2023:DHC:7696

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

Date of Reserve: 24th August, 2023
Date of Pronouncement: 20th October, 2023

\+ **CS(COMM) 703/2022 and I.A. 16559/2022**

PUMA SE ..... Plaintiff

Through: Mr. Ranjan Narula and Mr. Shashi P. Ojha, Advs. (M: 9891584230)

versus

ASHOK KUMAR ..... Defendant

Through:

CORAM:
JUSTICE PRATHIBA M. SINGH

JUDGMENT

Prathiba M. Singh, J.

1. This hearing has been done through hybrid mode.

Brief Facts

2. The Plaintiff – Puma Se, a German company has filed the present suit seeking injunction against the counterfeit products being manufactured and sold under the mark '*PUMA*' as also  *(hereinafter referred as "the leaping cat device")*. The Defendant in the present case is Ashok Kumar, Trading as "Kumkum Shoes", Agra.

3. The case of the Plaintiff is that it started using the mark '*PUMA*' since 1948 in Germany and got the mark first registered in Germany on 1st October, 1948. The Plaintiff has been marketing and selling its products in India including in Delhi through its wholly owned subsidiary Puma Sports

India Pvt. Ltd. under its well-known and world-renowned trademark 'PUMA'.

4. The Plaintiff claims to be one of the leading sporting brands in the world, which is engaged in designing, developing, selling and marketing footwear, apparels and accessories. The products of the Plaintiff are sold under the mark '*PUMA*' as also the leaping cat device thereof. The products are also sold globally as also in India. Though the main product of the Plaintiff is sporting shoes, the Plaintiff also sells apparels and accessories including track suits, T-shirts, shorts, polo shirts, formal shoes, slippers, flip-flops, sandals, bags, ladies' purse, wallets, smart/sport watches, *etc*.

5. The '*PUMA*' brand has collaborations with various designer brands such as Alexander McQueen and Mihara Yasuhiro who enables the Plaintiff to launch new and innovative products to the sporting community. The worldwide net sales of the Plaintiff for the year 2019 is claimed to be in the range of 5 billion euros.

6. The '*PUMA*' brand is the umbrella brand of the Plaintiff and is endorsed by a large number of internationally well-known celebrities including Usain Bolt, Virat Kohli, Sara Ali Khan, K.L. Rahul, *etc*. The Plaintiff invests a substantial amount of money in advertising and promotion. In the year 2019, the figure was more than 1 billion euros worldwide. The Plaintiff is also promoting and selling its 'PUMA' branded products through its website hosted on the domain name www.puma.com, which is accessible to the consumers at Delhi. The domain name was registered on 19th September, 1997 and has been in use since then. The Plaintiff has been supplying/selling its PUMA branded products in India since 1980's.

7. The trademark '*PUMA*' is registered in Germany since 1948, in the USA since 1965, and in Australia since 1969. The details of the earliest international registrations are set out below:

Trade Mark	Country	Regn. No.	Regn. Date	Cl.
PUMA	GERMANY	608870	01.10.1948	25
PUMA	USA	797843	19.10.1965	25
PUMA	AUSTRALIA	228918	15.05.1969	28

8. In India, the mark '*PUMA*' as also the '*leaping cat device'* are registered since 1977 and 1986. The details of the said registrations are set out below:

Trade Mark	Registration No.	Filing date	Class	Renewed Status
PUMA (WORD MARK)	323053	15/02/1977	18	15/02/2025

PUMA (WORD MARK)	323054	15/02/1977	25	15/02/2025
PUMA	450142	25/02/1986	18	25/02/2026
PUMA	559635	03/10/1991	24	03/10/2028
PUMA	699153	22/02/1996	09	22/02/2026
PUMA	699154	22/02/1996	03	22/02/2026
PUMA	700541	04/03/1996	16	04/03/2026
PUMA	1264294	03/02/2004	41	03/02/2024
PUMA	412852	08/11/1983	28	08/11/2024
PUMA	424934	27/07/1984	14	27/07/2025

