



2025:DHC:1207



\$~35

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% **Date of Decision: 18th February, 2025**+ **CS(COMM) 532/2024 & I.A. 31989/2024****CASTROL LIMITED****.....Plaintiff**

Through: Mr. Urfee Roomi, Mr. Jaskaran Singh
& Ms. Vanshika Bansal, Advocates
(M-9811600017)

versus

KAPIL & ANR.**.....Defendants**

Through: Mr. Kartik Jain, Advocate for D-1.
Mr. Deep Chand and Ms. Susheela
Prajapat, Advocates for D-2.

CORAM:**HON'BLE MS. JUSTICE MINI PUSHKARNA****MINI PUSHKARNA, J (ORAL)**

1. The present suit has been filed seeking permanent injunction against the defendants and their related parties from manufacturing, selling, advertising & exporting any products, i.e. engine oils, coolants, gear oils

lubricants bearing the marks, ACTIV,  ACTIBOND,



and packaging,



along with



anything that is deceptively similar to the said marks and packaging of the plaintiff.

2. This Court notes that an *ex-parte ad-interim* injunction has already been granted in favour of the plaintiff *vide* this Court's order dated 02nd July, 2024, whereby, the defendants were restrained from dealing in any manner with any engine oils, coolants, gear oils, etc., with the infringing marks/packaging or any other similar/identical marks/packaging as that of the plaintiff.

3. This Court also notes that no written statements have been filed on behalf of defendant nos. 1 and 2, despite lapse of statutory period. Accordingly, this Court *vide* order dated 10th February, 2025, proceeded under Order VIII Rule 10 of the Code of Civil Procedure, 1908 ("CPC") against the defendants. Further, the said order also recorded the request on behalf of the defendants that they may be granted some time with respect to payment of costs/damages.

4. The case of the plaintiff, as canvassed in the plaint, is as follows:

4.1 Founded in the year 1899 in the United Kingdom, the plaintiff company has its presence in more than 160 countries, and is a world leader in the field of lubricants, oils, coolants, grease and related goods and services.



4.2 The plaintiff uses the marks, "ACTIV", "ACTIV",



"ACTIBOND" and "ACTIBOND", in relation to its engine oils and lubricants which are packaged in plaintiff's unique trade dress,



being original artistic work within the meaning of the Copyright Act, 1957, having distinctive shape, get-up and colour combination, as follows:



4.3 The plaintiff is the proprietor of various registrations/applications in favour of the aforesaid marks and trade dress, with statutory registration in the mark, “ACTIV” dating back to the year 1999. Owing to the distinctive get-up and layout, the plaintiff’s packaging constitutes protectable trade dress under Section 2(1)(m) of the Trade Marks Act, 1999.

4.4 The marks of the plaintiff are known and reputed world-wide, with trade mark registrations in multiple jurisdictions. Furthermore, one or more of plaintiff’s marks have acquired the status of well-known marks under Article 6bis of the Paris Convention.



4.5 In India, plaintiff's CASTROL mark has been used as early as 1909 and the company itself has had presence in India since 1910. In the year 1990, the name of Indian subsidiary of the plaintiff company was changed to 'Castrol India Limited'.

4.6 Castrol India Limited has three manufacturing plants in India, located in Dadra and Nagar Haveli, Maharashtra and West Bengal and enjoys 20% market share in the overall Indian lubricant market.

4.7 Over the years, the plaintiff has spent crores on the advertisement and marketing of its products bearing the suit trademarks and trade dress, with endorsements from leading celebrities.

4.8 Plaintiff's marks and packaging have come to be associated solely and exclusively with the plaintiff and the same have developed a significant reputation owing to the long and extensive use in India. Further, the plaintiff's marks and packaging have also become well-known under the meaning of Section 2(1)(zg) and Section 11(6) of the Trade Marks Act, 1999.

4.9 Defendant nos. 1 and 2, as per plaintiff's knowledge, are individuals collusively engaged in manufacturing, marketing and selling engine oils and lubricants under infringing marks, "ACTIVE", "ACTIBOND",

“**Active**”,

“**ACTIVE**”

and

“**ACTIBOND MOLECULES
CONTINUOUS PROTETION**”, in an infringing trade dress, shown as under:



4.10 In April 2024, the plaintiff came across two Facebook profiles belonging to defendant no. 2, under the names, 'Makkvoll Lubricants' and 'Makkvoll Engine Oil', and a Facebook group by the name, 'All India Lubricant Manufacturers (#Makkvolllubricants)', advertising and offering for sale products of defendants with infringing marks and packaging.

4.11 Upon investigation by the plaintiff, it was found that the products bearing the infringing marks and trade dress, being advertised by defendant no. 2 through its Facebook profiles, groups and IndiaMart listing, were being manufactured and sold by defendant no. 1 through its brick-and-mortar store in Jhunjhunu, Rajasthan. It was further discovered that the infringing products under the brand Makkvoll used to be sold by defendant no. 2 till the year 2022, whereafter, the business was transferred to defendant no. 1.

4.12 The defendants are rank infringers who are using the infringing marks and packaging openly to mislead unwary customers and to capitalise upon plaintiff's goodwill and reputation by selling/offering for sale engine oils



and lubricants bearing confusingly and deceptively similar marks and packaging.

4.13 Being aggrieved by the infringing activities of defendants and dilution of its brand identity, the plaintiff has filed the present suit, praying for *inter alia* permanent injunction, damages, delivery-up and declaration of

plaintiff's mark,  as well-known.

