



2026:DHC:9381



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**# **CNR No. DLHC010625842024**+ **CS(COMM) 808/2024, I.A. 39797/2024 & I.A. 11217/2025**Date of Decision: **13.10.2026****IN THE MATTER OF:**

KIEHBERG GMBH
INDUSTRIESTRAßE 4,
56581 KURTSCHIED, DEUTSCHLAND PLAINTIFF NO. 1

SYNDICATE INNOVATIONS INTERNATIONAL LIMITED
G-365, PREET VIHAR
DELHI - 110092 PLAINTIFF NO. 2

(Through: Mr. Prithvi Singh, Mr. Prithvi Gulati and Mr. Ritwik Marwaha, Advs.)

Versus

CAPITAL AIRGUN MANUFACTURERS
PRIVATE LIMITED
C- 188, NIARALA NAGAR NA,
LUCKNOW,
UTTAR PRADESH – 226020 DEFENDANT

(Through: None.)

CORAM:
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

J U D G E M E N T**PURUSHAINDRA KUMAR KAURAV, J. (ORAL)**

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1. The present suit has been filed for the following reliefs:

“(a) An order for a permanent injunction restraining the Defendant, its Directors, employees, servants, agents and all others in active concert with it from manufacturing, selling, offering for sale, advertising, directly or indirectly dealing in products under the mark " KIEHBERG' or any other trade mark and/or which is deceptively similar to the Plaintiff's trade mark 'KIEHBERG' that would amount to passing off of the Defendant's products as those of the Plaintiffs.

(b) An order for rendition of accounts of profits directly or indirectly earned by the Defendant from the illegal activities and wrongful conduct and a decree for the amount so found due to be passed in favour of the Plaintiff.

(c) An order for delivery up to the Plaintiffs for destruction/erasure, all material bearing the mark KIEHBERG in the Defendant's possession as well as in the possession of representatives or affiliates, including but not limited to products, printing material, promotional material, brochures, pamphlets, advertising material, stationery articles, letter-heads, business cards, stickers, cartons or other articles bearing the said mark.

(d) A sum of Rs. 2,00,01,000/- for a decree of damages as valued for the purposes of this suit towards loss of sales, reputation and goodwill of the Plaintiff's trademarks caused by the activities of the Defendant;

(e) An order as to the costs of the proceedings; and (f) Any further order as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.”

2. Learned counsel appearing for the plaintiffs states that the plaintiffs do not press the monetary reliefs of rendition of accounts and damages claimed in prayers (b) and (d) of the plaint. He submits that the suit deserves to be summarily decreed in exercise of the power under Order XIII-A Rules 3 and 6(1)(a) read with Order VIII Rule 10 and Section 151 of the Code of Civil Procedure, 1908 (“CPC”), as applicable to commercial disputes. He submits that the defendant’s right to file the written statement was closed by the learned Joint Registrar *vide* order dated 06.02.2025, and that the defendant was thereafter proceeded *ex parte vide* order dated 05.05.2025.

3. The proceedings shows that the suit was first listed on 19.09.2024, when this Court granted an *ex parte ad interim* injunction in favour of the

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plaintiffs. Summons was served upon the defendant on 15.10.2024. The defendant has, however, chosen not to appear. Since the defendant, despite service, has neither filed its written statement nor defended the action, there is no real prospect of the defendant successfully defending the claim. In view of the aforesaid, the matter is being decided.

4. The facts of the case indicate that plaintiff no. 1 is a company registered and existing in Germany, incorporated on 06.12.2011. Plaintiff no. 2 is a company incorporated on 29.11.2011 under the Indian Companies Act, 1956. The plaintiffs are among the largest distributors, stockists and dealers of high-quality sports and outdoor shooting equipment. The plaintiffs conceptualised the trademark KIEHBERG in 2011 and have used the KIEHBERG trademarks in India since 21.03.2012. The plaintiffs jointly promote KIEHBERG in India. They focus on providing quality shooting equipment and accessories from Germany and other European countries. The plaintiffs claim that, on account of their efforts, the trademark has become immensely popular among traders and consumers, who exclusively associate it with the plaintiffs and their products. They claim that the trademark is renowned and respected in India.

5. Plaintiff no. 1, through plaintiff no. 2, has used the trademark/trade name KIEHBERG in India since 21.03.2012. Its applications for the mark, being application nos. 6490574 to 6490577 dated 21.06.2024, claim use since 21.03.2012 and are pending before the Trade Marks Registry. Plaintiff no. 2 began with gun care products and is now one of the prominent importers, distributors and manufacturers of shooting equipment in India. Its products include air rifles, air pistols, pellets and shooting accessories.

