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

+ **CS(COMM) 564/2023 & I.A. 40224/2024**

**FONTAINE LIMITED**

.....Plaintiff

Through: **Mr. Abhijnan Jha & Mr. Sadhvi  
Chhabra & Mr. Pranav Tomar, Advs.**

versus

**BERKELEY BEAUTY BRANDS PRIVATE LIMITED & ORS.**

.....Defendants

Through: **Mr. Gaurav Gupta, Mr. Nikhil Kohli,  
Mr. Tushar Mudgil & Mr. Kushank  
Garg, Advs. for Defendant no. 1.  
None for Defendant nos. 2 to 7**

**CORAM:**

**HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA**

**ORDER**

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**14.11.2025**

**I.A. 40224/2024 (under Order XIII-A of CPC)**

1. This is an application under Order XIII-A read with Section 151 of the Civil Procedure Code, 1908 ['CPC'], filed by the Plaintiff/Applicant seeking summary judgment.

2. Mr. Abhijnan Jha, learned counsel for the Plaintiff has set out the case of the Plaintiff as under: -

2.1 The House of Creed ['CREED'], a luxury perfume house established in 1760, is known worldwide for its original fragrances for men and women, having acquired immense goodwill through extensive use, advertising, and quality control. The Plaintiff currently owns and operates the CREED brand and its business in India, having acquired all rights and licenses through an



IP Assignment Agreement dated 29.05.2020, from Olivier Christian Henry Creed. The CREED (device) mark is registered in India under Class 3, Application No. 1219003, and enjoys protection under Classes 3, 4, and 35 as per the Madrid Protocol as of 11.01.2022. The details of the list of Plaintiff's various trademark applications and registrations thereof are mentioned at paragraph 18 of the plaint.

**Contractual agreements between the parties**

2.2 Erol International Limited ['Erol'] was engaged in the manufacturing, sale, and worldwide distribution of CREED trademark and sub-mark products, comprising premium fragrances, luxury cosmetics, toiletries, and related goods, through its distributors and agents. To advertise, sell, and distribute CREED products in India, Erol entered into a Distribution Agreement<sup>1</sup> with Defendant No. 2 on 10.08.2017, executed on 12.09.2017 ['Distribution Agreement'], granting Defendant No. 2 an exclusive license to import, distribute, and sell CREED products in India, along with the right to use related promotional materials.

Its<sup>2</sup> Indian affiliate, Defendant No. 1, operated a CREED store in Chanakya Mall at New Delhi. Erol issued a no-objection letter on 03.11.2017, allowing Defendant No. 1 to promote and distribute CREED products in India.

2.3 Later, on 23.02.2020, the Plaintiff acquired CREED's business from Mr. Oliver Creed through an Asset Purchase Agreement, followed by an IP Assignment Agreement dated 29.05.2020, transferring all rights and revenues related to CREED products to the Plaintiff. On 24.03.2020 Erol notified Defendant No. 2, that the Plaintiff had acquired its rights under the

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<sup>1</sup> The key terms of the Agreement is mentioned at paragraph 22 of the plaint.



Distribution Agreement, after which the Plaintiff continued supplying products to Defendant Nos. 1 and 2 for sale in India.

2.4 Despite regular supply of products, Defendant No. 2 delayed payments for invoices raised in June 2021 and settled them belatedly only in February 2022 after several reminders. Due to repeated delays and unresponsiveness, the Plaintiff decided to let the Distribution Agreement expire naturally after 09.08.2022 and requested for an orderly closure. It is stated that upon the expiry of the Distribution Agreement, the Defendant no. 1 and 2 could not claim to be the exclusive distributors in India, could not purchase or sell CREED products and could not use and exploit CREED trademarks.

**Dispute between the parties**

2.5 Despite repeated communications, the Defendants continued to illegally sell and distribute CREED products through unauthorised channels. Defendant Nos. 1, 3 and 4 are Indian affiliates of Defendant No. 2, who made unauthorized sales of CREED products. Defendant Nos. 5 to 7 are directors managing the day-to-day operations of all these entities i.e., Defendant Nos. 1 to 4.

2.6 As a result, the Plaintiff issued a cease-and-desist notice on 30.08.2022, directing Defendant No. 1 to immediately stop distributing, selling, or promoting CREED products from their Chanakya Mall store in New Delhi and to discontinue any use of CREED's intellectual property. The Plaintiff also offered to buy back all non-defective CREED products in accordance with the Distribution Agreement, at the 'landed cost'.

