materials of the Plaintiff companies.

(xiii) Ex. PW1/13 (colly) – Yearly Annual report of the year 2022 of the Plaintiff companies.

(xiv) Ex. PW1/14 (colly)– Screenshots of the Plaintiffs stores in the jurisdiction of this court.

(xv) Ex. PW1/15- Copies of Power of Attorneys in favour of Ms. Surbhi Bansal executed by the Plaintiffs and copy of the power of attorney in favour of Mr. Kartik Malhotra dated 31.10.2023 executed by the Plaintiffs through said Ms. Surbhi Bansal.

(xvi) Ex. PW1/16- Copy of legal receipts of LPC dated 25.04.2023.

(xvii) Ex. PW1/17- Power of Attorney in favour of Mr. Kartik Malhotra. (already exhibited on record as Ex. PW1/15 (colly)).

Although his tendering statement also mentioned about tendering of document Ex. PW1/18. However, no such document was either tendered or marked as an exhibit.

During his cross-examination conducted by Ld. Counsel for the Defendant No. 1 on 25.07.2025, PW1 had stated that Plaintiff was a Pvt. Ltd. Company and he was authorized to institute the present suit by virtue of Power of Attorney executed in his favour by the Plaintiff. Though he was authorized by Ms. Surbhi Bansal, initially, but now he was authorized individually by the Plaintiff company. Ex. PW1/15 was stated to have been executed in his presence. He could not tell the gross sales of

Swatch in the year 2022-23 and the total sales in South Delhi area.

Swatch was stated to have one of its showroom at Saket Mall and he could have also produced the proof of its existence, if he was directed to do so. He was not aware of any *inter se* relationship between the defendants, who were stated to have been found selling their goods in the Chandni Chowk Area. However, he had volunteered that they had apprehended their sales in South Delhi as well.

The defendants were stated to have been carrying on sales off line at their shop, however, he could not tell through whom those sales were made and the quantum of sales made by them. Since, he had personally not participated in the raid proceedings, hence, he could not tell as to whether the goods of the Plaintiff were being sold from the premises of defendant or not.

He had denied the suggestion that nothing incriminating was recovered during the raid or that defendants had never engaged themselves in any of the infringing activities as was alleged and other formal suggestions were also denied by him as wrong and incorrect including filing of present false suit by the Plaintiff against them for extorting money.

11. Thereafter Plaintiff's evidence was closed.

12. In rebuttal, Defendant No. 1 namely Sh. Lalit Jain, S/o Late Sh. Shyam Lal Jain, aged about 54 yrs, R/o Shop No. 274/2, New Lajpat Rai Market, Delhi-110006, himself had appeared in the witness box and had filed in evidence, his examination-in-chief by way of affidavit Ex. DW1/A, reiterating the contents of his written statement on solemn affirmation and had stated that the contents of affidavit Ex. DW1/A, were not within his knowledge and thus he could not tell as to whether same were correct or not. However, the same bear his signatures at Points A and B. He had again stated that he was told that he was not selling the brands of watches in respect of which Plaintiff had levelled allegations against him.

During his cross-examination conducted by Ld. Counsel for the Plaintiffs on the very same day, he had stated that since, he was not selling any brands in respect of which allegations had been made against him, hence, he had stated that the present suit was false. He was stated to be in the business of sales of watches of local brands like forest, lamkei, curren, etc. from his shops bearing no. 224 and 274 situated at Lajpat Rai Market, Delhi-06 and he had never kept or dealt in watches of brands Rado and Tissot. Though, he had heard the names of these brands, but he did not know much about them. He did not know whether the brands of Plaintiff were being found available in the markets of South Delhi or not.

He had denied the suggestion that he was found dealing in the watches of brands such as Longines, Tissot, Rado and Omega by the LC in his inspection carried out on

30.11.2023. He had also denied the suggestion that he was deposing falsely to avoid his liabilities qua the Plaintiffs.

DW2 was one Yogesh, S/o Sh. Raghuvar Dayal Gupta, aged about 45 yrs, R/o B-22/A, Gali No. 4, Arjun Mohalla, Maujpur, North-East Delhi-53, who had filed in evidence, his examination-in-chief by way of affidavit Ex. DW2/A, stating that he was an eye witness in the present case and had denied any dealing of defendant Lalit Jain in respect of any of the brands belonging to the Plaintiffs at any point of time whatsoever.

