



2025:DHC:1585



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

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Judgment Reserved on: 07.02.2025
Judgment pronounced on: 11.03.2025

+ CS(COMM) 570/2019 with I.A. 3678/2021, I.A. 3700/2021 and I.A. 12068/2022

JOHNSON & JOHNSON

.....Plaintiff

Through: Ms. Nancy Roy, Mr. Raghav Malik,
Ms. Prakirti Varshney and Mr.
Prashant, Advocates.

versus

**PRITAMDAS ARORA T/A M/S MEDSERVE
& ANR**

.....Defendants

Through: None.

CORAM:
HON'BLE MR. JUSTICE AMIT BANSAL

JUDGMENT

AMIT BANSAL, J.

1. The present suit has been filed by the plaintiff seeking relief of permanent injunction restraining the defendants from infringing the trade mark, selling counterfeits, and passing off along with other ancillary reliefs.

CASE SETUP IN THE PLAINT

2. Plaintiff [Johnson and Johnson], a company organised and existing under the laws of New Jersey, United States of America, is engaged in manufacturing consumer healthcare products, medical devices and pharmaceutical products. It is stated that the plaintiff has more than two hundred thirty (230) subsidiaries and employs more than one lakh thirty



thousand (1,30,000) employees with presence in over sixty (60) countries.

3. Plaintiff's business is diversified into three segments, namely, consumer healthcare products, pharmaceuticals, and medical devices. In 1949, the plaintiff acquired 'Ethicon Suture Laboratories', later renamed to 'Ethicon Inc' which manufactures *inter-alia*, surgical sutures, bleeding management and wound-closing devices.

4. Plaintiff, through its subsidiary Ethicon, manufactures medical devices used for bleeding management and sells them under the trade marks 'SURGICEL' and 'ETHICON'.

5. The plaintiff coined the term 'SURGICEL' in 1957 in relation to a sterile absorbable knitted fabric hemostat. In 1960, the plaintiff introduced first oxidized regenerated cellulose hemostat under the trade mark 'SURGICEL' for controlling bleeding in certain critical surgical procedures. The plaintiff has been using the 'SURGICEL' marks in respect of its products in India since the 1990s.

6. The products sold under the 'SURGICEL' marks are manufactured in the plaintiff's state-of-the-art facilities, which have quality control, specialised equipment and consistent processes which make the products reliable for surgeons.

7. In addition to the marks, the plaintiff has also adopted a unique trade dress to distinguish its 'SURGICEL' branded products. Through extensive use, the trade dress is exclusively and closely associated by consumers with the plaintiff.

8. The mark 'ETHICON' is the house mark of the plaintiff, which is used by the plaintiff on its products packaging, as shown below:



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9. Plaintiff has also obtained trade mark registrations for its marks ‘SURGICEL’ and ‘ETHICON’, in multiple jurisdictions including India. The first trade mark registration for the mark ‘SURGICEL’ was obtained by the plaintiff on 3rd March, 1958. The aforesaid registration certificate obtained by the plaintiff has been exhibited as **Exhibit PW 1/5**. The details of the registration obtained by the plaintiff in India for its ‘SURGICEL’ marks have been exhibited as **Exhibit PW 1/7 (colly)** and **Exhibit PW 1/8**, and the same is reproduced below:

Trade Mark	Reg. No.	Reg. Date	Class
SURGICEL	2294240	02.03.2012	5
SURGICEL SNOW	1966389	17.05.2010	5
SURGICEL	3619525	24.08.2017	10


10. The plaintiff, through its subsidiary, has also obtained registration for its mark ‘ETHICON’ and its formative marks across multiple jurisdictions including India. The details of the registration obtained by the plaintiff in India for its ‘ETHICON’ marks have been exhibited as **Exhibit PW 1/9**



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(colly), and the same is reproduced below:

Trade Mark	Reg. No.	Reg. Date	Class
ETHICON	2405710	04.10.2012	10
ETHICON	168857	02.05.1985	5
ETHICON	261309	16.12.1969	5
ETHICON EVITHROM	1559133	16.05.2007	5
ETHICON OMNEX	2491153	07.03.2013	5
ETHICON PDS	410257	06.09.1983	10
ETHICON ENDO- SURGERY  Ethicon Endo-Surgery	1947721	08.04.2010	10
ETHICON PHYSIOMESH	2798059	26.08.2014	10

11. It is stated that the products sold under the plaintiff's marks 'SURGICEL', 'LIGAGLIP' and 'ETHICON' are renowned and the same is evidenced from the revenue generated by these products over the years. The details of the revenue generated by plaintiff's products sold under the marks 'SURGICEL', 'LIGAGLIP' and 'ETHICON' have been exhibited as **Exhibit PW 1/11.**

12. In 2019, a neurosurgeon at the University of Kentucky Medical Center, United States of America (hereinafter referred to as 'University of Kentucky'), observed certain irregularities in surgical devices bearing the plaintiff's trade mark 'SURGICEL' while performing a brain surgery. The



said surgeon subsequently reported the complaint to the plaintiff, who, upon examination of the impugned product, discovered that the said device was a counterfeit.

13. Upon discovering the presence of counterfeit ‘SURGICEL’ branded surgical devices at the University of Kentucky, the plaintiff undertook an investigation to determine the source of the infringing goods. The plaintiff’s inquiry revealed that the University of Kentucky had procured over 1,000 units of ‘SURGICEL’ branded surgical devices from a United States of America-based entity, *XS Supply*. The invoice dated 29th April, 2018 indicating purchase of 1000 units of ‘SURGICEL’ has been exhibited as **Exhibit PW 1/13**. Consequently, the plaintiff initiated legal proceedings against *XS Supply* and other parties before the United States District Court, Middle District of Florida, and executed a seizure at *XS Supply*’s corporate offices and warehouse. The complaint dated 11th July, 2019 filed by the plaintiff against *XS Supply* at the United States District Court, Florida has been exhibited as **Exhibit PW 1/14**. The emergency motion for an *ex-parte* seizure order moved by the plaintiff before United States District Court, Florida, dated 12th July, 2019, has been exhibited as **Exhibit PW 1/26**. The seizure order passed by the United States District Court has been exhibited as **Exhibit PW 1/27**. In the course of the proceedings, *XS Supply* furnished records and information demonstrating that the counterfeit ‘SURGICEL’ branded surgical devices had been procured from Lion Heart Surgical Supply LLC, an entity based in Florida. The scanned copy of records, including purchase order issued by the Lion Heart Surgical Supply LLC to *XS Supply*, has been exhibited as **Exhibit PW 1/28**.

