

(2014) 07 DEL CK 0125
In the Delhi High Court
Case No : CS(OS) 3500/2012

Societe Des Produits Nestle,S.A.

APPELLANT

Vs

Montu Sadhu

RESPONDENT

Date of Decision : 04-07-2014

Acts Referred:

Copyright Act, 1957 — Section 14, 2(c), 40, 51, 55
Trade Marks Act, 1999 — Section 2(1)(h), 28(1), 29(1), 29(2)

Citation : AIR 2014 Delhi 156 : (2014) 212 DLT 570

Hon'ble Judges : G.S. Sistani, J

Bench : Single Bench

Advocate : Manish K. Mishra and Kritika Seth, Advocate for the Appellant

Judgement

G.S. Sistani, J.—Present suit has been filed by the plaintiffs for permanent injunction restraining infringement of trademark, copyright, dilution, unfair competition, rendition of accounts of profits/damages and delivery up. Summons were issued in the suit on 19.12.2012, 21.01.2013, 23.04.2013, 13.11.2013, 25.03.2014 and on 30.05.2014. Service report is awaited. It may noticed that in this case while issuing summons in the suit a local commissioner was appointed. On the spot proceedings report filed by the local commissioner shows that a copy of the order was handed over to the defendants. In fact, the Election Commission cards of the defendant no. 1 and defendant no. 3 have also been placed on record. The report also shows that the copy of the order was served upon the defendants which show that the defendants have knowledge about the filing of the suit and the next date of hearing in the matter. The proceedings were also video-graphed, CD of which has been placed on record.

2. In my view, defendants have been duly served. Despite service defendants have chosen not to enter appearance. The defendants are therefore proceeded ex-parte.

3. Counsel for the plaintiffs submits that the plaint is duly supported by an affidavit and the plaint should be read as evidence on behalf of the plaintiffs. The

plaint is duly supported by the affidavit of Ms. Venita Gabriel, Constituted Attorney of the plaintiffs. She has averred in the plaint that the plaintiff no. 1, Societe des Produits Nestle, S.A., is a company incorporated under the laws of Switzerland having its registered office at 1800, Vevey, Canton of Vaud, Switzerland. The plaintiff No. 2, Nestle India Limited, is a Company incorporated under The Companies Act, 1956 having its registered office at M-5A, Connaught Circus, New Delhi-110 001.

4. It has further been averred in the plaint that the plaintiffs, which includes its predecessors in business, belong to the "NESTLE Group" (hereinafter referred to as NESTLE). The beginning of "NESTLE" was made in the year 1867 when Henri Nestle founded a small business in Switzerland to manufacture Kindermehl, the first ever milk food manufactured for young children. In 1904, Nestle added chocolate to its range of food products pursuant to an agreement with the Swiss General Chocolate Company. Today, Nestle is the world's biggest food and beverage company, producing healthy and enjoyable food products for every stage of life.

5. It has also been averred in the plaint that since the year 1867, Nestle has diversified into a large range of businesses including infant foods and dietetic products, milk and dairy products, breakfast cereals, desserts, snacks, ice creams, chocolate, confectionery, bouillon's soups, seasonings, prepared dishes, canned food, pasta, sauces, yogurts, frozen foods, soluble coffee, roast & ground coffee, chocolate-based and malted drinks, tea, fruit juices, cereal drinks, mineral water, pet foods etc.

6. It has further been averred that one of the plaintiffs' products sold under internationally famous trade mark is KITKAT. The said trade mark was adopted by the predecessor-in-title of the plaintiffs namely, Rowntree Mackintosh of U.K. in the year 1935 and has been extensively and commercially used since 1937 and advertised in international markets in several countries in relation to "crisp wafer fingers covered with milk chocolate" (hereinafter referred to as "wafer bar").