PUMA	450143	25/02/1986	25	27/02/2027
PUMA	532578	03/07/1990	28	03/07/2024
PUMA	449270	05/02/1986	24	05/02/2027
PUMA	323053	15/02/1977	18	15/02/2025
PUMA	323054	15/02/1977	25	15/02/2025
PUMA	3093793	04/11/2015	35	12/11/2025
PUMA	3097774	12/11/2015	35	12/11/2025

9. The mark '*PUMA*' apart from being registered for shoes is also registered for apparels, clothing, sportswear, gloves, caps, slippers in classes 25 and 18 bearing numbers 450143 and 450142 respectively. In India, the sales of the Plaintiff for the year 2021 is more than Rs.1000/- crores with more than Rs.51 crores being spent on advertising and promotion.

10. The case of the Plaintiff is that its mark '*PUMA*' and *'leaping cat device'* are well known marks and has in fact been declared such as by the Trademark Registrar as on 30th December, 2019.

Plaintiff's Submissions

11. The ld. Counsel for the Plaintiff asserts that in the second week of September, 2022, the Plaintiff learnt that various counterfeit products under the mark *'PUMA'* are being sold in Agra, Uttar Pradesh. Thereafter, an investigation was conducted by the Plaintiff's representative to ascertain the availability of the Defendants' counterfeit products. The investigation led to the details of the Defendant's being engaged in the business of manufacturing, sale and supply of counterfeit products bearing the mark *'PUMA'* as also the *'leaping cat device'* in Uttar Pradesh, Delhi and Haryana. The images of the Defendant's products reflecting infringement of the Plaintiff's trademark are set out below:

12. The counsel for the Plaintiff further submits that the Plaintiff immediately took action, by filing the present suit. An interim injunction was granted and a Local Commissioner was appointed. Mr. Narula, ld. Counsel appearing for the Plaintiff submits that since the Defendant has not filed any reply/written statement, the judgment deserves to be pronounced in favour of the Plaintiff against the Defendant.

13. Heard ld. Counsel and perused the record. At the *ad-interim ex-parte* stage, the Court had considered the matter on 12th October, 2022 and granted an interim injunction in the following terms:

> "*19. Having perused the contents of the Plaint, the documents filed therewith, as also having heard the learned counsel for the plaintiff, I am of the opinion that the plaintiff has been able to make out a good prima facie case in its favour. The balance of convenience is also in favour of the plaintiff and against the defendant inasmuch as the use of the subject mark by the defendant is likely to cause not only deception to the unwary consumer but also dilution of the mark of the plaintiff. The plaintiff is likely to suffer grave irreparable injury in case an ex-*

parte ad interim injunction, as prayed for, is not granted in its favour.

20. ***Accordingly, an ex-parte ad interim injunction in terms of prayers made in paragraph 11 (a) to (e) of the application are passed in favour of the plaintiff and against the defendant till further orders.*** *The disclosure as sought in paragraph 11 (d) and (e) shall be made by the defendant on an affidavit, which shall be filed along with its written statement."*

14. In terms of the interim injunction as contained in paragraph 11 (a) to (e) of the prayer clause, the Defendant stood restrained from manufacturing, wholesaling, supplying, selling, marketing in any manner including online sale or dealing in any other way with any goods including footwear/or any other products including accessories under the Plaintiff's mark/logo *'PUMA'* or any other mark/logo identical/similar to Plaintiff's mark *'PUMA'*. Further the Defendant was also directed to remove all listings of the impugned products from third party website, B2B, B2C website or portals by the Defendant to promote its impugned products bearing the impugned mark/logo .

15. A Local Commissioner was also appointed vide the said order. After the execution of the Local Commission, repeated summons and notices have been issued to the Defendant. Finally, the Defendant entered appearance on 20th March, 2023, but thereafter has chosen not to file the written statement/reply in the matter.