2.7 However, the Defendants persisted in misusing the CREED

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<sup>2</sup> Defendant No. 2's



trademark, falsely representing themselves as authorised dealers, and promoting their business through a WhatsApp account under the name ‘CREED the Chanakya’ to mislead customers. They continued to sell CREED products through unauthorised shops, payment gateways, and discount schemes, raising serious concerns of passing off. Consequently, another cease-and-desist notice was issued on 07.07.2023, instructing the Defendants to stop sales through unauthorised channels, prepare an inventory of non-defective goods for repurchase, and destroy defective items under supervision. Despite this, the Defendants continued their unlawful activities, compelling the Plaintiff to file the present suit seeking prohibitory and mandatory injunctions to protect its trademark, reputation, and goodwill.

#### **Proceedings of the Suit**

3. On 18.08.2023, this Court passed an ex-parte ad interim injunction inter alia restraining the Defendants from (i) directly or indirectly using CREED marks as well as selling CREED products through any unauthorized channel. A local commissioner was also appointed vide the same order to visit the premises of the Defendants.

4. On 29.08.2023 the local commission was executed and the local commissioner found, at the premise of the Defendants, empty boxes, empty paper bags, a perfume booklet and placards with the device mark ‘CREED’. Further, a metal table with a screen bearing the device mark ‘CREED’ was also found at the premises of the Defendant. The Local Commissioner also found a list of products which as per the Plaintiff reflects the unsold inventory available with the Defendants.

5. Defendant No. 1 filed its written statement on 28.12.2023, along with the affidavit of admission/denial of documents. It was admitted in the



written statement that Defendant No. 1 operated the CREED store till 29.04.2023, even though the Distribution Agreement expired on 09.08.2022, however, Defendant No. 1 failed to expressly accept or deny all<sup>3</sup> of the documents filed by the Plaintiff.

6. Furthermore, despite effective service of summons, Defendant Nos. 2 to 7 failed to appear before this Court and vide order dated 21.02.2024, their right to file their written statements was closed.

7. On 01.05.2024, this Court made the ad-interim injunction order dated 18.08.2023 absolute.

8. On 20.09.2024, the Plaintiff filed the present Application seeking summary judgement under Order XIII-A of the CPC read with Rule 27 of the Delhi High Court Intellectual Property Rights Division Rules, 2021 ['IPD Rules'].

9. Further, Defendant No. 1 also filed their supplementary affidavit of admission/denial on 08.04.2025, at a very belated stage.

**Submissions by the learned counsels of the parties**

10. Learned counsel appearing on behalf of Defendant No. 1 states that Defendant No. 1 has no objection if the relief of permanent injunction prayed for at paragraph 95(a), (b), (c) and (d) is granted. He states that however, Defendant No. 1 is contesting this application vis-à-vis the relief of damages and claim of legal costs.

11. Learned counsel for the Plaintiff states that the Plaintiff is praying for recovery of legal costs of approximately Rs. 8 lakhs and damages to the tune of Rs. 37.43 lakhs with reference to Document-1 filed with the application.

11.1 He states that the Distribution Agreement between the parties was

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<sup>3</sup> Document No. 34, 36, 37, 38, 43, 44, 45 and 46 filed as Volume IV (II) along with the plaint.



terminated on 09.08.2022. He states that as per the agreement, the Plaintiff herein had an option for buying back the non-defective products lying with the Defendants at the landed cost. He states that the said option was exercised by the Plaintiff and the Plaintiff by its notices called upon the Defendant No. 1 to return all the unsold products. He states that Defendant No. 1 had failed to return the products and it came to the attention of the Plaintiff that Defendant No. 1 was continuing to illegally sell these products at market price with the assistance of defendant nos. 2 to 7. He refers to the two cease-and-desist notices dated 30.08.2022 and 07.07.2023.

11.2 He states that the documents placed on record show that Defendant No. 1 through its affiliates continued to sell the products at the market price. He also relies upon the Local Commissioner's report dated 29.08.2023, filed on record. He states that the Local Commissioner's report encloses a list of plaintiff's products found at the Defendant's premises. He states that the said list is the unsold inventory of the products available with the Defendants.

11.3 He states that Defendant No. 1 has not disputed the list of products filed by the Local Commissioner and has not explained its stand vis-à-vis the said list in its written statement.

11.4 He states that the Plaintiff has placed on record document's evidencing the continuing illegal sale of its products by the Defendants to the third parties through its WhatsApp accounts. He states that the store at Chanakya Mall, also continued to be operated by the Defendant No. 1 till 29.04.2023, as admitted in the written statement.

