$~19

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

\# **CNR No. DLHC010774392025**

\+ CS(COMM) 1087/2025, I.A. 25149/2025

MODI-MUNDIPHARMA PVT. LTD. .....Plaintiff

Through: Ms. Prachi Aggarwal and Ms. Medha Singh, Advocates.

versus

ARLAK BIOTECH PRIVATE LIMITED & ANR. .....Defendants

Through:

CORAM:
HON'BLE MR. JUSTICE VIKAS MAHAJAN

O R D E R

% 04.11.2026

I.A. 30624/2026 ***(by plaintiff under Order XIII-A read with Order VIII Rule 10 read with Section 151 CPC, 1908)***

1. The present suit has been filed by the plaintiff praying for a decree of permanent injunction restraining the infringement of plaintiff's trade marks, copyright, dilution, tarnishment, passing off, rendition of accounts, damages, etc.

2. The suit has been filed by the plaintiff against the defendants in respect of nitroglycerin-controlled release tablets being marketed and manufactured under the impugned mark "Z-CONTIN".

3. The case set out in the plaint is that the plaintiff is the registered proprietor of the mark "NITROCONTIN"in Class 5 and holds more than 80 registrations in the same class for pharmaceutical products bearing "CONTIN"as acommon feature (hereinafter referred to as "CONTIN series

This is a digitally signed order.
The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above.
The Order is downloaded from the DHC Server on 10/11/2026 at 02:06:35

of trademarks"). Some of the registrations which have been obtained by the plaintiff have been given in paragraph 7 of the plaint and the same are also set out hereinbelow:

S. No	Trademark	Reg. No.	Date of Application
1.	PHYLLOCONTIN	387773	18.03.1982
2.	METOCONTIN	515540	23.08.1989
3.	NITROCONTIN	518598	19.10.1989
4.	UNICONTIN	412095	19.10.1983
5.	CONTINUS	412096	19.10.1983
6.	CONTIN	518594	19.10.1989

4. Likewise, it has also been averred in paragraph 9 of the plaint that the plaintiff holds the registration of the mark "NITROCONTIN" in Hindi language and holds registration of the trade dress "NITROCONTIN® 2.6" and "NITROCONTIN® 6.4". The relevant extract from paragraph 9 has been set out hereinbelow:

Trade mark	Registration No.	Date of Application	User Details	Goods and Service Details
नाईट्रोकॉन्टिन NITROCONTIN	1662026	07.03.2008	01.02.1993	pharmaceutical veterinary and sanitary substances; infants" and invalids foods; plasters, material for banding, material for stopping teeth, dental wax; disinfectants; preparations for

This is a digitally signed order.
The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above.
The Order is downloaded from the DHC Server on 10/11/2026 at 02:06:35

				killing weeds and destroying vermin
 NITROCONTIN 6.4 WITH DEVICE	1687664	15.05.2008	13.04.1993	medicinal and pharmaceuticals preparations falling in class 05
 NITROCONTIN WITH DEVICE	1687665	15.05.2008	13.04.1993	medicinal and pharmaceuticals preparations falling in class 05

5. It is stated in the plaint that the aforesaid registrations in favour of the plaintiff are valid and subsisting. The art work, label and trade dress of the plaintiff's "CONTIN series of trademarks", including "NITROCONTIN" further constitutes original artistic work, in which the plaintiff is the first owner of copyright under Section 17 of the Copyright Act, 1957.