During his cross-examination conducted by the Ld. Counsel for Plaintiffs on the very same day, he had stated that he was into the business of milk supply and was also working part time in the shop of defendant Lalit Jain for last three years at a monthly salary of Rs. 5000/- in cash. The defendant was stated to have been dealing in selling of watches of local brands without any specific names. Defendant was stated to have two shops no. 224 and 274 in Chandani Chowk and DW2 was stated to be working in shop no. 224 as salesman and he used to remain there from 11.00 AM till 08.00 PM.

He was stated to have never heard the names of watches/brands such as Longines, Rado, Tissot, Omega, etc. nor he was aware of their market reputation. DW2 was stated to be not aware as to whether the aforementioned brands were being sold in the market where their shop was situated and Defendant was stated to have never sold the watches of those brands.

He did not remember, if any raid was conducted at the shop of defendant Lalit Jain at any point of time whatsoever. However, he had admitted that he was not present at the time of raid/inspection at the shop of Sh. Lalit Jain. He could not tell as to whether Plaintiff was selling the watches of brands Longines, Rado, Tissot, Omega, etc. in the markets of South Delhi in the second week of October 2023 or not. He was stated to have never seen the watches of the brands Longines, Rado, Tissot, Omega, etc. He had no knowledge about the contents of para 13 of his affidavit Ex. DW2/A, pertaining to his deposition regarding defendant Lalit Jain having never indulged himself in copying artistic work and features of Plaintiffs trademarks/labels.

He had denied the suggestion that Defendant Lalit Jain was found dealing in the watches of brands such as Longines, Tissot, Rado and Omega by the LC in his inspection carried out on 30.11.2023. Other formal suggestions were also denied by him as wrong and incorrect.

13. Thereafter DE was also closed.

14. On the date of final arguments, Ld. Counsel for the Plaintiff had sought a discharge in the present case, hence, at his request, he was discharged vide order dated 25.03.2026.

I have perused the material available on record as well as the written submission filed on behalf of the Defendant on 04.04.2026.

Ld. Counsel for the defendant No. 1, in his written arguments had contended that this court had no territorial jurisdiction to try and entertain the present suit as Defendant was carrying out his business in Chandni Chowk, Delhi and was dealing only in low cost local brands.

Ld. Counsel for Defendant No. 1 had also contended that the suit was not filed by a duly authorized person and that the alleged Power of Attorney was stated to be invalid, unstamped and not in compliance with Section 2 of the Power of Attorney Act, 1882 and Order XXIX Rule 1 CPC.

In his written submissions, Ld. Counsel for the Defendant No. 1 had also averred that the Plaintiff's witness had not only failed to prove on record the sales made by the Defendant no. 1, but also, the invoice or transaction record of the infringing goods and had also averred that the recovery made by the LC from the shop of the Defendant no.1 was disputed since day one and since the report remained unproved as the Local Commissioner was not examined as a witness in the present case, hence, the same could not have been relied upon as substantive piece of evidence of alleged recovery. Even the Plaintiffs had neither brought nor called for production of alleged infringing goods, seized during LC raid, before the Court for their comparison with the original products of the Plaintiffs.

Ld. Counsel had further contended that PW1 had categorically admitted during his cross-examination that he was

not physically present at the time of the LC inspection and had also failed to establish any recovery of incriminating material from the Defendant, hence, his testimony with respect to the alleged recovery was purely hearsay in nature and thus devoid of any evidentiary value.

It was also argued that no customer was examined by the Plaintiffs to substantiate their claim that the defendant no.1 was indulging in selling counterfeit goods to its customers either from his shops at Chandani Chowk or at any part of South Delhi. No documentary evidence either in the form of any invoices or purchase records of the defendant were produced to link him with any of the infringing activities as alleged.

It was submitted further by the Defendant No. 1 that once the alleged recovery of infringing materials had itself become a disputed question of fact during trial, then it was incumbent upon the Plaintiffs to have examined the Local Commissioner as a witness in order to prove the contents and authenticity of his report dated 30.11.2023, however, Plaintiffs had miserably failed to do so and in the absence of such report having tendered and proved in evidence in accordance of law, no evidentiary value could have been attributed to the same, nor it could have been considered for any practical purposes whatsoever.

Even PW1 had categorically admitted during his cross-examination that since he was not physically present at the time of said raid, hence, he could not have testified as to whether

the goods of the Plaintiffs were being sold from the premises of Defendant or not and had remained silent about the Defendant No. 1 having been found in possession of any of the infringing material as was alleged. Thus, no recovery of any infringing material could be proved against the Defendant.