11.5 He states that Defendant No. 1 in its first affidavit of admission/denial of documents filed along with its written statement, did not dispute the



WhatsApp chats relied upon by the Plaintiff, however, after the filing of the captioned application, the Defendant No. 1, at a very belated stage, filed a supplementary affidavit dated 08.04.2025 wherein the Defendant No. 1 has disputed the WhatsApp chats relied upon by the Plaintiff.

11.6 He states that such a belated affidavit of admission/denial of documents filed on 08.04.2025 ought not to be considered and the Defendant No.1 shall be deemed to have admitted the documents/WhatsApp chats which were not admitted/denied in the affidavit filed along with the written statement.

11.7 He states that Plaintiff is restricting its claim of damages to the tune of Rs. 37.43 lakhs for the unauthorised sale of the unsold inventory by the defendant. He states that Defendant No. 1 has in fact, earned profits to the tune of Rs. 2,00,91,150 by selling the unsold inventory at the market price and Defendant No. 1 is restricting its claim for damages to a lesser amount of Rs. 37.43 lakhs.

11.8 He states that Defendants are habitual defaulter in terms of selling branded products unauthorizedly and refers to the order of the Coordinate Bench in **Yves Saint Laurent v. Brompton Lifestyle**<sup>4</sup>.

11.9 He explains that the legal costs of Rs. 8 lakhs being sought for is towards the Court fees, Local Commissioner fees and Rs. 5 lakhs towards the counsel fees.

12. In reply, learned counsel for the Defendant No. 1 states that it is a matter of record that the Plaintiff has not placed on record any document with respect to the dates on which the unsold inventory available with Defendant No. 1 as on 09.08.2022 was sold.

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<sup>4</sup> CS (COMM) No. 789/2022, order dated 04.01.2024



12.1 He states that the products were purchased by the Defendant No. 1 from the Plaintiff only after paying full cost and it is not a case of sale of counterfeit.

12.2 He states that it is the issue of trial as to the extent of inventory which has been sold by Defendant No. 1 after the termination of the Distribution Agreement.

12.3 He states that it is correct that Defendant No. 1 has not placed on record any documents including its GST returns or Chartered Accountant certificate to show that the entire stock purchased from the Plaintiff stood sold before the termination of the Distribution Agreement on 09.08.2022.

#### **Findings and Analysis**

13. This Court has heard the learned counsels for the parties and perused the record.

14. The Plaintiff owns and operates the brand CREED, which is a high end, luxury perfume house that creates original fragrances for men and women.

15. Defendant No. 2 was authorized in 2017 to distribute CREED products in India. Defendant No. 1 an affiliate company of Defendant No. 2 was appointed by Defendant No. 2 to operate a store in the Chanakya Mall for sale of CREED products. The store operated under the name CREED, representing to the consumers that it is an authorized store of the brand CREED. The Distribution Agreement expired by efflux of time on 09.08.2022; however, as per the Plaintiff, Defendant Nos. 1 and 2 failed to comply with the closure requirements of the contractual arrangement.

16. The Plaintiff contends that as per Article 16.10 of the Distribution Agreement, Defendant No. 2 was obligated to provide the Plaintiff with the



final unsold inventory available with it including defective and out of date products, and advertising materials in their possession. The Plaintiff contends that as per Article 16.11 of the Distribution Agreement, Plaintiff exercised its option vide notice dated 30.08.2022 to purchase back non-defective CREED products at the landed cost. The Plaintiff contends that Defendant Nos. 1 and 2 had to assist the Plaintiff in an orderly handover of such products.

17. Plaintiff contends that Defendant Nos. 1 and 2 failed to respond to the notice dated 30.08.2022 and instead unauthorisedly continued to use the CREED trademark for selling the unsold inventory to the customers. Plaintiff contends that Defendant No. 2 continued to unauthorisedly use the trademark CREED for the store at the Chanakya Mall unauthorisedly until its closure on 29.04.2023 and also continued to use the promotional materials for selling the unsold inventory to the customers.

18. Plaintiff contends that it also became aware in June, 2023 that Defendant Nos. 1 and 2 were clandestinely selling the unsold inventory through a WhatsApp business account carrying the name 'CREED The Chanakya' for making sales thereby misrepresenting that Defendants are still associated with the Plaintiff.

19. Plaintiff has pleaded the role played by Defendant No. 4 in disposing of the unsold inventory in 2023 by placing on record invoices issued by Defendant No. 4 for the products sold through the WhatsApp business account. Plaintiff has also placed on record documents evidencing receipt of payment by Defendant No. 3 for the CREED products unauthorisedly sold through the WhatsApp business accounts.