This is a digitally signed order.
The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above.
The Order is downloaded from the DHC Server on 10/11/2026 at 02:06:35

6. It is further stated that no third party holds any registration in Class 5 using "CONTIN" as a suffix.

7. It is stated that the plaintiff's series of marks having the dominant part "CONTIN" have acquired an impeccable goodwill and reputation which can be gauged from the turnover of the plaintiff, which has been detailed in paragraphs 13 and 16 of the plaint, and has been extracted hereinbelow:

Financial Year	Total domestic sales (in Rupees) of products bearing 'CONTIN' series of marks	Total export sales (in Rupees) of products bearing 'CONTIN' series of marks
1998	2,07,452	10,473
1999	25,02,40,082	11,729,841
2000	29,85,90,809	16,845,050
2001	34,58,74,317	25,913,295
2002	41,70,51,810	30,242,404
2003	48,66,44,516	43,253,186
2004	56,36,26,053	41,363,096
2005	65,15,32,403	47,555,780
2006	79,82,40,312	41,395,083
2007	83,07,30,262	43,274,059
2008	88,67,97,293	47,221,881
2009	95,00,83,073	55,319,510
2010	84,21,44,733	63,359,456
2011	95,10,12,105	78,531,164
2012	98,85,97,810	5,19,45,631
2013	1,05,65,26,501	5,22,54,366
2014	1,13,18,40,602	5,06,66,249
2015	1,05,77,41,655	5,95,23,233
2016	1,12,08,74,979	5,43,08,841
2017	1,13,18,31,582	6,51,39,975
2018	1,13,83,20,502	6,69,18,153

This is a digitally signed order.
The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above.
The Order is downloaded from the DHC Server on 10/11/2026 at 02:06:35

2019	1,15,88,81,939	8,99,19,709
2020	1,22,29,31,167	9,32,60,488
2021	1,30,32,36,213	6,99,64,679
2022	1,16,88, 55, 147	6,15,35,922
2023	1,33,39,30,035	7,17,18,192
2024	1,37,72,37,105	7,64,53,295

Period	Total Sales figures (In Rupees) for NITROCONTIN
1995	1,01,26,033
1996	2,02,43,202
1997	3,17,57,176
1998	4,43,79,339
1999	5,69,14,335
2000	7,71,78,819
2001	9,38,63,035
2002	11,89,78,804
2003	14,93,12,444
2004	18,90,80,763
2005	23,16,81,702
2006	25,84,23,453
2007	29,58,94,026
2008	33,26,89,085
2009	36,62,69,161
2010	34,71,81,581
2011	42,51,09,238
2012	45,34,08,577
2013	49,85,39,662
2014	56,09,69,874
2015	52,09,93,020
2016	60,87,85,123
2017	66,58,58,700
2018	67,94,59,223
2019	71,32,39,691
2020	81,88,07,765
2021	82,84,30,512
2022	79,43,21,110
2023	90,31,27,035
2024	95,81,72,246

8. It is submitted that the plaintiff has also invested huge sums of money and efforts in relation to the promotional activities and publicity concerning

This is a digitally signed order.
The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above.
The Order is downloaded from the DHC Server on 10/11/2026 at 02:06:35

their products sold under the "CONTIN series of trademarks". The advertisement and promotional expenses have been given in the form of a tabulated chart in paragraphs 14 and 17 of the plaint, which have been set out hereinbelow:

Financial Year	Total expenses incurred on advertisement and promotion (in Rupees) for products under the CONTIN series of trademarks in India	Total expenses incurred on advertisement and promotion (in Rupees) for products under the CONTIN series of trademarks for export
April–Dec 1998	7819863	780557.5
1999	1,83,15,261	5,53,752
2000	1,59,96,127	6,96,959
2001	2,57,41,116	6,56,001
2002	3,87,29,118	3,05,501
2003	5,16,36,544	8,33,991
2004	5,60,13,438	31,89,955
2005	6,82,65,419	12,77,982
2006	7,16,48,291	18,28,157
2007	7,45,01,965	23,39,020
2008	8,53,45,652	17,45,027
2009	9,69,90,374	26,39,283
2010	6,25,86,479	37,01,784
2011	6,07,94,198	27,43,255
2012	6,21,08,521	65,29,160
2013	6,92,50,372	37,73,818
2014	5,85,63,518	49,29,972
2015	6,23,57,691	17,55,849
2016	6,22,05,713	39,60,543
2017	4,24,68,902	36,01,596
2018	2,59,99,210	25,61,295
2019	4,18,92,219	33,78,658
2020	3,03,42,990	20,97,285
2021	3,33,73,103	8,04,837
2022	3,38,89,503	6,16,344
2023	4,18,29,469	31,22,030
2024	3,72,36,929	14,53,220

