

**IN THE COURT OF ANUBHAV JAIN, DISTRICT JUDGE-05,
NEW DELHI DISTRICT, PATIALA HOUSE COURTS,
NEW DELHI**

DLND010000142012



CS (COMM) 355/2019

In the matter of :

M/s. Parfums Christian Dior
33, Avenue Hoche, 75008,
Paris, France

...Plaintiff

Versus

- 1. M/s. Maja Health Care Division**
VI-John Industrial Estate
Kishanpura, Tehsil Nalagarh,
District Solan, Himachal Pradesh

Corporate Office:

G-59, Mezzaine Floor,
Marina Arcade,
Behind Hotel Marina,
Middle Circle, Connaught Place,
New Delhi-110001

- 2. M/s. Kanshi Ram Pawan Kumar**
Marketing Pvt. Ltd.
Regd. Office-S-3A, Bhagwan Das Nagar,
East Punjabi Bagh, New Delhi-110026

3. **Manish Sethi, S-3A,**
Bhagwan Das Nagar,
East Punjabi Bagh,
New Delhi-110026

....Defendants

Date of institution : 03.02.2012
Date when Judgment reserved : 06.03.2026
Date of Judgment : 12.05.2026

Suit under Sections 134 & 135 of Trade Marks Act, 1999 and under Section 51 of Copyright Act for permanent injunction restraining infringement, passing off, rendition of account etc.

JUDGMENT

1. Present suit for permanent injunction restraining infringement, passing off, rendition of account etc. is filed by the plaintiff against the defendants.

2. It is pertinent to state in here that initially the present suit was filed by the plaintiff against defendant no. 1 i.e. M/s Maja Healthcare Division. Thereafter, vide order dated 01.10.2014, defendant no. 2 and 3 were impleaded as party to the present suit.

FACTS OF THE CASE

3. In brief, facts of the case as stated by the plaintiff in his plaint are that plaintiff is artificial person duly organized,

established and incorporated under the law of France and is engaged in the business of manufacturing and marketing of wide range of perfumery, cosmetics, soaps, essential oils, hair lotions, dentifrices etc. It is further stated that plaintiff was established in the year 1947 and is one of the divisions of Christian Dior S.A and is well known manufacturer and distributor of luxury fashion wear cosmetics and personal care products and accessories.

3.1 It is further stated that in the year 1985, plaintiff launched a perfume under the trademark 'POISON' and in order to get statutory protection, plaintiff obtained the registration of said trade mark in India under provisions of the Trade Marks Act 1999. It is further stated that plaintiff is absolute and global owner and proprietor of trade mark Poison on account of prior, honest, bonafide adoption in the year 1985. Further, it is stated that said trade mark Poison is stated to have been earned substantial goodwill and reputation in the minds of the trade and public worldwide who recognize the said goods under the said trade mark for their excellent quality.

3.2 It is further stated that defendants are engaged in various type of perfumery and cosmetics products and that defendants have started using trade mark "Poison Pot" in relation to their impugned goods which is identical with and deceptively similar to the plaintiff's said trade mark Poison in each and every respect including phonetically, visually structurally, in its basic idea and its essential features.

It is further averred that defendants have copied the artistic features involved in the plaintiff's said trade mark and are

infringing the copy right involved in the said trade mark. It is further stated that defendants have adopted and started using the impugned trade mark dishonestly, fraudulently and out of positive greed with a view to take advantage and to trade upon the established goodwill, reputation and proprietary rights of the plaintiff in the said trade mark.

3.3 It is further stated that due to the defendant's impugned activities, plaintiff has suffered huge losses both in business and in reputation which are incapable of being assessed in monetary terms. It is further averred that plaintiff learnt about the activities of defendants in the first week of January 2012 when plaintiff came across the impugned goods of the defendant in New Delhi Market and plaintiff further caused an inquiry with regard to the same.

3.4 It is further stated that defendants are not only making the retails sales but is also supplying the impugned goods bearing the impugned trade marks to various dealers/shopkeepers/retailers in New Delhi market i.e. Connaught Place, Parliament Street, Barakhamba, Chanakyapuri, Gole Market, Khan Market etc. who are making the clandestine and surreptitious sales thereof to the ultimate consumers in New Delhi area.

3.5 By way of present suit plaintiff has sought relief of injunction that defendants be restrained from using, selling, soliciting, advertising etc. or by any other mode using the impugned trade mark POISON POT.

Plaintiff further sought injunction that defendant be restrained from disposing off or dealing with its assets including its premises at the address mentioned in the memo of parties and its stocks in trade or any other assets.

Plaintiff further sought relief for an order for delivery of all the impugned finished and unfinished materials bearing the impugned trade mark or any other word/mark which may be identical with or deceptively similar to the plaintiff's trade mark/name including its blocks, labels, display boards, sign boards, trade literature and goods etc.

Plaintiff further, by way of present suit, sought relief for rendition of accounts of profits earned by the defendants by its impugned illegal trade activities and for a decree of the amount so ascertained on such rendition of account.

WRITTEN STATEMENT FILED BY DEFENDANT No. 1

4. In reply thereof, written statement was filed by the defendant no. 1 wherein the suit of the plaintiff is challenged on the ground that the present suit was not filed by the authorized person as no power of attorney or resolution authorizing the AR to file the present suit is filed; that no incorporation document of either of the plaintiff or M/s. Christian Dior S.A have been placed on record by the plaintiff; that the power of attorney dated 01.10.2009 in favour of Meena Bansal was executed in Paris France has not been stamped as per the prevalent law in India; that no document is placed on record to show that AR is authorized to file the present suit on behalf of plaintiff; that registration as claimed to have been obtained by the plaintiff is

invalid as same was granted in violation of provision of Trade Mark Act; that plaintiff does not have inception right to use word POISON.

4.1 It is further stated that defendant no. 1 is a part of established business house engaged in the cosmetics trade since past over 50 years and defendant is a part of famous VI John Group and is registered proprietor of trade mark ST. JOHN & ST. JOHN.

4.2 It is further stated that in the year 2006, defendant coined and adopted a mark POISON POT in conjunction with its well known established mark ST. JOHN for its perfumery goods. It is further state that use of word POISON was further encouraged with the fact that as the defendant was the owner and proprietor of another mark ST. JOHN COBRA which is well established and well known mark of defendant. It is further stated that from the time of when the defendants adopted the mark ST JOHN POISON POT and even till the time they were served with the summons of the present proceedings, the defendants have never been aware of any goods of the plaintiff under the mark POISON.

4.3 Defendants further denied all the other averments so made by the plaintiff in its plaint and prayed for dismissal of the suit.

DEFENCE BY DEFENDANT NO. 2 AND 3

5. It is further pertinent to state in here that defendant no. 3 filed an affidavit before the court, wherein he has stated that defenses so raised by defendant no.1 to the suit, may be considered on his behalf and that on behalf of defendant no.2. Thereupon, Ld. court vide order dated 03.11.2014, considered the written statement filed by defendant no. 1 on behalf of defendant no. 2 and 3.

APPOINTMENT OF LOCAL COMMISSIONER

6. It is further pertinent to state in here that upon filing of present suit, Ld. Predecessor Court vide order dated 03.02.2012, while allowing the application for ad-interim injunction, appointment of Local Commissioner to seize the products etc. bearing trademark 'poison pot'. In compliance thereof, report was filed by Local Commissioner on 02.04.2012.

ISSUES

7. That on the basis of pleadings of the parties, following issues were framed vide order dated 23.08.2013 by the Ld. Predecessor of Court:

- i) Whether this court has territorial jurisdiction to entertain and try the present suit?
- ii) Whether the defendant has infringed the plaintiff's trade mark and passed on their goods as those of the plaintiff?

- iii) Whether the plaintiff is entitled to any damages? If so to what amount?
- iv) Whether the plaintiff is entitled to rendition of account?
- v) Relief.