20. Plaintiff has pleaded that Defendant Nos. 5 to 7 are the persons in



charge of Defendant Nos. 1 to 4 and all these corporate entities form part of the Bequest Group.

21. In these facts, when the Plaintiff first approached the Court for seeking restraint against the Defendants from unauthorizedly using its trademark CREED and selling the unsold inventory, this Court vide ex-parte ad-interim order dated 18.08.2023 was pleased to restrain the Defendants from using the CREED trademarks and more specifically restrain them from selling CREED products through any channel, including WhatsApp. The Court also appointed a Local Commissioner for carrying out an inspection in the warehouse of Defendant No. 1.

22. The said injunction order dated 18.08.2023 has not been vacated or modified and has in fact been made absolute vide order dated 01.05.2024. None of the Defendants have approached the Court for variation or vacation of the injunction Order.

23. Defendant No. 1 was operating the store at Chanakya Mall and was holding the unsold inventory as on 09.08.2022. Defendant No. 1 has filed its written statement and has also filed the affidavit of admission/denial of the documents; however, it is not pressing on its pleas raised in the written statement and is agreeable to a decree for permanent injunction, prayed for at paragraph 95(a), (b), (c) and (d) of the plaint, against it, however it is opposing the claims for damages and legal costs.

24. No appearance has been marked by Defendant Nos. 2 to 7 despite due service. The plaint discloses how Defendant Nos. 1 to 7 are related to each other and in fact Defendant Nos. 5 and 6 are the Directors of Defendant No. 1. In these facts, it is evident that Defendant Nos. 2 to 7 have full knowledge of the pendency of these proceedings and have consciously elected not to be



represented before the Court.

25. The plaint has been duly verified and is supported by the affidavit of the Plaintiff as well the Statement of Truth. The Plaintiff has placed on record the IP assignment agreement dated 29.05.2020 in its favour evidencing that the trademark CREED have been assigned to it.

26. In view of the deliberate non-filing of the written statement by Defendant Nos. 2 to 7, it is apparent that they do not wish to contest these proceedings and they do not dispute the proprietary rights of the Plaintiff in the mark CREED. Even otherwise as per averments in the plaint, Defendant Nos. 3 to 7 have no independent right to use the Plaintiff's trademark CREED. Defendant No. 2 had rights under the Distribution Agreement, which however expired by efflux of time on 09.08.2022.

27. At this stage, it would be apposite to refer to **Su-Kam Power Systems Ltd. v. Kunwer Sachdev**<sup>5</sup>, wherein the Co-ordinate Bench of this Court in the context of commercial suits has observed the following: -

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

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

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<sup>5</sup> 2019 SCC OnLine Del 10764



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 Hryniak (supra), in the event, the Court comes to the conclusion that the defendant lacks a real prospect of successfully defending the claim.”

(Emphasis Supplied)

28. The Plaintiff at paragraphs 6 to 13 of the plaint has given details with respect to the inter-se relationship of Defendant Nos. 1 to 7. It is stated that Defendant Nos. 1 to 4 are affiliates and all form part of a group of companies known as ‘Bequest Group’. It is averred that Defendant Nos. 5 to 7 are individuals who are also part of the said Bequest Group and exercise control over the Defendant companies. The Defendant No. 1 in its written statement has pleaded that these averments in the plaint do not warrant any reply. In the considered opinion of this Court the averments in the plaint at paragraph 6 to 13 have been unequivocally admitted by Defendant No. 1.

29. It would, thus, appear that Defendant No. 1’s unequivocal stand that it has no objection to suffering a decree of permanent injunction in terms of prayer clauses (a), (b), (c) and (d), mentioned in the plaint, would also be an admission of the other Defendants since Defendant Nos. 5 to 7 are common individuals controlling Defendant Nos. 1 to 4 and Defendant Nos. 5 to 7 are aware about this stand taken by Defendant No. 1.

30. Therefore, in the considered opinion of this Court, this suit does not merit trial, and this is a fit case where a Summary Judgment in terms of Order XIII-A of CPC deserves to be passed both for permanent injunction as well as for damages.

31. In view of the aforesaid admission of Defendant No. 1 and no contest by Defendant Nos. 2 to 7, the suit vis-à-vis relief of permanent injunction in



terms of prayer clauses at paragraph 95(a), (b), (c) and (d) of the plaint is hereby decreed in favour of the Plaintiff and against the Defendant Nos. 1 to 7. The interim injunction order dated 18.08.2023 as confirmed on 01.05.2024 shall merge into the decree.