This is a digitally signed order.
The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above.
The Order is downloaded from the DHC Server on 10/11/2026 at 02:06:35

Period	Total expenses incurred on advertisement and promotion (in Rupees) for NITROCONTIN® product in India
1998	1,00,468
1999	1,79,934
2000	12,16,344
2001	27,80,463
2002	37,71,060
2003	61,09,156
2004	78,35,213
2005	97,87,565
2006	90,53,656
2007	91,47,863
2008	97,15,088
2009	1,11,92,103
2010	82,83,542
2011	89,35,541
2012	1,26,42,192
2013	1,52,62,429
2014	1,67,71,490
2015	1,79,77,538
2016	2,04,27,445
2017	1,74,61,022
2018	1,60,19,399
2019	2,43,27,269
2020	1,63,35,268
2021	2,10,97,348
2022	2,15,08,604
2023	2,84,74,300
2024	2,36,13,832

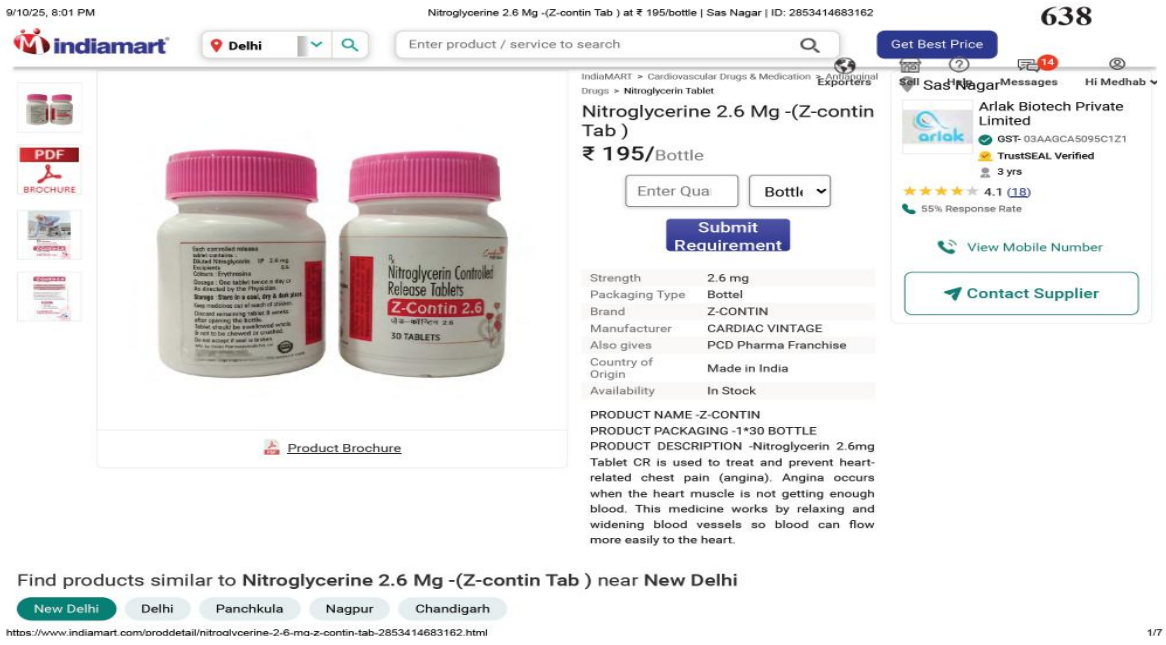
9. Ms. Prachi Aggarwal, learned counsel appearing for the plaintiff, submits that the plaintiff has been vigilant in enforcing its rights in the "CONTIN series of trademarks" and number of orders have been passed in