7.1 That subsequent thereto an application u/o XIV Rule 5 CPC was filed by the defendant seeking of framing of additional issues. In pursuance thereof, Ld. Predecessor Court vide order dated 19.08.2014 framed following additional issues:

- v) Whether the present suit has been filed by a legal entity authorized to file the suit.
- vi) Whether the plaint of the present suit has not been filed and verified by the duly authorized representative on behalf of plaintiff.
- vii) Whether the plaintiff has any copyright in its packaging of POISON? If yes, whether the defendant has infringed the copyright of the plaintiff.
- viii) Whether the defendant is not liable to be enjoined on the objections taken in written statement.
- ix) Whether the plaintiff is not entitled on account of delay, laches and acquiescence.
- x) Relief.

PLAINTIFF'S EVIDENCE

8. Plaintiff in support of his case has examined Ms. Meena Bansal (AR of the plaintiff company) as PW-1 who has tendered her evidence by way of affidavit as Ex. PW-1/A. The said

witness, beside reiterating the averment of plaint in her affidavit in evidence, relied upon the following documents:

1. Ex.PW1/1 (OSR) is power of attorney;
2. Ex.PW1/2 (colly. Page No. 11 to 19A) is detail of plaintiff company. (objected to mode of proof by proxy counsel for defendant);
3. Ex.PW1/3 (OSR) (page No. 1 to 19) is legal proceedings certificate. (objected to as except page No. 1 to 3 none of the other pages have been shown);
4. Ex.PW1/4 (colly. Page No. 1 to 7) is representation of plaintiff's trademark(objected to mode of proof as no certificate u/s 65 is filed);
5. Ex.PW1/5 (colly. Page No. 1 to 30) is detail of plaintiff's product which are already on record. (Objected to mode of proof);
6. Ex.PW1/6 (page No. 1 to 7) is detail of plaintiff's exclusive business address. (Objected to mode of proof);
7. Ex. PW1/7 (colly. Page No. 1 to 2) is representation of defendant's trademark. (Objected to mode of proof);
8. Ex.PW1/8 (OSR) is defendant's broucher;
9. Ex.PW1/9 price list of defendant is de-exhibited and marked as Mark D;
10. Ex. PW1/10 (colly.) is Local Commissioner report. (objected to mode of proof);
11. Mark A & B is copy of plaintiff's consolidated financial record.
12. Mark C is copy of invoice of the plaintiff.

8.1 Plaintiff was duly cross examined by counsel for defendant on 23.08.2018 and 07.09.2019. Thereafter PE stands closed vide separate statement of plaintiff and matter was fixed for DE.

DEFENDANT'S EVIDENCE

9. Defendants in support of their case has filed affidavit in evidence of Sh. Pawan Goel as Ex. DW1/A, who relied upon the 15 invoices issued by defendant no.1 towards the sale of goods under the Mark Poison Pot.

9.1 The said witness was duly cross examined by plaintiff counsel on 28.01.2020. Thereafter, DE stands closed vide separate statement of defendant's counsel and matter was fixed for Final Arguments.

FINAL ARGUMENTS

10. Detail arguments were led by counsel for both the parties and further both the parties submit written contentions in support of their case. Same is not being reproduced herein for the sake of brevity.

11. I have heard the arguments and perused the case file. My issue-wise findings are as follows:-

ISSUE NO. I:

Whether this court has territorial jurisdiction to entertain and try the present suit?

12. Burden to prove the said issue lies upon the plaintiff. As per the plaintiff, the goods with infringed trademark were being sold by the defendant within the jurisdiction of this court. Further, defendant no. 1 is stated to be having its corporate office within the jurisdiction of this court, while defendant no. 2 and 3 are residing/working for gain within the jurisdiction of this court.

13. It is settled proposition of law that in terms of Section 20 CPC, a suit can be instituted in a court within the local limits of whose jurisdiction either defendant reside or carries on business or personally works for gain or where the cause of action arise.

14. Since in the present case in hand, it is not denied that defendants are carrying on their business within the jurisdiction of this court, as such, this court has territorial jurisdiction to try the present case. In view of the same, present issue is decided in favour of plaintiff and against the defendant.

ISSUE NO. V & VI:

- v. **Whether the present suit has been filed by a legal entity authorized to file the suit.?**
- vi. **Whether the plaint of the present suit has not been filed and verified by the duly authorized representative on behalf of plaintiff ?**

15. This court shall proceed with dispose of above said issues firstly, since outcome of the said issues shall have direct bearing upon the outcome of the present case. Burden to prove the both the issues lies upon the defendants.

LEGAL ENTITY OF PLAINTIFF

16. It is stated by the defendants that the present suit has not been filed by a legal entity authorized to file the suit nor the plaint has been signed by the duly authorized representative on behalf of plaintiff. As such, in order to determine the present issue, legal identity of the plaintiff to file the present suit, has to be seen.

a) As per plaint

17. As per the *memo of parties* as mentioned in the plaint, the present suit is filed by plaintiff M/s. Parfums Christian Dior. Memo of parties does not specify nature/ legal identity of plaintiff.

Further as per *averments made in plaint*, as per para 1 plaintiff is stated to be an artificial person duly organized, established and incorporated under law of France. It is further stated in para 2 that plaintiff is one of divisions of Christian Dior S.A, France a well known manufacturer and distributor of luxury fashion wear, cosmetics etc.

b) As per trade mark Certificate

18. On the other hand, as per *certificate dated 28.06.1983 issued under Trade and Merchandise Marks Act, 1958* (placed on record by the plaintiff) issued by Registrar of Trademark India, plaintiff is shown to “A Society anonyme organized under the laws of France, Manufacturer 30, Avenue Hoche, Paris (Seine) France.”

Further, as per the *trademark certificate* dated 31.01.1999 so placed on record by the plaintiff, same shows the plaintiff as a body incorporate.

c) As per Power of Attorney

19. Further, as per the *Power of Attorney* on the basis of which present suit is filed by AR Mrs. Meena Bansal, mentions the plaintiff as “company”.

d) As per Plaintiff witness/AR

20. It is further pertinent to state in here that during the course of cross examination, AR of plaintiff Ms. Meena Bansal denied having knowledge as to what kind of legal entity the plaintiff is. For the sake of convenience relevant portion of cross examination of plaintiff is being reproduced as under:

...The plaintiff in the present matter is M/s. Parfums Christian Dior. I do not know as to what kind of legal entity, the plaintiff is. The plaintiff has not filed any document with regard to the incorporation or formation or existence of the plaintiff as the legal entity....

21. As such, from the perusal of plaint, documents annexed therewith as well as testimony of witness, the legal identity of plaintiff cannot be concluded. Further, there is nothing placed on record by the plaintiff to show that there is any registration as a company or society in the country of India. As such, plaintiff has miserably failed to disclose the legal entity of the plaintiff which has filed the suit before this court.

AUTHORITY OF MS. MEENA BANSAL TO FILE PRESENT SUIT

22. The present suit is filed by Ms. Meena Bansal on the strength of copy of power of attorney dated 06.11.2009 issued by one Oliver Gourdon, Market Protection Director of plaintiff. Since, power of attorney being relied upon by the AR of plaintiff states plaintiff to be a “company”, it was for the plaintiff to file the present suit, by duly authorized representative as per law applicable.

