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

% *Date of decision : 29th September, 2014*

+ **CS(OS) 1057/2011**

M/S P.P. JEWELLERS Plaintiff
Through: Ms.Mamta Jha and Ms.Kritika Seth,
Advocates

versus

PP GOLD CONSULTANCY PVT LTD Defendant
Through

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J. (ORAL)

1. Plaintiff has filed the present suit for permanent injunction restraining infringement of trade mark, passing off, unfair competition, dilution, rendition of accounts of profits, damages and delivery up.
2. Summons in the suit and notice in the application under Order XXXIX Rule 1 and 2, were issued on 04.05.2011, 22.07.2011 and 16.11.2011. Since the defendant could not be served in the ordinary way an application under Order V Rule 20 CPC was filed by the plaintiff, which application was allowed and defendant was served by way of publication. Despite service none appeared for the defendant, consequently defendant was proceeded ex parte vide order dated 13.02.2012 and the interim order dated 04.05.2011 was made absolute.
3. Plaintiff has filed affidavit by way of evidence of Mrs. Harpreet Kaur (PW1), company secretary of plaintiff company. A copy of the board resolution authorizing PW1 to act on behalf of the plaintiff company has been exhibited as **Ex.PW-1/1**. PW1 has deposed that the plaintiff

(including its predecessors and assigns in business) is a company incorporated in 1993 under The Companies Act, 1956 having its registered office at H-5, Netaji Subhash Place, Pitampura, Delhi- 110034. Memorandum and Articles of Association of the plaintiff has been marked as **MARK A**. She has also deposed that the plaintiff is a well-recognized manufacturer and merchant in India and across the world, *inter-alia* of jewellers and precious metals and their alloys and goods, precious stones etc. under the trade mark “PP JEWELLERS”. Plaintiff has been carrying on this well established international business for almost three decades since 1980 and has earned the distinction of being the largest Jewellers Export House in India, winning 18 times export awards.

4. PW1 has also deposed that since the year 1980, the plaintiff **PP JEWELLERS** through its associate group companies has diversified its business in other fields of commercial activities such as real estate business in 1998 under the name of **PP TOWERS** and garment business in 2002 under the name and style of **PP DESIGN ESTATE**. It has also been deposed that the products and services of the plaintiff under the said trademarks have acquired enviable goodwill and impeccable reputation amongst the public at large and also within trade and export circles, so much so that the people have come to identify the mark “**PP**” with the plaintiff’s business house only. Plaintiff and its predecessors have also received several awards including ‘Outstanding Export Performance Award’ from the Gem & Jewellery Export Promotion Council of India consistently for the past many years. Certified copies of the original awards have been exhibited as **Ex.PW-1/2(Colly)**.
5. PW1 has further deposed that the jewellery of the plaintiff from the house of PP JEWELLERS bearing the trade mark / trade name PP / PP JEWELLERS / PPJ logo have been extensively advertised internationally

including in India, through various media, including print as well as electronic, such as TV network, newspapers, magazines, hoardings, sales promotional materials etc. As a result of such extensive use and promotional campaigns, backed by aggressive marketing, the trade mark / trade name PP/ PP JEWELLERS / PPJ logo have acquired high level of distinctiveness indicating source and origin of goods including jewellery originating from the plaintiff. The same is evident from the following statement of promotional expenses incurred by plaintiff’s group company:

ADVERTISING AND PUBLICITY EXPENSES

YEAR	ADVERTISING/PUBLICITY AND OTHER CONSUMER PROMOTION EXPENSES *(In Rupees Lacs)
1996-1997	7.12
1997-1998	2.33
1998-1999	23.55
1999-2000	37.70
2000-2001	161.30
2001-2002	243.22
2002-2003	246.89
2003-2004	603.04
2004-2005	130.00
2005-2006	149.00
2006-2007	103.00
2007-2008	129.00
2008-2009	83.00
2009-2010	148.00
2010-2011	243.00

Copies of promotional invoices pertaining to the trade marks PP JEWELLWERS and PPJ Logo have been marked as **MARK B(Colly)**. Copies of the print media advertisement pertaining to the trade mark PP

JEWELLERS and PPJ Logo from the year 2007 to 2010 have been exhibited as **Ex. PW-1/3 (Colly)**.