This is a digitally signed order.
The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above.
The Order is downloaded from the DHC Server on 10/11/2026 at 02:06:35

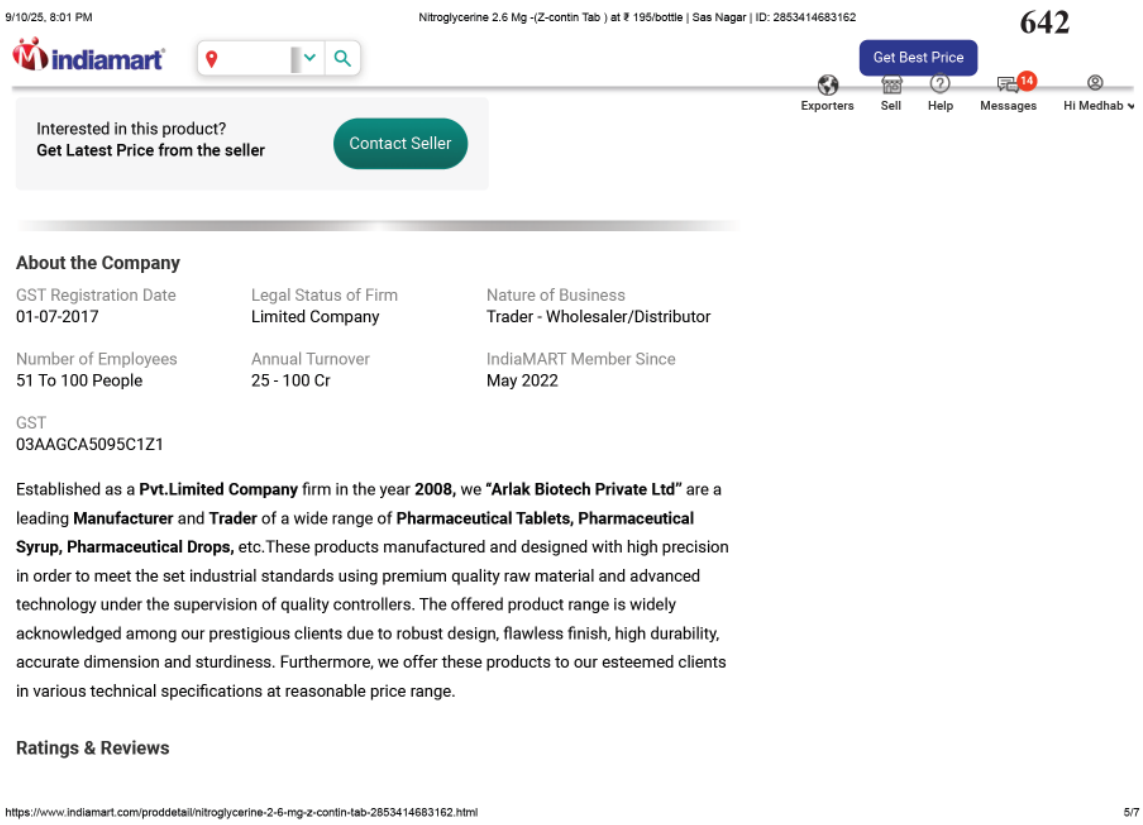
its favour restraining different defendants in various suits. The attention of the Court has been invited to paragraph 22 of the plaint, wherein the details of the orders obtained by the plaintiff in various suits have been set out.

10. It is stated in the plaint that defendant no.1, while operating through its division *Soigner Pharma*, in turn has a further division *Cardiac Vintage*, which is engaged in the business of pharmaceutical products and marketing of the infringing product "Z-CONTIN". Defendant no.2 is stated to be the manufacturer of the said product. The defendants have no association whatsoever with the plaintiff.

