

# H-D U. S. A., Llc vs Vijaypal Dhayal Owner/ Proprietor Of ... on 2 April, 2025

**Author: Amit Bansal**

**Bench: Amit Bansal**

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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of decision:

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CS(COMM) 609/2023 & I.A. 42209/2024

H-D U. S. A., LLC

Through:

Mr. Ranjan Narula, Mr.  
Nair and Mr. Parth Baj

versus

VIJAYPAL DHAYAL OWNER/ PROPRIETOR  
OF RED ROSE INDUSTRIES

.....Defendant

Through:

Mr. Arnav Goyal, Advoc

CORAM:

HON'BLE MR. JUSTICE AMIT BANSAL

AMIT BANSAL, J. (Oral)

CS(COMM) 609/2023 & I.A. 42209/2024 (Under Order XIII-A and Order VIII Rule 10 of the CPC seeking summary judgment)

1. The present suit has been filed seeking relief of permanent injunction restraining the defendants from infringing the trademarks and copyright of the plaintiff, passing off their goods and services as that of the plaintiff, and other ancillary reliefs.

## CASE SETUP IN THE PLAINT

2. The plaintiff, Harley-Davidson LLC, is a company organised and existing under the laws of the United States of America ('USA'). The plaintiff is engaged in the business of manufacturing and marketing motorcycles along with a wide range of products, inter alia, shoes, apparel and accessories.

3. The plaintiff commenced use of the mark 'HARLEY-DAVIDSON' in 1903 in the USA and subsequently expanded its use to various countries worldwide. On September 17, 1907, Harley-Davidson Motor Company was formally incorporated. In 1910, the plaintiff introduced its

renowned 'Bar & Shield' logo, which was first used in the same year and later registered as a trademark with the U.S. Patent and Trademark Office.

4. Since its inception, the plaintiff has grown to be a global corporation and has used the marks 'HARLEY-DAVIDSON' and its various logos, including the 'Eagle logo/device mark' ' ' and ' ' logo, to market its products and to conduct its business activities. It is stated that due to continuous and extensive use since the 1930s, the distinctive features, trade dress, get-up, layout, and placement of the unique elements of its 'Eagle Logo/Device' have acquired distinctiveness and function as a source identifier for the plaintiff's products.

5. It is averred that the plaintiff's 'HARLEY-DAVIDSON', ' ' ' and ' ' branded products are the market leaders and are sold in at least 90 countries through a network of over 1460 independently owned 'HARLEY-DAVIDSON' dealerships.

6. The plaintiff commenced operations in India in August 2009 trading under through its wholly owned subsidiary 'H-D Motor Company India Private Ltd.', a company incorporated in 2009 under the Indian Companies Act, 1956 and opened its first dealership in July 2010. The plaintiff later partnered with the Indian multinational company 'Hero MotoCorp' to continue its operations in India. The plaintiff also promotes its products and sells its wide range of products through its website <https://www.harley-davidson.in/> created on 14th February, 2005.

7. It is stated that the plaintiff holds over 2,200 trademark registrations or pending applications worldwide for the marks 'HARLEY-DAVIDSON', its logos, and various other design marks incorporating these elements. Owing to its longstanding and extensive use, as well as trademark registrations in India and globally, the relevant trade members and the purchasing public have come to exclusively associate these marks and logos with the plaintiff and no other entity. In India, the plaintiff has obtained several registrations for its different trademarks/names/devices. The registrations obtained by the plaintiff in India are given in the table below:

Trade Mark Registration No.	Filing Date	Class	Renewed	Status
1333740	24.01.2005	25	REGISTERED	1333795
24.01.2005	25	REGISTERED	1333792	24.01.2005
25	REGISTERED	1333737	24.01.2005	35
REGISTERED	2615599	22.10.2013	16, 25,	REGISTERED
41, 43	1333738	24.01.2005	12	REGISTERED
3707493	20.12.2017	12	REGISTERED	1333793
24.01.2005	9	REGISTERED	1333741	24.01.2005
26	REGISTERED	1333742	24.01.2005	34
REGISTERED	901270	02.02.2000	18	REGISTERED
510503	17.05.1989	18	REGISTERED	1333766
24.01.2005	18	REGISTERED	510504	17.05.1989
18	REGISTERED	850819	12.04.1999	18
REGISTERED	3507995	10.03.2017	25	REGISTERED
490824	10.05.1988	25	REGISTERED	490825
10.05.1988	25	REGISTERED	850824	12.04.1999
25	REGISTERED	901271	02.02.2000	25
REGISTERED	901282	02.02.2000	25	REGISTERED
1333746	24.01.2005	35	REGISTERED	1333769
24.01.2005	35	REGISTERED	1333758	24.01.2005
35	REGISTERED	1333751	19.11.2005	35
REGISTERED	1333781	24.01.2005	35	REGISTERED
1333736	24.01.2005	35	REGISTERED	

8. It is stated that the plaintiff's Eagle Logo/Device Mark branded products, with their distinct features, have acquired significant recognition and reputation among the Indian public. Because of the long uninterrupted use, the marks have come to exclusively denote and indicate the plaintiff's goods.

9. The plaintiff has also spent a substantial amount of money globally including India to popularize its 'HARLEY-DAVIDSON' branded products that bear the logos as well. The plaintiff has provided its annual sales and promotional figures for the period of 2009-2014 in India in paragraph 19 of the plaint. It is noted that in the year 2014, the sales figures and promotional expenses of the plaintiff in India were to the tune of Rs. 4,88,09,70,699/- and Rs. 5,31,53,418/- respectively.

10. The artwork for the 'HARLEY DAVIDSON' trade mark including the overall get-up, and trade dress is an artistic work within the meaning of Section 2(c) of the Copyright Act.

11. In the third week of July 2023, the plaintiff, through its representative/ salesperson, came to know about the Defendant's use of a mark identical to the plaintiff's device/logo on their shoes.

12. Subsequently, the plaintiff directed its representative to visit the Defendant's premises to investigate their business activities. During the visit, the plaintiff's representative met with one of the defendant's employees and gathered information regarding the defendant's operations. It was discovered that the defendant was stocking, supplying, and selling footwear, including shoes under the brand name 'RONTEX' bearing the impugned trademark/logo ' ' which is deceptively similar to the plaintiff's device/logo.

13. Upon enquiry regarding the owner of the defendant's premises by the plaintiff's representative, the defendant, Mr. Vijaypal Dhayal's business card was handed over by the employee.

14. Upon further investigation, it was found that the defendant is advertising and conducting business through third-party platforms such as [www.amazon.in](http://www.amazon.in), [www.flipkart.com](http://www.flipkart.com), and [www.indiamart.com](http://www.indiamart.com), where they sell and supply the infringing products bearing the impugned mark ' '.

15. It is the case of the plaintiff that the adoption and use of the deceptively similar / nearly identical logo, 'Eagle Logo/Device mark' ' ' by the defendant on its products amounts to infringement and dilution of the plaintiff's exclusive statutory and proprietary rights in the plaintiff's marks/devices.

#### PROCEEDINGS IN THE SUIT

16. On 1st September, 2023, this court issued the summons in the suit and notice in the application. Further, the court also appointed a local commissioner to inventorize the products bearing the impugned mark.

17. On 5th September 2023, the local commissioner visited the premises of the defendant and found a total of 640 pairs of shoes bearing the infringing marks.

18. After hearing the submissions of the counsel for the defendant, the predecessor bench, vide order 25th September 2023, granted an injunction in favour of the plaintiff and against the defendant, by way of which the defendant and all others acting on its behalf were restrained from stocking, supplying, selling, marketing, in any manner including online sale or dealing in footwear, or any other products under the impugned mark/logo ' ' or any other mark/logo which is identical and similar to the plaintiff's device/logo. Furthermore, the Court directed the status quo to be maintained with respect to the goods bearing the infringing mark which were found in the premises of the defendant as inventorised by the Local Commissioner in its report dated 7th September 2023. It was further directed that in case any of the said goods had already been sold, the invoices and amounts earned by way of such sale, shall be placed on record on affidavit by the defendant.