5. Learned counsel appearing for the plaintiff has drawn the attention of this Court to the Local Commissioner Report, to show the extent of infringing goods along with counterfeit products that were recovered from the premises of defendant no. 1. The relevant portions of the report of the Local Commissioner dated 19th July, 2024, read as under:

“xxx xxx xxx

8. *The search began around 11:45 AM and I started with the inspection of the subject site during which I was informed by Mr. Ankit Saini that Mr. Kapil, i.e., Defendant No.1 had received a call 3 days back from an unknown individual alerting him of a suit/case that has been filed against him before the Delhi High Court and advised Defendant No.1 to take action at the earliest. Upon further enquiry qua the details of the unknown individual caller, Mr. Ankit Saini refused to give any information to that effect.*

9. **While the Local Commission was being executed and search was being carried out, I identified the original Castrol products bearing the mark 'Castrol Activ', that were also being sold along with the infringed products at the subject site. To this effect, I was informed by Mr. Ankit Saini that they deal in original Castrol products and themselves manufacture the infringed products and sell all such products at the retail store owned by Defendant No.1.**

10. *Further during the course of inspection, I came across a computer and enquired from Mr. Ankit Saini about the books of accounts, ledgers, and the mode of dealing with the infringed products. In response to my query, Mr. Ankit Saini introduced me to the Chartered Accountant (“CA”) of Kapil Autoworks, who introduced himself as Mr. Kapil Sharma. **Subsequently, I was***



informed by the CA that they deal in cash only and have no records of any books of accounts, ledgers, etc., as they provide a plain slip of paper indicating the figure, which they give to the customers and keep no record of.

11. Upon enquiry qua the whereabouts of Defendant No.1, I was informed that he is not present due to three back-to-back deaths in his family. Thereafter, I enquired about the mode of acquiring and manufacturing of the infringed products. **To which, I was informed that all the products are manufactured by the Defendant no.1 in a factory which was located behind the main retail store.**

12. **It is recorded, that after the stock present at the retail store was thoroughly inspected and seized at the retail store, I along with the counsel for the plaintiff and his team proceeded to inspect the factory, wherein manufacturing of infringed products was being carried out. Upon my entry into the factory, I found 17 oil barracks and multiple boxes of the infringed products, which evidently showed that the factory was a manufacturing unit used/owned by the Defendant no.1.**

xxx xxx xxx”

(Emphasis Supplied)

6. This Court also notes the inventory, as filed by the learned Local Commissioner, of the seized goods from the premises of the defendant no. 1, which is reproduced as under:

S. No.	Particulars	Quantity
1.	Makkvoll Active (25 Boxes x 20) - 900ml each	500 Bottles
2.	Makkvoll Active (53 boxes x 20) - 900ml each	1060 Bottles
3.	Makkvoll Active Empty Bottles (6 Boxes x 20) - 900ml each	120 Bottles
4.	Makkvoll Active (3 Boxes x 18) - 900ml each	54 Bottles
5.	Makkvoll Active Empty Bottles (1 Box x 17)- 900ml each	17 Bottles



6.	Mackkvoll Active Stickers	1988 stickers
7.	Mackkvoll Cartons (bearing Active mark)	20 boxes
8.	Mackkvoll Active Empty Bottles [900ml each]	59 Bottles

Total: 1810 Bottles
1988 Stickers
20 Carton Boxes

7. Perusal of the aforesaid clearly shows that defendant no. 1 has been dealing with, manufacturing and marketing its products under the infringing marks and packaging, in large commercial quantities.

8. At this stage, learned counsel appearing for the defendant no. 2 submits that no local commission was executed at his premises and no infringing goods were recovered from the premises of defendant no. 2.

9. However, the said fact is vehemently denied by the learned counsel appearing for the plaintiff. He draws the attention of this Court to various documents filed with the plaint to show the active involvement of defendant no. 2.

10. Pursuant to the aforesaid submission, the plaintiff has drawn the attention of this Court to 'Document 31', as filed along with the plaint, which is the Goods and Services Tax ("GST") information of 'Yashvi Enterprises', in the name of Mr. Sunil, i.e. defendant no. 2. Perusal of the said document shows that defendant no. 2, who is running his proprietorship under the trade name, 'Yashvi Enterprises', had obtained the GST registration in 2020, and the same is currently active. The said document is reproduced as under:



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6/26/24, 6:50 PM

Goods & Services Tax (GST) | Services

DOCUMENT - 31[Skip to Main Content](#) A+ A-**Goods and Services Tax**

Government of India, States and Union Territories

REGISTERED
891
TIN[Home](#) > [Search Taxpayer](#) > [Search by GSTIN/UIN](#)**Search Taxpayer**

* Indicates mandatory fields

GSTIN/UIN of the Taxpayer*

SEARCH

Search Result based on GSTIN/UIN : 06HJEPS2965G1ZT

Legal Name of Business

SUNIL

Trade Name

YASHVI ENTERPRISES

Effective Date of registration

10/07/2020

Constitution of Business

Proprietorship

GSTIN / UIN Status

Active

Taxpayer Type

Regular

Administrative Office

(JURISDICTION - STATE)

State - Haryana

Range - Hisar

District - Bhiwani

Ward - Bhiwani Ward 4

Other Office

(JURISDICTION - CENTER)

State - CBIC

Zone - PANCHKULA

Commissionerate - ROHTAK

Division - BHIWANI

Range - RANGE-7 BHIWANI

Principal Place of Business

11. In furtherance thereto, this Court also takes note of the GST document showing registration in the name of Mr. Kapil, i.e., defendant no. 1, under



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his trade name, Kapil Auto Workshop, which is filed along with the plaint as ‘Document 30’. The same is reproduced as under:

6/26/24, 6:50 PM

Goods & Services Tax (GST) | Services

DOCUMENT - 30

Skip to Main Content A+ A-

Goods and Services Tax

Government of India, States and Union Territories

REGISTERED
888
GSTIN

Home > Search Taxpayer > Search by GSTIN/UID

Search Taxpayer

* Indicates mandatory fields

GSTIN/UID of the Taxpayer*

Enter GSTIN/UID of the Taxpayer

SEARCH

Search Result based on GSTIN/UID : 08CAOPK8547E1Z9

Legal Name of Business

kapil

Trade Name

KAPIL AUTO WORKSHOP

Effective Date of registration

01/08/2020

Constitution of Business

Proprietorship

GSTIN / UID Status

Active

Taxpayer Type

Regular

Administrative Office

(JURISDICTION - CENTER)

State - CBIC

Zone - JAIPUR

Commissionerate - ALWAR

Division - GST DIVISION-G SIKAR

Range - GST RANGE-XXXIV JHUNJHUNU

Other Office

(JURISDICTION - STATE)

State - Rajasthan

Zone - Bikaner

Circle - Circle-Jhunjhunu

Ward - Circle-Jhunjhunu - Ward-I

Principal Place of Business



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12. This Court further notes the various listings on IndiaMart, for the infringing products, wherein, the trade names of defendant nos. 1 and 2 are clearly mentioned. The documents with regard to listing showing the trade names of defendant nos. 1 and 2 on the pages of IndiaMart are reproduced as under:


6/26/24, 6:57 PM Engine Oil Additive from Surajgarh

indiamart All India Enter product / service to search Search Get Best Price Shopping Cart Help Messages Sign In

Kapil Auto Workshop **DOCUMENT - 32** **894**
Surajgarh, Jhunjhunu, Rajasthan | GST 08CAOPK647E123 | Verified Supplier | 3.0 ★★★★★
Home Products & Services About Us Contact Us Send Email

Products & Services **Engine Oil Additive**
Offering you a complete choice of products which include Engine Oil Additive.

Engine Oil Additive
₹ 120 / Litre [Get Latest Price](#)




Viscosity	10W30
Packaging Size	Bottle of 900 mL
Engine Oil Type	Semi Synthetic
Vehicle Type	Bike, Car, Bus, Truck
Country of Origin	Made in India

Engine Oil Additive

[Get More Photos](#) [Yes, I am interested!](#)

Interested in this product?
[Get Best Quote](#)

Explore more categories




 **Automotive Components**
3 products available

Get in touch with us

Our Company
Products & Services
Contact Us
Sitemap
Download Brochure

Reach Us
Kapil Auto Workshop
Ward No 11, Old Bus Stand To Tehsil
Road, Surajgarh, Jhunjhunu, Rajasthan-333029,
Rajasthan, India
Kapil
[View Mobile Number](#)
[Send SMS](#) [Send Email](#)

Leave a Message, we will call you back!
Mobile Number
+91 Enter your mobile
Year Country is India
Requirement Details
Additional details about your requirement...
[Submit Requirement](#)

Share us via   

<https://www.indiamart.com/kapil-autoworkshop/engine-oil-additive.html#2853072217088> 1/2



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6/27/24, 7:16 PM

Kapil Auto Workshop Business enquiry form

All India

Search

Get Best Price

Kapil Auto Workshop

Surajgarh, Jhunjhunu, Rajasthan | GST 08CAOPK8547E1Z9 | Verified Supplier | 3.0/5 ★★★★★

895

Call 08069264770 Ext 706

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Contact Us for more details

Requirement Details

Additional details about your requirement...

Submit Requirement

Reach Us

Ward No 11, Old Bus Stand To Tehsil Road, Surajgarh, Jhunjhunu,
Surajgarh-333029, Rajasthan, India

Kapil

Call 08069264770

Dial Ext 706 when connected

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Maksvoll 4T 20W40 Powerful Lubricant 4 Active Stroke Engine Oil, Packaging Size: 900ml, Model Name/Number: Api-s at Rs ...



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6/26/24, 7:01 PM Bike Engine Oil Makkvoll Multigrade 20w40, Packaging Type: Bottle, Packaging Size: 900 ML And 1 L at Rs 130/litre in Loharu

indiamart All India Enter product / service to search Search Get Best Price

indiamart > Oils, Grease & Lubricants > Engine Oil > Bike Engine Oil Automotive Oils > Engine Oil > Lubricating Oil > Engine Oil > Bike Engine Oil

Bike Engine Oil Makkvoll Multigrade 20w40, Packaging Type: Bottle, Packaging Size: 900 ML And 1 L

₹ 130/ Litre **897**

Yashvi Enterprises
3.4/5 ★★★★★
Loharu, Bhiwani, Haryana
GSTIN: 0874 994928893127
Verified Supplier Manufacturer
View Mobile Number Contact Supplier

Product Details

Grade	20w40
Type	Bike engine oil
Packaging Size	900 ml and 1 L
Brand	MAKKVOLL
Packaging Type	Bottle

MAKKVOLL 4T Star 20W-40 is a superior engine oil blended from highly refined base stocks fortified with carefully selected additive chemistry. It is specially...

[View Complete Details](#)

Get Latest Price

Related categories :

- Bike Engine Oil
- Multigrade Engine Oil
- Automotive Oils
- Engine Oil
- Lubricating Oil

Find products similar to Bike Engine Oil Makkvoll Multigrade 20w40, Packaging Type: Bottle, Packaging Size: 900 ML And 1 L near Loharu

Newhazrat 6W10 Bike Engine Oil, Bottle of 1 L...
New Bharat Al...
Deals In Loharu
₹ 321/ Litre
View Mobile Number
Get Latest Price

Engine Oil
Agarwal Automotiles
Deals In Loharu
Ask Price
View Mobile Number
Get Latest Price

4T Bike Oil All Types
Sat Oil Agency N...
Deals In Loharu
Ask Price
View Mobile Number
Get Latest Price

Semi Synthetic Perfect 4T 20W-40...
Jai Bharat Lubricants
Deals In Loharu
₹ 350/ Litre
View Mobile Number
Get Latest Price