7. In the plaint it has also been averred that the international goodwill and reputation that has been acquired by the trade mark KITKAT is evident from the fact that for the year 2002 alone, the sales of KITKAT wafer bars by the Company amounted to 150,000 tons for a Net Profit of Sales of 1 billion Swiss Francs. Yearly worldwide consumption of KITKAT wafer bars is approximately 4.7 billion, being equivalent to 150 KITKAT wafer bars eaten every second. In 1987 itself, it was estimated that 30 million KITKAT wafer bars were sold in 100 countries every week. In 2004 sales amounted to more than ₹170 million. In 2005, there were over 800 million 2 finger KITKAT bars sold in the UK i.e. over 2 million bars everyday.

8. It has also been averred that according to the book "SUPERBRANDS-An insight into 100 of Britain's strongest brands", KITKAT is estimated to be worth over ₹

220 million and is sold in more than 100 countries around the world from Iceland to the Far East. The achievements of the brand are as under:

? In 1999, KITKAT chalked up its 14th consecutive year as the UK's best-selling confectionery brand with sales of over ?225 million and volume sales of four-finger KITKAT up by 7% compared with the previous year. KITKAT continues to be the UK's best selling confectionery brands;

? KITKAT has won numerous awards for advertising creativity and marketing effectiveness including silver awards at the Cannes International Advertising Festival in 1991 and 1992;

? KITKAT was awarded Gold in the "1993 Epica Awards" and Grand Prix in the "1990 Eurobest Competition";

? In 1995, KITKAT won Gold with its Burger King promotion in the ISP Promotional Awards;

? In 2005, there were over 800 million 2 finger KITKAT bars sold in the UK i.e. over 2 million everyday;

? In 2006, KITKAT bagged the platinum award at the marketing effectiveness awards. The Judge rated it as Asia's most effective piece of marketing in 2005;

? In a sponsorship deal with Nestle Rowntree, York City Football Club's ground has been renamed as KITKAT crescent.

The book "SUPERBRANDS" also gives an insight into the creation of the brand KITKAT and its red and white logo.

9. The plaint also discloses that the trade mark KITKAT is a coined mark which has no meaning whatsoever either in any dictionary or in common parlance. The said trade mark, therefore, always conveyed one and only one meaning, i.e., a brand indicating a connection in the course of trade between the product bearing the brand and its proprietor-origin associated with the plaintiffs.

10. It has also been averred in the plaint that KITKAT first appeared on television in 1957 with the theme "Have a Break-Have a KITKAT". Over 50 different kinds of television commercials have appeared for the brand since the first broadcast in the year 1957 till 1998. Further, with huge advertising and sales promotion, the sales of KITKAT also increased dramatically. For 14 consecutive years, from 1985 till 1999, KITKAT was the largest and best selling confectionery brand in UK and still continues to maintain its position till date.

11. Further, it has been averred in the plaint that from its introduction, the plaintiffs' KITKAT was sold practically all over the world. Therefore, it is not surprising that the plaintiffs' predecessors applied for protection of its rights in various countries all over the world by registering it, with the appropriate authorities. Some of the oldest registrations for KITKAT (other than that for India, which were secured way back in the year 1942), are mentioned as below:-

KITKAT is registered in close to 150 countries worldwide. It is but obvious, that the appropriate trade mark authorities have considered the mark to be distinctive and thus, capable of being registered. Moreover, the plaintiffs and its predecessors have fiercely protected the KITKAT trade marks by ensuring that the same are renewed on a regular basis and are valid and subsisting. Protection List showing worldwide registration has been filed.