19. Vide order dated 8th May 2024, the Joint Registrar took note of the defendant's delay in re-filing the written statement and directed the defendant to bring the written statement on record within two weeks, failing which the right to bring the written statement on record would be closed.

20. On 21st August, 2024, the Joint Registrar noted that the defendant's written statement had initially been marked defective on 1st November, 2023, the same was re-filed on 5th May, 2024 with a significant delay, and marked defective again on 6th May, 2024 by the Registry. Subsequently, the written statement was re-filed on 8th May, 2024 but placed under objections on 10th May, 2024. After subsequent re-filings on 25th May, 2024 and 17th August, 2024, the written statement remained under objection on 28th May, 2024 and 20th August, 2024, respectively. The learned Joint Registrar also noted that no explanation had been provided by the defendant for the delay of 6 months in re-filing its written statement between 1st November, 2023 and 5th May, 2024. Considering the aforesaid, the Joint Registrar closed the defendant's right to file the written statement.

21. In view of the above, the counsel of the plaintiff filed the present application under Order XIII-A and Order VIII Rule 10 of the Code of Civil Procedure, 1908 for passing of a summary judgment. Vide Order dated 15th October, 2024, the court issued notice to the defendant and directed the defendant to file a reply.

22. Since no reply was filed on behalf of the defendant, on 21st February 2024, counsel for the defendant was given a last opportunity of two weeks to file a reply to the application filed by the plaintiff.

23. Despite multiple opportunities to contest the suit, no written statement or reply to the present application was filed by the defendant. ANALYSIS AND FINDINGS

24. I have heard the submissions of the counsel for the plaintiff and also perused the material on record.

25. The plaint has been duly verified and is also supported by the affidavit of the plaintiff. In view of the fact that no written statement has been filed on behalf of the defendant, all the averments made in the plaint have to be taken to be admitted. Further, since no affidavit of admission/denial has

been filed on behalf of the defendant in respect of the documents filed with the plaint, in terms of Rule 3 of the Delhi High Court (Original Side) Rules 2018, the same are deemed to have been admitted.

26. Therefore, I am of the opinion that no purpose would be served by directing the plaintiff to lead evidence by filing an affidavit of examination in chief and the plaintiff is entitled to a summary judgment.

27. From the averments made in the plaint and the evidence on record, the plaintiff has been able to prove that the plaintiff is the registered proprietor of the plaintiff's HARLEY-DAVIDSON and Eagle logo/device mark.

28. A comparison between the plaintiff's marks and the impugned marks along with products bearing the plaintiff's marks and the impugned marks used by the defendant is set out below:

PLAINTIFF'S MARKS    DEFENDANT'S IMPUGNED MARK    PLAINTIFF'S PRODUCT  
DEFENDANT'S PRODUCT BEARING IMPUGNED MARK

29. A perusal of the competing marks would show that the defendant has adopted the mark '' which is almost identical to the plaintiff's Eagle logo/device mark. The defendant, in the impugned mark, has employed the Eagle, the ribbon underneath the eagle and the placement of the geometrical shape resembling a shield of the plaintiff's mark. The defendant has not only copied the SCREAMING EAGLE/ EAGLE but also copied the outline of the Bar and Shield logo of the plaintiff. The defendant has merely replaced the words 'HARLEY-DAVIDSON CLOTHES' with 'SPORTS CASUAL' while adopting the impugned mark. The adoption of all the features of the plaintiff's mark by the defendant makes both the marks structurally and visually similar.

30. A perusal of the online listings of the defendant would show that the defendant is a habitual infringer who is not only selling the products bearing the impugned trade mark but also sells products on third-party websites infringing upon the likeness of other established brands.