**Damages and legal costs**

32. In addition to the relief of permanent injunction, the Plaintiff is praying for recovery of legal costs and damages for the Defendants action of continuing to unauthorisedly sell the unsold inventory of CREED products post termination of Distribution Agreement to consumers by illegally holding itself out to be associated with the Plaintiff, which was in addition, in violation of the Distribution Agreement dated 10.08.2017.

32.1. In the application, the Defendant has prayed for damages to the tune of Rs. 2,70,22,600/- at prayer clause (b) however during arguments Plaintiff has limited its claim for damages of Rs. 37,42,737/- as per alternate prayer clause (d) of the application. Similarly, in the application Plaintiff has prayed for legal costs of Rs. 1.40 crores at prayer clause (c), however during arguments Plaintiff has limited its claim for legal costs to Rs. 7.97 lakhs.

33. It is stated that Defendant No. 2 had a Distribution Agreement with the Plaintiff, and Defendant Nos. 1, 3, and 4, after termination of the Distribution Agreement on 09.08.2022, illegally disposed of the unsold inventory instead of returning the same to the Plaintiff at the landed cost. It is stated that Defendant Nos. 5, 6, and 7 are common directors of Defendant Nos. 1, 2, 3 and 4. This Court has already noted above that Defendant No. 1 in its written statement has not disputed the inter-se relationship between the parties.

34. The Plaintiff has averred in the plaint that after the Distribution



Agreement expired by efflux of time on 09.08.2022, Defendant Nos. 1 and 2 continued to unauthorisedly operate the store at the Chanakya Mall under the name CREED and retailed the unsold inventory without any authorisation of the Plaintiff from the said store till its closure on 29.04.2023.

The Plaintiff has further averred that in June and July 2023 the inventory was being sold by Defendant Nos. 1 to 4 through a WhatsApp business account with the name 'CREED The Chanakya'. The Plaintiff has placed on record documents evidencing the WhatsApp chat, the test purchases made through the said WhatsApp business account in June-July 2023 through bank transfers including invoices and receipts.

The Plaintiff has also placed on record the legal notices dated 30.08.2022 and 07.07.2023 issued to the Defendants calling upon them to desist from selling the unsold inventory and to return the inventory to the Plaintiff on buy-back basis as per Article 16.11 of the Distribution Agreement.

35. The Plaintiff during the arguments has relied upon the Local Commissioner's report dated 29.08.2023 which encloses a 'list'<sup>6</sup> found at the premises/warehouse of the Defendant No. 1. The said 'list' contains relevant details of quantity and description of goods which includes brands/products of the Plaintiff. The Plaintiff avers that the said 'list' represents the unsold inventory of the Plaintiff's products which were available with the Defendant No. 1 as it also corresponds to the report of the private investigator hired by it.

36. The Defendant No. 1 in its written statement at paragraph 12 of the

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<sup>6</sup> At page 31 to 33



preliminary submissions has stated that it has discontinued operations from the CREED store at Chanakya Mall effective from 29.04.2023 and has stated at paragraph 15 of the preliminary submissions that as on date of filing the written statement i.e., 27.12.2023 all inventory has been discarded and it is left with none under its control and possession. These positive assertions in the written statement are an admission of the Plaintiff's assertion in the plaint that Defendant continued to sell the unsold inventory of products from this store between 09.08.2022 until 29.04.2023 by using the trademark CREED as the name of the store. The Defendant No. 1 at paragraph 15 of its preliminary submission in the written statement has cleverly pleaded that it has no stock or inventory as on date i.e. 27.12.2023, thereby completely evading the averments in the plaint that Defendants unauthorizedly sold the inventory between 09.08.2022 until filing of the written statement on 27.12.2023.

37. The Plaintiff has specifically pleaded in the plaint, the continuing operation of the store at the Chanakya Mall post 09.08.2022, test purchase transactions undertaken by it in June-July 2023 through WhatsApp business account set up by the Defendants, at paragraphs 45 to 59 and 77 to 79 of the plaint. The said paragraphs plead the modus in which Defendant No. 1 in connivance with the other Defendant Nos. 3 and 4 continued to sell the unsold inventory to customers by wrongfully holding itself out as the authorised distributor of the Plaintiff. However, in its written statement Defendant No. 1 has merely parroted a single line assertion that the said paragraphs do not warrant any reply, which in the considered opinion of the Court fails to satisfy the rigor of the provision of Order VIII Rule 3 CPC, which obligates the Defendant to specifically deal with each allegation of



fact. The Defendant No. 1 has therefore, effectively admitted the contentions in the plaint that the Defendant Nos. 1 to 4 continued to sell the unsold inventory of the Plaintiff's products post 09.08.2022 both from the store at the Chanakya Mall and through the WhatsApp accounts in collusion with the other Defendants.