14. Thereafter, the plaintiff filed a First Amended Complaint impleading



Lion Heart as a party to the said suit and successfully obtained an *ex-parte* seizure order and preliminary injunction. Thereafter, the plaintiff executed a seizure at the Lion Heart's offices, recovering multiple units of 'SURGICEL' branded surgical devices, which, upon testing, were confirmed to be counterfeit. The First Amended Complaint has been exhibited as **Exhibit PW 1/29** and the order granting preliminary injunction has been exhibited as **Exhibit PW 1/30**. Additionally, during the course of the seizure, employees of Lion Heart informed the plaintiff's legal representatives in the United States that the counterfeit 'SURGICEL'-branded surgical devices had been sourced from Pure Care Traders F.Z.E., an entity based in Ajman, UAE. The copies of invoices dated 5th January, 2019, purchase orders, wire transfer information showing that Lion Heart purchased counterfeit products from Pure Care have been exhibited as **Exhibit PW 1/33 (colly)**.

15. Simultaneously, Lion Heart produced an email correspondence dated 27th June, 2019 between Lion Heart and Pure Care, wherein Lion Heart had inquired from Mr. Ali Hussain (a partner in Pure Care) to disclose the source of the 'SURGICEL' branded surgical devices supplied to them. In response, Mr. Ali Hussain provided documentation evidencing that the 'SURGICEL'-branded surgical devices had been shipped to Pure Care by one Mr. Pritamdas Arora, the proprietor of M/s Medserve based in New Delhi, i.e., the defendant no.1 in the present suit. The email correspondence dated 27th June, 2019 between Mr. Ali Hussain and Lion Heart has been exhibited as **Exhibit PW 1/34**. Copy of the sales invoice dated 24th January, 2019 issued by the defendant no.1 to Mr. Ali Hussain, a partner in Pure Care along with Amarex waybill showing shipment of 'Cotton Gauge' from M/s Medserve



in Delhi to Pure Care in United Arab Emirates and invoice from ‘Captain’s Freight Services FZCO’ a shipping and exporter in Dubai, UAE forwarding those 70 boxes of ‘SURGICEL’ from Dubai to Lion Heart which were identified as counterfeit have been exhibited as **Exhibit PW 1/35 (colly)**.

16. Furthermore, the plaintiff discovered that one of Pure Care’s other customers was an entity named ‘Very Nice Deals,’ an Illinois, USA-incorporated entity operating under the business name ‘AK Global Med.’ Based on its independent research, the plaintiff communicated with Mr. Ashraf Abukhalaf, the Sales Director of AK Global, and placed orders for controlled test purchases of several ‘SURGICEL’ branded surgical devices. Upon receipt of the shipments, it was found that the products had been dispatched directly from defendant no.1’s address in New Delhi, rather than from AK Global’s registered location in Illinois, USA. The invoice dated 16th August, 2019 issued by A.K. Global has been exhibited as **Exhibit PW 1/38**. The invoice and invoice-cum-packing list of shipment of ‘SURGICEL’ products from New Delhi dated 19th August, 2019 signed by the defendant no.1 has been exhibited as **Exhibit PW 1/39 (colly)**.

17. Subsequent examination of the counterfeit surgical devices revealed that they were inadequately oxidized, non-sterile, and contaminated with bacterial infection. Additionally, it was found that certain ‘SURGICEL’ branded products supplied by AK Global, while being original, were expired and had been repackaged in counterfeit packaging bearing the ‘SURGICEL’ trade mark with a falsified expiration date.

18. In view of the aforementioned facts and circumstances, the plaintiff filed a Second Amended Complaint before the United States District Court, Middle District of Florida, wherein Pure Care, Mr. Ali Hussain, AK Global,



Mr. Ashraf Abukhalaf, and Mr. Pritamdas Arora were also impleaded. The Second Amended Complaint has been exhibited as **Exhibit PW 1/49**. Simultaneously, the plaintiff instituted the present suit before this Court in 2019.

CASE SETUP IN THE WRITTEN STATEMENT

19. Defendant no.1 [Mr. Pritamdas Arora] is the sole proprietor of M/s Medserve, a business engaged in import, export and wholesale trade of medical devices and pharmaceutical products, including those manufactured by Ethicon.

20. Defendant no. 2 [Ms. Ritika Arora] is the wife of defendant no.1 who is alleged to be associated with the business of defendant no.1. However, in the written statement, it is contended that defendant no.2 is a home-maker and does not have any relation with the facts of the present case. Further, the defendant no.2 does not participate in the day-to-day activities of the business run by the defendant no.1.

21. The defendants undertook to comply with the reliefs claimed in prayer clauses A (i) and (ii), which pertain to the relief of permanent injunction seeking to restrain the defendants from using the marks ‘SURGICEL’, ‘SURGICEL ORIGINAL’, ‘SURGICEL FIBRILLAR’, ‘SURGICEL SNoW’, ‘SURGICEL NU-KNIT’ and other ‘SURGICEL’ formative marks, ‘LIGACLIP’, ‘ETHICON’ and ‘ETHICON’ formative marks.

22. As for the reliefs claimed in prayer clauses B (i) to (viii) pertaining to recall, delivery, and disclosure of the finished and unfinished impugned products, and trade marks, it is stated that the defendants do not have anything in their possession and therefore, there is nothing to be recalled, delivered or disclosed.



23. As for the relief regarding takedown of websites, the defendants claim that they have already taken down the website.

PROCEEDINGS IN THE SUIT

24. The matter came up for the first time before this court on 11th October, 2019, wherein the court passed an *ad-interim* injunction in favour of the plaintiff restraining the defendant no.1 from dealing in any manner whatsoever with any goods/devices/medicines under the name/mark 'SURGICEL' and/or 'ETHICON' and from using 'SURGICEL' and/or 'ETHICON' as a trade mark. Further, the court appointed two Local Commissioners to visit the premises of the defendants to search, seal and seize the infringing products.

25. On 12th October, 2019, two more Local Commissioners were appointed to visit the place of the unknown defendants identified by the plaintiff.

26. Subsequently, on 14th October, 2019, the plaintiff executed the commission on the defendants' premises and seized documents.

27. On 5th November, 2019, the Predecessor Bench allowed the application for impleadment of the defendant no.2 in the present suit and the interim order passed on 11th October, 2019 was extended to defendant no.2

28. On 21st November, 2019, this Court permitted the de-sealing and examination of the sealed goods, documents, materials, and hard drives containing data from the electronic devices seized during the Local Commission proceedings, and for the said purpose a technical expert (hereinafter the 'IT expert') was appointed as a local commissioner. Further, it was directed that, as mutually agreed by the counsel for the defendants, the copies/images so prepared by the technical expert would be admissible



in evidence without the requirement of any proof.

29. On 14th January, 2020, the application for interim injunction was disposed of and the orders dated 11th October, 2019, 12th October, 2019 and 21st November, 2019 were made absolute.