31. Based on the discussion above, a clear case of infringement of trademarks and copyright is made out. Since the artistic elements of the rival marks are nearly identical, the class of consumers targeted by both parties directly overlaps, and the channels of trade both online and physical stores are identical. Consequently, there exists a likelihood that consumers may mistakenly associate the defendant's infringing products with the plaintiff or perceive them as a variant of the plaintiff's products, causing irreparable harm to the plaintiff's goodwill and reputation.

32. The defendant has taken an unfair advantage of the reputation and goodwill of the plaintiff's trademarks/artistic works and has also deceived the unwary consumers of their association with the plaintiff by dishonestly adopting the plaintiff's registered marks without any plausible explanation. Therefore, the plaintiff has established a case of passing off as well.

33. At this stage, it may be relevant to note that despite being given multiple opportunities, the defendant failed to bring on record its written statement and failed to file a reply to the present application.

34. Since the defendant has failed to take any requisite steps to contest the present suit, despite having suffered an ad interim injunction order, it is evident that the defendant has no defence to put forth on merits.

35. In *Su-Kam Power Systems Ltd. v. Kunwer Sachdev*, 2019 SCC OnLine Del 10764, this Court has observed as under:

"90. To reiterate, the intent behind incorporating the summary judgment procedure in the Commercial Court Act, 2015 is to ensure the 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 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."

36. The aforesaid principles are fully applicable to the facts and circumstances of the present case. As elaborated above, the defendant has no real prospect of successfully defending the claims in the present suit.

Further, taking into account that the aforesaid defendants have not set up any defence, there is no compelling reason for the recording of oral evidence.

37. Therefore, this is a fit case where a summary judgment in terms of Order XIII-A of the Code of Civil Procedure, 1908 can be passed in favour of the plaintiff and against the defendant.

38. Counsel for the plaintiff also presses for reliefs of compensatory damages and costs.

39. It is a settled position of law that the Local Commissioner's report can be read into evidence in the terms of provisions of Order XXVI Rule 10 (2) Code of Civil Procedure, 1908 ('CPC') where it is not challenged by any party. (Please refer: Aero Club v. M/s Sahara Belts<sup>1</sup>, Puma se v. Ashok Kumar<sup>2</sup>). A perusal of the Local Commissioner's report would show that during the execution of the Commission, the Local Commissioner found a total of 640 pairs of shoes bearing the impugned mark. Further, the defendant has not filed written statement or reply to contest the same.

40. In Hindustan Unilever Limited v. Reckitt Benckiser India Limited, a Division Bench of this Court outlined the principle of 'rough and ready calculations' for awarding damages. Further in Inter Ikea v. Sham Murari, a coordinate bench of this court granted damages on 'rough and ready calculation' based on the seizure made by the Local Commission.

41. In light of the foregoing analysis, this Court concludes that the defendant's conduct not only warrants but also necessitates the imposition of both damages and costs. Taking into account the entire facts and circumstances presented in this case, this Court also awards damages and 2023 SCC OnLine Del 7466 2023 SCC online Del 6764 costs amounting to Rs. 5,00,000/- in favour of the plaintiff and against the defendant.

#### RELIEF

42. In view of the foregoing analysis, a decree of permanent injunction is passed in favour of the plaintiff and against the defendant in terms of prayer clauses 46 (a), (b) and (c) of the plaint.

43. In respect of relief claimed in prayer clause 46(e) of the plaint, the defendant shall destroy the products bearing the infringing marks, inventorised by the Local Commissioner during the execution of the commission, in the presence of the authorised representative of the plaintiff.

44. Insofar as the relief of damages and costs sought in prayer clause 46

(g) and (h) is concerned, the plaintiff is awarded a sum of Rs.5,00,000/- towards damages and costs.

45. Counsel for the plaintiff does not press for the remaining reliefs prayed for in the plaint.

46. Let the decree sheet be drawn up.

47. The pending application stands disposed of.

AMIT BANSAL, J APRIL 2, 2025 kd