6. Plaintiff no. 2 holds exclusive Indian distributorships for well-known

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European manufacturers. It is also one of the 19 companies selected to manufacture small arms and ammunition at the Defence Corridor, Aligarh. According to the Chartered Accountant's certificate, the sales turnover from Financial Year 2012-13 to 2023-24 is approximately INR 5.45 billion, and the promotional expenditure is approximately INR 173 million. Plaintiff No. 2 has also operated the website www.kiehberg.in since 2012.

7. The plaintiffs, however, contend that the defendant filed Application No. 6103985 for the mark KIEHBERG in Class 13 with *mala fide* intent. The application was filed on 11.09.2023 on a "proposed to be used" basis and proceeded to registration on 26.05.2024. The plaintiffs came to know of it in July 2024, and have also filed a petition seeking its cancellation, being C.O. (COMM.IPD-TM) 187/2024. The plaintiffs further state that the defendant is their trade competitor, and that one of its directors is related to Sial Manufacturers Private Limited. That company had intervened, through CM APPL. 41728/2022, in W.P.(C) 10143/2022, which plaintiff No. 2 had filed before this Court. Those proceedings concerned shipments imported by plaintiff No. 2, which included products bearing the KIEHBERG trademark.

8. The plaintiffs then made enquiries among members of the trade to find out whether the defendant's products bearing the mark KIEHBERG were available in the market, and found that they were yet to be launched. During these enquiries, the plaintiffs came across the website www.camstarsports.com, which carries the defendant's registered office address. Its terms and conditions state that the content and products on the website are provided by the defendant. The website shows that the defendant deals in air rifles, air pistols and related accessories, although it does not yet list any product under the mark KIEHBERG. The plaintiffs, therefore,

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apprehend that the defendant is about to launch identical goods under the identical mark, and have filed the present suit as a *quia timet* action.

9. Learned counsel places reliance on the decisions in ***S. Syed Mohideen v. P. Sulochana Bai***¹, ***N.R. Dongre and Ors. v. Whirlpool Corporation and Anr.***², ***Laxmikant V. Patel v. Chetanbhai Shah and Anr.***³, ***Milmet Oftho Industries and Ors. v. Allergan Inc.***⁴, ***B.K. Engineering Co. v. UBHI Enterprises (Regd.) & Anr.***⁵, ***Su-Kam Power Systems Ltd. v. Kunwer Sachdev and Anr.***⁶, ***Satya Infrastructure Ltd. & Ors. v. Satya Infra & Estates Pvt. Ltd.***⁷, and ***Merck Sharp & Dohme Corporation & Anr. v. Aprica Pharmaceuticals Pvt. Ltd.***⁸

10. I have heard learned counsel for the plaintiffs and perused the record.

11. The plaint is verified and supported by the affidavit and statement of truth of the constituted attorney of the plaintiffs. The averments in the plaint, and the documents filed with it, remain unrebutted. This Court is, however, conscious that the failure of a defendant to file a written statement does not by itself entitle the plaintiff to a decree. In ***Balraj Taneja v. Sunil Madan***⁹, the Supreme Court cautioned that the court should be a little cautious in proceeding under Order 8 Rule 10 CPC. The same view has been reiterated in ***Asma Lateef v. Shabbir Ahmad***¹⁰, which holds that the provision is permissive and not mandatory. The Court must therefore be satisfied, on the

¹(2016) 2 SCC 683

²(1996) 5 SCC 714

³(2002) 3 SCC 65

⁴(2004) 12 SCC 624

⁵1984 SCC OnLine Del 288

⁶2019 SCC OnLine Del 10764

⁷2013 SCC OnLine Del 508

⁸2017 SCC OnLine Del 11695

⁹(1999) 8 SCC 396

¹⁰(2024) 4 SCC 696

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basis of the pleadings and documents, that the plaintiffs have made out their case.

12. Order XIII-A of the CPC, as applicable to commercial disputes, permits the Court to give a summary judgment where the defendant has no real prospect of successfully defending the claim and there is no other compelling reason why the claim should not be disposed of before recording oral evidence. In **Su-Kam Power Systems Ltd.** (supra), this Court held as under:

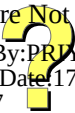
“90. To reiterate, the intent behind incorporating the summary judgment procedure in the Commercial Court Act, 2015 is to ensure disposal of commercial disputes in a time-bound manner. In fact, the applicability of Order XIII A, CPC to commercial disputes, demonstrates that the trial is no longer the default procedure/norm.