23. Before dealing with the said contentions, this court deems it appropriate to discuss in here law with regard to authority of the AR to represent a company in any suit. For the same, I may gainfully refer to the observations made by Hon’ble High Court of Delhi in *NIMBRO Ltd. v. National Insurance Company Ltd. 06.03.1990 AIR 1991 Delhi 25*, wherein it was observed as follows:

29. It is well-settled that under section 291 of the Companies Act except where express provision is made that the powers of a company in respect of a particular matter are to

be exercised by the company in general meeting, in all other cases the board of directors are entitled to exercise all its powers. Individual directors have such powers only as are vested in them by the memorandum and articles. It is true that ordinarily the court will not unsuit a person on account of technicalities. However, the question of authority to institute a suit on behalf of a company is not a technical matter. It has far-reaching effects. It often affects the policy and finances of the company. Thus , unless a power to institute a suit is specifically conferred on a particular director, he has no authority to institute a suit on behalf of the company. Needless to say such a power can be conferred by the board of directors only by passing a resolution in that regard.

Chapter IV of the Delhi High Court (Original Side) Rules deals with the question of presentation of suits. Under this rule, a suit can be presented by a duly authorised agent or by an advocate duly appointed by him for the purpose. This authorisation, in my view, in the case of a company can be given only after a decision to institute a suit is taken by the board of directors of the company. The board of directors may in turn authorise a particular director, principal officer or the secretary to institute a suit.

24. On the other hand, it was argued on behalf of plaintiff that Ms. Meena Bansal is duly authorized to institute present suit, she being power of attorney holder. Ld. Counsel further relied upon following judgments, in support of his contentions:

a) *United Bank of India v. Naresh Kumar*, (1997) 90 Comp Cas 329 : 1996 SCC OnLine SC 92 at page 333

In cases like the present where suits are instituted or defended on behalf of a public corporation, public interest should not be permitted to be defeated on a mere technicality. Procedural defects which do not go to the root of the matter should not be permitted to defeat a just cause. There is sufficient power in the courts, under the Code of Civil Procedure, to ensure that injustice is not done to any party who has a just cause. As far as possible a substantive right should not be allowed to be defeated on account of a procedural irregularity which is curable.

*It cannot be disputed that a company like the appellant can sue and be sued in its own name. Under Order 6, rule 14 of the Code of Civil Procedure, a pleading is required to be signed by the party and its pleader, if any. As a company is a juristic entity it is obvious that some person has to sign the pleadings on behalf of the company. Order 29, rule 1 of the Code of Civil Procedure, therefore, provides that in a suit by or against a corporation, the secretary or any director or other principal officer of the corporation who is able to depose to the facts of the case might sign and verify on behalf of the company. Reading Order 6, rule 14, together with Order 29, rule 1 of the Code of Civil Procedure, it would appear that even in the absence of any formal letter of authority or power of attorney having been executed a person referred to in rule 1 of Order 29 can, by virtue of the office which he holds, sign and verify the pleadings on behalf of the corporation. **In addition thereto and de hors Order 29, rule 1 of the Code of Civil Procedure, as a company is a juristic entity, it can duly authorise any person to sign the plaint or the written statement on its behalf and this would be regarded as sufficient compliance with the provisions of Order 6, rule 14 of the Code of Civil Procedure. A person may be***

expressly authorised to sign the pleadings on behalf of the company, for example by the board of directors passing a resolution to that effect or by a power of attorney being executed in favour of any individual. In the absence thereof and in cases where pleadings have been signed by one of its officers a corporation can ratify the said action of its officer in signing the pleadings. Such ratification can be express or implied. The court can, on the basis of the evidence on record, and after taking all the circumstances of the case, specially with regard to the conduct of the trial, come to the conclusion that the corporation had ratified the act of signing of the pleading by its officer.

***b) Citizen Watch Co. Ltd. v. Dinesh Kumar LaxmanBhai Virda,
(2024) 2 HCC (Del) 707***

*9. This objection deserves to be rejected for more than one reason. The power of attorney dated 2-6-2015 was exhibited as Ext. PW 1/1 and a bare perusal shows that Mr Hiroyuki Kaneko has signed on the power of attorney and authorised PW 1 to act as the constituted attorney of the plaintiff along with three other advocates and is duly notarised. In United Bank of India case [United Bank of India v. Naresh Kumar, (1996) 6 SCC 660] , the Supreme Court observed that a company is a juristic entity and it can authorise any person to sign the plaint by a Board Resolution or power of attorney and this would be sufficient compliance of provisions of Order 6 Rule 14CPC. **Additionally, even in the absence of such authorisation, where pleadings have been signed by one of its officers, company can ratify the said action of signing the pleadings and ratification can be express or implied.** Court can, on the basis of evidence on record and surrounding circumstances, come to a conclusion that the act of signing the pleadings has been ratified. Moreover, there is sufficient power in the courts to ensure that injustice is not done to a*

party on account of procedural irregularities which are curable. In the present case, Ms Mitra appeared as PW 1 and proved her authority to sign and verify the plaint and identified her signatures. Board Resolution issued in favour of PW 2 by the Managing Director Shumya Shoji creates an inference in favour of the authority of Ms Mitra to sign and institute the plaint. Deposition of PW 1 on this aspect is as follows:

*“ * * **

(1) That I am the constituted attorney of plaintiff in the present suit and as such I am well conversant with the facts of the case and authorised to swear this affidavit on behalf of plaintiff.

(2) I say that the plaint has been signed by me and I am authorised and empowered to sign and verify the plaint and institute the present proceedings on behalf of plaintiff. Certified true copy of power of attorney dated 2-6-2015 issued by the plaintiff in my favour is marked herewith as exhibit EX-PW 1/1.

25. As stated above, present suit is filed by Ms. Meena Bansal on the strength of copy of power of attorney dated 06.11.2009 issued by one Oliver Gourdon, Market Protection Director of plaintiff.

In the present case in hand, there is no documents placed on record by the plaintiff to show that she has been duly authorized by Board of Directors of the plaintiff company to institute the present suit. No board of resolution and minutes of meeting in this regard is placed on record by the plaintiff.

26. Further, no official of plaintiff company appeared on stand to state that Ms. Meena Bansal has been duly authorized to file present suit or that Oliver Gourdon, Market Protection Director

has been authorized by Board of Directors to appoint AR to file suit in India.

As such, there is also nothing on record to show that Oliver Gourdon who is stated to be Market Protection Director of plaintiff was having power, authority or right to appoint AR to file civil suit on behalf of plaintiff.

27. In fact, the plaintiff during the course of her cross examination failed to disclose anything about Oliver Gourdon on the strength of power of authority on whom the present suit is filed by her. AR Meena Bansal further proceed to state that she received Rs. 25,000/- to act as Authorised Representative of the present suit. The relevant portion of the cross examination of plaintiff AR Ms. Meena Bansal is being reproduced as under:

...I do not know any person by the name of Oliver Gourden. Again said that he is the marketing protection head of the plaintiff. I do not know since when Mr. Oliver Gourden is the marketing protection head. Mr. Oliver Gourden is not the marketing head of plaintiff presently. I do not know if he has resigned from the plaintiff. I am not aware as to since when he is not the marketing head of the plaintiff. I am not even aware as to for what period, he was the marketing head of the plaintiff. I am not the employed with the plaintiff however, I am the Authorized Representative of the plaintiff. I do freelance work from home and the plaintiff might have come to know about me and approached me I offer my services as Authorized Representative for whosoever may approach me for the said purpose. I however, do not advertise my services. The entities who wish to engage my services as their Authorized Representatives, come to know about me by word of mouth. I have received an amount of Rs.

25,000/- from the plaintiff to act as its Authorized Representative. I do not remember as to when was the said amount was received by me. I do not remember as to which document i have been authorized as AR of the plaintiff however, the same is on record. The authorization document was executed in France. It was not executed in my presence, I am not a Law Graduate. I am a Trademark Agent registered with the Registrar of Trademark in India. I run my own firm namely M/s. Sealinks. I am the Proprietor of this firm, office of the same is located at 96, Sukhdev Vihar, New Delhi. I was instructed by the plaintiff to sign and file the present suit. I do not remember if such instructions were conveyed to me orally or in writing. I have not seen any authorization in favour of Mr. Oliver Gourden by the plaintiff authorizing him further appoint any Authorized Representative. I have not visited the office of the plaintiff ever. I do not have a ready access to the records of the plaintiff. (vol. however, I can access the website of the plaintiff on internet.) My investigator informed me about the defendant in the present suit. I have not filed any investigation report on record. Upon reading the investigation report, the plaintiff decided to institute the present suit. I do not know if the plaintiff recorded such decision in writing anywhere in its records.”