11. It is submitted that in May, 2025, the plaintiff came across the defendants' nitroglycerin-controlled release tablets of 2.6 mg being sold under the impugned mark "Z-CONTIN" on *IndiaMart* and in physical stores across India. In support of her submission, she has invited the attention of the Court to pages 638 to 644 of the plaintiff's documents. The relevant portion of the said pages has been set out hereinbelow for the ease of reference:



This is a digitally signed order.
The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above.
The Order is downloaded from the DHC Server on 10/11/2026 at 02:06:35



12. It is averred that upon further examination of the defendants' product, the plaintiff found that the said mark was being used for the same formulation as their NITROCONTIN® product i.e. nitroglycerin tablets 2.6mg. The defendants' product was also found bearing the phrase *"controlled release tablets"*, as used on the plaintiff's product NITROCONTIN® for identical dosages of 2.6mg and 6.4mg.

13. It is stated that defendant no.1's dishonest intention is further evident from the fact that it is marketing its nitroglycerin 2.6mg tablets under a similar combination of pink and white, as that of the plaintiff's nitroglycerin 2.6mg tablets.

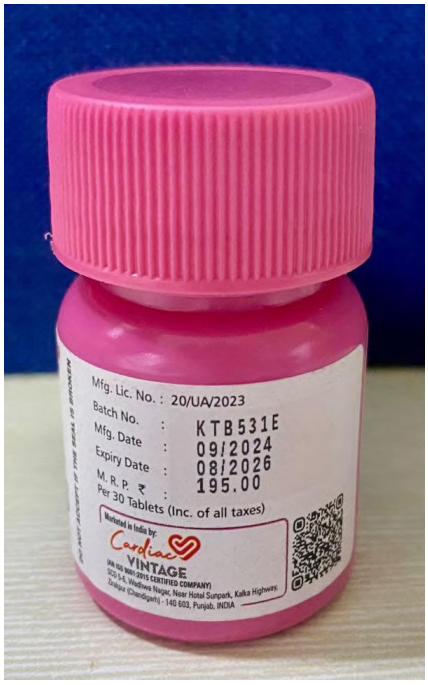
14. The attention of the Court has been invited to pages 11 to 15 of the plaintiff's documents, which contain the photographs of the parties' products bearing the mark "Z-CONTIN". An illustrative comparison of the

This is a digitally signed order.
The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above.
The Order is downloaded from the DHC Server on 10/11/2026 at 02:06:35

plaintiff's products and the defendants' products bearing the impugned mark, is set out hereinbelow for the ease of reference:

PLAINTIFF'S PRODUCTS	DEFENDANTS' PRODUCTS
 	 

This is a digitally signed order.
The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above.
The Order is downloaded from the DHC Server on 10/11/2026 at 02:06:35

15. It is stated that a cease-and-desist notice dated 19.05.2025 was issued by the plaintiff to defendant no.1 and M/s. Gnosis Pharmaceuticals Pvt. Ltd. (the then manufacturer), which did not fetch any response from defendant

This is a digitally signed order.
The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above.
The Order is downloaded from the DHC Server on 10/11/2026 at 02:06:35

no.1. However, a response was received from M/s. Gnosis Pharmaceuticals Pvt. Ltd. *vide* their reply dated 19.06.2025, whereby they undertook to cease the manufacturing of the product under the mark "Z-CONTIN" or any mark deceptively similar to the "Contin series of trademarks".Thus, in view of aforesaid undertakings, M/s. Gnosis Pharmaceuticals Pvt. Ltd. has not been arrayed as a defendant in the present suit.

16. It is also the plaintiff's case that defendant no.2, i.e., Kuresia Pharma Pvt. Ltd., who is the present manufacturer of offending products, is a habitual infringer and a suit is already going on against it, bearing CS (COMM) 444/2025 titled as *Modi Mundipharma v. Care Formulation Labs Pvt. Ltd. and Anr.*, wherein this Court, *vide* order dated 14.05.2025, has injuncted the defendants' product, including the defendant no.2 from manufacturing, selling, offering for sale, advertising or any in other manner dealing with the products bearing the plaintiff's registered mark "CONTIN"and/or any mark identical or deceptively similar thereto.