30. On 25th February, 2021, the amendment application of the plaintiff to incorporate violation of the plaintiff's trade mark 'LIGACLIP' was allowed and the amended plaint was taken on record.

31. On 6th January, 2022, the Local Commissioner filed its report with the documents before this Court.

32. On 10th March, 2021, this Court issued notice in the application filed on behalf of the plaintiff seeking initiation of contempt proceedings against the defendants for violation of orders passed by this court.

33. On 13th April, 2022, the Court directed the defendants to remain present in the court on the next date of hearing.

34. Since the defendants were not responding to their counsel and were not present in court on 27th April, 2022, the counsel for the defendants sought discharge of his *vakalatnama* and the matter was adjourned to 28th April, 2022.

35. On 28th April, 2022, the Court allowed the application of the counsel for the plaintiff seeking discharge of his *vakalatnama*. *Vide* the same order bailable warrants were issued for production of defendant no.1 [Mr. Pritam Das Arora].

36. Owing to non-appearance of the defendant no.1 and the inability of the concerned Station House Officer ('SHO') to trace the said defendant, this Court *vide* order dated 23rd May, 2022, issued non-bailable warrants against defendant no.1 and the Cyber Cell of the Delhi Police was directed



to investigate into the contact numbers and email addresses of defendant no.1 and, try and locate the defendant no.1 through them.

37. Since the defendants were still not traceable, this Court, *vide* order dated 6th December, 2022, directed that the defendants be proceeded against *ex-parte*.

38. On 6th April, 2023, the plaintiff filed the affidavit of evidence of its witness Mr. Ameya Joshi [**PW1**].

39. On 18th May, 2023, the Joint Registrar recorded the statement of the plaintiff's witness Mr. Ameya Joshi. The affidavit of evidence of **PW1** was exhibited as **Ex. PW-1/A**. Since no cross-examination was carried out on behalf of the defendants, the recording of the plaintiff's *ex-parte* evidence was completed on the said date and exhibits were marked.

40. On 22nd November, 2023, this Court, upon the conclusion of the plaintiff's *ex-parte* evidence, directed the Delhi Police, Bureau of Immigration, Ministry of Home Affairs ('MHA'), Unique Identification Authority of India ('UIDAI'), Goods and Services Tax Department ('GST Department'), and Income Tax Department to file status reports regarding the whereabouts, activities, and current status of the defendants.

41. On 5th April, 2024, this Court directed UIDAI to disclose the mobile numbers linked to the defendants' Aadhaar numbers by submitting the details in a sealed cover. Further, the Court directed the plaintiff to approach the Delhi Police and Cyber Cell, after receiving this information, to seek the reopening of the investigation by providing the relevant details furnished by UIDAI.

42. On 16th July, 2024, this Court directed the Delhi Police and Cyber Cell to take necessary action based on the information submitted by the



plaintiff and to file a fresh status report.

43. On 4th February, 2025, the Delhi Police filed its status report and informed the Court that, despite their efforts, they were unable to ascertain the whereabouts of the defendants.

44. On 7th February, 2025, the arguments were heard and the judgment was reserved in the present case.

SUBMISSIONS ON BEHALF OF PLAINTIFF

45. Ms. Nancy Roy, Advocate appearing on behalf of the plaintiff has made the following submissions:

45.1. The defendants' actions pose a severe risk to public health due to their blatant disregard for the stringent quality control and safety standards maintained by the plaintiff.

45.2. The defendants have falsely applied the plaintiff's trade marks to counterfeit products and their packaging, without the plaintiff's authorization. The defendants' unauthorized adoption and use of the plaintiff's trade marks, 'SURGICEL', 'LIGACLIP', and 'ETHICON', along with the misappropriation of the plaintiff's trade dress, constitute clear acts of trade mark infringement and passing off.

45.3. The defendants, in their amended Written Statement, have merely made bare denials and vague assertions, failing to provide any plausible explanation for their illicit counterfeiting activities. The defendants have also denied the plaintiff's claims, despite the overwhelming documentary evidence submitted as part of the Local Commissioner's Report.

ANALYSIS AND FINDINGS

46. I have heard counsel for the plaintiff and examined the material on record.



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47. Based on the evidence led on behalf of the plaintiff, the plaintiff has established its proprietary rights over its trade marks ‘SURGICEL’, ‘ETHICON’, and ‘LIGACLIP’. (Please refer: **Exhibit PW 1/5**, **Exhibit PW 1/7**, **Exhibit PW 1/8**, and **Exhibit PW 1/11**) The online printouts of the Trade Mark Registrations of the plaintiff in India are marked as Mark A, B, C, D respectively.

48. On the 11th October, 2019 and 12th October, 2019, this Court had appointed four Local Commissioners for visiting the premises of the defendants given in the table below:

S. No.	LOCAL COMMISSIONER’S NAME	PREMISES
1.	Ms. Sukhbeer Kour Bajwa	H. No. 165, 2 nd Floor, Tagore Park, Mukherjee Nagar, New Delhi-110009. (hereinafter ‘premises no.1’)
2.	Mr. Tushar Gupta	Shop No. 4, Plot 275, Kalyan Vihar, New Delhi-110009, India. (hereinafter ‘premises no.2’)
3.	Ms. Shreya Maheshwari	Bhagirath Palace, New Delhi- 110006 (hereinafter ‘premises no.3’)
4.	Mr. Kanav Viren Barman	Bhagirath Palace, New Delhi- 110006 (hereinafter ‘premises no.4’)

REPORT OF LOCAL COMMISSIONER APPOINTED FOR PREMISES No.1



49. During the execution of the Commission at the premises mentioned above, the Local Commissioner found multiple infringing and counterfeit goods. The Local Commissioner, along with her report, has filed the Inventory List of the goods found at the defendants' premises. These goods *inter-alia* include infringing stamps, huge quantities of 'SURGICEL' and 'ETHICON' products, ledger books, account books, note books, shipment records, call records, consignment notes, handwritten notes and invoices. Along with the abovementioned goods, the electronic devices were also seized by the Local Commissioner.

49.1. It is noted in the Local Commissioner's Report that during the execution of the Commission, a courier was delivered at the house of the defendants. Upon examination of said package, it was found that it contained the counterfeit versions of the plaintiff's products.

49.2. Copies of the physical documents seized from the premises no.1 have been exhibited as **Exhibit PW 1/65**.

REPORT OF LOCAL COMMISSIONER APPOINTED FOR PREMISES NO.2

50. On the said premises, the Local Commissioner met the defendant no.1 and his employee Mr. Upkar Singh. On searching the premises of the defendants, a large number of original and photocopied documents were found relating to the sale, purchase, import, export, etc. of various medical devices, including the counterfeit goods. Along with the said documents, other documents such as copies of identity cards, bank accounts statements, deeds, diaries, notepads, bill books in the name of M/s Medserve were also found. Further, medical devices bearing the 'ETHICON' and 'SURGICEL' marks were also recovered from the defendants' premises. Among the electronics, certain email addresses, mobile phones and hard drives were



found from the said premises.