16. The report of the Local Commissioner clearly shows that the Commissioner visited the premises of the Defendant on 20th October, 2022. After visiting the premises, the Local Commissioner obtained police

assistance and conducted seizure at the Defendant's premises. The total quantity seized by the Local Commissioner is as under:

S. NO.	PRODUCT	QUANTITY
1.	Puma Shoes	156 pieces (78 pair)
2.	Puma Stickers	15 pieces

17. The Local Commissioner has also placed on record the photographs of the premises of the Defendant, which show that the Defendant is running a complete manufacturing of counterfeit '*PUMA*' products. At the time of Local Commission, several boxes were seized consisting shoes, socks, and footwears with the mark '*PUMA*'. The said images are set out below:



18. The present is a case where the Defendant is clearly engaged in the manufacturing and sale of counterfeit '*PUMA*' branded products as is evident from the record of the case as also the report of the ld. Local Commissioner.

19. A perusal of the inventory prepared by the Local Commissioner would show that the quantum is substantial and the Defendant is actually running a full-scale manufacturing operation in respect of counterfeit '*PUMA*' shoes.

20. In the opinion of the Court, most customers would not be able to distinguish between the Plaintiff's and Defendant's products if they are adjacently placed, unless a deeper examination is undertaken.

21. Insofar as the quantum of goods manufactured and sold by the Defendants are concerned, even if a reasonable assessment is taken of the Defendant's manufacture and sale, the inventory which has been prepared by the Local Commissioner on a particular day shows that approximately 156 pieces were lying fully manufactured and certain shoes were semi-manufactured. Thus, if the said stock of approximately 200 pairs of shoes is taken as an estimate of products manufactured in a week, it would clearly mean that the Defendant would be manufacturing and selling approximately 800 to 1000 pairs of shoes in a month.

22. The settled legal position is that the Local Commissioner's report can be read in evidence in terms of Order XXVI Rule 10(2) CPC. In ***M L Brother LLP v. Mahesh Kumar Bhrualal Tanna [CS(COMM) 126/2022***] this Court held as under:

> *"10.* ***Order 26 Rule 10(2) CPC stipulates that the report of the Commissioner and the evidence taken***

by the Commissioner shall be evidence in the suit and shall form part of the record. *The said provision reads as under:*

> ***10. Procedure of Commissioner.—***
> *(1) The Commissioner, after such local inspection as he deems necessary and after reducing to writing the evidence taken by him, shall return such evidence, together with his report in writing signed by him, to the Court.*
> ***(2) Report and depositions to be evidence in suit. Commissioner may be examined in person****.—The report of the Commissioner and the evidence taken by him (but not the evidence without the report) shall be evidence in the suit and shall form part of the record; but the Court or, with the permission of the Court, any of the parties to the suit may examine the Commissioner personally in open Court touching any of the matters referred to him or mentioned in his report, or as to his report, or as to the manner in which he has made the investigation.*

11. In Levi Strauss & Co. v. Rajesh Agarwal 2018 IAD (Delhi) 622, *this Court examined the said provision and held that* ***once the Commissioner has filed the evidence along with his report, it becomes evidence in the suit itself****. Under Order 26 Rule 10(2) CPC it is not mandatory to examine the Commissioner to admit the report of the Commissioner as evidence in the suit. The relevant observations are as under:*

> *8.* ***The Local Commissioner is in fact a representative of the Court itself and it is for this reason that Order 26 Rule 10 (2) of CPC clearly provides that once the Commissioner has filed the evidence along with his report the same shall be treated as evidence in the suit and shall form part of the record****. XXX XXX XXX*