38. The Defendant no. 1 on its own showing has a GST registration number and has been filing GST returns. Defendant no. 1 has not placed on record any GST returns or Chartered Accountant certificate with its written statement to show that the entire inventory of Plaintiff's CREED products stood sold before 09.08.2022. Defendant no.1 in its written statement failed to explain the nature of operations carried out by it in its CREED store at the Chanakya Mall, after the termination on 09.08.2022 till 29.04.2023. Thus, no credible defence has been raised in the written statement which would require trial on the issue of unauthorized sales of the inventory, as it is apparent from the pleadings and the documents filed with the plaint that the Defendants have disposed of the unsold inventory after 09.08.2022.

39. Thus, upon a perusal of the specific averments in the plaint supported by documents and the non-denial of the said averments by the Defendant No. 1 in its written statement, this Court is of the considered opinion that Defendant No. 1 in its written statement has (i) not denied termination of the Distribution Agreement on 09.08.2022, (ii) receipt of the legal notice dated 30.08.2022 calling upon Defendants to handover the unsold inventory to the Plaintiff as per the terms of the agreement, (iii) sale of unsold inventory post 09.08.2022 from the store at Chanakya Mall including sales through WhatsApp business account in June-July, 2023 with the assistance of Defendant Nos. 3 and 4. In these facts, it is apparent that Defendants by



misrepresenting its continuing association with Plaintiff as an authorized distributor/retailer post 09.08.2022 persuaded the customers to purchase the unsold products from its store at Chanakya Mall and then through the WhatsApp business account. Therefore, as per the law laid down in **Koninlijke Philips and Ors. v. Amazestore and Ors.**<sup>7</sup>, the Plaintiff is entitled to damages from Defendants for their unauthorized use of the Plaintiff's trademark CREED for selling the unsold inventory whether through the store at the Chanakya Mall or through the WhatsApp accounts.

40. For the purpose of quantification of damages, it would be relevant to refer to the captioned application. With the captioned application, Plaintiff has attached Document 1 and Document 2 with the captioned application. It is stated that Document 2 is a confabulation of the 'list' discovered by the Local Commissioner at the Defendant No. 1's premise with the information on pricing provided by third-party investigator. It is stated that the product inventory (quantum) has been picked up from the 'list' filed by the Local Commissioner with its report. It is stated that the selling price has been collected from the information collected by third-party investigator as well as the information internally available with the Plaintiff with respect to the sale price. The Plaintiff has demonstrated through Document 1 that the profit earned by the Defendants through sale of the unsold inventory would be Rs. 37,42,736 and the total value of the stock sold is assessed at Rs. 2.1 crores approximately. The Plaintiff has specifically pleaded the said Document 1 at paragraph 5.22 of its application and attached it with the application.

The Defendant No. 1 in its reply to the said application, while

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<sup>7</sup> 2019 SCC OnLine Del 8198



responding to paragraph 5.22, has disputed the quantification of the value of the goods sold at Rs. 2.1 crores and claim of profit at Rs. 37,42,736. However significantly it has not disputed the ‘quantity’ of unsold inventory enlisted in this Document 1 and has thus admitted the quantum of goods sold by it. The Defendant No. 1 with its reply to this application has once again not filed any documents to show the rate at which the unsold inventory enlisted in Document 1 was actually sold by it. In addition, Defendant No. 1 with the reply has not even filed any GST return or Chartered Accountant certificate to show that no inventory was sold by it after 09.08.2022.

41. In these facts, on the perusal of the pleadings in the suit and the pleadings in the captioned application, there is no triable dispute with respect to the quantum of the unsold inventory available with the Defendants as Document 1 and Document 2 sufficiently show the inventory of the unsold products. Similarly, Defendants have not provided any data with respect to the rate list at which it sold the inventory thereby making the information furnished by the Plaintiff in Document 1 filed with the captioned application vis-à-vis the price, reliable. Moreover, since Plaintiff itself is in this business of sale of these products and is aware of the value at which these products can be sold, the price attributed by them to the individual product would also be reasonable. This Court has also perused the invoices<sup>8</sup> of the test purchase placed on record by the Plaintiff for the product Aventus Cologne (100 ml) and CREED Millesime Silver Mountain Water (100 ml) with the plaint as issued with Defendant No. 3. The prices mentioned therein (in the invoices) also comes close to the prices given in Document 1.