12. The plaint also discloses that KITKAT wafers were always available in India by way of import from 1940s onwards from Rowntree, U.K. as well as through the grey channel. The market created by KITKAT wafers in India in the early 1940s, led to Rowntree, U.K. applying for registration of the trade mark KITKAT in India. The trade mark KITKAT has been registered in India since 1942 in respect of chocolate, confectioneries, chocolate biscuits, etc. under trade mark registration No. 8982 in class ` 30". There are various registrations in favour of the plaintiff no. 1 with respect to the trade mark KITKAT, however, the plaintiffs have relied upon the following trade mark registrations. The details whereof are mentioned as below:

The abovementioned registrations are valid and subsisting and thus, being the registered proprietor of the trade mark KITKAT, the plaintiff no. 1 has a statutory right of exclusive use thereof under the provision of Section 28(1) of The Trade Marks Act, 1999, (hereinafter referred to as " the Act") including having right to obtain relief against infringement thereof.

13. It has further been averred in the plaint that the goodwill and reputation possessed by the trade mark KITKAT in India can be gauged from the fact that its local manufacture in India was commenced in the year 1995 through plaintiff no. 2 "Nestle India Ltd." and the sale of locally manufactured KITKAT in the year 1995 itself was in the range of Rs. 17 Crores. The publicity and advertisement expenses incurred by Nestle India Limited, for the period August, 1995 to December 1995 was Rupees 3 crores. The sales of KITKAT between 1982 and 1989 in India are as follows. That even prior to its being manufactured locally in India in 1995, KITKAT wafer bars were being sold throughout the world including India for past several decades. These figures relate to export from plaintiffs' predecessor in business to India and do not account for the grey market channel:-

14. The sales and promotional figures pertaining to sales of KITKAT in India by plaintiff no. 2 "Nestle India Limited", the licensee of plaintiff no. 1 are as follows:

15. It has also been averred in the plaint that the plaintiff no. 2 has been extensively advertising the trade mark KITKAT in India through various media including television commercials, newspapers, magazines, hoardings, sponsorships of events, business, etc. at huge advertising and sales promotional cost. Thus on account of prior adoption, continuous and genuine substantial commercial use, extensive and intense advertising campaign, nationwide marketing network, enormous sales and painstaking quality control, the trade

mark KITKAT has come about to acquire enviable goodwill and reputation amongst the members of the public and the trade, becoming a "well known household brand" in India. In fact, the trade mark KITKAT has been recognized and included in the list of well-known trade marks by the Trade Mark Registry. Printout from the website of the Trade Marks Registry has been filed.

16. The plaint also discloses that KITKAT has always been marketed by the plaintiffs as well as its licensee all over the world including India in an unique and distinct trade dress/get up and logo comprising a predominant colour combination of red and white. The characteristic features of the plaintiffs KITKAT packaging are as follows:

- a) a bright red packaging;
- b) the mark KITKAT written in a stylized manner, with the letters "K" represented in capital letters and the suffixes "it" and "at" represented in small letters;
- c) the trade mark KITKAT is represented in red colour along with a thin white line appearing within each letter creating a three dimensional shadow effect against white background;

The trade mark KITKAT appears within a white oval device having a red border with white outline contiguous thereto, hereinafter referred to as "logo". An illustration of plaintiffs' KITKAT logo is represented hereunder:

The "logo" including the distinctive red and white colour combination and get up of KITKAT has acquired distinctiveness indicating trade origin of source as trade mark of the plaintiffs. The KITKAT/KITKAT logo has been used and advertised consistently, extensively and continuously in over 150 countries including India in its distinctive trade dress of red and white. The plaintiffs launched extensive advertising and promotional campaigns incurring huge expenses over past several decades so as to strengthen the impression of KITKAT/KITKAT logo and its association with the plaintiffs' business in the minds of consumers at large.