10. The rationale behind Order 26 Rule 10 (2) of CPC is clear i.e., the Commissioner is appointed as a representative of the Court and evidence collected by the Commissioner along with the report of the Commissioner would be evidence in the suit, subject to any objection raised by any party. ***If any party has any objection to Commissioner's report or to the evidence, such party has an option to examine the Commissioner personally in open Court. Such examination is however, neither compulsory nor required especially in cases where the party does not challenge the report.*** *In the present case, a perusal of the written statement filed by the Defendant clearly reveals that the Defendant does not challenge the Commissioner's report. Para of the written statement is set out below…"*

12. This position of law has been reiterated by this Court in Vinod Goel v. Mahesh Yadav [RFA 2022/DHC/004806 CS (COMM) 413/2021 Page 9 of 14 598/2016 decided on 23rd May, 2018] *wherein the Court observed as under:*

"7. It is the settled proposition in law that when a Commissioner is appointed, he acts as the officer of the Court and it is not necessary for the Commissioner to be examined. This is clearly laid down by the Supreme Court ***in Misrilal Ramratan & Ors. Mansukhlal & Ors. v. A. S. Shaik Fathimal & Ors., 1995 Supp (4) SCC 600,*** *wherein the Court held as under:*

"It is now settled law that the report of the Commissioner is part of the record and that therefore the report cannot be overlooked or rejected on spacious plea of non-examination of the Commissioner as a witness since it is part of the record of the case."

8. Even this Court, recently in ***Levis Strauss v. Rajesh Agarwal [RFA 127/2007 decision dated***

> ***3rd January, 2018]****, held as under: "11. The rationale behind Order 26 Rule 10 (2) of CPC is clear i.e. the Commissioner is appointed as a representative of the Court and evidence collected by the Commissioner along with the report of the Commissioner would be evidence in the suit, subject to any objection raised by any party. If any party has any objection to Commissioner's report or to the evidence, such party has an option to examine the Commissioner personally in open Court. Such examination is however, neither compulsory nor required especially in cases where the party does not challenge the report."*
>
> *9. Mr. Prag Chawla clearly concedes that there 2022/DHC/004806 CS (COMM) 413/2021 may be no requirement to examine the Local Commissioner once the Commissioner is appointed by a Court.*
>
> *10. Under these circumstances, since the Commissioner had visited the suit property and had submitted the report, it is deemed appropriate that the matter is remanded back to the Trial Court to decide the matter afresh after taking into consideration the report of the Local Commissioner, Mr. Y.D. Nagar dated 5th January, 2000 in Suit No.2198/1999."*

23. In view of Order 26 Rule 10(2) CPC and the judgments discussed above, the settled legal position that emerges is that the report of the Local Commissioner can be treated as evidence in the suit where it is not challenged by any party. Accordingly, in the present case the report of the Local Commissioner and the contents therein can be relied upon by the Court as evidence to assess the damages, as the same stands unchallenged.

24. Furthermore, considering the report of the Local Commissioner which has been prepared and the evidence which has been collected by the Local

Commissioner as also the non-filing of the written statement, this Court is of the opinion that no *ex parte* evidence is required in this matter. This view is supported by the decisions of this Court in ***Disney Enterprises Inc. & Anr. v. Balraj Muttneja &Ors. [CS (OS) 3466/2012]*** and ***Cross Fit LLC v. RTB Gym and Fitness Centre [CS(COMM) 543/2021].***

25. In ***Disney Enterprises Inc. & Anr. V. Balraj Muttneja & Ors.,2014: DHC:964***, it has been held by the Court that leading formal evidence would not be required where the Defendant has not appeared in matter or filed a written statement. The Court was of the view that leading of ex parte evidence would be a waste of time, considering material before court is sufficient. The relevant portion of the judgment is set out below:

> *"5. The plaintiffs, despite having been granted sufficient time and several opportunities, have failed to get their affidavits for leading ex parte evidence on record. However, it is not deemed expedient to further await the same and allow this matter to languish, for the reason that* ***I have in Indian Performing Rights Society Ltd. Vs. Gauhati Town Club MANU/DE/0582/2013 held that where the defendant is ex parte and the material before the Court is sufficient to allow the claim of the plaintiff, the time of the Court should not be wasted in directing ex parte evidence to be recorded*** *and which mostly is nothing but a repetition of the contents of the plaint."*

26. No written statement has been filed by the Defendant and vide order dated 27th July, 2023, the Joint Registrar has closed the Defendant's right to lead evidence. The report of the Local Commissioner specifically records that Mr. Jogender Singh, who is found to be the owner of the premises, was served with a copy of the order dated 12th October, 2022.