20W40 Bike Engine Oil, Bottle of 1 L...
Siddhi Vinayak...
Deals In Loharu
₹ 120/ Litre
View Mobile Number
Get Latest Price

1 ENGINE OIL 4T
BKE Oil, Packagin...
Shri Ratan Traders
Deals In Loharu
₹ 120/ Bottle of 900ml
View Mobile Number
Get Latest Price

[View More](#)

Find related categories near Loharu

Automotive Oils
in Mahendragarh
Get Quote >

Engine Oil
in Bhiwani
Get Quote >

Lubricating Oil
in Bhiwani
Get Quote >

Castrol Engine Oil
in Hisar
Get Quote >

Lubricants
in Hisar
Get Quote >

<https://www.indiamart.com/proddetail/makkvoll-multigrade-20w40-23890582662.html>

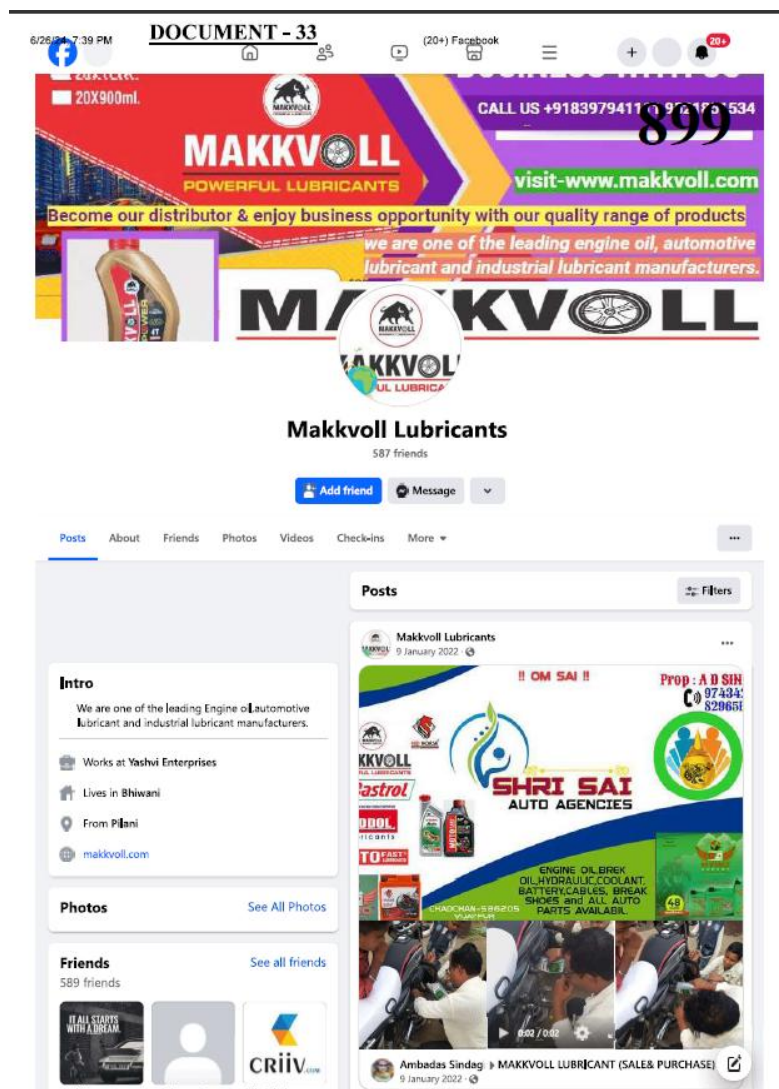
1/3

13. This Court notes that the respective GST registration numbers of the businesses of defendant nos. 1 and 2, as reproduced hereinabove, are clearly recorded along with the trade names of defendant nos. 1 and 2 in the aforesaid pages of IndiaMart. Further, perusal of the aforesaid pages of



IndiaMart clearly shows that both the defendants have been actively involved in selling the infringing goods.

14. This Court further notes the various Facebook pages, profiles and posts associated with defendant no. 2, in the name of either Yashvi Enterprises or Mr. Sunil Sangwan which clearly show the offer for sale of the infringing products in association with defendant no. 2, offering distributorship of the infringing product and bulk marketing, thereof. The said Facebook pages are reproduced as under:





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Makkvoll Engine oil

4 January 2022 · 🌐



Sunil Sangwan ► ALL INDIA LUBRICANT MANUFACTURERS(#Makkvolllubricants)

4 January 2022 · 🌐

#discountoffer #specialoffer #specialday #distributor #affordableprice

Get Distributorship of Makkvoll lubricants
Lubricants in your City & District
Superior E... See more



2



Like



Comment



Share

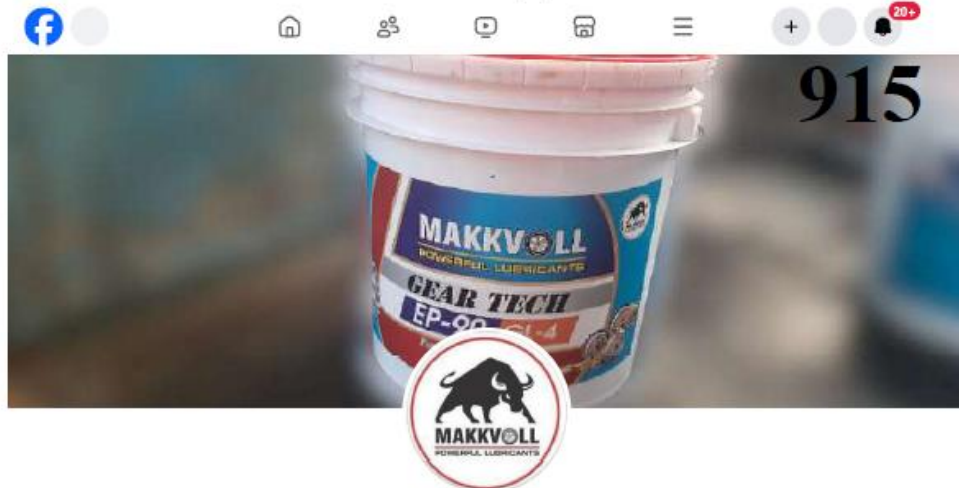


2025:DHC:1207



6/26/24, 7:40 PM

(20+) Facebook



Makkvoll Engine oil

251 likes · 251 followers

WhatsApp

Message

Like

Posts About Mentions Reviews Followers Photos More

Intro

We are one of leading manufacturer of engine oil, Automotives LUBRICANT and industrial LUBRICANT