17. It has further been averred in the plaint that the KITKAT logo and colour combination of red and white constitutes key, essential and distinguishing visual features of plaintiffs' trade mark KITKAT and the same constitute original "artistic work" within the meaning of Section 2(c) of The Copyright Act, 1957. The said artistic work was designed at instance of the plaintiffs through an advertising agency engaged by the plaintiffs for consideration paid. The plaintiffs are, therefore, the owners of copyright in KITKAT logo, thereby having an exclusive statutory right to use or reproduce it in any material form under the provision of Section 14 of The Copyright Act, 1957. The copyright in KITKAT logo is protected in India by virtue of the International Copyright Order, 1958 as well as the subsequent International Copyright Order, 1991 which have been issued by the Government of India exercising its powers conferred u/s 40 of The Copyright Act, 1957. By virtue of the said order and on account of Switzerland being signatory to the "Berne Convention" and the "Universal Copyright

Convention", the copyright in KITKAT logo is protected in India in favour of plaintiffs. The use, reproduction or colourable imitation thereof by any unauthorized person amounts to infringement of copyright of the plaintiffs under the provisions of Section 51 of The Copyright Act which is liable to be injuncted u/s 55 and also constitutes a cognizable offence under Sections 63 and 64 of the said Act, punishable with imprisonment upto 3 years and penalty upto Rs. 2 lakhs.

18. It has also been averred in the plaint that the defendant no. 1, Mr. Montu Sadhu is trading as M/s. Montu Confectionery i.e. defendant no. 2 and is the owner of the same, the defendant no. 3 Mrs. Putul Sadhu is the wife of the defendant no. 1 and is trading as M/s. Putul Trading Company, the defendant no. 4 herein. The trading address of all the defendants are same, located at C-16, Near Subhas Sammilani Club, Old Naba Naritala, P.O. Buxaroh, Howraha-711110. The defendants are involved in manufacturing and selling substandard and spurious confectionery including candies, toffees etc. under the impugned trade marks KETKET & KIT-KET and their packaging to the consumers at large. The impugned trade marks KETKET & KIT-KET and their packaging are outright and fraudulent imitations of plaintiffs' trade mark KITKAT and its packaging.

19. Further, it has been averred in the plaint that it came to the knowledge of the plaintiffs in the first week of December, 2012, through their field force that the defendants are selling confectionery under the impugned trade marks KETKET & KIT-KET in the packaging which are slavish and colourable imitation of plaintiffs' trade mark KITKAT and its packaging.

20. It is also stated in the plaint that the plaintiff no. 2 engaged the services of a professional investigator namely, Mr. Rakesh Kumar Sharma and entrusted him with the task of finding out the details of the manufacturers, sellers and distributors/dealers of spurious confectioneries, details of the persons involved and their complete names and addresses since the details were not specified on the impugned KETKET & KIT-KET packaging. Mr. Sharma carried out a detailed investigation and submitted his report to the plaintiff no. 2 vide investigation report dated 14.12.2012. From the investigation report, the plaintiffs came to know about the defendants' role of manufacturing, distributing, selling and dealing in the impugned products under the impugned trade marks KETKET & KIT-KET and their packaging and confirmation of their addresses. The details of the defendants and their role are given in the investigation report dated 14.12.2012. The same has been filed.

21. It has also been averred in the plaint that the perusal of the defendants' confectionery, toffees, chocolates, candies packaging as depicted herein below clearly establishes the fraudulent conduct and malafide of the defendants:

(i) The defendants have adopted the trade marks KETKET & KIT-KET for their candies/toffees which are an outright imitation of plaintiffs' well-known trade mark KITKAT. The impugned marks KETKET & KIT-KET are structurally as well as

phonetically deceptively similar to the plaintiffs' trade mark KITKAT;

(ii) The defendants have further deliberately imitated the distinctive KITKAT logo and have written KETKET & KIT-KET in an identical manner within a white oval device having a red border with white outline contiguous thereto;

22. It has further been averred in the plaint that the impugned trade marks KETKET & KIT-KET and the packaging pertaining thereto by the defendants, in relation to the aforementioned goods, amounts to misrepresentation and misappropriation of plaintiffs' goodwill in the trade mark KITKAT and its packaging. Such act constitutes unfair competition and dilution. The sales of infringing goods by the defendants are also acts of "misbranding" and sale of "spurious goods" are also violations under the provisions of "The Prevention of Food Adulteration Act, 1954".