It was also stated that Plaintiffs had failed to establish any likelihood of confusion or deception regarding the infringing trademarks in the market, as no consumer to that effect was examined by them.

Reliance was also placed on the citation of “***Emami Ltd. Vs. Dabur India Ltd.***”, wherein it was stated to have been held that mere similarity is not sufficient to draw a conclusion of infringement and Plaintiff was required to establish a real likelihood of confusion in the market.

15. In view of aforesaid submissions of the Defendant No. 1 as well as evidence of both the parties appearing on record, my issue wise findings are as under:

Issue no. (i) Whether the plaintiff is entitled to decree for permanent injunction, as prayed ? OPP.

The onus to prove this issue was upon the Plaintiffs and PW1 for the first time in his cross-examination had stated that the nature of Plaintiffs’ entity was that of a Private Limited company, however, no such averment was made anywhere by the Plaintiffs either in their pleadings in the form of plaint as well as replication nor during the examination-in-chief of PW1 and it

was for the first time that PW1 had deposed about the status of Plaintiffs that being of a Private Limited Company but had failed to place on record any proof of their incorporation.

Not only this, but also, the AR for Plaintiff, PW1, had miserably failed to prove on record the source from where he had derived the knowledge about the facts of this case as admittedly he was not associated with either of the Plaintiffs' companies in any manner whatsoever, except for having derived his authorization from the previous AR Ms. Surbhi Bansal, who in turn was stated to be a lawyer by profession and had never worked with either of the Plaintiffs in any capacity whatsoever. Furthermore, it was not even the case of PW1 that he had ever examined the records of the Plaintiffs either in their office situated at the place of their existence or the same was provided to him by them at his place.

Even a perusal of authorization executed in favour of Ms. Surbhi Bansal revealed that although she was authorized to sign and execute vakalatnama, which was also referred to as Power of Attorney in brackets and also to appoint a complainant or investigator. However, the Power of Attorney did not vest any power in her to delegate her own powers in favour of some other person.

So far as the deposition of PW1 regarding his presence at the time of execution of POA in his favour is concerned, the said POA executed in his favour by Ms. Surbhi Bansal was never ever accepted by him, hence, it could not have

been held to have been duly accepted by PW1, even though same was executed in his favour.

So far as the claim by PW1 regarding selling of infringing products by the Defendants in the locality of South Delhi is concerned, neither any locality, nor any specific area was mentioned by PW1, where the Defendant was allegedly selling his infringing goods, nor even the volume of those sales or the prices at which those infringing articles were allegedly sold by Defendant were mentioned by him.

Furthermore, in the absence of any concrete material to substantiate these allegations, it appears nothing beyond a mere lip service done by PW1 in the air. In this regard, I must further hold here that the class of consumers of the products of Plaintiffs is totally different from the class which buys products from market places like New Lajpat Rai Market. The price range of the products of Plaintiffs can even exceed the monthly earnings of a person, who would make a purchase from such markets, where defendant was operating his shop. Hence, the question of existence of any confusion being created there in the mind of the consumers does not even arise at all.

I also find force in the contention of the Defendant that in the given facts and circumstances of the case, the Plaintiff was essentially required to examine the Local Commissioner, however, although it has been claimed in the written submissions filed on record by the Defendant that report of Local Commissioner was vehemently disputed qua the recovery of

infringing material, however, no objection to the same was ever filed on record by either of the defendants, nor they had placed any such objections in their written statement filed on record, which was admittedly filed almost after 1 year from the date of inspection. Hence, even if it is presumed that report of Local Commissioner, in the absence of any formal objections being filed to its correctness and veracity, was *per se* admissible in evidence as held by Hon'ble High Court of Delhi in following cases:

- (i) ***“LEVI Strauss & Co. Vs. Rajesh Agarwal”***, RFA 127/2007, decided on 03.01.2018.
- (ii) ***“LT Foods Limited Vs. Saraswati Trading Company”***, CS (COMM) 413/2021, decided on 11.11.2022.

Even then, I have no hesitation in holding that Ld. Local Commissioner in his report had mentioned about having conducted a raid at shop no. 274/2, New Lajpat Rai Market, New Delhi, belonging to Defendant no. 1 Sh. Lalit Jain, where he had found one watch of make RODD, plus one RADO, plus one TISSOT, plus four empty boxes having trademark/label of RADO and one empty carry bag RADO from the spot.