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<sup>8</sup> At page 296 and 257



42. With respect to award of damages under Order XIII-A CPC in cases of infringement, a Coordinate Bench of this Court in **Aero Club v. M/s Sahara Belts**<sup>9</sup> awarded damages by applying Rule 20 of the IPD Rules, based on the inventory of goods seized during the local commission. In the present case as well, as noted above, the ‘list’ of goods discovered by the Local Commissioner from Defendant No. 1’s warehouse and annexed to the report has not been disputed by the Defendants, particularly when the Defendants had the opportunity to deal with it while responding to paragraph 5.22 of this application. The onus to raise a triable issue was on the Defendants as the information with respect to the inventory and its sale price is exclusively in their possession. Having failed to bring on record any rebuttable information, the Defendants have failed to raise a triable issue.

43. The coordinate Bench in **Koninlijke Philips**<sup>10</sup> (supra), to guide the determination of damages, the Court laid down an illustrative framework categorizing degrees of mala fide conduct and corresponding reliefs. The Plaintiff has demonstrated that the Defendants are habitual infringers, who, in relation to another luxury brand, *YSL*, were also found to be engaged in unauthorized sales of that brand. The Plaintiff has specifically pleaded these facts in paragraphs 61 to 67 of the plaint. Accordingly, the principles laid down by the Coordinate Bench in **Koninlijke Philips** (supra) would apply, and the principles enumerated above would be instructive for the present case while quantifying damages and costs.

44. In view of the documents placed on record by the Plaintiff along with the plaint, the Local Commissioner’s report, and the bare denials contained

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<sup>9</sup> 2023 SCC OnLine Del 7466, at paragraph nos. 23 to 25.

<sup>10</sup> At paragraph no. 41.



in the written statement of Defendant No. 1, it is evident that the Plaintiff has established a specific case that Defendant No. 1 continued selling the unsold inventory, despite the termination of the Distribution Agreement on 09.08.2022, in contravention of Clause 16.11 thereof. The Defendants further continued to misrepresent to customers its association with the Plaintiff as the authorized distributor even after termination, and it is evident that such sales were carried out by falsely representing a continuing association with the Plaintiff and by unauthorizedly using the Plaintiff's trademark at the store in Chanakya Mall and on the Defendant's WhatsApp group called 'CREED The Chanakya'.

45. The Defendant No. 1 was authorized to use the mark CREED for its store at Chanakya Mall only during the subsistence of its Distribution Agreement. With the termination of the said agreement by efflux of time on 09.08.2022, the Defendant No. 1 had no right to use the said name for its store. Therefore, the sales conducted from the said store for the unsold inventory between 09.08.2022 until 29.04.2023 was by misusing the mark of the Plaintiff and misrepresenting the consumers who visited the store that this was an authorized store of the brand.

46. There can be no cavil that the goodwill which a store authorized by the brand carries is high in the minds of the consumer, as the consumers have more trust with respect to the quality and authenticity of goods available at the store. The value/price which the luxury goods fetch at the brand operated store is higher than non-branded store. Similarly, use of the mark CREED by Chanakya as the name for the WhatsApp account group for selling the unsold inventory in June-July 2023 was continuing misrepresentation of brand association by Defendants to mislead the



consumers. The Local Commissioner's report dated 29.08.2023, corroborated by WhatsApp communications and other documentary evidence placed on record, establishes that the Defendants continued to engage in unauthorised sales even after the termination of the agreement. There is therefore no doubt that the sales undertaken by the Defendants post termination of the Distribution Agreement on 09.08.2022 by showing false association with the Plaintiff makes the Defendants liable for damages for loss of profits, business opportunity, and brand reputation.

47. The Co-ordinate Benches in **Hindustan Lever Ltd. v. Satish Kumar**<sup>11</sup> and **Ebay Inc. v. Mohd. Waseem T/AS Shopibay and Ors.**<sup>12</sup> have held that defendants who fail to enter appearance despite due service cannot be rewarded and cannot defeat or deflect the plaintiff's claim for damages. In the present case, the culpability of Defendant Nos. 2 to 7, along with Defendant No. 1, in disposing of the unsold inventory has been specifically averred in the plaint and substantiated through documentary evidence. Defendant Nos. 2 to 7 have consciously chosen not to appear and contest these allegations. They are, therefore, deemed to have admitted the allegations made in the plaint. This Court, upon consideration of the pleadings, the documents filed with the plaint, the Local Commissioner's report, and the written statement of Defendant No. 1, is satisfied that the Plaintiff has established that Defendant Nos. 2 to 7 acted in concert with Defendant No. 1 in disposing of the unsold inventory by unauthorizedly using the Plaintiff's trademark CREED post 09.08.2022.