23. Further it has been averred in the plaint that the defendants are actually committing multiple offences and a fraud upon members of purchasing public. Considering that the goods in question are edible articles having direct bearing on the health of the consumers and the fact that such goods are manufactured and marketed without any quality control or mechanism to maintain quality or safety or hygiene of the products, the defendants are conspiring and abetting sale of adulterated confectionery in infringing trade marks KETKET & KIT-KET and their packaging. The defendants are enabling other dishonest retailers to make further misrepresentation to consumers, about the source and origin of such goods by deliberately using trade marks KETKET & KIT-KET and their packaging which are phonetically, structurally and visually deceptively similar to the plaintiffs' well-known trade mark KITKAT and its packaging.

24. Reading of the plaint also shows that the trade mark KITKAT is registered under The Trade Marks Act, 1999. The use of the impugned trade marks KETKET & KIT-KET and their packaging by the defendants, which are phonetically, structurally and visually deceptively similar with the trade mark KITKAT of the plaintiffs, constitutes infringement of plaintiffs' registered trade mark. As per search taken of the Trade Marks Register, the impugned trade marks KETKET & KIT-KET are not registered trade marks in favour of the defendants. The defendants are hence guilty of infringing plaintiffs' statutory right of exclusive use of the trade mark KITKAT. The trade mark KITKAT enjoys immense goodwill and reputation and such damage to the goodwill and reputation of the brand KITKAT of the plaintiffs, unless injuncted immediately, will be irreparable, colossal and beyond any monetary compensation.

25. It has also been averred in the plaint that the use by the defendants of the trade marks KETKET and/or KIT-KET is absolutely illegal and is detrimental to the rights of the plaintiffs. The trade mark KITKAT is exclusively associated with the plaintiffs and the use by the defendants thereof and their colourable imitation would result in diminution and whittling away of the value of the plaintiffs' trade marks. The public is also likely to make a connection between the goods and

business of the defendants and the plaintiffs. This would result in "Dilution by Blurring" and also constitutes "infringement" of plaintiffs' registered trade mark. The use of the impugned trade marks KETKET and/or KIT-KET and their packaging by the defendants which have overall deceptive similarity with the plaintiffs' trade mark KITKAT and its packaging, is deliberate, calculated and designed to confuse the consumers, particularly, the semi literate or illiterate ones predominantly children.

26. It has further been averred in the plaint that the defendants are causing irreparable damage and injury to the plaintiffs on account of their illegal trade activities, which is beyond quantification or compensation. The plaintiffs believe that they are entitled to compensatory as well as penal damages calculated to be at least Rupees 20 lakhs which must be paid by the defendants.

27. I have heard counsel for the Plaintiffs and carefully perused the documents which have been placed on record along with the plaint duly supported by affidavit which has been treated as affidavit by way of evidence on the averment of the counsel for the plaintiffs. The evidence of plaintiffs has gone unchallenged and unrebutted. Trademark registration certificates of the trademark "KITKAT" in favor of plaintiffs have been filed along with the plaint. Protection List showing worldwide registration of the trademark "KITKAT" in favor of plaintiffs has been filed. Wrappers of the products of plaintiffs and defendants have been filed along with the plaint.

28. In compliance to the Order dated 19.12.2012 a local commissioner visited the premises of the defendants. On checking the premises local commissioner found 22,000 rectangular wrappers of Re. 1 chocolate, 6,000 rectangular wrappers of Rs. 2 chocolate, 19,000 square wrappers of Re. 1 chocolate, 1000 small wrappers of 50 paise chocolate, 480 pieces of Re. 1 KETKET toffee, 48 pieces of Rs. 2 KETKET toffee, 288 pieces of KETKET "NOW BIG" pickets, 48 pieces of 50 paise KETKET chocolate, 120 pieces of Rs. 2 KETKET and 24 pieces of KETKET chocolate in blue packaging.