Page · Oil lube and filter service

Delhi, India, Delhi

083979 41111

makkvoll@gmail.com

makkvoll.com

Always open

Price range · ₹₹₹₹

Not yet rated (1 review)

Photos

See All Photos



Posts

Filters

Makkvoll Engine oil

8 March 2022 ·

BEST RATE & BEST QUALITY

WHATS AAP & ORDER NOW

8397941111,9521851534... See more

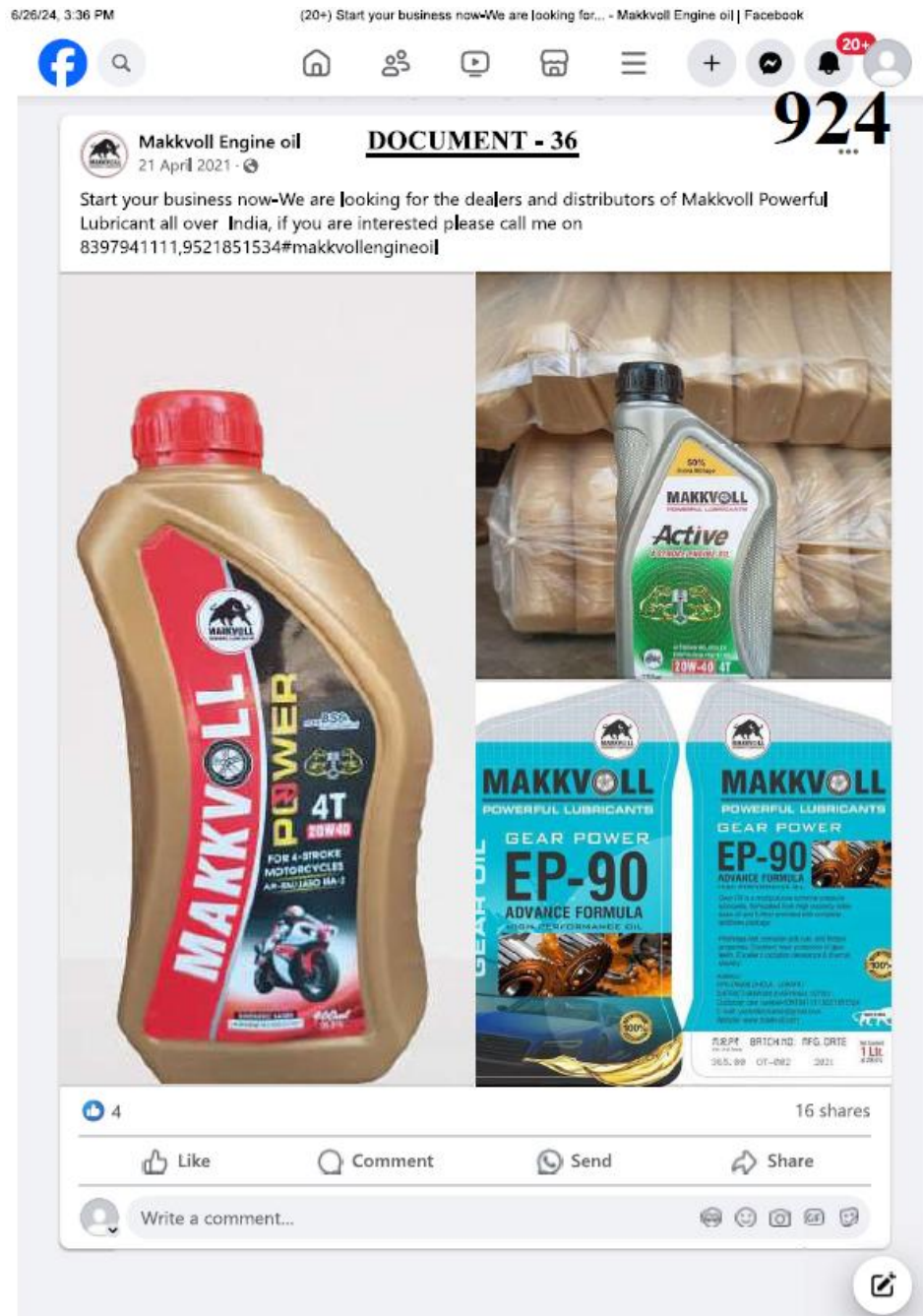


https://www.facebook.com/p/Makkvoll-Engine-oil-100066493763693/?paipv=0&eav=AfZmKRVNxiAXJnCO6fkNTpoF2bbzUfNripMsHeJLWRbD... 1/3

15. Various other documents from Facebook, as filed along with the plaint, show that the defendant no. 2, Mr. Sunil Sangwan is the proprietor of



Yashvi Enterprises and has clearly claimed that defendant no. 2 is looking for dealers and seeking distributorship for the infringing product in question. The extracts of the relevant documents from the Facebook page of and groups associated with defendant no. 2, are reproduced as under:



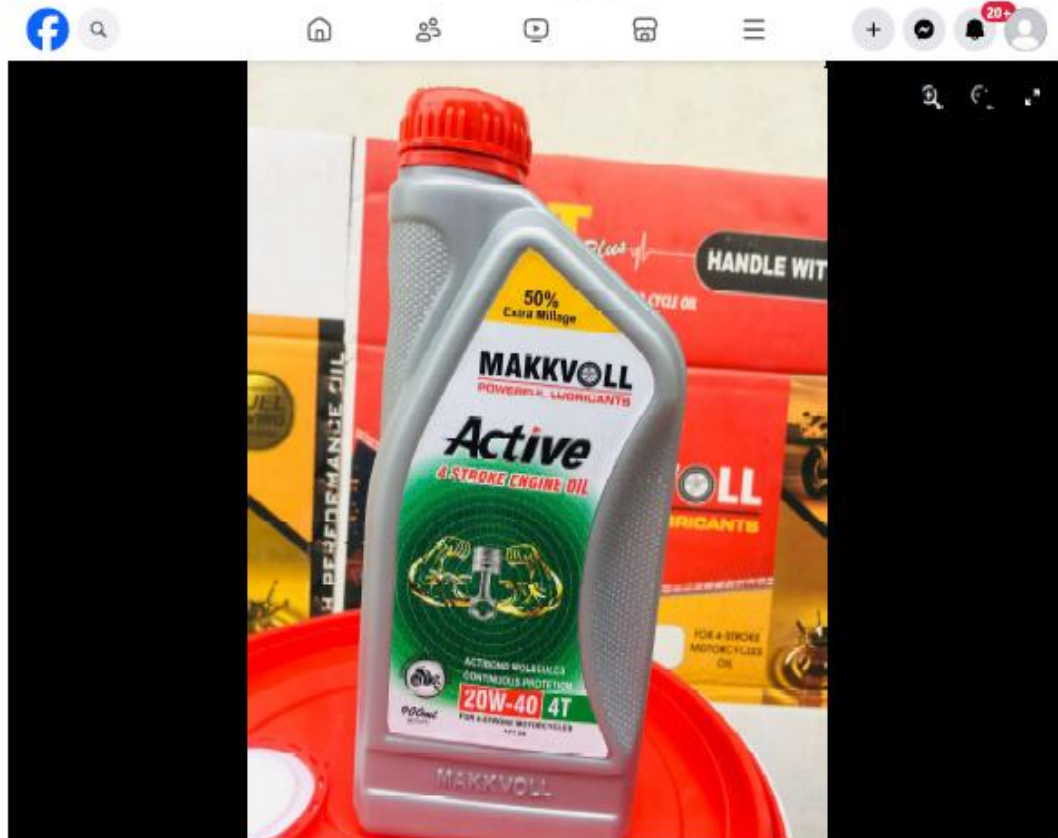


2025:DHC:1207



6/26/24, 8:02 PM

(20+) Facebook



Sunil Sangwan

Admin · 4 January 2022 · 🌐

#discountoffer #specialoffer #specialday #distributor #affordableprice

Get Distributorship of Makkvoll lubricants

Lubricants in your City & District

Superior Engine Oil Protection

POWER TO PERFORM

Give Extra Power & Performance to your business

Contact watsp-8397941111

9521851534... See more



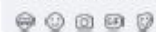
2



1



Write a public comment...





2025:DHC:1207



6/27/24, 7:56 PM

ALL INDIA LUBRICANT MANUFACTURERS(#Makkvolllubricants) | No rate increase same price order now and get extra benefi...

facebook

Log in



ALL INDIA LUBRICANT MANUFACTURERS(#Makkvolllubricants) | No rate increase same price order now and get extra benefi...

32.8K members

927 Join Group



Makkvoll Lubricants

Admin · 6 March 2022 ·

No rate increase same price order now and get extra benefits!

Get Distributorship of Makkvoll lubricants
Lubricants in your City & District

Superior Engine Oil Protection

POWER TO PERFORM

Give Extra Power & Performance to your business

Contact watsp-8397941111

9521851534

#makkvoll #makkvolllubricant #makkvollengineoil #makkvollgearoil #makkvollhy

Customer can reach through this link below

<https://wa.me/message/5FSUAH2XJGLNN1>



FREE

Log in or sign up for Facebook to connect with friends, family and people y...

Log in

or

Create new account



2025:DHC:1207



facebook

Log in



ALL INDIA LUBRICANT MANUFACTURERS(#Makkvolllubricants) | Get Distributorship of Makkvoll Lubricants

32.8K members

928



Sunil Sangwan is looking for a full-time employee with Oilman Lubricant and 14 others in Haryana.

Admin · 4 January 2022 ·

Get Distributorship of Makkvoll lubricants
Lubricants in your City & District
Superior Engine Oil Protection
POWER TO PERFORM
Give Extra Power & Performance to your business
Contact watsp-8397941111
9521851534
#makkvoll
#lubricant
#distributor
#Karnataka #makkvolllubricant #makkvollengineoil #makkvollgearoil #makkvollhy-68



7

59 shares

Log in or sign up for Facebook to connect with friends, family and people y...

Log in

or

Create new account

https://www.facebook.com/groups/2839817306235369/permalink/3026500997566998/?mibextid=Nif5oz&_rd

1/5

16. Perusal of the aforesaid documents clearly show that the defendant no. 2 is not only the manufacturer of the products in question, but defendant no. 2 is also dealing in bulk quantities of the said products. This is manifest



from the very fact that defendant no. 2 is shown to be looking for distributorships and dealerships for the products manufactured by him through his proprietorship concern, i.e. Yashvi Enterprises.

17. This Court further takes note of the affidavit of the investigator filed along with the plaint as ‘Document 37’, who was hired at behest of the plaintiff, wherein, the investigator has categorically stated as under:

“xxx xxx xxx

6. I say that upon calling on this phone number, I found that it belonged to one Kapil Saini, who informed, during my call, that he deals in engine oils and lubricants bearing the MAKKVOLL brand and ACTIVE marks as shown above through his proprietorship concern, namely, Kapil Auto Workshop. Upon further enquiries, Mr. Saini provided his address to me and agreed to meet me in person.