28. Bare perusal of the cross examination of the plaintiff itself goes to show that she is completely unaware as to the identity of working of plaintiff or that of the present case and she secured fees in order to act as Authorised Representative for the present suit.

29. At this stage, this court further deems it appropriate to discuss in her observations made by Hon’ble Apex Court in

State Bank of Travancore Vs. Kingston Computer 2011 AIR SCW 1948, wherein it is observed as follows:

In our view, the judgment under challenge is liable to be set aside because the respondent had not produced any evidence to prove that Shri Ashok K.Shukla was appointed as a Director of the company and a resolution was passed by the Board of Directors of the company to file suit against the appellant and authorised Shri Ashok K.Shukla to do so. The letter of authority issued by Shri Raj K.Shukla, who described himself as the Chief Executive Officer of the company, was nothing but a scrap of paper because no resolution was passed by the Board of Directors delegating its powers to Shri Raj K.Shukla to authorise another person to file suit on behalf of the company.

30. In view of the discussion made above, it is hereby held that Mrs. Meena Bansal is not duly authorized AR of plaintiff to file the present suit on its behalf.

In view of the discussion made above, both the abovesaid issues are decided in favour of defendant and against the plaintiff and stands disposed off accordingly.

ISSUE NO. II & VII:

- ii) Whether the defendant has infringed the plaintiff's trade mark and passed on their goods as those of the plaintiff?
- vii) Whether the plaintiff has any copyright in its packaging of POISON? If yes, whether the defendant has infringed the copyright of the plaintiff.

31. Since both the above said issues required common discussion of law and facts, all the said issues are being dealt with together. Burden to prove both the above said issues lies upon the plaintiff.

32. It is settled proposition of law that burden lies upon the plaintiff to prove its own case by preponderance of probability. As such, in the present case in hand, it is for the plaintiff to prove that:

- a) they have copyright in its packaging of POISON, and
- b) that defendants herein have infringed/ passing off the trademark in favour of plaintiff i.e. “Poison”.

AUTHORITY OF WITNESS TO DEPOSE

33. The plaintiff in support of its case has examined only one witness i.e. AR Meena Bansal, thereby making her evidence material in order to prove case of plaintiff.

Before averting to the evidence of Ms. Meena Bansal, it would be relevant to discuss in here as to whether Ms. Meena Bansal is duly authorized to depose in the present case. As discussed above, present suit is filed by Ms. Meena Bansal on the basis of Power of Attorney filed by Oliver Gourdon. At this stage, reference can be made to observation made in *Manisha Mahendra Gala v. Shalini Bhagwan Avatramani*, (2024) 6 SCC 130, wherein it was observed as follows:

28. The law as understood earlier was that a general power-of-attorney holder though can appear, plead and

act on behalf of a party he represents but he cannot become a witness on behalf of the party represented by him as no one can delegate his power to appear in the witness box to another party. However, subsequently in *Janki Vashdeo Bhojwani v. Indusind Bank Ltd.* [*Janki Vashdeo Bhojwani v. Indusind Bank Ltd.*, (2005) 2 SCC 217] , this Court held that the power-of-attorney holder can maintain a plaint on behalf of the person he represents provided he has personal knowledge of the transaction in question. It was opined that the power-of-attorney holder or the legal representative should have knowledge about the transaction in question so as to bring on record the truth in relation to the grievance or the offence. However, to resolve the controversy with regard to the powers of the general power-of-attorney holder to depose on behalf of the person he represents, this Court upon consideration of all previous relevant decisions on the aspect including that of *Janki Vashdeo Bhojwani* [*Janki Vashdeo Bhojwani v. Indusind Bank Ltd.*, (2005) 2 SCC 217] in *A.C. Narayanan v. State of Maharashtra* [*A.C. Narayanan v. State of Maharashtra*, (2014) 11 SCC 790 : (2014) 4 SCC (Civ) 343] concluded by upholding the principle of law laid down in *Janki Vashdeo Bhojwani* [*Janki Vashdeo Bhojwani v. Indusind Bank Ltd.*, (2005) 2 SCC 217] **and clarified that power-of-attorney holder can depose and verify on oath before the court but he must have witnessed the transaction as an agent and must have due knowledge about it. The power-of-attorney holder who has no knowledge regarding the transaction cannot be examined as a witness. The functions of the general power-of-attorney holder cannot be delegated to any other person without there being a specific clause permitting such delegation in the power of attorney; meaning thereby ordinarily there cannot be any sub-delegation.**

29. It is, therefore, settled in law that power-of-attorney holder can only depose about the facts within his personal knowledge and not about those facts which are not within his knowledge or are within the personal knowledge of the person who he represents or about

the facts that may have transpired much before he entered the scene. The aforesaid power-of-attorney holder PW 1 had clearly deposed that he is giving evidence on behalf of Plaintiffs 2 to 4 i.e. the Galas. He was not having any authority to act as the power of attorney of the Galas at the time his statement was recorded. He was granted power of attorney subsequently as submitted and accepted by the parties. Therefore, his evidence is completely meaningless to establish that Galas have acquired or perfected any easementary right over the disputed *rasta* in 1994 when the suit was instituted.

As such, it is clear that a power of attorney holder can only depose with respect to the fact which are within his personal knowledge.

34. From bare perusal of cross examination of plaintiff witness i.e. Ms. Meena Bansal, it is clear that the said witness is not even aware as to the basic facts of the present suit. During the course of her cross-examination witness Meena Bansal states all the documents so relied upon as well as averments in paragraphs 11 to 15 of the plaint, were obtained from website and internet without any cogent evidence as to the correct source of information. As per the witness herself the present suit is filed on the strength of an investigation alleged to have been conducted by her investigator, of which she was not even the part. The name of the said investigator was never brought on record by the plaintiff nor his investigation report is placed on record, on the basis of which the present suit is alleged to have been filed. Further, the affidavit of the said investigator with respect to his investigation was never placed on record nor he was subjected to cross-examination with respect to the

investigation being conducted by him on the basis of which present suit was filed. For the sake of convenience, relevant portion of cross examination of AR of plaintiff, is being reproduced as under:

“...I have not visited the office of plaintiff ever. I do not have a ready access to the records of plaintiff. (Vol. However, I can access the website of plaintiff on internet.) My investigator informed me about the defendant in the present suit. I have not filed any investigation report on record. Upon reading the investigation report, the plaintiff decided to institute the present suit. I do not know if the plaintiff recorded such decision in writing anywhere in its records. The mark being used by the defendant is 'POISON'. It is correct that the defendant is using the mark 'ST. JOHN POISON POT'. (vol. it is confusingly similar to the plaintiff's trademark.) I do not remember if the plaintiff uses the mark POISON independently or with the mark 'DIOR' or with the mark "CHRISTIAN DIOR' however, I can answer the said question after checking the record. After checking the record of the suit file, I confirm that the plaintiff uses the mark 'POISON' in conjunction with the mark 'DIOR'. I do not know as to what goods apart from perfumes, the plaintiff manufactures under the mark 'DIOR POISON'. I cannot say if the plaintiff has filed the sale invoices towards the sale of goods under the mark 'DIOR POISON' in India or even Abroad. I can answer the said question after Checking the suit record. I have filed an invoice which is marked as Mark-I do not remember as to where is the original of this document. It is correct that the original was not produced

even while recording of my examination in chief. I do not remember if this invoice is after the filing of the suit or prior to that. I do not know if the mark 'POISON' is registered in favour of the plaintiff as a word mark or a label mark. I am not aware as to when the plaintiff for the first time, applied for registration of a mark containing the word 'POISON' in India. (vol. documents in this regard are filed on record.) The source of information of the averments contained in para no. 2 to 4 of my affidavit Ex. PW-1/A is internet i.e., the wikipedia information as, has been filed and exhibited as Ex. PW-1/2. I took the printout of Ex. PW-1/2 myself. I do not remember as to when I took such printout, I do not remember if I took the said printout after saving the contents on a word file on my computer or after saving the said document as a PDF file or by any other mode. I cannot tell the make and model of the computer and printer using which, the printout was taken.