51. Copies of the physical documents seized from the premises no.2 have been exhibited as **Exhibit PW 1/66**.

REPORT OF LOCAL COMMISSIONER APPOINTED FOR PREMISES NO.3

52. The premises on which the Commission was executed was of one Mr. Rajeev Khattar, who stated himself to be the authorized agent of the plaintiff company. A comprehensive search was conducted of the entire shop premises. However, no physical products bearing the trade marks 'ETHICON' and 'SURGICEL' were recovered by the Local Commissioner from the said location. It is stated that upon searching the desktop computer located on the premises, as well as the office email account, copies of product lists dated 19th August 2019 were recovered which referenced 'ETHICON' and 'SURGICEL' products.

52.1. Upon complete confirmation that Mr. Rajeev Khattar was a validly authorized agent of the plaintiff, the local commissioner deemed it unnecessary to prepare an inventory list. Instead, the Local Commissioner decided to take certain samples, returnable on the responsibility of the plaintiff's counsel, of the products bearing the marks 'ETHICON' and 'SURGICEL' for the purpose of authentication by the plaintiff.

REPORT OF LOCAL COMMISSIONER APPOINTED FOR PREMISES NO. 4

53. On the said premises, the Local Commissioner met Mr. Ankit Chhabra who stated that none of the products at the said premises were counterfeits and the products bearing the marks 'ETHICON' and 'SURGICEL' were introduced to him by 'Mr. Rajesh Jha', i.e., the sales representative of the plaintiff company.

53.1. In light of the above findings, rather than seizing the products bearing



‘ETHICON’ and ‘SURGICEL’ marks, an undertaking of Mr. Ankit Chhabra was recorded that sale of the impugned products would be restricted until their authenticity was established. The Local Commissioner inventorised the products and made copies of invoices from suppliers. Along with preparing an inventory, one sample of each product was seized, sealed, and handed over to the plaintiff’s counsel for verification. Additionally, a backup of the shop’s accounting software was made and transferred to a sealed hard drive by the technical expert accompanying the Local Commissioner.

REPORT OF LOCAL COMMISSIONER FILED BY MS. MATT SLONE

54. On 21st November, 2019, this court appointed IT expert United Lex, Gurgaon, for de-sealing and examination of the sealed goods, documents, material and hard drives containing the data of the electronic devices, including mobile phones, laptops, seized by the Local Commissioners. The commission was executed and a report in respect of the same has been filed on behalf of Local Commissioner.

55. Between 27th November, 2019, and June 2020, the Local Commissioner assisted the plaintiff’s and defendant’s counsel in collection and segregation of electronic documents related to the manufacture, sale, or distribution of counterfeit ‘SURGICEL’ and ‘ETHICON’ branded products.

55.1. In the report it is stated that the Local Commissioner facilitated access to the defendants’ identified email accounts linked to counterfeit activities and assisted the plaintiff in reviewing and segregating the relevant material.

55.2. The relevant material was processed and compact discs ('CD') containing copies of all relevant data were prepared by the Local Commissioner for the Court, the defendants’ counsel, and the plaintiff’s counsel. A physical set of documents, excluding audio and video files, has



been filed before the Court. The CDs include documents filed with the Local Commissioner's report, audio files from defendants' mobile phones, WhatsApp and WeChat data, and other multimedia attachments.

55.3. Copies of the electronic documents extracted from the defendant no.1's devices Apple iPhone 6 Plus, Apple Mac Book Pro, Samsung SMN960F and HP Laptop (seized by the Local Commissioner) have been exhibited as **Exhibit PW 1/67, Exhibit PW 1/68, Exhibit PW 1/69** and **Exhibit PW 1/70** respectively. Copies of the defendant no.1's chats on WECHAT App along with attachments at Pg 5884-6514 of the Local Commissioner's Report have been exhibited as **Exhibit PW I/71**.

55.4. Copies of the emails extracted from the defendant no.1's email ids humed@rediffmail.com, medserve53@rediffmail.com, and pd@medserveindia.com have been exhibited as **Exhibit PW I/72, Exhibit PW I/73, and Exhibit PW I/74**.

55.5. Copies of the emails extracted from the defendant no.2's email id: ritikal972arora@gmail.com filed along with Local Commissioner's report have been exhibited as **Exhibit PW I/106**. Copies of the electronic documents extracted from the defendant no.2's Facebook account filed along with the Local Commissioner's Report have been exhibited as **Exhibit PW I/107**. Copies of the electronic documents extracted from the defendant no.2's devices, Apple iPad, Apple MacBook Air, Samsung Galaxy S10 Plus have been exhibited as **Exhibit PW I/108, Exhibit PW I/109** and **Exhibit PW I/110** respectively. Copies of the WhatsApp transcripts of defendant no.2 with third parties along with attachments thereto and certified English translations thereof have been exhibited as **Exhibit PW 1/111**.

55.6. The plaintiff has transcribed relevant voice notes, and the transcripts



have been filed alongside the Local Commissioner's report.

56. It is a settled position of law that the Local Commissioner's report can be read into evidence in the terms of provisions of Order XXVI Rule 10 (2) Code of Civil Procedure, 1908 ('CPC') where it is not challenged by any party. (Please refer: *Aero Club v. M/s Sahara Belts¹*, *Puma se v. Ashok Kumar²*). Further, in the order dated 21st November, 2019, it was recorded the defendants had consented to the copies/images prepared by the IT Expert could be admitted in evidence without the requirement of any proof. Accordingly, the report submitted by the Local Commissioner, along with its contents, are admissible as evidence as the same was unchallenged and consented to by the defendants.

57. Now I shall examine the material found by the Local Commissioners.

58. On examination of the shipping records and invoices obtained during the raid, it is apparent that the defendants had established a network through which counterfeit goods were distributed to the international markets, and the defendants had sold approximately 250,000 counterfeit medical devices between 2017 and 2019 to at least nine different countries. Further, the shipping record reveals that the defendant no.1 had fabricated false authorization letters purportedly from the plaintiff's subsidiary companies, forging signatures of their authorized representatives through his employee, Mr. Upkar Singh, in an attempt to mislead clients to make them believe that the defendants have a connection with the plaintiff.

58.1 Copies of the transcript of the WhatsApp conversation between the defendant no.1 and Mr. Upkar Singh have been exhibited as **Exhibit 1/90**

¹ 2023 SCC OnLine Del 7466

² 2023 SCC online Del 6764



and documents extracted from the electronic devices of Mr. Upkar Singh have been exhibited as **Exhibit 1/91**.