7. I then met with Mr. Saini at the address Ward No 11, Old Bus Stand To Tehsil Road, Surajgarh, Jhunjhunu, Rajasthan, 333029, and noticed that Mr. Saini was carrying on his business of manufacturing and selling engine oils and lubricants from this address, trading under the name Kapil Auto Workshop. I also noticed that the products which were listed on Mr. Sunil/Yashvi Enterprises' IndiaMart page, bearing the MAKKVOLL brand name and the above-shown ACTIVE and ACTIBOND marks and packaging, were being manufactured, marketed and sold/offered for sale by Mr. Saini, from this address.

8. Further, during my oral enquiries with Mr. Saini, I got to know that Mr. Saini is associated with Mr. Sunil/Yashvi Enterprises and that the two of them are together engaged in the business of manufacturing and selling engine oils under the MAKKVOLL brand, bearing the above-shown ACTIVE and ACTIBOND marks and packaging.

9. I further say that Mr. Saini confirmed to me during the investigation that he is marketing, supplying and selling his engine oils under the MAKKVOLL brand bearing the ACTIVE and ACTIBOND marks and packaging to various dealers as well as consumers in Delhi.

xxx xxx xxx”

18. This Court also takes note of the invoice dated 15th May, 2024, which has been issued by defendant no. 1 for the infringing products, which is reproduced as under:



2025:DHC:1207



9783166821 KAPIL AUTO WORKSHOP
Ward No 11, Old bus stand to Tehsil Road,
Surajgarh Dist Jhunjhunu (Raj.)

हॉरो होल्डा, बजान, एंबीएस, स्वेयर पार्ट एवं रिपेयरिंग 1: Hero

M/s राहुल एस डी Invoice No. 935
Add. विरासत - 137C Date 6/5/24
GSTIN 9783166821 Vehicle No. HR024

S.No.	Particulars	HSN/ SAC	Qty	Rate	Amount
①	MARKVOI				Rs. 130/-

9783166821



Rupees. रु. 130/- Amount Before Tax
Add. CGST @ 3%
Add. SGST @ 3%
Add. IGST @ 3%
Total Tax Amount
Total Bill Amount 130/-

Bank-IndusInd Bank
A/c - 259783166821
IFSC - INDB0000882

1. All dispute to Surajgarh Jurisdiction. For - Kapil Auto works shop
2. Goods once sold will not be taken back
3. Interest will be charged @ 10 after 7 days Auth. Signatory Proprietor

19. The aforesaid detailed discussion clearly brings forth the involvement of the defendant nos. 1 & 2 in the manufacturing, marketing and selling of engine oils, coolants and lubricant products under the infringing packaging bearing the infringing marks.

20. This Court notes that the plaintiff is the proprietor of multiple registrations and applications for the following marks:

S. No.	Reg/App No.	Mark	Class	Reg/App Date	Status
1.	838183	ACTIV	4	25/01/1999	Registered
2.	3355419		4	08/04/2016	Protection Granted
3.	2317448	ACTIBOND	4	18/04/2012	Pending
4.	6153641		4	17/10/2023	Pending



21. Having noted the aforesaid facts and submissions, it is relevant to compare the marks and packaging of the plaintiff to the infringing marks and trade dress being used by the defendants. A comparative table towards the same is reproduced, as under:

PLAINTIFF'S MARKS AND TRADE DRESS	DEFENDANTS' INFRINGING MARKS AND TRADE DRESS
<p>ACTIV</p>  <p>ACTIBOND</p>   	<p>ACTIVE</p>   <p>ACTIBOND</p>  

22. Perusal of the aforesaid tabular comparison, particularly the trade dress of the parties, shows the following:



- i. The distinctive feature of plaintiff's packaging, which is silver-grey in colour with a red cap.
- ii. The front of plaintiff's container bears a label in the shape akin to that of a trapezium, the top of which prominently displays the CASTROL device mark, below which the plaintiff's other marks, such as ACTIV are written in a stylized font.
- iii. The centre of the label features the 'Oil in Action' with Rod device



mark ()/ 'Oil in Action' with device mark ().



- iv. The bottom right of the plaintiff's lubricant bottle features the

ACTIBOND device ().

- iv. There is a label affixed onto the back of the container, which is also in the shape or a trapezium, bearing the CASTROL ACTIV device mark



(). Further, below the said label are the details of the manufacturer, place of manufacturing, bar code, MRP, date of manufacture, etc.

23. Upon a careful comparison of the trade dress of the plaintiff and that of the defendants, it becomes apparent that the overall colour scheme, get-up and layout of the defendants' impugned packaging is nearly identical to that of the plaintiff's trade dress. The defendants have evidently used nearly identical/deceptively similar two tone green and white background for the label on their packaging. Further, the layout of the defendants' label, with



white colour in the upper half and a circular green, highlight for placement



of similar device element/ is another deliberate attempt on part of the defendants to mislead and confuse the consumers as to the true identity and association of its goods.