27. Vide the Local Commission conducted on 20th October, 2022, footwear bearing the *'PUMA'* mark and *'leaping cat device'* was handed over to the Defendant on *superdari* basis. The Defendant also gave an undertaking to the effect that he will produce the sealed goods when ordered by the Court. Repeated orders of the Joint Registrar record that the Defendant has failed to appear despite service. Defendant's proxy counsel has also last entered appearance on 20th March, 2023. However, there is no appearance thereafter.

28. In a case of this nature, the Defendant has chosen to stay away from the proceedings. The execution of the Local Commission and the preparation of the inventory leaves no manner of doubt that the Defendant is well aware of the suit, which has been filed and the proceedings which are pending against it. In ***Inter Ikea Systems BV & Ors. v. Imtiaz Ahamed and Ors., MANU/DE/3680/2016***,it is clearly laid down by this Court that a party who chooses not to participate in the court proceedings cannot enjoy an advantage and a premium for such conduct.

29. In the opinion of this Court, the Defendant has deliberately chosen to stay away from the proceedings merely to ensure that it is not required to produce its accounts. The Plaintiff is entitled to be monetarily compensated for the infringement committed by the Defendant. Accordingly, this Court is of the opinion that on an assessment of the evidence on record, monetary compensation deserves to be awarded.

30. Insofar as injunction is considered, the prayers in the suit are as under:

> *"38. It is, therefore, respectfully prayed that this Hon'ble Court may be pleased to pass the following reliefs in favor of the Plaintiff and against the Defendant:*

a) A decree for permanent injunction restraining the Defendant, its proprietor or partners as the case may be, servants, agents, affiliates, associates, stockiest, distributors from manufacturing, wholesaling, supplying, selling, marketing, in any manner including online sale or dealing in any other way, any products including footwear, or any other ~ products under the Plaintiff's mark PUMA, and  *logo or any other mark/logo which is identical and similar to the Plaintiff's mark PUMA and*  *logo which may amount to infringement of the Plaintiffs registered trademarks as mentioned in paragraph 12 of the plaint;*

b) A decree for permanent injunction restraining the Defendant, its proprietor or partners as the case may be, servants, agents, affiliates, associates, stockiest, distributors from manufacturing, wholesaling, supplying, selling, marketing, in any manner including online sale or dealing in any other way, any products including footwear or any other products under the Plaintiff's mark PUMA, and  *logo or any other mark/logo which is identical and similar to the Plaintiffs mark PUMA, and*  *logo which may amount to passing off the Defendant's products for those of the Plaintiff;*

c) An order for delivery up of all finished and unfinished goods, dies, blocks, labels, packaging materials and any other printed material bearing the  *Plaintiffs mark PUMA, and logo to the authorised representative of the Plaintiff for the purpose of destruction/erasure/obliteration;*
d) A decree for general, exemplary, compensatory and punitive damages of Rs.2,00,00,010/- be passed in favor of the Plaintiff and against the Defendant;"

31. Considering, the wholesale/ large scale and brazen manufacturing of footwear with the mark 'PUMA' and its logo, from the report of the Local Commissioner dated 30th October, 2022, the extensive equity and reputation of the said mark as also the statutory rights of the Plaintiff, in view of the trademark registrations, a decree of injunction is liable to be passed in terms of paragraph 38(a) & (b) of the suit. Ordered accordingly.