29. On the basis of the documents placed on record, the plaintiffs have established that plaintiff no. 1 is the owner of the trademark "KITKAT" and the plaintiffs have the exclusive right to use the same. Plaintiffs have also established that the KITKAT logo and colour combination of red and white constitutes key, essential and distinguishing visual features of plaintiffs' trade mark KITKAT and the same constitute original "artistic work" within the meaning of Section 2(c) of The Copyright Act, 1957 and the plaintiffs are the owners of copyright in KITKAT logo, thereby having an exclusive statutory right to use or reproduce it in any material form. Plaintiffs have also established that on account of prior adoption, continuous and genuine substantial commercial use, extensive and intense advertising campaign, nationwide marketing network, enormous sales and painstaking quality control, the trade mark KITKAT has come about to acquire unparallel goodwill and reputation amongst the members of the public and the trade, becoming a "well known household brand" in India. Plaintiffs have

also established that the trade mark KITKAT used for wafer bars is highly distinctive and is identified with plaintiffs only. Plaintiffs have also established that the defendants by using the trademark KETKET & KIT-KET and the packaging, which is identical and/or deceptively similar to plaintiffs' mark KITKAT and the logo, in respect of candies, toffees etc, are causing infringement of rights in the trademark and copyright of the plaintiffs.

30. In *Corn Products Refining Co. Vs. Shangrila Food Products Ltd.*, the Supreme Court observed that the question whether two competing marks are so similar as to be likely to deceive or cause confusion is one of first impression and it is for the court to decide it. The question has to be approached from the point of view of a man of average intelligence and imperfect recollection.

31. In *Parle Products (P) Ltd. Vs. J.P. and Co., Mysore*, Supreme Court *inter alia* observed as under:

According to Karly's Law of Trade Marks and Trade Names (9th Edition Paragraph 838):

Two marks, when placed side by side, may exhibit many and various differences, yet the main idea left on the mind by both may be the same. A person acquainted with the one mark, and not having the two side by side for comparison, might well be deceived, if the goods were allowed to be impressed with the second mark, into a belief that he was dealing with goods which bore the same mark as that with which he was acquainted.

It would be too much to expect that persons dealing with trademarked goods, and relying, as they frequently do, upon marks, should be able to remember the exact details of the marks upon the goods with which they are in the habit of dealing. Marks are remembered rather by general impressions or by some significant detail than by any photographic recollection of the whole. Moreover, variations in detail might well be supposed by customers to have been made by the owners of the trade mark they are already acquainted with for reasons of their own.

It is therefore clear that in order to come to the conclusion whether one mark is deceptively similar to another, the broad and essential features of the two are to be considered. They should not be placed side by side to find out if there are any differences in the design and if so, whether they are of such character as to prevent one design from being mistaken for the other. It would be enough if the impugned mark bears such an overall similarity to the registered mark as would be likely to mislead a person usually dealing with one to accept the other if offered to him.

32. While examining the question of misrepresentation or deception, comparison has to be made between the two trademarks as a whole. Rules of Comparison was explained by Justice Parker in the *Pionotist* case, 1906(23) RPC 774, in the following words:

You must take the two words. You must judge of them, both by their look and by their sound. You must consider the goods to which they are to be applied. You must consider the nature & kind of customer who would be likely to buy those goods. In fact, you must consider all the surrounding circumstances; and you must further consider what is likely to happen if each of those trade marks is used in a normal way as a trademark for the goods of the respective owners of the marks. If, considering all those circumstances, you come to the conclusion that there will be confusion-that is to say, not necessarily that one man will be injured and the other will gain illicit benefit, but that there will be confusion in the mind of the public which will lead to confusion in the goods-then you may refuse the registration, or rather you must refuse the registration in that case.