24. This Court takes into consideration the principles to be borne in mind while analysing deceptive similarity of marks, as laid down by the Supreme Court in the case of *Parle Products (P) Ltd. Versus J.P. and Co., (1972) 1 SCC 618*, which read as under:

“xxx xxx xxx

9. 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. In this case we find that the packets are practically of the same size, the colour scheme of the two wrappers is almost the same; the design on both though not identical bears such a close resemblance that one can easily be mistaken for the other. The essential features of both are that there is a girl with one arm raised and carrying something in the other with a cow or cows near her and hens or chickens in the foreground. In the background there is a farm house with a fence. The word “Gluko Biscuits” in one and “Glucose Biscuits” on the other occupy a prominent place at the top with a good deal of similarity between the two writings. Anyone in our opinion who has a look at one of the packets today may easily mistake the other if shown on another day as being the same article which he had seen before. If one was not careful enough to note the peculiar features of the wrapper on the plaintiffs’ goods, he might easily mistake the defendants’ wrapper for the plaintiffs’ if shown to him some time after he had seen the plaintiffs’. After all, an ordinary purchaser is not gifted with the powers of observation of a Sherlock Homes. We have therefore no doubt that the defendants’ wrapper is deceptively similar to the plaintiffs’ which was registered. We do not think it necessary to refer to the decisions referred to



at the bar as in our view each case will have to be judged on its own features and it would be of no use to note on how many points there was similarity and in how many others there was absence of it.

xxx xxx xxx”

(Emphasis Supplied)

25. This Court further notes that even on a broad comparison of the rival marks of the plaintiff and the defendants, it is apparent that the defendants have merely added the letter ‘E’ to the plaintiff’s ‘ACTIV’ mark to arrive at the impugned ‘ACTIVE’ mark, with identical font and stylization. Moreover, the defendants have copied the plaintiff’s ‘ACTIBOND’ sword mark in its entirety and are using it to package their infringing products. Thus, this Court, in the case of *National Insurance and Indemnity Corporation and Another Versus Virat Travels and Another, 2022 SCC OnLine Del 1004*, while adjudicating upon the nature of deceptive similarity between the marks BOLTBUS and BOLTTBUS/BULLETBUS, held as under:

“xxx xxx xxx

19. After having seen the Defendants’ use of the identical and deceptively similar mark ‘BOLTTBUS’ and ‘BULLETBUS’, as also the initial adoption of the ‘bolt logo’, the identical colour combination and the promotion on social media, this Court is convinced that the Defendants’ adoption and use of the said mark ‘BULLETBUS’ logo and writing style as also BOLTTBUS’ would be contrary to law and violative of the Plaintiffs rights in the mark ‘BOLTBUS’. Such blatant infringement of the mark, even though belonging to a foreign proprietor, cannot be condoned, especially when the Court is convinced that the same has been adopted with a dishonest and mala fide intention.

xxx xxx xxx”

(Emphasis Supplied)

26. In view of the aforesaid findings and on account of no written statements being filed on behalf of the defendants as recorded above, there is



no defence effectively raised by the defendants and the claims of the plaintiff remain un rebutted. Therefore, no useful purpose would be served in putting the present case for trial.

27. Thus, in the case of *Sandisk LLC and Another Versus Laxmi Mobiles and Others*, 2023 SCC OnLine Del 432, this Court held that where no written statement has been filed by the defendants, the Court is empowered to pass a summary judgement placing reliance on the report of the Local Commissioner as evidence. The relevant portion of the said judgement is reproduced as under:

“xxx xxx xxx

17. Since there is no written statement on behalf of Defendants, despite service of summons, this Court is empowered to pass a judgment in terms of Order VIII Rule 10 of Civil Procedure Code, 1908. The report of the Local Commissioner can be read in evidence in terms of Order XXVI Rule 10(2) of CPC. [See: ML Brother LLP v. Maheshkumar Bhuralal Tanna]. Therefore, in light of the Reports of Local Commissioners, and evidence collected by them, as well as non-filing of written statements, this Court is of the opinion that no ex parte evidence is required to be led. This view is supported by decisions of this Court in Disney Enterprises Inc. v. Balraj Muttneja, and Cross Fit LLC v. RTB Gym and Fitness Centre...”

xxx xxx xxx”

(Emphasis Supplied)

28. Therefore, in light of the foregoing facts and findings, the Court finds that the defendant nos. 1 and 2 have infringed plaintiff’s trademarks, and trade dress/packaging. Therefore, a decree by way of a summary judgment is warranted in favour of the plaintiff.

29. As regards the aspect of cost and damages, this Court has further held in the case of *Sandisk LLC and Another (supra)* that in matters involving *malafide* adoption of mark and seizure of considerable quantity of infringing



material, the Court can proceed to award damages to the plaintiff. The relevant portion of the said judgment is reproduced as under:

“xxx xxx xxx

17. “...As regards claim of damages, this Court is convinced that this is not a case of innocent adoption, and Defendants’ conduct invites the award of damages. Taking a reasonable assessment of the volume of seizure made, nature of counterfeiting indulged into by Defendants, in the opinion of the Court, Plaintiffs are entitled to nominal damages, purpose of which has been laid out in the judgment of this Court in Indian Performing Right Society v. Debashis Patnaik.

xxx xxx xxx”

(Emphasis Supplied)

30. Considering the aforesaid submissions and findings, the following directions are issued:

- I. The present suit is decreed in favour of the plaintiff and against the defendants in terms of Para 65 (a) to (d).
- II. Cost and damages of Rs. 10,00,000/- each, shall be paid by defendant nos. 1 & 2 to the plaintiff.
- III. The said amount shall be paid by the defendants to the plaintiff within a period of six months from today. The aforesaid amount shall be paid in two instalments by the defendants each, i.e., the first instalment of Rs. 5,00,000/- within three months from today, and the second instalment within a period of three months, thereafter.
- IV. The plaintiff and/or its representative, is granted liberty to visit the premises of defendant no. 1 to destroy the goods bearing the mark/packaging of the plaintiff. For this purpose, the plaintiff and/or its representative shall contact the learned counsel appearing for defendant no. 1, and fix a mutual convenient time, which shall be done within a period of



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four weeks from today.

31. Decree sheet be drawn up, accordingly.
32. The present suit, alongwith the pending application, stands disposed of.

MINI PUSHKARNA, J

FEBRUARY 18, 2025/da