17. It is stated that under the aforesaid circumstances, plaintiff was constrained to file the present suit against the defendants.

18. Despite being duly served, the defendants have not entered appearance till date. They were proceeded against *ex parte vide* order dated 12.08.2026. Prior thereto, the right of the defendants to file their written statement was closed *vide* order dated 10.04.2026.

19. Ms. Aggarwal submits that since the defendants have already been proceeded against *ex parte* and there is no written statement of the defendants on record, therefore, all the allegations made in the plaint have remained uncontroverted. She submits that the plaintiff is pressing for relief in terms of prayer 62(i) to (v), however, as regards the damages, she would

This is a digitally signed order.
The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above.
The Order is downloaded from the DHC Server on 10/11/2026 at 02:06:35

press for a nominal damages and cost. She prays that the suit may be decreed in the said terms.

20. In support of her contention, she has invited the attention of the Court to the decision of this Court in ***DS Confectionary Products Limited v. Nirmala Gupta and Anr., 2022 SCC OnLine Del 4013***

21. In ***DS Confectionary*** (supra), the Court passed a summary judgment in terms of Order XIII-A of the Civil Procedure Code, 1908 in favour of the plaintiff and against the defendants, and under similar circumstances also awarded damages of Rs.2,00,000/-. The relevant observations of the Court are as follows:

> *"24. Adoption of the similar trade mark and trade name by the defendants is not only a violation of the rights of the plaintiff, but may also deceive general unwary consumers and appears dishonest.*
>
> *25.* ***In the present case, the defendants have chosen not to file their written statements, nor have they entered appearance in the suit to defend the same. In my opinion, therefore, this is a fit case where a Summary Judgment in terms of Order XIII-A of the Civil Procedure Code, 1908, as applicable to commercial disputes of a specified value, read with Rule 27 of the IPD Rules deserves to be passed in favour of the plaintiff and against the defendants.***
>
> *26. This Court, in Su-Kam Power Systems Ltd. v. Kunwer Sachdev, 2019 SCC OnLine Del 10764, has 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 XIIIA, CPC to commercial disputes, demonstrates that the trial is no longer the default*

This is a digitally signed order.
The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above.
The Order is downloaded from the DHC Server on 10/11/2026 at 02:06:35

procedure/norm.

91. Rule 3 of Order XIIIA, 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. This Court is of the view that the expression "no genuine issue requiring a trial" in Ontario Rules of Civil Procedure and "no other compelling reason…..for trial" in Commercial Courts Act can be read mutatis mutandis. Consequently, Order XIIIA, CPC would be attracted if the Court, while hearing such an application, can make the necessary finding of fact, apply the law to the facts and the same is a proportionate, more expeditious and less expensive means of achieving a fair and just result.

92. Accordingly, unlike ordinary suits, Courts need not hold trial in commercial suits, even if there are disputed questions of fact as held by the Canadian Supreme Court in Robert Hryniakv. Fred Mauldin, 2014 SCC OnLine Can SC 53, in the event, the Court comes to the conclusion that the defendant lacks a real prospect of successfully defending the claim."

27. ***In view of the above, the plaintiff has been able to make out a case for grant of prayers made in paragraph 69 (i) to (vi) and (viii) of the Plaint.***

xxx xxx xxx

29. In the case of Hindustan Lever Ltd. v. Satish Kumar, 2012 SCC OnLine Del 1378, this Court again held as under:

"23. ***One of the reasons for granting relief of punitive***

This is a digitally signed order.
The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above.
The Order is downloaded from the DHC Server on 10/11/2026 at 02:06:35

damages is that despite of service of summons/notice, the defendant had chosen not to appear before the court. It shows that the defendant is aware of the illegal activities otherwise, he ought to have attended the proceedings and give justification for the said illegal acts. Since, the defendant has maintained silence, therefore, the guilt of the defendant speaks for itself and the court, under these circumstances, feels that in order to avoid future infringement, relief of punitive."