91. Rule 3 of Order XIII A, CPC, as applicable to commercial disputes, empowers the Court to grant a summary judgement against the defendant where the Court considers that the defendant has no real prospects of successfully defending the claim and there is no other compelling reason why the claim should not be disposed of before recording of oral evidence. The expression “real” directs the Court to examine whether there is a “realistic” as opposed to “fanciful” prospects of success. ...”

13. Similarly, in **Satya Infrastructure Ltd.** (supra), this Court observed that no useful purpose is served by directing the plaintiff to lead *ex parte* evidence in such cases:

“5. I am of the opinion that no purpose will be served in such cases by directing the plaintiffs to lead ex parte evidence in the form of affidavit by way of examination-in chief and which invariably is a repetition of the contents of the plaint. The plaint otherwise, as per the amended CPC, besides being verified, is also supported by affidavits of the plaintiffs. ...”

14. Having regard to the pleadings and the material on record, the questions which fall for consideration are whether the plaintiffs are the prior users of the trademark KIEHBERG with goodwill in it, whether the defendant’s registration bars the present action for passing off, and whether





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the threat posed by the defendant is real and imminent so as to justify a *quia timet* injunction.

15. The material placed on record clearly shows that the plaintiffs were the prior users and lawful owners of the KIEHBERG trademark, both in India and abroad. The plaintiffs have used the trademark continuously and without interruption since 21.03.2012. This is supported by the Chartered Accountant's certificate of sales, sample invoices, website extracts with WHOIS records, social media extracts and third-party articles filed on record. The documentary evidence shows that the plaintiffs are the prior users of the mark and have the benefit of its goodwill and reputation. The defendant's application, on the other hand, was filed only on 11.09.2023, and on a "proposed to be used" basis. It was filed more than eleven years after the plaintiffs began using the mark in India.

16. The Supreme Court in **MilmetOftho Industries** (supra) held that, as between rival claimants, the ultimate test should be, who is first in the market. The plaintiffs are clearly first in the market.

17. The fact that the defendant holds a registration for the mark KIEHBERG does not defeat the plaintiffs' claim. Section 27(2) of the Trade Marks Act, 1999 expressly preserves the right of action for passing off. Section 34 provides that nothing in the Act entitles a registered proprietor to interfere with the rights of a prior user. In **S. Syed Mohideen** (supra), the Supreme Court, after reading Sections 27, 28 and 34 of the Act together, held as under:

"30.4. ... Thus, the scheme of the Act is such where rights of prior user are recognised superior than that of the registration and even the registered proprietor cannot disturb/interfere with the rights of prior user. The overall effect of collective reading of the provisions of the Act is that the action for passing off which is premised on the rights of prior user generating a

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goodwill shall be unaffected by any registration provided under the Act. ...”

18. In **N.R. Dongre** (supra), the defendants had obtained registration of the mark WHIRLPOOL on a proposed-user basis. The Supreme Court upheld the injunction granted in favour of the prior user in a passing off action, observing in paragraph 20 that an injunction in a passing off action, which is based on a common law right distinct from the statutory right, can be granted even against the owner of a registered trade mark in an appropriate case. Following these decisions, this Court in **Vinita Gupta v. Amit Arora**¹¹, held that the defendant’s registration is irrelevant in an action for passing off. The present case is squarely covered by this line of authority. The defendant’s registration, obtained on a “proposed to be used” basis long after the plaintiffs’ adoption and use, gives the defendant no right to pass off its goods as those of the plaintiffs.

19. The plaintiffs have stated that the defendant’s goods under the mark KIEHBERG were not in the market when the suit was filed. This Court is mindful that a mere application for registration of a trade mark does not, by itself, give rise to a cause of action. In **Deepak Kumar Khemka v. Yogesh Kumar Jaiswal & Ors.**¹², a Division Bench of this Court held so. The Division Bench, however, also clarified in paragraph 21 that “*if there is material to indicate that, apart from merely applying for registration of the mark, the defendant also intends to use the mark, whether before or after its registration, it would certainly suffice to maintain a quia timet action.*”

20. In the present case, the material on record goes well beyond the mere filing of an application. The defendant has obtained registration for the

¹¹2022 SCC OnLine Del 3249

¹²RFA(COMM) 381/2025, decided on 28.07.2025



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identical mark KIEHBERG in Class 13 on a “proposed to be used” basis, which itself shows its intention to use the mark. It is also already selling air rifles, air pistols and accessories through its website www.camstarsports.com, which are the very goods the plaintiffs deal in under the mark KIEHBERG. KIEHBERG is not a common or descriptive word. It is the corporate name of plaintiff no.1, and its adoption by a trader in identical goods cannot be a mere coincidence.