6. PW1 has next deposed that on account of long and continuous use since 1980 in India and Internationally, extensive marketing and sale campaign, enormous sale and painstaking quality control, the jewellery sold under the trade mark/trade name PP/ PP JEWELLERS/ PPJ logo have acquired enviable goodwill and reputation amongst the members of trade and public at large as “well-known” brands which now symbolize, distinguish, signify, connote and denote source and origin as well as high quality of jewellery designed, made and marketed by the plaintiff exclusively. The goodwill and reputation that the said brand has come about to acquire and enjoy is self evident from the perusal of the statement of annual sales pertaining to PP/ PP JEWELLERS/ PPJ logo of the plaintiff group company in India as under:


STATEMENT OF ANNUAL SALES


YEAR	SALES (In Rupees Crores)
1997	77.39
1998	150.29
1999	104.86
2000	123.66
2001	180.43
2002	194.30
2003	197.16
2004	262.05
2005	357.00
2006	283.00
2007	419.00
2008	510.00
2009	606.00
2010	805.00

Upto 31.03.2011	1184.00
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The above mentioned sales figures have been taken from the books of accounts of the plaintiff company maintained by the accounts department of plaintiff. The certified copies of the original sales invoices have been exhibited as **Ex.PW-1/4 (Colly)**.

7. Further, the trade marks PP and/or PP JEWELLERS and PPJ logo when used in relation to jewellery are now identified by members of public and trade with goods and business originating from the plaintiff. It has also been deposed that any product bearing the trade marks PP and/or PP JEWELLERS or PPJ logo is likely to be associated with the plaintiff and none else.
8. PW1, Mrs. Harpreet Kaur, has also deposed that in order to accord statutory protection to its trade marks PP and/or PP JEWELLERS and its PPJ logo, the plaintiff has applied for and obtained various trade mark registrations. Details of relevant registrations are set out hereinunder:

S. No	Trade Mark	Registn. No.	Class	Goods	Dt. Of Registn
1.	PP JEWELLERS (Label) 	507596	14	Jewellery, Precious Metals and their Alloys and Goods in Precious Metals or Coated Therewith, Precious Stone All Being Goods	27/03/1989
2.	PPJ logo	617996	14	Jewellery, Precious	28/01/1994

				Metals and their Alloys and Goods etc.	
3.	PP	1197456	14	Precious Metal and Their Alloys and Goods in Precious Metals of Coated therewith (Except Cutlery, Forks and spoons), Jewellery Precious Stones etc.	08/05/2003

9. PW1 has also deposed that all the registrations mentioned hereinabove are valid and subsisting in favour of the plaintiff. Copy of the certificate for use in legal proceeding pertaining to the trade mark registration no.507596, 617996, 1197456 have been exhibited as **Ex.PW-1/5**, **Ex.PW-1/6**, **Ex.PW-1/7**, respectively. Plaintiff is the registered proprietor of the trade marks PP, PP JEWELLERS and PPJ logo, thereby having exclusive statutory right to use thereof in relation to jewellery and similar goods. It has also been deposed that the trade mark registration no. 617996 was initially applied in the name of PW1 and the said trade mark has already been assigned in favour of the plaintiff. The plaintiff is taking steps to register it as a subsequent proprietor. Plaintiff has also obtained trade mark registration certificate in USA and UK. Copy of the International registration certificate no. 009151382 pertaining to PP Jewellers has been exhibited as **Ex.PW-1/8**.
10. PW1 has further deposed the plaintiff has also registered its domain name as **www.ppjewellers.org**, **www.pp.af** and **www.pptowers.com** and for email enquiries the query can be sent to **pp@ppjewellers.org**. Thus, the

trade mark “PP” is the constant distinctive component of all manner of use of trademarks, trade names, domain names etc. such as “PP Jewellers”, “PP Design Estate”, “PP Towers”, www.ppjewellers.org, www.pp.af, www.pptowers.com, pp@ppjewellers.org.

11. PW1 has next deposed that the defendant, Perfect Purity Gold Consultant Pvt. Ltd is also engaged in the business of manufacture and sale of jewellery. The very adoption of the trade name Perfect Purity Gold Consultant Pvt. Ltd by the defendant is dishonest because the plaintiff has used the slogan ‘Perfect & Purity means P.P. Jewellery’ to advertise its product/jewellery. A copy of the print media advertisement establishing the said fact has been marked as **MARK C**. It has also been deposed that the dishonesty on the part of the defendant is writ large from the fact that the defendant is deliberately using PP Gold though being registered as Perfect Purity Gold Consultant Pvt. Ltd. and is even using PPG logo which is an obvious and fraudulent imitation of plaintiff’s well known PPJ logo on its website www.ppgoldconsultancy.com. Printouts from the impugned website www.ppgoldconsultancy.com have been exhibited as **Ex.PW-1/9(Colly)**.