*I cannot tell as to when the plaintiff for the first time, adopted any mark containing the word 'POISON' as part of any trademark however, I can answer this question after checking the suit record. After checking the suit record, I state that the first adoption was in the year 1985. The registration under no. 466766 is class-3, is a word mark registration. After checking the record, I state that as no date of use is mentioned in the legal proceedings Certificate, it may have been filed on 'proposed to be used' basis. (vol. as it was adopted in 1985, I assume that we can claim use since 1985 and the application for registration was filed in the year 1987.) I do not remember if I have ever seen the goods of the plaintiff under the **mark** registered under no.*

466766 in respect of the goods being soaps, perfumery, essential oils, cosmetics, hair lotions and dentifrices. **I have seen the documents file as Ex. PW-1/5 (colly. in thirty pages). The source of these documents, is internet. I do not remember as to when and from which website such documents have been taken.** These printouts were taken in my office. I do not remember if I took the said printout after saving the contents on a word file on my computer or after saving the said documents as a PDF file or by any other mode. I cannot tell the make and model of the computer and printer using which, the printouts were taken. (vol. these advertisements can be seen in many fashion magazines as well.) I have not filed any such fashion magazine on record. In relation to para no. 9 of my affidavit, I state that the submissions made therein, are with respect to the label appearing on page no. 10 of Ex. PW-1/5.

Cross examination of 07.09.2019

I have seen page no. 10 of Ex. PW-1/5 (the plaintiff's product as per averments in para no. 9 of my affidavit) and Ex. PW-1/7 (the defendant's product) and I state that the only similarity between the said two packaging is the word 'POISON' appearing on both. Apart from the above, I am not able to point out any other similarity. **I cannot tell the exact price of the products of the plaintiff however, they are highly priced. I do not remember even tell the approximate range of the price of the plaintiff's product. The products of the plaintiff could be ranged between Rs. 10,000/- to Rs. 20,000/- approximately.** The perfumes manufactured by the plaintiff or even generally are not for consumption. I am not aware if the

perfumes are poisonous or if there is a disclaimer on all perfume bottles that it is not for human consumption being hazardous and poisonous. I do not remember if I have ever heard the name of Mr. Bernard Arnault. I am not even aware if the said person has had any connection with the plaintiff. I first came to know about the defendant's product through my Investigator. I do not remember if any sample of the defendant's product was purchased by the Investigator. I cannot say if any product was shown to me or it was informed orally. I do not remember if the Investigator told me at which shop or from which market, did he seek the defendant's product. After the information was provided by the Investigator, raids were conducted on some locations at Punjabi Bagh. I do not remember if raid was conducted at Connaught Place also. I did not go in the raid though my team was there. I cannot tell who all were part of my team. I do not remember if I took any other step after I received the information from the Investigator and before the raid conducted at Punjabi Bagh as above. I do not remember if the plaintiff manufactures soaps, cosmetics or hair lotions, I do not also remember if the plaintiff manufactures essential oils or dentifrices, though I know that they deal in many products and these could be one of the products of the plaintiff. I cannot tell any reason for which, the sale turnover and income of the plaintiff as mentioned in para no. 10 of my affidavit, were restricted to the year 2000 and 2001. These sale figures were extracted from internet. The averments contained in para 11, 12, 13, 14, 15 are based on information extracted through internet and

not on my personal knowledge. I am not aware about perfumes under the name JULES, ONE SYMBOLIC FRANC, HIGHER, ADDICT. I do not remember if I have ever seen the perfumes under the aforesaid marks. **I do not remember if the plaintiff manufactures its products in its own factories or gets it manufactured from other third party manufacturers, I cannot tell the sale figures of the plaintiff for the years 2012, 2013, 2014, 2015, 2016, 2017, 2018 however, the same would be available on the internet.** I do not remember if the plaintiff ever received any complaint about confusion prevailing in the market with regard to the use of mark of the defendant.

It is wrong to suggest that the present suit has been filed without any specific authority of the plaintiff. It is further wrong to suggest that I do not hold any power or authority to file the present suit. It is further wrong to suggest that the plaintiff has never used the mark DIOR POISON or POISON. It is wrong to suggest that the present suit has been filed for any extraneous considerations and to cause harassment to the defendants. It is wrong to suggest that the contents of my affidavit are all based on assumptions and presumptions. It is wrong to suggest that the plaintiff is not entitled to any relief in the present suit.

35. The witness during the course of her cross examination failed to depose even with respect to the fact as to whether the word “Poison” is registered in favour of plaintiff as a word mark or a label mark or the time when the same was firstly applied for by the plaintiff. The witness refused to have any knowledge as to whether the plaintiff manufacture soap, cosmetics, hair lotions,

essential oil or dentifrices. The plaintiff further failed to state as to whether the plaintiff manufactured its product in its own factory or from third party.

36. The fact that the witness of the plaintiff failed to answer anything with regards to facts of the present case and further that the entire case of the plaintiff relies upon some investigation report (which is not even the part of present case) and some facts and documents which are obtained from internet (source not disclosed), it can be said that plaintiff has failed to prove its case even by pre-ponderance of probability. Plaintiff has further not produced even a single document in original, nor has examined any other witness in order to prove the registration of trademark in favour of the plaintiff herein.

INFRINGEMENT/PASSING OFF

37. Be that as it may, this court further still proceed further to deal with the case of the plaintiff in hand on merits, while considering that the plaintiff has trademark of word 'Poison'.

As per the plaintiff they have a registered trademark in their favour with respect to word "Poison" which was registered in their favour on 29.01.1987 for goods, soaps, perfumery, essential oil, cosmetics, hair lotions and dentifrices. Further it is the case of the plaintiff, the defendant herein by using the word "Poison" for his product by reproducing it on its labels and packaging material is violating the trademark of plaintiff.

38. Since, the plaintiff herein has alleged that the defendant have infringed their trademark and further seeks to pass-off their goods as that of the plaintiff, this court deems it appropriate to discuss in here law with regard to “infringement” and “passing off” of a trademark. For the same, gainful reference made to the observation made by Hon’ble High Court of Delhi in ***KRBL Limited. v. Praveen Kumar Buyyani and Others 2025***, SCC OnLine Del 198, the same is as under:

21. Deceptive similarity

21.1. The first finding of the learned commercial court is that there is no phonetic similarity between BHARAT GATE and INDIA GATE. No reason, for this finding, is forthcoming in the impugned order.

21.2. The finding is clearly erroneous.

21.3. Certain basic principles of infringement assessment do not seem to have been factored, by the learned commercial court, into consideration.