Similarly, during his raid conducted at Shop No. 224, New Lajpat Rai Market, he had found 32 watches of RODD, one watch of OMEGA, 3 watches of RQDD, 34 watches of TISSOT and three empty boxes of RADO.

It is not even the case of LC that either he himself was carrying or any of the representatives of the Plaintiffs had provided him the original products of the Plaintiffs with which he could have compared the articles recovered from the shop of Defendant no. 1 to arrive at a conclusion regarding the recovered articles, being the duplicate copies or infringing the trademarks and copyright of the Plaintiffs in any manner whatsoever.

Further, I have no hesitation in holding that so far as the factual assertions or evidence on factual aspects is concerned, anybody could appear and depose on behalf of the company being its authorized representative after deriving knowledge of those facts from the official records of the said company. However, in order to clarify those aspects, which involve technicalities in nature, one must examine a technical expert, who could have identified and explained the basic distinguishing features between the original product of the Plaintiffs and its duplicate copies allegedly recovered from the shops of the defendant. Not even the AR of the Plaintiffs had identified those recovered articles from the shop of Defendant as duplicate or infringing ones, hence, the possibility of the genuine and original watches or boxes or carry bags lying there at the shop of defendant could also be not ruled out.

In view of my aforesaid observations, I have no hesitation in holding that Plaintiffs had miserably failed to make out a *prima facie* case in their favour, even by preponderance of probabilities against Defendant no.1, so as to make them entitled to a relief of permanent injunction as prayed in the present suit.

The issue is accordingly answered in negative and decided in favour of the Defendant and against the Plaintiffs.

Issue No. (ii) Whether the plaintiff is entitled to delivery up of infringing material and decree for rendition of accounts, if so, from whom? OPP.

Issue No. (iii) Whether the Plaintiff is entitled to any damages, if so, the quantum thereof? OPP.

Onus to prove these issues was again upon the Plaintiffs and in view of my findings given to issue no. 1 above, these issues are also answered in negative and decided in favour of the Defendant and against the Plaintiffs.

Issue No. (iv) Whether the Plaintiff is guilty of suppression and concealment of material facts ? OPD.

Onus to prove this issue was upon the Defendant, however, he had failed to discharge the same by placing on record the facts which as per him, were though material but were conceded or suppressed by the Plaintiffs, so as to enable them to have laid a false claim against the Defendant. Accordingly, this issue is answered in negative and decided in favour of Plaintiffs and against the defendant.

Issue No. (v) Whether the suit of the Plaintiff is bad in terms of provision of order XXIX rule 1 CPC ? OPD

Issue No. (vi) Whether the suit of the Plaintiff is bad for violation of Section 2 of Power of Attorney Act, 1882 ? OPD

Issue No. (vii) Whether the Suit of the Plaintiff is bad for violation of provisions of Section 2 (30) of Companies Act, OPD.

Onus to prove these issues was again upon the defendant, however, no cogent evidence has been lead in this regard. Therefore, all these issues are answered in negative and decided in favour of the Plaintiffs and against the Defendant.

Issue No. (viii) Whether this Court has no territorial jurisdiction to try and entertain the present suit? OPD

Onus to prove this issue was again upon the defendant, who had categorically averred about having conducted his business in the Chandni Chowk area and although the Plaintiff had miserably failed to prove any of the business activities of Defendant in South Delhi, within the territorial jurisdiction of this court, however, still keeping in view the mandate of Section 134(2) of the Trademarks Act, 1999 and also in view the evidence lead on record, showing the existence of Plaintiffs' exclusive showrooms within the territorial jurisdiction of this Court, I have no hesitation in holding that Plaintiffs were also conducting their business within the territorial jurisdiction of South Delhi, conferring territorial jurisdiction upon this Court to try and entertain the present suit. Accordingly, this issue is answered in negative and decided in favour of the Plaintiffs and against the Defendant.

Issue No. (ix) Relief.

16. In view of my findings given to all the above issues, suit of the Plaintiffs is dismissed with costs. Decree sheet be drawn accordingly.

17. File be consigned to record room after completion of necessary legal formalities in this regard.

**ANNOUNCED IN THE OPEN COURT
DATED:09.04.2026**

**(Lokesh Kumar Sharma)
District Judge (Commercial Court)-05
South/Saket/New Delhi**