30. ***Applying the above principles and taking into account the fact that the defendants failed to appear before this Court despite service, the plaintiff is found entitled to damages of a sum of Rs. 2,00,000/-.***

31. The plaintiff shall be entitled to a decree as to costs as well."

22. Reference in this regard may also be had to the decision of yet another Coordinate Bench of this Court in ***Disney Enterprises I.N.C. & Anr. vs. Balraj Muttneja & Ors., 2014 SCC OnLine Del 781***, wherein the Court decreed the suit of the plaintiffs considering the fact that the defendants had failed to file their written statement and were also proceeded ex-parte. The relevant observation from the said decision reads thus:

"3. Summons of the suit were issued to Defendants 1 to 4 on 17-12-2012 and vide order of the same date, an ex-parte ad-interim injunction was granted against the defendants. This Court also appointed two Local Commissioners to visit and inspect the premises of Defendant 3 and Defendant 4 respectively for the purpose of making an inventory of the infringing goods/merchandise, if any found, and for seizing and sealing the same. The Local Commissioners so appointed have in compliance with the order dated 17-12-2012 filed their reports.

This is a digitally signed order.
The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above.
The Order is downloaded from the DHC Server on 10/11/2026 at 02:06:35

> *4. Though the defendants entered appearance through their counsel on 1-2-2013 but remained unrepresented thereafter and failed to file a written statement as well. The defendants were thus directed to be proceeded ex-parte vide order dated 4-10-2013 and the plaintiffs permitted to file affidavits by way of ex-parte evidence.*
>
> *5. The plaintiffs, despite having been granted sufficient time and several opportunities, have failed to get their affidavits for leading exparte evidence on record.* ***However, it is not deemed expedient to further await the same and allow this matter to languish, for the reason that I have in Indian Performing Rights Society Ltd. v. Gauhati Town Club held that where the defendant is ex parte and the material before the Court is sufficient to allow the claim of the plaintiff, the time of the Court should not be wasted in directing ex parte evidence to be recorded and which mostly is nothing but a repetition of the contents of the plaint.****"*
>
> (emphasis supplied)

23. After hearing the learned counsel for the plaintiff and perusing the record, this Court is of the view that the plaintiff has a registered mark "CONTIN"and a series of trademarks, which has already been noted above. In view thereof, allowing the defendants to continue with the impugned mark can lead to a likelihood of confusion in the minds of general public as regards to the association of the defendants' marks with that of the plaintiff. Therefore, the plaintiff is entitled to protection under the Act against infringement as well as passing off.

24. Further, considering that the defendants have not entered appearance till date and that their right to file written statementshas already been closed, and further having regard to the fact that the defendants havebeen proceeded against *ex parte*, all the averments made in the plaint remainsuncontroverted.

This is a digitally signed order.
The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above.
The Order is downloaded from the DHC Server on 10/11/2026 at 02:06:35

25. Thus, applying the rationale of ***DS Confectionary***(supra) and ***Disney I.N.C.*** (supra) in the given circumstances, this Court is of the view that the plaintiff is entitled to a summary judgment under Order XIII-A of the Code of Civil Procedure, as applicable to commercial disputes, read with Rule 27 of the IPD Rules.

26. The suit is, therefore, decreed in terms of prayer 62 (i) to (v).

27. The plaintiff is also awarded decree of nominal damages of Rs. 2,00,000/-, in addition to costs.

28. Let decree be drawn in the above terms.

29. The suit, along with pending applications, is disposed of.

VIKAS MAHAJAN, J

NOVEMBER 4, 2026/*jg/sj*

This is a digitally signed order.
The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above.
The Order is downloaded from the DHC Server on 10/11/2026 at 02:06:35