21.4. It is settled — indeed, practically axiomatically by now — that the possibility of likelihood of confusion, for the purpose of trade mark infringement, has to be assessed from the perspective of a customer of average intelligence and imperfect recollection.¹⁶

21.5. “Likelihood of confusion”, by a consumer of average intelligence and imperfect recollection, is all that is needed. “Confusion”, again, need not extrapolate, in every case, to the consumer mistaking one mark for the other. It is enough — as Section

29(4) itself clarifies — if the similarity between the marks conveys an impression of “association” between them, to the mind of such a consumer. Again, all that is needed is “initial interest confusion”¹⁷, without placing the marks side by side. **In other words, if, on seeing the defendant's mark some time after the first, the consumer of average intelligence and imperfect recollection is likely to pause, even if for the fraction of a minute, and ponder as to whether it was not the same, or at was not associated with, the plaintiff's mark which he had seen earlier, the tort of infringement stands, ipso facto, committed by the defendant.** The following passage from Kerly's Law of Trade Marks and Trade Names, 9th Edn, was approvingly cited by the Supreme Court in Parle Products (P) Ltd. v. J.P. & Co.¹⁸: (SCC pp. 621-622, para 8)

“8. ... Two marks, when placed side by side, may exhibit many and various differences, yet the main idea left on the mind by both may be the same. A person acquainted with one mark, and not having the two side by side for comparison, might well be deceived, if the goods were allowed to be impressed with the second mark, into a belief that he was dealing with goods which bore the same mark as that with which he was acquainted. Thus, for example, a mark may represent a game of football; another mark may show players in a different dress, and in very different positions, and yet the idea conveyed by each might be simply a game of football. It would be too much to expect that persons dealing with trade marked goods, and relying, as they frequently do, upon marks, should be able to remember the exact details of the marks upon the goods with which they are in the habit of dealing. Marks are remembered rather by

general impressions or by some significant detail than by any photographic recollection of the whole. Moreover, variations in detail might well be supposed by customers to have been made by the owners of the trade mark they are already acquainted with for reasons of their own.”

(emphasis supplied)

21.6. Having reproduced the above passage from Kerly, the Supreme Court, in Parle Products case¹⁸, went on to hold : (SCC p. 622, para 9)

“9. It is, therefore, clear that in order to come to the conclusion whether one mark is deceptively similar to another, the broad and essential features of the two are to be considered. They should not be placed side by side to find out if there are any differences in the design and if so, whether they are of such character as to prevent one design from being mistaken for the other. It would be enough if the impugned mark bears such an overall similarity to the registered mark as would be likely to mislead a person usually dealing with one to accept the other if offered to him....”

(emphasis supplied)

In view of the express words employed by Section 29(2) of the Trade Marks Act, it is clear that the propensity of the average consumer to accept the defendant's product, if offered to him, owing to the similarity between the plaintiff's and defendant's marks, cited as a definitive test in Parle Products¹⁸ may as much be because she or he, confuses the defendant's mark for the plaintiff's, as because, owing to the similarity between the two marks, he believes the existence of an association between them. A fascinating study on the contours of

confusion is to be found in *Shree Nath Heritage case*¹⁰.

21.7. The opening sentence in the above para from *Parle Products*¹⁸ introduces a further concept of “idea infringement”. If, in other words, the idea conveyed by one mark is copied by another, it amounts to idea infringement which, too, is prohibited as likely to result in confusion in the mind of the consumer of average intelligence and imperfect recollection, as the above passage from *Parle Products*¹⁸ holds. The logic is apparent. The human mind captures ideas conveyed by images, or words, and often it is the idea which remains impressed on the mind. The conveying of the same idea by two marks, therefore, clearly results in likelihood of the human mind — especially if average in intellect and imperfect in recollection — confusing one for the other, or at least presuming an association between them. Instances where this Court has held “idea infringement” to exist are to be found in *Holyland Mktg. (P) Ltd. v. Vijay Pal Vineet Kumar & Co.*¹⁹; *Hari Chand Shri Gopal v. Evergreen International*²⁰; *Bulgari SPA v. Notandas GEMS (P) Ltd.*²¹ and *Pernod Ricard India (P) Ltd. v. A.B. Sugars Ltd.*²²

21.8. The House of Lords in *Reckitt & Colman Products Ltd. v. Borden Inc.*²³, also postulated the “trinity” or “triple identity test”, which deems infringement to exist where identical (or deceptively similar) marks are used for more or less identical products, having a common market. Similarity of marks, identity/similarity of the goods on which the marks are used, and

commonality of market, therefore, predicate a legitimate inference of infringement.

39. Further, Hon'ble High Court of Delhi in ***FDC Limited v. Faraway Foods Pvt. Ltd*** 2021 SCC OnLine Del 1539, has observed as follows:

75. From the aforementioned decisions, the following clear principles emerge:

*(i) Passing off, though an action based on deceit, does not require the establishment of fraud as a necessary element to sustain the action. Imitation or adoption, by the defendant, of the plaintiffs trade mark, in such manner as to cause confusion or deception in the mind of prospective customers, is sufficient.*²³

*(ii) The principles for grant of injunction, in passing off actions, are the same as those which govern the grant of injunctions in other cases, i.e. the existence of a prima facie case, the balance of convenience, and the likelihood of irreparable loss in issuing to the plaintiff, were injunction not to be granted.*³³

*(iii) Proof of actual damage is not necessary, to establish passing off. However, proof of misrepresentation is necessary, even if intent to misrepresent is not approved. The question of intent may, nevertheless, be relevant, when it comes to the ultimate relief to be granted to the plaintiff.*³⁴

(iv) Passing off may be alleged by a claimant who owns sufficient proprietary interest in the goodwill associated with the product, which is

really likely to be damaged by the alleged misrepresentation.³⁵

(v) Grant of injunction, in cases where passing off is found to exist, is intended to serve two purposes, the first being preservation of the reputation of the plaintiff, and the second, safeguarding of the public against goods which are “passed off as those of the plaintiff.”³⁶

(vi) The ingredients/indicia of the tort of passing off are the following:

(a) There must be sale, by the defendant, of goods/services in a manner which is likely to deceive the public into thinking that the goods/services are those of the plaintiff.

(b) The plaintiff is not required to prove long user to prove established reputation. The existence, or otherwise, of reputation, would depend upon the volume of the plaintiff's sales and the extent of its advertisement.

(c) The plaintiff is required to establish

(i) misrepresentation by the defendant to the public, though not necessarily mala fide,

(ii) likelihood of confusion in the minds of the public (the public being the potential customers/users of the product) that the goods of the defendant are those of the plaintiff, applying the test of a person of “imperfect recollection and ordinary memory”,

(iii) loss, or likelihood of loss, and

(iv) goodwill of the plaintiff, as a prior user.³⁷ Elsewhere, the five elements of passing off have been identified as (a) misrepresentation,

*(b) made by the trader in the course of trade, (c) to prospective customers or ultimate consumers of the goods or services supplied by him, (d) calculated to injure the business or goodwill of another (i.e. that such injury is reasonably foreseeable) and (e) actual damage, or the possibility of actual damage, to the business or goodwill of the plaintiff.*³⁸

(vii) In cases of alleged passing off, the Court, while examining the likelihood of causing confusion, is required to consider, in conjunction, inter alia,

(a) the nature of the market,

(b) the class of customers dealing in the product,

(c) the extent of reputation possessed by the plaintiff,

(d) the trade channels through which the product is made available to the customer and

*(e) the existence of connection in the course of trade.*³⁹ *The Supreme Court has also held that, in passing off action on the basis of unregistered trade marks, the Court is required to assess the likelihood of deception or confusion by examining*

(i) the nature of the marks, i.e. whether there were demands/label marks/composite marks,

(ii) the degree of similarity between the competing marks,

(iii) the nature of the goods,

(iv) the similarity in nature, character and performance of the goods of the rival parties,

(v) the class of purchasers, and the degree of care which they would be expected to exercise while purchasing the goods, and

*(vi) the mode of purchasing the goods and placing orders.*⁴⁰

*(viii) That the defendant is not producing the goods manufactured by the plaintiff may not be relevant, where the plaintiff's mark is found to have sufficient reputation.*⁴¹

*(ix) Courts are required to be doubly vigilant where passing off is alleged in respect of pharmaceutical products, in view of the possibility of adverse effects resulting from administration of a wrong drug. For the said reason, the degree of proof is also lower, in the case of alleged passing of pharmaceutical products.*⁴²