Damages

32. The Plaintiff has also prayed for general, exemplary, compensatory and punitive damages. No evidence has been led by the Plaintiff in this matter. In any event, the nature of the Defendant's outlet leaves no doubt in the mind of the Court that proper assessment of the sale and profit earned may also not be determinable. The Defendant is obviously aware of the brand equity enjoyed by the *'PUMA'* mark and has deliberately chosen to manufacture and sell counterfeit products under the said mark and ride piggy-back on the Plaintiff's goodwill and reputation.

33. The Delhi High Court Intellectual Property Rights Division Rules, 2022 provide guidance on the manner in which the damages could be calculated in such cases. Rule 20 of the IPD Rules, 2022 is set out below:

> *"20. Damages/Account of profits A party seeking damages/account of profits, shall give a reasonable estimate of the amounts claimed and the foundational facts/account statements in respect thereof along with any evidence, documentary and/or oral led by the parties to support such a claim. In addition, the Court shall consider the following factors while determining the quantum of damages:*
> *(i) Lost profits suffered by the injured party;*
> *(ii) Profits earned by the infringing party;*
> *(iii) Quantum of income which the injured party may have earned through royalties/license fees, had the use of the subject IPR been duly authorized;*
> *(iv) The duration of the infringement;*
> *(v) Degree of intention/neglect underlying the infringement;*
> *(vi) Conduct of the infringing party to mitigate the damages being incurred by the injured party;*
> *In the computation of damages, the Court may take the assistance of an expert as provided for under Rule 31 of these Rules."*

34. Amongst the factors outlined above, the Court can consider the following two factors while granting damages:–

(a) Profit earned by the infringing party

(b) Duration of income.

35. In the present case, it is not clear as to from when the Defendant has been using the impugned mark. The earliest document filed by the Plaintiff shows that after acquiring knowledge of the Defendant's use of the mark,

the Plaintiff got in-house analysis taken to show how the products are counterfeit. The said analysis is set out below:

Product	Analysis
  	1. The appearance / design / style of the shoes does not match with PUMA design; 2. The fulfillment of the product sample is of inferior quality; 3. The material used to manufacture the product is of inferior quality, not matching the standards of original PUMA product; 4. The colour used for the product does not match the standards of original PUMA products; 5. The size, colour, and appearance of the PUMA device on the shoes does not match with the standards of original PUMA product; 6. The finishing of the products is not matching with the standards of original PUMA product. 7. The original PUMA products are sold in packaging with the mark PUMA/ Leaping Cat device printed on it, while the sample product is being sold without any packaging.

36. The use of 'PUMA' mark and logo by the Defendant on inferior quality products would not only result in violation of the Plaintiff's statutory and common law rights but will also lead to erosion of the brand equity of the Plaintiff and result in dilution of the marks. Such infringement if left unchecked would also be contrary to the consumer's interests, inasmuch as the consuming public may be purchasing the counterfeit products and paying a higher price presuming the same to be the Plaintiff's branded products. Thus, the sale of such counterfeit products is even contrary to the public interest.

37. On the issue of damages, the settled legal position has been laid down in ***Hindustan Unilever Limited v. Reckitt Benckiser India Ltd. (2014) 57 PTC 495 (DB),*** by the ld. Division Bench. In the said decision, the ld. Division Bench has clearly held that unless there are extenuating circumstances and overwhelming evidence of wrong doing, punitive damages cannot be awarded. Usually, the Court grants either notional damages or the compensatory damages.