12. PW1 has also deposed that it came to the knowledge of the plaintiff in 1st week of April, 2011 when a consumer by mistake visited to the office of the defendant at 707, 7th Floor Pearl Best Height-I, Behind Max Hospital, Netaji Subhash Place, Pitampura, New Delhi- 110034 which is in the same vicinity where one of the retail outlets of the plaintiff is located. The said consumer thereafter came to the plaintiff’s office and informed about the defendant and confusion caused by it. On enquiry the plaintiff came to know about the defendant and its website www.ppgoldconsultancy.com.

13. Further, the defendant is taking unlawful advantage of the goodwill and reputation of the plaintiff's trade mark/trade name PP/ PP JEWELLERS/PPJ logo and using deceptively similar name for identical business cleverly planned to ride piggy bank upon the plaintiff's goodwill. It has also been deposed that illegal trade activities of the defendant are causing irreparable loss, injury and damage to the business, goodwill and reputation of the plaintiff. The profits earned by the defendant by misappropriating and pirating the intellectual property rights of the plaintiff including the goodwill and reputation that vest in the trade mark/ trade name PP/PP Jewellers/PPJ logo belong to the plaintiff and the defendant is liable to pay damages to the plaintiff. It has also been deposed that there should not only be compensatory damages which should be awarded to the plaintiff to compensate it for the loss suffered but also punitive damages in order to deter other wrong doers and the like minded, such as the defendants from indulging in such unlawful activities.
14. I have heard counsel for the plaintiff and carefully perused the documents which have been placed on record along with the affidavit by way of evidence which has been filed. Evidence of the plaintiff has gone unchallenged and un-rebutted. Copy of the certificate for use in legal proceeding pertaining to the trade mark registration no.507596, 617996, 1197456 have been exhibited as **Ex.PW-1/5**, **Ex.PW-1/6**, **Ex.PW-1/7**, respectively. Copies of the print media advertisement pertaining to the trade mark PP JEWELLERS and PPJ Logo from the year 2007 to 2010 have been exhibited as **Ex. PW-1/3 (Colly)**. Certified copies of the original sales invoices of plaintiff have been exhibited as **Ex.PW-1/4 (Colly)**. Printouts from the impugned website www.ppgoldconsultancy.com have been exhibited as **Ex.PW1/9(Colly)**.

15. On the basis of the documents placed on record, plaintiff has been able to establish that it is the registered proprietor of the trade marks PP, PP JEWELLERS and PPJ logo, thereby having exclusive statutory right to use thereof in relation to jewellery and similar goods. Plaintiff has also established that on account of long and continuous use since 1980 in India, extensive marketing and sale campaign, enormous sale and painstaking quality control, the jewellery sold under the trade mark/trade name PP/ PP JEWELLERS/ PPJ logo have acquired unparallel goodwill and reputation amongst the members of trade and public at large and the said trademarks/ trade name now symbolize, distinguish, signify, connote and denote source and origin as well as high quality of jewellery designed, made and marketed by the plaintiff exclusively. Plaintiff has also established that the trademarks/trade name PP/ PP JEWELLERS/ PPJ logo are recognized and associated exclusively with the plaintiff only and no one else. Plaintiff has further established that the defendant by using the trademark/trade name 'PP Gold' and PPG logo which are identical or deceptively similar to plaintiff's registered trademarks PP/ PP JEWELLERS/ PPJ logo, for similar goods, is causing infringement of rights in the trademarks of the plaintiff.
16. In a very recent judgment delivered by another bench of this court, *The Indian Hotels Company Ltd. Vs. Ashwajeet Garg and Ors.* CS(OS) 394/2012, decided on 01.05.2014, following observations were made:

“23.

39. In Kaviraj Pandit Durga Dutt Sharma vs. Navaratna Pharmaceutical Laboratories 1965 SCR (1) 737, the Hon'ble Apex Court in the following paras held as under: "In an action for infringement, the Plaintiff must, no doubt, make out that the use of the Defendant's mark is likely to deceive, but where the similarity between the Plaintiffs and the Defendant's

mark is so close either visually, phonetically or otherwise and the court reaches the conclusion that there is an imitation, no further evidence is required to establish that the Plaintiffs rights are violated. Expressed in another way, if the essential features of the trade mark of the Plaintiff have been adopted by the Defendant, the fact that the get-up, packing and other writing or marks on the goods or on the packets in which he offers his goods for sale show marked differences, or indicate clearly a trade origin different from that of the registered proprietor of the mark would be immaterial;..... When once the use by the Defendant of the mark which is claimed to infringe the Plaintiffs mark is shown to be "in the course of trade", the question whether there has been an infringement is to be decided by comparison of the two marks. Where the two marks are identical no further questions arise; for then the infringement is made out...."