*(x) Passing off differs from infringement. Passing off is based on the goodwill that the trader has in his name, whereas infringement is based on the trader's proprietary right in the name, registered in his favour.*⁴³ *Passing off is an action for deceit, involving passing off the goods of one person as those of another, whereas an action for infringement is a statutory remedy conferred on the registered proprietor of a registered trade mark for vindication of its exclusive right to use the trade mark in relation to the goods in respect of which registration has been granted.*⁴⁴ *Use of the trade mark by the defendant is not necessary for infringement, but it is a sine qua non for passing off. Once sufficient similarity, as is likely to deceive, is shown, infringement stands established. Passing off, however, may be resisted on the ground of added material, such as packing, procurement through different trade channels, etc., which would*

*distinguish the goods of the defendant from those of the plaintiff and belie the possibility of confusion or deception.*⁴⁴

(xi) On the concept of “deceptive similarity”, the following principles have emerged:

*(a) In assessing deceptive similarity, the class of the customer would purchase the product is relevant.*⁴⁵ *The look/appearance, and the sound, of the trade marks, as well as the nature of the goods, are all relevant considerations.*⁴⁶ *Surrounding circumstances are also relevant.*⁴⁶

*(b) The onus of proof is on the plaintiff who alleges passing off.*⁴⁷ *As against this, in an opposition to the registration of a trade mark, the onus to prove deceptive similarity is on the defendant who seeks non-registration, or removal of the trade mark from the register.*

*(c) “Confusion” refers to the state of mind of the customer who, on seeing the mark, thinks that it differs from the mark on the goods which he has previously bought, but is doubtful whether that impression is not due imperfect recollection.*⁴⁸ *The question is one of first impression.*⁴⁹

*(d) This is especially true in the matter of phonetic similarity. A meticulous comparison of the words, syllable by syllable, is to be avoided. The possibility of careless pronunciation and speech, both on the part of the buyer walking into the shop, as well as the shop assistant, is also required to be factored into consideration.*⁵⁰

*(e) The matter has to be examined from the point of view of a person of average intelligence and imperfect recollection. It has to be seen as to how such a purchaser would react to the trade mark, the association which he would form and how he would connect the trade marks with the goods he would be purchasing.*⁵¹

*(f) The Pianotisi*²¹ *test, postulated over a century ago, has repeatedly been endorsed by the Supreme Court, as the definitive test to be adopted while comparing rival trade marks. According to this test, the Court is required to judge the rival trade marks by their look and sound, and consider*

(i) the goods to which they are to be applied,

(ii) the nature and kind of customer who would be likely to buy those goods,

(iii) all surrounding circumstances and

*(iv) the consequences which would follow if each of the marks is used in the normal way as the trade mark for the goods of the respective owners.*⁵²

*While doing so, the common part of the words forming the competing marks may not be decisive. The overall similarity of the composite words is required to be seen, having regard to the circumstance (if applicable) that both are on like goods of similar description.*⁵³ *The test to be applied is whether, if the two marks are used in a normal and fair manner, there is likelihood of confusion or deception.*⁵⁴

(g) The whole word/mark is to be considered.⁵⁵ An ordinary man would not split a word or name, in a trade mark, into its components, but would go by the overall structural and phonetic similarity of the marks at the nature of the goods previously purchased, or of which he has been told and which he wants to purchase.⁵⁶ It has to be examined whether the totality of the trade mark of the defendant is likely to cause deception/confusion or mistake in the minds of the persons accustomed to the existing trade mark of the plaintiff.⁵⁷

(h) The resemblance may be phonetic, visual or in the basic idea represented by the plaintiff's mark.⁵⁸ The Court is, however, required to apply both the phonetic and the visual tests.⁵⁹ At times, ocular similarity may be sufficient to find possibility of confusion/deception, even if the marks are visually dissimilar, though ocular similarity, by itself, may not, generally, be the decisive test.⁶⁰ Where, however, (i) in all other respects, the marks of the plaintiff and defendant are different, (ii) the word/words, in the marks, which are phonetically similar, cannot be regarded as the dominant word, or essential feature, in the marks, and (iii) the surrounding circumstances also belie any possibility of confusion, it has been held that deceptive similarity cannot be found to exist merely on the basis of phonetic similarity or even identity.⁶¹ The matter, apparently, is always one of fact. The Court would have to decide, on a comparison of the two marks, and the parts thereof which are phonetically similar, as to whether such phonetic similarity is likely, considering all other circumstances, to confuse or deceive a purchaser of average

intelligence and imperfect recollection, always bearing in mind the nature of the goods, and the degree of circumspection which would be expected of the purchasers who would purchase such goods.

(i) The Court is required to examine whether the essential features of the plaintiff's mark are to be found in the mark of the defendant. Identification of the essential features is a question of fact, left to the discretion of the Court.⁶²

(j) No objective standards are possible, regarding the degree of similarity which is likely to cause deception. It has to be seen from the viewpoint of the purchasers of the goods.⁶³

(k) The test to be applied would depend on the facts of the case. Precedents are valuable only to the extent they specify tests for application, and not on facts.⁶⁴

(l) On the issue of deceptive similarity, and especially with respect to the aspect of phonetic similarity, English cases are not of relevance. English cases are useful only to the extent they aid in understanding the essential features of trade mark law.⁶⁵ The tests for deceptive similarity, which apply in other jurisdictions, may not always apply in India.⁶⁶

(xii) That the application of the aforesaid tests, in any given case, is purely a question of fact, involving exercise of judicial discretion by the Court, and that no objective or preset standards could be stipulated in that regard, may be apparent from the fact that, applying these tests,

(a) “Sify” and “Siffy” were held to be phonetically and visually similar, with the addition of the suffix “net” after “Siffy” being found to be insufficient to tide over the similarity⁶⁷,

(b) “Gluvita” and “Glucovita” were found to be phonetically similar, with the syllable “co” in the latter name being regarded as insignificant⁶⁸,

(c) “Amritdhara” and “Lakshmandhara” were found to be deceptively similar⁶⁹, and

(d) “Sri Ambal” was found to be phonetically similar “Sri Andal”⁷⁰, but

(e) on an intricate and microscopic comparison of the competing words, it was held that “Protovit” and “Dropovit” were dissimilar, with no possibility of confusion.⁷¹

(xiii) The likelihood of disruption of the business of the defendant cannot inhibit the Court from granting relief, where the plaintiff is otherwise found entitled thereto.⁷² The object of interlocutory injunction is protection of the plaintiff against injury by violation of its rights, for which damages would not be adequate compensation even were the plaintiff to ultimately succeed in the suit. The Court is required to balance this consideration against the right of the defendant to protection from injury at being prevented from exercising its own legal rights for which, too, damages would not be an adequate compensation. The balance of convenience, in any given case, is to be asserted by balancing one consideration against the other.⁷³ In doing so, the fact of whether the defendant has yet to commence its enterprise is a

relevant consideration.⁷³ Balance of convenience”, nevertheless, would be a relevant consideration whether the scales are evenly balanced, and not where, for example, the plaintiff has extensive business over decades and the defendant is a recent entrant with no proof of established business. Acquisition of secondary meaning in the trade mark of the plaintiff, over the course of time, is also, therefore, a relevant consideration.⁷⁴

40. In light of the law discussed above, coming upon the present case in hand on merits, in order to adjudicate with respect to infringement/passing off, this court deems it appropriate to reproduce in here products of both the parties.

a) Products of Plaintiff :



b) Product of Defendant :



41. In lieu of the law discussed above, the court for the purpose of infringement of a trademark has to assess the same from a perspective of:

- a) a customer;
- b) having average intelligence and
- c) imperfect re-collection.

The court is also required to go by the overall structural and phonetic similarity of the mark and is required to apply both phonetic and visual test.