38. In ***Koninlijke Philips and Ors. v. Amazestore and Ors., 2019:DHC:2185***, the Court laid down certain standards for grant of damages in the following terms:

> "*39. Accordingly, the question which was left open in Rookes (supra) was closed in Cassell (supra) as regards the manner in which aggravated or punitive damages are to be awarded.*
> *40. Consequently, though in assessing the aggravated damages which the Defendants should pay, the total figure awarded should be in substitution for and not in addition to the smaller figure, yet the rounded total sum shall have to be calculated by adding an additional amount to the compensatory damages.*
> *41.* ***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****:—*

#	***Degree of mala fide Conduct***	***Proportionate award***
(i)	*First-time innocent infringer*	*Injunction*
(ii)	*First-time knowing infringer*	*Injunction + Partial Costs*
(iii)	*Repeated knowing infringer*	*Injunction +*

	which causes minor impact to the Plaintiff	*Costs + Partial damages*
(iv)	*Repeated knowing infringer which causes major impact to the Plaintiff*	*Injunction + Costs + Compensatory damages.*
(v)	*Infringement which was deliberate and calculated (Gangster/scam/mafia) + wilful contempt of court.*	*Injunction + Costs + Aggravated damages (Compensatory + additional damages)*

42. 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."

39. Considering the above judgments, it is clear that the Plaintiff is liable to be awarded damages. The infringement conducted by the Defendant by imitating Plaintiff's mark *'PUMA'* as also *'leaping cat device'* has been deliberate and calculated. Thus, the Defendant falls within the categories laid down above against which damages ought to be awarded by the Court.

40. The Defendant has obviously earned profits from sale of the 'PUMA' branded shoes and there has to be some deterrence against sale of such counterfeit products. The sale price on the shoes is reflected as Rs.699/-. However, even going by the statement made by Mr. Jogendra Singh to the Local Commissioner, the Defendant was selling the shoes for Rs.200/- per pair. The Local Commissioner's report records as under:

"*13.* ***A question was put to the defendant, Mr. Jogendra Singh, about the selling price of the***

> ***infringing products i.e. Puma shoes, to which he answered that he has been selling them for Rs.200/- per pair.***
> *14. Another question was put to Mr. Jogendra Singh about the records and bills of the said sales, to which he answered that he did not have any bills for the sale of infringing products.*
> *15. Upon being asked by the undersigned,* ***Mr. Jogendra Singh informed that he has been doing this business for last two years.****"*

41. Considering the above stated Local Commissioner's report, if the Defendant's average sale per week is considered to be 200 pairs of shoes, the Defendant's weekly sale would be Rs.40,000/- and hence, Rs.1,60,000/- per month. The Defendant has clearly informed the Local Commissioner that he has been engaged in this business for the last two years. Accordingly, the sale of the unauthorized *'PUMA'* marked shoes for 24 months will be Rs. 38,40,000/-. If the costs of raw material *etc*. are considered to be 50% of the same, the Defendant has made profits of approximately Rs.18 to Rs.19 lakhs. In addition, there are no mitigating factors in the present case, which would give any benefit of doubt to the Defendant.

Conclusion

42. Under such circumstances, this Court is of the opinion that the present suit is liable to be decreed in favour of the Plaintiff against the Defendant, towards:-

i. Damages to the tune of Rs.10,00,000/-

ii. Costs of Rs. 2,00,000/-

43. Costs of Rs.2 lakhs are awarded to the Plaintiff as the Defendant has deliberately and with complete knowledge of the fact that *'PUMA'* brand

and '*leaping cat device'* cannot be used, imitated the same and earned the profits forcing the Plaintiff to file the present suit.

44. The shoes, which have been seized by the Local Commissioner, shall now be handed over by the Defendant to the Plaintiff's representative on 1st November, 2023 when the Plaintiff's representative may visit the Defendant's premises.

45. Accordingly, a decree of injunction is liable to be passed in terms of prayer 38(a) & (b) of the suit. Damages and costs awarded by the Court *qua* prayer 38(d) shall be paid by the Defendant within eight weeks, failing which the Plaintiff is free to seek execution and avail other remedies in accordance with law.

46. The suit is decreed in the above terms. Decree sheet be drawn up.

47. All applications are disposed of.

PRATHIBA M. SINGH
JUDGE

OCTOBER 20, 2023
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