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

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(ii) In the case of *Evergreen Sweet House Vs. Ever Green and Others*, , it was observed as under:

15. A mark, is said to be deceptively similar to another (Section 2(1)(h), Trademarks Act, 1999) if it so nearly resembles that other mark as to be likely to deceive or cause confusion. Section 29(1) deals with a situation where the defendant uses a mark, which is identical or deceptively similar to that of the plaintiff, in respect of the same goods or services, and in such manner that it is likely that such use is taken as being an use as a trademark. This amounts to infringement. To fall within Section 29(1), the defendant's use of the mark must be so that it is likely that the public assumes that the said mark is used as a trademark. Section 29(2) deals with three situations; one where the defendants mark is identical to that of the plaintiff and in respect of similar goods. Two, where the marks are similar and in respect of goods which are identical or similar. Three, the marks as well as the goods are identical. Infringement does not take place if only one of the three ingredients are satisfied; the plaintiff has to prove that use by the defendant is likely to cause confusion on the part of the public or is likely to have an association with the registered mark.

[Emphasis Supplied]

34. I am of the view that the impugned trademark of the defendants is deceptively similar to the plaintiffs' trademark. The use of the words KETKET & KIT-KET by the defendants is likely to dilute the distinctive character of the plaintiffs' trademark KITKAT and the same is likely to erode the goodwill and reputation of the plaintiffs among its existing as well as potential customers in

the market. The adoption and use of the identical and/or deceptively similar trademark by the defendants in relation to identical products amounts to an infringement of the plaintiffs' statutory rights in the registered trademark KITKAT. I am of the opinion that the defendants are also guilty of passing off as by using an deceptively similar mark as that of the plaintiffs, the defendants are misrepresenting to the purchasing public that it is selling its goods in association with/in connection with the plaintiffs and thus causing confusion as to the source of the goods and passing off his goods as that of the plaintiffs. Furthermore, the defendants in a mala fide, dishonest and an unethical manner are encashing upon the goodwill and reputation of the plaintiffs", established by the latter over the period of many years.

35. The plaintiffs have also claimed compensatory and penal damages on account of illegal profits earned by the defendants. However, plaintiffs have limited their claim to punitive damages.

36. In Microsoft Corporation Vs. Deepak Raval , this Court observed that in our country the Courts are becoming sensitive to the growing menace of piracy and have started granting punitive damages even in cases where due to absence of Defendant, the exact figures of sale made by them under the infringing copyright and/or trademark, exact damages are not available. The justification given by the Court for award of compulsory damages was to make up for the loss suffered by the plaintiff and deter a wrong doer and like-minded from indulging in such unlawful activities.

37. In Larsen and Toubro Limited Vs. Chagan Bhai Patel, , this Court has observed that it would be encouraging the violators of intellectual property, if the Defendants notwithstanding having not contested the suit are not burdened with punitive damages.

38. In the case of Time Incorporated Vs. Lokesh Srivastava and Another, , apart from compensatory damages of Rs. 5 lakhs, punitive damages were also been awarded.

39. I am in agreement with the aforesaid submission of learned counsel for the plaintiff that damages in such cases must be awarded and a defendant, who chooses to stay away from the proceedings of the 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 a defendant who appears in Court and submits its account books would be liable for damages, while another defendant who, chooses to stay away from court proceedings would escape the liability on account of failure of the availability of account books. A party who chooses not to participate in court proceedings and stays away must, thus, suffer the consequences of damages as stated and set out by the plaintiffs. There is a larger public purpose involved to discourage such parties from indulging in such acts of deception and, thus, even if the same has a punitive element, it must be granted. R.C. Chopra, J. has very succinctly set out in Time Incorporated's case

(supra) that punitive damages are founded on the philosophy of corrective justice.

40. For the reasons stated above, the plaintiffs have made out a case for grant of decree as prayed in the plaint. Accordingly, the order dated 19.12.2012 is confirmed and the suit is decreed in favour of the plaintiffs and against the defendants. Plaintiffs are also entitled to damages to the tune of Rs. 5.00 lacs.

41. Decree sheet be drawn up accordingly.