59. While conducting the search of the premises no.1, the Local Commissioner also recovered a counterfeit seal/stamp bearing the plaintiff's house mark "JOHNSON & JOHNSON" from the defendants' possession and the same was seized by the Local Commissioner. Further, the data retrieved from the electronic devices of the defendants indicates that defendant no.1 was in possession of a guide detailing the differences between genuine and counterfeit 'ETHICON' products.

60. The defendant no.1 had engaged third-party manufacturers, namely Altaylar Medical (Turkey), Hangzhou Tao Imp & Exp Co. Ltd., and Yueping Wu, since 2012, to produce counterfeit 'SURGICEL' branded products. The WhatsApp conversations and email correspondences show that defendant no.1 had provided detailed instructions on how the defendants were replicating the plaintiff's products, including specifications for branding and packaging. These unbranded surgical devices were subsequently repackaged by the defendants in a counterfeit, non-sterile, and contaminated trade dress bearing the plaintiff's trade marks and distributed internationally.

60.1 Copies of the WhatsApp transcript between the defendant no.1 and Altaylar Medical have been exhibited as **Exhibit PW 1/75 (colly)** and copies of the WhatsApp transcript between the defendant no.1 and Mr. Lovedeep Singh of Hangzhou Tao Imp & Exp Co. Ltd. have been exhibited as **Exhibit PW 1/86**.

61. The WhatsApp conversations of the defendant no.1 reveal that the defendants were also involved in re-packaging, the expired medical products



by affixing counterfeit labels with falsified future expiry dates. The said exercise was carried out by one Mr. Upkar Singh, who is an employee of the defendant no.1 and was working under his guidance. The defendant no.1 actively sought expired medical products from suppliers, inquiring whether expired goods were available for purchase and resale. (Please refer: **Exhibit 1/90**).

62. In one of the WhatsApp correspondence between defendant no.1 and his employee, Mr. Upkar Singh, the defendant no.1 had provided explicit instructions to one Mr. Mudassar Shah, employee of the US based company, eSutures, which partnered with the defendants to supply the expired 'SURGICEL' products in India, as to which expiry dates would work and how the expiry products are to be invoiced. At the request of defendant no.1, the representative at eSutures furnished details of the expiration dates of the products being offered, a significant number of which had been expired for over a decade. Subsequently, defendant no.1 responded to the eSutures representative *via* a voice message, stating:

"Boss, we are friends, and we cooperate with each other. We all have common sense, so we must all have an idea of what will work and what will not. Last night, I was slightly intoxicated when I stated that I would purchase all the expired goods. However, we cannot cause harm to anyone; we can never accept goods from 2007 or 2008—it is impossible. But, we can purchase—I am merely mentioning this. You need to return the material. We cannot accept all of it."

63. Further, defendant no.1 sent a separate voice message to Mr. Mudassar Shah, instructing him on the manner in which the expired products should be dispatched. Defendant no.1 directed:

"There is no need to mention the expiry date or lot number. Simply describe it as cotton foam—there is no need to indicate its intended use"



or any other details. The invoice should only state 'cotton foam samples' and should be shipped via Aramex. There is no need to reference the product code or item name on the invoice—only specify the size and label it as 'cotton foam samples,' and that will suffice.”

63.1 Copies of the transcript of the WhatsApp conversation between the defendant no.1 and Mr. Mudassar Shah have been exhibited as **Exhibit PW 1/88**. Copies of the transcript of the WhatsApp conversation between the defendant no.1, Mr. Mudassar Shah and Mr. Jason of eSutures, and certified English translations thereof filed along with the Local Commissioner's Report have been exhibited as **Exhibit PW 1/89 (colly)**.

64. The email correspondences and WhatsApp conversations retrieved from the devices of the defendant no.1 further establish that the defendant no.1 received multiple complaints from his clients regarding the visibly counterfeit nature of both the packaging and the products supplied by him. For instance, in 2019, Mr. Bob Chen, a client of the defendants, informed the defendant no.1 that his company had received a formal complaint from a hospital regarding products bearing the marks 'SURGICEL'. The hospital reported that the use of these products had resulted in a head infection, prompting them to send the items for laboratory testing. Upon being confronted by Mr. Bob Chen regarding the authenticity of the 'SURGICEL' branded products and whether they had been legitimately sourced from the plaintiff, the defendant no.1, instead of providing clarification or verifying their origin, instructed Mr. Bob Chen to first resolve the issue by bribing the concerned individuals.

64.1 Copies of the transcript of the WhatsApp conversation between the defendant no.1 and Mr. Bob Chen have been exhibited as **Exhibit PW 1/92**.

65. Upon receiving the aforementioned complaint, the defendant no.1



inquired from his wife, i.e., the defendant no.2, whether the infection could have resulted from the handling and packaging practices of his staff in relation to the counterfeit products. In response, defendant no.2 dismissed this possibility, stating that contamination was unlikely as all staff members washed their hands with sanitizer.

65.1 Copies of the transcript of the WhatsApp conversation between the defendant no.1 and defendant no.2 have been exhibited as **Exhibit PW 1/93 (colly)**.

66. The defendant no.1 has made explicit admissions to multiple clients that he engages in the trade of duplicate or counterfeit medical products bearing the plaintiff's trade marks 'SURGICEL', 'LIGACLIP', and 'ETHICON'. Further, the defendants have admitted that the counterfeit 'LIGACLIP' products were manufactured in China and subsequently packaged in India by the defendants.

66.1 Copies of the WhatsApp transcript between the defendant no.1 and Mr. Ali Hussain, partner of Pure Care Traders filed along with the Local Commissioner report have been exhibited as **Exhibit PW 1/94 (colly)**.

67. A review of the data seized during the raid, *inter alia*, reveals that for the purposes of money laundering and tax evasion, the defendant no.1 expressly informed his clients that he could not accept payments in his Indian bank accounts. The financial records obtained during the proceedings revealed that defendant no.1 operated at least thirteen foreign bank accounts, wherein substantial sums were deposited by international clients in exchange for counterfeit products. The documents on record indicate that transactions exceeding at least USD 1 million were made in 2019 alone by the defendants.



67.1 Printout of the list of foreign companies and/or third parties along with the corresponding bank details, in whose accounts the defendants have received payments for supply/ sale of products under the plaintiff's marks have been exhibited as **Exhibit PW 1/100**.

68. During the execution of the Local Commission at premises no.1, a consignment containing 10,000 counterfeit products arrived at the residential premises of the defendants, which was also seized by the Local Commissioner. Further, Rs.16 Lakhs in cash was recovered from the defendants' premises no.1 and the same has been duly recorded by the Local Commissioner in its report.