48. The Company Master Data filed as document no. 20 with the plaint

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<sup>11</sup> 2012 SCC OnLine Del 1378, at paragraph no. 23

<sup>12</sup> 2022 SCC OnLine Del 3879, at paragraph nos. 30 to 32.



shows that Defendant Nos. 5 and 6 are the directors of Defendant No. 1. The document no. 21 shows that Defendant No. 7 is the director of Defendant No. 2 and Defendant No. 5 was a director of Defendant No. 2 until 31.03.2022. The Company Master Data filed as document no. 23 with the plaint shows that Defendant No. 5 and 6 are the directors of Defendant No. 4. The DIN details of Defendant Nos. 5 and 6 filed with the plaint shows that they are the directors of Defendant No. 3. Thus, Defendant Nos. 1 to 7 are all related parties and the abstention of Defendant Nos. 2 to 7 is a mere smoke and mirrors as these proceedings are being contested by them through Defendant No. 1. The board resolution authorizing the representatives who has filed the written statement is signed by Defendant No. 6, evidencing its knowledge of these proceedings.

49. Additionally, as noted above, the Plaintiff, through its agents, purchased one bottle of CREED Millesime Silver Mountain Water (100 ml) on 27.06.2023 from the Defendants, who were selling CREED products via an unauthorised WhatsApp Business account 'CREED The Chanakya'. The authorised signatory in the invoice was Defendant No. 1, and the money for this purchase was collected by Defendant No. 3, using a merchant ID operated by Defendant No. 1.

Similarly, on 24.07.2023, the Plaintiff through its agent, again made purchase from the same WhatsApp Business account, one bottle of Aventus Cologne (100 ml). The authorised signatory in the invoice was Defendant No. 4, and the money for this purchase was collected by Defendant No. 3.

Pertinently, it is stated that to receive payments for the unauthorised sales on WhatsApp, Defendant No. 1 was using a merchant ID registered in the name of Defendant No. 3 to accept payment for CREED products.



Documents have been filed in support of these averments.

50. All the averments made in the plaint averring that Defendant Nos. 2 to 7 were illegally selling Plaintiff's products post 09.08.2022 without its authorization, have to be taken to be admitted against them, in view of the no-contest. Defendant No. 1 is associated/affiliated to Defendant Nos. 2 to 7 and while Defendant No. 1 has entered appearance, Defendant Nos. 2 to 7 have consciously abstained from entering appearance and have thus elected not to rebut the specific allegations made against them in the plaint.

In the present suit, the activities of Defendants, after the expiry of the Distribution Agreement, not only violates the terms of the said agreement, but also violates the Plaintiff's proprietary rights in its trademark CREED. The fact that Defendants are repeat violators has already been noted above. Such mala fide actions of the Defendants should be deterred, so that no such unauthorised and unlawful acts occur in future.

51. In the considered opinion of this Court, in view of the aforementioned judgments and Rule 20 of the IPD Rules, the Plaintiff is entitled to damages of Rs. 37,42,737/- representing the profit margin on the illegally sold inventory to compensate the Plaintiff for the unauthorised use of the Plaintiff's trademark CREED, in addition to legal costs of Rs. 7.97 lakhs incurred by the Plaintiff towards enforcement of its rights. The award of damages in these circumstances serves both compensatory and deterrent purposes, ensuring protection of the Plaintiff's trademark and preventing unjust enrichment of the Defendants.

52. Accordingly, the claim for damages to the extent of Rs. 37,42,737/- as calculated by the Plaintiff is allowed and legal costs to the extent of Rs. 7.97 lakhs are ordered. The Defendants are directed to pay the said decretal



amount [‘damages + legal cost’] within a period of four (4) weeks failing which they will be liable to pay interest at 12% per annum on the decretal amount from the date of this judgement until realisation.

53. The decree for damages and costs as well shall apply jointly and severally against Defendant Nos. 1 to 7.

54. The Defendants are also directed to deliver up and handover all the products and packaging material which were seized by the Local Commissioner and handed over on *superdari* to the Defendant No. 1, within four (4) weeks.

55. The suit stands decreed in the aforesaid terms.

56. The application stands disposed of.

57. Interim Orders, if any, stands merged to the final decree.

58. All future dates stand cancelled.

59. The digitally signed copy of this order, duly uploaded on the official website of the Delhi High Court, [www.delhihighcourt.nic.in](http://www.delhihighcourt.nic.in), shall be treated as a certified copy of the order for the purpose of ensuring compliance. No physical copy of order shall be insisted by any authority/entity or litigant.

**MANMEET PRITAM SINGH ARORA, J**  
**NOVEMBER 14, 2025/hp/IB/AM**