42. In the judgement FDC Limited (supra) Hon'ble High Court has also stated that there can be no objective standards regarding the degree of similarity which is likely cause deception and same has to be seen from the view point of purchaser of goods.

43. In light of the law and facts discussed above, coming upon the question as to whether the defendant herein is in infringement

of trademark of that of the plaintiff by using word “Poison” for their product, the same has to be tested from the view point of purchasers of the goods.

44. From the *visual representation* of packaging of both the products, it can be seen that same are completely dissimilar with respect to their packaging, colour combination or background.

The font, graphic as well as colours used in reference of the words by both plaintiff and defendant are different and does not contain any similarity.

45. Furthermore, while the product of plaintiff clearly and visibly depict words “*Dior*” at the bottom of the packaging in order to announce that the product belongs to company Dior, on the other hand, defendant specifically and visibly mentioned the word “*St. John*” at the top of the packaging reflecting/clarifying that the product belongs to company St. John.

46. With respect to *phonetic similarity* of word “*Poison*”, it has to be seen that while plaintiff herein is selling his product by name of word “Poison”, “Pure Poison” and “Hypnotic Poison” the defendant on the other hand has named his product as “Poison Pot”.

47. As discussed above, what has to be seen by the court is whether the similarity as alleged, is going to cause confusion in mind of average customer.

48. To my mind, the same has to be answered in negative. Admittedly both “Dior” and “St. Jhon” has completely different customer base. The product which is stated be sold by both companies is “perfumery Goods”. While admittedly as per the cross examination of plaintiff witness, cost of one product of “Dior” perfume ranges between Rs.10,000/- to Rs.20,000/-, the cost of product of defendant company “St. Jhon” ranges between Rs.700/- to Rs.800/- (as per the invoices so placed on record).

As such, it cannot, by any stretch of imagination, can be believed that product “DIOR” is being purchased by illiterate/average customer with limited recollection or that there is even likelihood of confusion in mind of customer while differentiating between the two.

49. Considering the law and facts discussed above that both the products have completely different visual representation and further both the products have completely separate consumer base, it cannot be said that the defendant herein is in passing off/ infringement of trademark of that of the plaintiff, as alleged.

In view of the same, both the abovesaid issues are decided in favour of defendant and against the plaintiff.

ISSUE NO. III & IV:

- iii. Whether the plaintiff is entitled to any damages? If so to what amount?**
- iv. Whether the plaintiff is entitled to rendition of account?**

50. Since both the abovesaid issues require common discussion of law and fact, both the said issues are dealt with together. Burden to prove the both the said issues lies upon the plaintiff.

51. Although in light of the discussion made above that the defendant cannot be said to be in passing off or infringement of trademark/wordmark of word “Poison”, the plaintiff herein is not entitled for any relief of damages or rendition of account as sought, however still this court deems it relevant to reproduce in here the relevant portion of cross examination of plaintiff witness with regards to the sales etc. of the plaintiff herein :

“I cannot tell any reason for which, the sale turnover and income of the plaintiff as mentioned in para no. 10 of my affidavit, were restricted to the year 2000 and 2001. These sale figures were extracted from internet. The averments contained in para 11, 12, 13, 14, 15 are based on information extracted through internet and not on my personal knowledge. I am not aware about perfumes under the name JULES, ONE SYMBOLIC FRANC, HIGHER, ADDICT. I do not remember if I have ever seen the perfumes under the aforesaid marks. I do not remember if the plaintiff manufactures its products in its own factories or gets it manufactured from other third party manufacturers, I cannot tell the sale figures of the plaintiff for the years 2012, 2013, 2014, 2015, 2016, 2017, 2018 however, the same would be available on the internet.”

52. The bare perusal of the cross examination of the witness goes to show her complete unawareness and lack of knowledge qua the plaintiff company. Apart from vague testimony, there is nothing cogent placed on record by the plaintiff in order to show the goodwill of the plaintiff company, the effect on sales of the plaintiff company due to alleged violation of their trademark by the defendant or the total damage suffered by the plaintiff company due to the same.

In light of the observations made above, both the abovesaid issues are decided against the plaintiff and in favour of defendants.

ISSUE NO. IX:

Whether the plaintiff is not entitled on account of delay, laches and acquiescence?

53. Further with respect to issue no. ix so framed on 19.08.2014, burden to prove the same lies upon the defendant. Since no arguments with respect to the same has been led by defendants nor any evidence is produced in order to prove the same, the abovesaid issue is decided in favour of the plaintiff and against the defendant.

ISSUE NO. VIII:

Whether the defendant is not liable to be enjoined on the objections taken in written statement?

54. Burden to prove the said issue lies upon the defendant. In light of the discussion made in issue no. ii and vii as made above, that the defendant is not in infringement or passing off of trademark “Poison”, as alleged by the plaintiff, the present issue is decided in favour of defendant and against the defendant.

ISSUE NO. X:

Relief

57. In view of the law and facts discussed above, the suit of the plaintiff stands dismissed.

58. Before parting with the present judgement in hand, this court cannot turn nelson eye towards the fact that the present suit was filed way back in the year 2012 and is pending in the system from about 14 years. As discussed above, plaintiff has nowhere disclosed its legal entity and different averment qua the same is being made on each and every stage. Furthermore, the Authority so relied upon by the plaintiff to file the present suit is found to be not as per law. The entire case is filed on basis of some documents obtained from the undisclosed web site and investigation report, which was not made part of present suit. The AR was completely unaware as to about the plaintiff on whose behalf the present case was filed or the facts of the present case.

59. To carry out litigation in such manner, not only clog the Judicial System but also result in wastage of Judicial time and harassment of defendant. The plaintiff, who approach court to

seek justice is expected to carry certain burden to approach the court as per law and with all relevant material facts and circumstances of the cases. Filing of litigation in callous manner and further carrying on with same for more than a decade, to mind of this court, should not be allowed to be permitted. In view of same, plaintiff is further burdened with compensatory cost of Rs. 2 Lakhs, which shall be paid to the defendant no. 1, who is contesting the present suit for about 14 years. In this regards reliance can also be placed upon the judgment passed by Hon'ble Apex Court in ***Maria Margarida Sequeira Fernandes v. Erasmo Jack de Sequeira***, (2012) 5 SCC 370, wherein it was observed as under

82. This Court in a recent judgment in Ramrameshwari Devi [(2011) 8 SCC 249 : (2011) 3 SCC (Cri) 481 : (2011) 4 SCC (Civ) 1] aptly observed at p. 266, para 43 that unless wrongdoers are denied profit from frivolous litigation, it would be difficult to prevent it. In order to curb uncalled for and frivolous litigation, the courts have to ensure that there is no incentive or motive for uncalled for litigation. It is a matter of common experience that the court's otherwise scarce time is consumed or more appropriately, wasted in a large number of uncalled for cases. In this very judgment, the Court provided that this problem can be solved or at least can be minimised if exemplary costs is imposed for instituting frivolous litigation. The Court observed at pp. 267-68, para 58 that imposition of actual, realistic or proper costs and/or ordering prosecution in appropriate cases would go a long way in controlling the tendency of introducing false pleadings and forged and fabricated documents by the litigants. Imposition of heavy costs would also control unnecessary adjournments by the parties. In appropriate cases, the courts may consider ordering prosecution otherwise it may not be possible to maintain purity and sanctity of judicial proceedings.

60. In view of same, suit of the plaintiff stands dismissed, subject to cost of Rs. 2 Lakhs, which shall be paid by him to the defendant no. 1. Decree sheet be prepared accordingly. File be consigned to record room after due compliance.

Pending applications, if any, stands disposed off accordingly. Interim order, if any, stands vacated.

**Announced in the open Court
on 12th of May, 2026**

**(Anubhav Jain)
District Judge-05 (New Delhi District)
Patiala House Courts, New Delhi**

Note: This Judgment contains 52 pages and each page has been signed by me.