69. Further, evidence suggests that defendant no.1 has been engaged in Hawala transactions for laundering illicit proceeds. Copies of the WhatsApp transcripts of the defendant no. 1 with his hawala brokers, *Mr. Rajiv Gmbr* and *Mr. Buntysrdji*, regarding payments made through hawala, along with all attachments and certified English translations have been exhibited as **Exhibit PW 1/99**. The WhatsApp conversations confirm that the defendant no.1 received over Rs.50 Lakhs through Hawala transactions between August and October 2019, immediately preceding the filing of the present suit. (Please refer: **Exhibit PW 1/94**)

70. The Court takes serious note of an intercepted conversation where defendant no.1, upon receiving complaints about infected counterfeit surgical products, advised his business associate to resolve the matter through bribery rather than corrective action. Such conduct demonstrates blatant disregard for public health and safety.

71. The defendants, in their written statement, have denied all the averments made against them. The defendants have not only denied any



involvement in the alleged illegal transactions but also claimed to have no knowledge of the same. Despite the evidence on record, the defendant no.1 has victimised himself and claimed that the present suit has been filed to target the defendants.

72. With respect to the involvement of defendant no.2 in the counterfeiting activities, it has been stated that defendant no.2 acted unknowingly and without intent to infringe the plaintiff's trade marks or counterfeit its products. Furthermore, it is asserted that any actions undertaken by defendant no.2 were carried out under the instructions of her husband, defendant no.1.

73. However, the evidence on record shows that the defendant no.2 was actively involved with the defendant no.1 in counterfeiting the goods of the plaintiff. Not only did the defendant no.2 have complete knowledge about the counterfeiting business of defendant no.1, but also she was actively participating in the complicit activities. Further, the material extracted from her email and electronics clearly shows that the defendant no.2 was giving directions to Mr. Upkar Singh, to print and/or make copies of counterfeit stickers/labels for use in repackaging of counterfeit products under the trade marks 'SURGICEL' and other 'ETHICON' formative trade marks. (Please refer: **Exhibit PW 1/111**). Moreover, the participation of the defendant no.2 can be further evidenced from the fact that numerous shipment receipts were found by the Local Commissioner during the execution of the commission, which were signed by the defendant no.2.

74. The conduct of the defendants before the court had also been malicious as the defendants have repeatedly failed to make full and honest disclosures about their bank accounts despite multiple court orders.



Defendant no.1 initially withheld details of various bank accounts and assets in his affidavit. Even after being directed to submit a second affidavit, he only partially complied with the order and failed to disclose the IndusInd Bank account, details of which were recovered during the execution of the commission. Further evidence from seized documents and the Local Commissioner's Report highlights extensive undisclosed financial dealings, including large-scale shipments and monetary transactions running in crores.

75. It is also to be noted that the defendants chose to stop appearing before this Court and evade the present proceedings. The Predecessor Bench, *vide* orders dated 22nd November 2023 and 16th July 2024, directed multiple government entities (Delhi Police, Bureau of immigration/MHA, UIDAI, GST department, Income Tax department, Cyber Cell (New Delhi District), Office of the Dy. Commissioner of Police etc.) to track the defendants and file a status report. However, despite their efforts, the defendants remained untraceable. The aforesaid conduct of the defendants makes it clear that the defendants do not have anything to put forth on merits and have absconded. Even in the Amended Written Statement, the defendants have made bare denials and vague averments against the plaintiff without giving any plausible explanation for their flagrant counterfeiting activities. The defendants have also denied the plaintiff's submissions which are based on the documents filed with the Local Commissioner's Report and failed to set up any valid defence.

76. On perusal of the electronic data and physical documents seized by the Local Commissioner, it is clear that the defendants were engaged in the counterfeiting of surgical devices and medical products under the plaintiff's registered trade marks, including but not limited to 'SURGICEL',



‘ETHICON’, and ‘LIGACLIP’. The evidence placed before this Court without a doubt establishes that the defendants have engaged in counterfeiting, misrepresentation, and fraudulent activities in blatant violation of the plaintiff’s rights. The conduct of the defendants poses a severe risk to public health and safety, as the counterfeit medical products distributed by them lack the necessary sterility and quality standards as required in the surgical use. Further, the guide, found at the defendant’s premises, for differentiating genuine and counterfeits of the plaintiff’s products clearly demonstrates a premeditated intent to deceive consumers and medical professionals. The deliberate falsification of expiry dates on medical devices further exacerbates the gravity of their actions.

77. It is a settled principle of law that while awarding damages, the court has to adopt a stringent approach in awarding damages where the infringement is deliberate and *mala-fide*. In ***Koninlijke Philips N.V. & Anr. v. Amazestore & Ors***³, a Coordinate Bench of this Court outlined principles for awarding proportionate damages on the basis of degree of *mala-fide* conduct. The relevant observations of the coordinate bench are extracted below:

“40. Keeping in view the aforesaid, this Court is of the view that the rule of thumb that should be followed while granting damages can be summarised in a chart as under:-

#	<i>Degree of mala fide conduct</i>	<i>Proportionate award</i>
(i)	<i>First-time innocent infringer</i>	<i>Injunction</i>

³ 2019 SCC OnLine Del 8198



(ii)	<i>First-time knowing infringer</i>	<i>Injunction + Partial Costs</i>
(iii)	<i>Repeated knowing infringer which causes minor impact to the Plaintiff</i>	<i>Injunction + Costs + Partial damages</i>
(iv)	<i>Repeated knowing infringer which causes major impact to the Plaintiff</i>	<i>Injunction + Costs + Compensatory damages.</i>
(v)	<u>Infringement which was deliberate and calculated (Gangster/scam/mafia) + wilful contempt of court.</u>	<u>Injunction + Costs + Aggravated damages (Compensatory additional damages)</u>

41. It is clarified that the above chart is illustrative and is not to be read as a statutory provision. The Courts are free to deviate from the same for good reason.”

[Emphasis is mine]

78. In *Cartier International A.G. v. Gaurav Bhatia*⁴, while granting the damages in case where defendants were selling counterfeit watches and did not appear to contest the suit filed by the plaintiff, a Coordinate Bench of this Court has observed that the defendant who deliberately avoids court proceedings should not be allowed to benefit from such evasion as that would be unfair to a defendant who submits account records and is held liable for damages, while one who evades proceedings escapes liability due to the absence of financial records. The relevant extract is given below:

“66. It is well settled that damages in such cases must be awarded and a defendant, who chooses to stay away from the proceedings of the

⁴ 2016 SCC OnLine Del 8



Court, should not be permitted to enjoy the benefits of evasion of court proceedings. Any view to the contrary would result in a situation where the defendant who appears in Court and submits its account books would be liable for damages, while a party which chooses to stay away from court proceedings would escape the liability on account of failure of the availability of account books.