17. In another judgment of this court, *Mind Gym Ltd.v. Mindgym Kids Library Pvt. Ltd* CS (OS) 1029/2013, decided on 21.03.2014, plaintiffs who were carrying on business under the trade mark 'MIND GYM' sought permanent injunction against the defendants restraining them from infringing and/or passing off the plaintiff's rights by using the trademark 'MINDGYM' as part of latter's corporate name/trademark. Following observations were made by the court:-

"9.....

(ii) In the case of Evergreen Sweet House Vs. Ever Green and Ors., 2008 (38) PTC 325 (Del), it was observed as under:

15. A mark, is said to be deceptively similar to another (Section 2(1) (h), Trademarks Act, 1999) if it so nearly resembles that other mark as to be likely to deceive or cause confusion. Section 29(1) deals with a situation

where the defendant uses a mark, which is identical or deceptively similar to that of the plaintiff, in respect of the same goods or services, and in such manner that it is likely that such use is taken as being an use as a trademark. This amounts to infringement. To fall within Section 29(1), the defendant's use of the mark must be so that it is likely that the public assumes that the said mark is used as a trademark. Section 29(2) deals with three situations; one where the defendant's mark is identical to that of the plaintiff and in respect of similar goods. Two, where the marks are similar and in respect of goods which are identical or similar. Three, the marks as well as the goods are identical. Infringement does not take place if only one of the three ingredients are satisfied; the plaintiff has to prove that use by the defendant is likely to cause confusion on the part of the public or is likely to have an association with the registered mark.

[Emphasis Supplied]

18. I am of the view that the impugned trademark of the defendant is deceptively similar to the plaintiff's trademark. The use of the trademark 'PP Gold' and PPG logo by the defendant, in relation to similar goods, is likely to dilute the distinctive character of the plaintiff's trademarks PP/ PP JEWELLERS/ PPJ logo and the same is likely to erode the goodwill and reputation of the plaintiff among its existing as well as potential customers in the market. The adoption and use of the deceptively similar trademark by the defendant in relation to identical products amounts to an infringement of the plaintiff's statutory rights in the registered trademarks PP/ PP JEWELLERS/ PPJ logo. Furthermore, the defendant in a *mala fide*, dishonest and an unethical manner is encashing upon the goodwill and reputation of the plaintiff's, established by the latter over the period of years.

19. In the case of *Laxmikant V. Patel Vs. Chetanbhai Shah And Another*, reported at (2002) 3 SCC 65, Apex court made following observation:

“.....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 his 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.”

20. In view of the above, the plaintiff is entitled to a decree of permanent injunction against the defendant from using PP Gold and/or PPG logo directly or indirectly in relation to jewellery/ornaments or any other products as may be identical or deceptively similar with plaintiff's registered trademarks PP/ PP JEWELLERS/ PPJ logo in terms of prayers (a) and (b) in paragraph 28 of the plaint.
21. Plaintiff has also claimed rendition of accounts of profits illegally earned by the defendants or in alternate, damages to the tune of Rs. 20,00,000/-. Plaintiff has further claimed delivery up of infringing and impugned banners, trade literatures, printed material, jewellery/ornaments or any other products bearing the impugned trademark 'PP Gold' and/or PPG logo and equipments used in embossing, packaging, printing cylinders, their blocks, negatives or dyes. However plaintiff limits its claim to punitive damages.

22. In case of *Time Incorporated v. Lokesh Srivastava and Anr.*, reported at 2005 (30) PTC 3 (Del), the court has recognized third type of damages as punitive damages apart from compensatory and nominal damages. The court has held that:

“The award of compensatory damages are aimed at deterring a wrong doer and the like minded from indulging in such unlawful activities.”

"This Court has no hesitation in saying that the time has come when the Courts dealing actions infringement of trademark, copy rights, patents etc. should not only grant compensatory damages but award punitive damages also with a view to discourage and dishearten law breakers who indulge in violations with impunity out of lust for money so that they realize that in case they are caught, they would be liable not only to reimburse the aggrieved party but would be liable to pay punitive damages also, which may spell financial disaster for them."

23. In *Larsen and Toubro Limited v. Chagan Bhai Patel* reported at MIPR 2009 (1) 194, this Court has observed that it would be encouraging the violators of intellectual property, if the Defendants notwithstanding having not contested the suit are not burdened with punitive damages.
24. For the reasons stated above, the plaintiff has made out a case for grant of decree as prayed in the plaint. Accordingly, order dated 4.5.2011 is confirmed and the suit is decreed in favour of the plaintiff and against the defendant. Plaintiff is also entitled to damages to the tune of Rs.2.00 lacs.
25. Decree sheet be drawn up accordingly.

(G.S.SISTANI)
JUDGE

SEPTEMBER 29, 2014
msr