21. It is further seen that one of the defendant’s directors is related to Sial Manufacturers Private Limited. That company was an intervener in W.P.(C) 10143/2022, which plaintiff No. 2 had filed and which concerned shipments that included KIEHBERG products. This shows that the defendant was aware of the plaintiffs’ mark. Despite service of summons and the injunction order dated 19.09.2024, the defendant has not entered appearance to explain why it adopted the mark, or to state that it does not intend to use it.

22. Taken together, these circumstances show that the plaintiffs’ apprehension is real and imminent. The law does not require a prior user to wait until the infringing goods reach the market. In **Laxmikant V. Patel** (supra), the Supreme Court held as under:

“10. ... The law does not permit any one to carry on his business in such a way as would persuade the customers or clients in believing that the goods or services belonging to someone else are his or are associated therewith. It does not matter whether the latter person does so fraudulently or otherwise. The reasons are two. Firstly, honesty and fair play are, and ought to be, the basic policies in the world of business. Secondly, when a person adopts or intends to adopt a name in connection with his business or services which already belongs to someone else it results in confusion and has propensity of diverting the customers and clients of someone else to himself and thereby resulting in injury.”

23. In paragraph 13 of the same decision, the Supreme Court noted that the plaintiff does not have to prove actual damage in a passing off action,

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and that the likelihood of damage is sufficient. A Division Bench of this Court in **B.K. Engineering Co.** (supra) held as under:

“46. It is not necessary to prove that any members of the public were deceived. An action will lie where it is to be expected that in due course the act of the defendant would be calculated to cause confusion in the minds of the purchasing public ...”

24. In **Merck Sharp & Dohme Corporation** (supra), this Court decreed a *quia timet* suit where the impugned product had not yet been commercially sold, but there was a reasonable apprehension of its launch. The Court relied upon **Mars Incorporated v. Kumar Krishna Mukerjee**¹³, where it was observed that *“to expect the aggrieved party to wait and watch for the opening of business or manufacturing or sale or goods under the apprehended infringement of trade mark is too much. A stitch in time always saves nine and that is what is the essence of Quia Timet Action”*.

25. In the present case, the marks are identical, the goods are identical and the class of consumers, namely the shooting sports community, is the same. If the defendant is allowed to sell goods under the mark KIEHBERG, buyers are bound to believe that the goods come from the plaintiffs or are connected with them. This would amount to misrepresentation, and the injury to the plaintiffs’ goodwill is evident. All the elements of passing off, namely goodwill, misrepresentation and likelihood of damage, are made out.

26. There is nothing on record to justify or rebut the aforesaid aspects. The defendant has no real prospect of successfully defending the claim, and there is no other compelling reason why the claim should not be disposed of without recording oral evidence.

27. It is also pertinent to note that, by a separate order of even date passed

¹³(2003) 26 PTC 60 (Del)



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in C.O. (COMM.IPD-TM) 187/2024 between the same parties, this Court has allowed the plaintiffs' petition under Section 57 of the Trade Marks Act, 1999. By that order, the Court has directed the cancellation of the defendant's Registration No. 6103985 for the mark KIEHBERG in Class 13 and its removal from the Register of Trade Marks. The defendant, therefore, has no subsisting registration for the said mark.

28. Accordingly, the suit is decreed under Order XIII-A Rules 3 and 6(1)(a) of the CPC read with Commercial Courts Act, 2015, in the following terms:

- i. A decree of permanent injunction is passed in favour of the plaintiffs and against the defendant, in terms of prayer (a) of the plaint. The defendant, its directors, employees, servants, agents and all others acting in active concert with it are restrained from manufacturing, selling, offering for sale, advertising, or directly or indirectly dealing in products under the mark KIEHBERG, or any other mark deceptively similar to the plaintiffs' trademark KIEHBERG, so as to pass off the defendant's goods as those of the plaintiffs;
 - ii. A decree of delivery up is passed in terms of prayer (c) of the plaint. The defendant shall deliver up to the plaintiffs, for destruction or erasure, all material bearing the mark KIEHBERG in its possession or in the possession of its representatives or affiliates, if any;
 - iii. Prayers (b) and (d) of the plaint are dismissed as not pressed.
29. Accordingly, the suit stands decreed in the aforesaid terms.
30. The Registry is directed to draw up the decree sheet.

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31. The civil suit, along with the pending applications, stands disposed of.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

OCTOBER 13, 2026/p/SA

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