67. A party who chooses not to participate in court proceedings and stay away must, thus, suffer the consequences of damages as stated and set out by the plaintiffs as the Court in the present case are dealing with counterfeiting products. It is rank case of dishonesty where the piracy committed by the defendants is apparent on the face of the record. It is just like printing of duplicate currency. The counterfeiter can never be allowed to do such illegal activities. Cheating can never be condoned by the Court unless the accused is punished.

68. Sub-Section (1) of Section 135 of the Trade Marks Act, 1999 provides that relief may be granted in any suit for infringement or for passing off includes injunction and at the option of the plaintiff, either damages or an account of profits. The plaintiffs have chosen the route of damages. The plaintiffs in the present matter while establishing in evidence have been able to prove the damages suffered by them. Materials have been filed and proved accordingly. The damages which they claim are attributable to flagrant infringement.”

[Emphasis is mine]

79. The aforesaid principles would be squarely applicable in the present case. In the present case, the defendants have deliberately sold counterfeit medical products. In the tests conducted by the plaintiff, it has been found that the counterfeit products of the defendants failed to meet the necessary oxidation levels required for proper absorption in the body and the use of such substandard medical devices during surgery could result in severe complications, including infections, foreign body reactions, and surgical adhesions. This is substantiated by the chats exhibited in **Exhibit PW 1/92** as discussed above, where several complaints were received by the



defendants for their counterfeit products.

80. In my view, the counterfeit medical products sold by the defendants pose a significant threat to public health. Counterfeiting of medical devices is not merely a case of trade mark infringement, it is a grave offence that endangers the lives of people. The defendants' conduct demonstrates a deliberate effort to mislead the public, jeopardize the consumer safety and exploit consumer trust for financial gain.

81. The defendants' deliberate and fraudulent acts have also caused irreparable harm to the plaintiff's goodwill and market reputation. By selling substandard counterfeit products under the plaintiff's trade marks, the defendants have misled consumers and associated the plaintiff's name with the counterfeit goods.

82. The evidence presented before the Court, including invoices, bank receipts, and chat extracts, establishes without a doubt that defendant no. 1 has received substantial financial gains in the course of carrying out the infringing and counterfeiting activities. These transactions, as detailed in the Local Commissioners' Report, and invoices found at the premises, demonstrate a clear pattern of profiting commercially, by selling counterfeits, at the expense of the plaintiff. In view of the compelling evidence on record and the blatant disregard for the Court's orders, the conduct of the defendants in the present case necessitates and warrants imposition of compensatory as well as exemplary damages in favour of the plaintiff and against the defendants.

83. The plaintiff has led evidence and in the affidavit of Mr. Ameya Joshi [PW1] it is averred that on the basis of invoices, bank receipts recovered, the defendants have sold the counterfeit goods amounting to approximately



₹9,39,31,946/-. The averments made in the aforesaid affidavit remain un rebutted. The relevant extract from the affidavit of Mr. Ameya Joshi [PW1] is set out below:

“79. I have reviewed the documents filed along with the Local Commissioner's Report and have been able to find several invoices/ receipts of payments received by the Defendant No. 1 for sale of counterfeit products of the Plaintiff. The Plaintiff has already filed copies of select invoices, bank receipts and extracts of chats which reflect transactions of crores of rupees as detailed above and in the amended Plaint. Few copies of bank transfer slips at Volume 259 @Pg 51533, 51534, 51539, 51583, 51591, 515611, 51632 evidence transfer of huge payments by Bob Chen (Beijing Zhonglianhai) to Defendant No. 1 in foreign bank accounts. Further, select chats of the Defendant No. 1 with his associates in this regard confirming that the Defendant No. 1 at least received an amount of Rs. 9,39,31,946 (approx.) against sale of counterfeit products of the Plaintiff extracted from the report of the Local Commissioner are being filed with my affidavit and be exhibited as Exhibit PW 1/199.

80. I state that the Plaintiff is entitled to the entire amount received by the Defendant Nos. 1 and 2 on account of sale of counterfeit products of the Plaintiff. This is de hors the Plaintiff's contention that the Defendants are also liable for punitive and extraordinary damages on account of not only infringing the Plaintiff's trade marks and counterfeiting medical devices but also tarnishing the goodwill and reputation of the Plaintiffs' brands. The Plaintiff has been forced to file simultaneous actions in multiple countries on account of the counterfeiting products manufactured by and/or at the behest of the Defendants and sold to consumers in at least 9 countries. In fact, the Defendants continue to sell counterfeits in China causing irreparable loss and injury to the Plaintiff.”

[Emphasis is mine]

84. In *Hindustan Unilever Limited v. Reckitt Benckiser India Limited*⁵, a Division Bench of this Court, outlined the principle of ‘rough and ready

⁵ ILR (2014) 2 Del 1288



calculations’ for awarding damages. In *Koninlijke Philips* (supra), relying on the judgment passed by the Division Bench of this Court in *Hindustan Unilever* (supra), a Coordinate Bench of this Court granted damages assuming the profit margin of 20% of the defendants.

85. I am convinced with the evidence presented and submissions made by the counsel for plaintiff and conclude that a conservative profit margin of 25% can be assumed for awarding actual damages in favour of the plaintiff and against the defendants in the present case. Therefore, in the present case, the plaintiff is entitled to an award of compensatory damages to the extent of 25% of ₹9,39,31,946/- i.e., the sales figures given by the plaintiff in the evidence affidavit of Mr. Ameya Joshi [PW1]. Accordingly, the plaintiff is entitled to compensatory damages of ₹2,34,82,986/-.

86. With regard to the exemplary damages, a reference may be made to *Hindustan Unilever* (supra) wherein the Division Bench of this Court has affirmed the principles governing grant of exemplary damages as laid down by the House of Lords in *Rookes v. Barnard*⁶, and *Cassell & Co Ltd v Broome*⁷. In *Rookes* (supra), the House of Lords identified three categories of cases in which exemplary damages may be awarded:

- a) Oppressive, arbitrary or unconstitutional action by any of the servants of the government;
- b) Wrongful conduct by the defendant which has been calculated by him for himself which may well exceed the compensation payable to the claimant; and
- c) Any case where exemplary damages are authorised by the statute.

⁶ [1964] 1 All E. R. 367

⁷ [1992] AC 1027



86.1 In *Cassell* (supra), the House of Lords has held that the exemplary damages awarded by courts are not merely to compensate the claimant but to punish the defendant for its misconduct and to deter similar conduct in the future.

86.2 Following the aforesaid principles, the Division Bench in *Hindustan Unilever* (supra), held that the exemplary damages must follow general damages. The relevant extract is reproduced below:

*“67. In India, the Supreme Court has affirmed the principles in Rookes (supra) and Cassel (supra). Interestingly, however, the application in those cases has been in the context of abuse of authority leading to infringement of Constitutional rights or by public authorities (ref. Ghaziabad Development Authority v. Balbir Singh, (2004) 5 SCC 6; Lucknow Development Authority v. M.K. Gupta, 1994 SCC (1) 243). As yet, however, the Supreme Court has not indicated the standards which are to be applied while awarding punitive or exemplary damages. In libel, tortious claims with economic overtones such as slander of goods, or in respect of intellectual property matters. The peculiarities of such cases would be the courts’ need to evolve proper standards to ensure proportionality in the award of such exemplary or punitive damages. **The caution in Cassel that “[d]amages remain a civil, not a criminal, remedy, even where an exemplary award is appropriate, and juries should not be encouraged to lose sight of the fact that in making such an award they are putting money into a plaintiff’s pocket...” can never be lost sight of. Furthermore – and perhaps most crucially –the punitive element of the damages should follow the damages assessed otherwise (or general) damages; exemplary damages can be awarded only if the Court is “satisfied that the punitive or exemplary element is not sufficiently met within the figure which they have arrived at for the plaintiff’s solatium”. In other words, punitive damages should invariably follow the award of general damages (by that the Court meant that it could be an element in the determination of damages, or a separate head altogether, but never completely without determination of general damages).**”*

[Emphasis is mine]

87. Following the aforesaid principles, a Coordinate Bench of this Court



in *Whatman International Ltd. v. P. Mehta*⁸, awarded exemplary damages amounting to Rs.1.85 Crores in favour of the plaintiff and against multiple defendants in a suit relating to counterfeit products. While awarding exemplary damages, the Court took note of the fact that the conduct of the defendants was dishonest, as they had made false, incorrect, and misleading statements both in their pleadings and in their statements before the Court. Further, the defendants were habitual infringers and were engaged in selling counterfeit products since 1992.

88. In the present case, the defendants, through their conduct, have caused immense harm to the goodwill and reputation of the plaintiff. The defendants' actions constitute a deliberate, conscious, and wilful infringement of the plaintiff's rights. By selling counterfeit medical products, the defendants have not only inflicted substantial financial loss upon the plaintiff but have also misled the consumers who purchased these products under the false belief that they were genuine. Given the gravity of the infringement and the extent of harm caused, compensatory damages alone would be inadequate to compensate the plaintiff. Thus, applying the principles of *Rookes* (supra), as affirmed by the Division Bench in *Hindustan Unilever* (supra), the present case is a fit case for awarding exemplary damages. Accordingly, exemplary damages amounting to ₹.1,00,00,000/- are awarded in favour of the plaintiff and against the defendants.

89. In *Uflex Limited v. Government of Tamil Nadu and Ors.*⁹ the Supreme Court has laid down the principles for determining the costs in

⁸ 2019 SCC OnLine Del 6856

⁹ (2022) 1 SCC 165



commercial matters. The relevant observations of the Supreme Court are set out below:

“55. We may note that the common thread running through all these three cases is the reiteration of salutary principles: (i) costs should ordinarily follow the event; (ii) realistic costs ought to be awarded keeping in view the ever-increasing litigation expenses; and (iii) the costs should serve the purpose of curbing frivolous and vexatious litigation. [Report No. 240 of the Law Commission of India.]

56. We may note that this endeavour in India is not unique to our country and in a way adopts the principle prevalent in England of costs following the event. The position may be somewhat different in the United States but then there are different principles applicable where champerty is prevalent. No doubt in most of the countries like India the discretion is with the court. There has to be a proportionality to the costs and if they are unreasonable, the doubt would be resolved in favour of the paying party [UK Civil Procedure Rule 44.2.] . As per Halsbury's Laws of England, the discretion to award costs must be exercised judicially and in accordance with reason and justice. [Vol. 10, 4th Edn. (Para 15).] The following principles have been set out therein:

“In deciding what order (if any) to make about costs, the court must have regard to all the circumstances, including:

- (i) The conduct of all the parties;*
- (ii) Whether a party has succeeded on part of his case, even if he has not been wholly successful; and*
- (iii) Any payment into court or admissible offer to settle made by a party which is drawn to the court's attention.*

The conduct of the parties includes:

- (a) Conduct before, as well as during, the proceedings and in particular the extent to which the parties followed any relevant pre-action protocol;*
- (b) Whether it was reasonable for a party to raise, pursue or contest a particular allegation or issue;*
- (c) The manner in which a party has pursued or defended his case or a particular allegation or issue; and*
- (d) Whether a claimant who has succeeded in his claim, in whole or in part, exaggerated his claim.” [10th Vol. 4th Edn. (Para 17).]”*



[Emphasis is mine]

90. The present suit was filed in October 2019, and involved multiple hearings wherein counsel appeared on behalf of the plaintiff. Additionally, Local Commissioners were appointed to visit the premises of the defendants. Further, IT experts were also appointed to extract the data from the electronic devices retrieved by the Local Commissioners from the defendants' premises. Taking into account the aforesaid position, I am of the view that in the present facts and circumstances, the plaintiff is entitled to recover actual costs from the defendants.

RELIEF

91. In view of the foregoing analysis, a decree of permanent injunction is passed in favour of the plaintiff and against the defendants no. 1 and 2 in terms of prayer clauses A (i) to (iii) of the plaint.

92. In respect of relief claimed in prayer clause B (ii), the plaintiff is permitted to destroy the counterfeit products seized by the Local Commissioners during the execution of the commission and currently in the possession of the plaintiff.

93. The plaintiff is entitled to a decree of damages in terms of prayer clause C of the plaint against the defendants jointly and severally. The damages are awarded in the following manner:

- (i) A sum of ₹2,34,82,986/- is awarded as compensatory damages in favour of the plaintiff and against the defendants.
- (ii) A further sum of ₹1,00,00,000/- is awarded as exemplary damages in favour of the plaintiff and against the defendants.

94. As for the relief of costs prayed for in prayer clause D of the plaint, the plaintiff shall file its bill of costs in terms of Rule 5 of Chapter XXIII of



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the Delhi High Court (Original Side) Rules, 2018 within four weeks. For this purpose, the representatives of the plaintiff shall appear before the Joint Registrar, who shall determine the actual costs incurred by the plaintiff in the present litigation.

95. Counsel for the plaintiff does not press for the remaining reliefs claimed in the suit.

96. Plaintiff shall pay the additional court fees on the differential amount awarded in favour of plaintiff within four (4) weeks.

97. Let the decree sheet be drawn up.

98. All pending applications stand disposed of.

**AMIT BANSAL
(JUDGE)**

MARCH 11, 2025

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