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JOHNSON & JOHNSON V. PRITAMDAS ARORA T/A M/S MEDSERVE & ANR., 2025

Drishti Banerjee¹

CS(COMM) 570/2019 with I.A. 3678/2021, I.A. 3700/2021, and I.A. 12068/2022

High Court of Delhi at New Delhi

Bench: Hon'ble Mr. Justice Amit Bansal

I. ABSTRACT

This case analysis examines the decision of the High Court of Delhi in Johnson & Johnson v. Pritamdas Arora t/a M/s Medserve & Anr., 2025, a significant ruling addressing large-scale counterfeiting of surgical medical devices. The dispute arose after counterfeiting hemostatic products bearing the registered trademarks 'SURGICEL' and 'ETHICON' were traced to an organised distribution network linked to the Defendants in New Delhi. The counterfeit goods involved expired products that were repackaged, relabelled with falsified expiry dates, and distributed domestically and internationally, posing serious public health risks. The principal legal issues before the Court concerned: (i) infringement of registered trademarks under Section 29 of the Trade Marks Act, 1999; (ii) passing off in respect of non-registered marks and trade dress; (iii) the grant of permanent injunctive relief; and (iv) the assessment of compensatory and exemplary damages in cases of deliberate and calculated counterfeiting involving medical devices. The Court held that the Defendants were guilty of trademark infringement, passing off, and organised counterfeiting. Relying on documentary evidence, including electronic communications and findings of Local Commissioners, the Court established deliberate falsification, fraudulent misrepresentation, and transnational commercial operations. A decree of permanent injunction was granted, counterfeit goods were ordered to be destroyed, compensatory damages of ₹2.34 crore and exemplary damages of ₹1 crore were awarded, along with costs. The judgment is significant in trademark infringement jurisprudence for its structured damages framework, integration of proportionality principles, recognition of trade

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dress protection, and its strong articulation of the public health dimension in cases involving counterfeit medical products.

II. FACTS

Johnson & Johnson, the Plaintiff in the present matter, is a multinational company incorporated under the laws of New Jersey. It manufactures consumer healthcare products, pharmaceuticals, and medical devices. Ethicon Inc., a subsidiary of the Plaintiff, manufactures surgical hemostats under the registered trademarks 'SURGICEL' and 'ETHICON', the latter being the Plaintiff's house mark. The Plaintiff adopted a distinctive trade dress for 'SURGICEL', which acquired brand identity and secondary meaning. The mark 'SURGICEL' was coined in 1957 and commercially introduced in 1960. The marks, including 'ETHICON', have been registered in multiple jurisdictions, including India since the 1990s.

In 2019, counterfeit surgical devices bearing the mark 'SURGICEL' were reported by a neurosurgeon at the University of Kentucky Medical Centre. Subsequent investigations traced the counterfeit products to XS Supply (USA), Lion Heart Surgical Supply LLC, and Pure Care Traders F.Z.E. (UAE), eventually linking the supply chain to Defendant No. 1, Pritamdas Arora of M/s Medserve, based in New Delhi. The counterfeit shipments originated from the Defendants' premises and involved expired original products repackaged in non-sterile packaging, with falsified expiry dates and bacterial contamination.

Counterfeit surgical devices bearing the trademark 'SURGICEL' were reported in 2019 by a neurosurgeon at the University of Kentucky Medical Centre to the Plaintiff. After this, the Plaintiff started an investigation and found that the University of Kentucky had procured over 1000 counterfeit units from XS Supply (USA). Proceedings before the US District Court, Middle District of Florida, were initiated with a successful emergency motion for an injunction and *ex parte* seizure. Procured records from the Lion Heart Surgical Supply LLC and traced the counterfeits to Pure Care Traders F.Z.E. (UAE). Further inquiry linked the distribution chain to the New Delhi-based defendant Pritamdas Arora of M/s Medserve. The counterfeit shipments were sent directly from the defendant's address. The shipments contained expired originals

repackaged in non-sterile packaging and bore falsified expiry dates and were contaminated with bacterial infection. Consequently, the Plaintiff initiated proceedings before the US District Court and simultaneously filed the instant case before the Hon'ble High Court at Delhi in 2019.

III. FINDINGS BY LOCAL COMMISSIONS

The Hon'ble Delhi High Court appointed four Local Commissioners to search, seize, and seal infringing products at the four premises of the Defendants. They had established a substantial operation for the manufacture, storage, and distribution of counterfeit medical devices bearing the Plaintiff's registered trademarks. It was confirmed that the illegal activities extended to domestic, as well as international trade.

Proceedings were initiated before the United States District Court, Middle District of Florida, resulting in interim relief and seizure orders. Simultaneously, the Plaintiff instituted the present suit before the High Court of Delhi in 2019.

Pursuant to orders of the Court, four Local Commissioners were appointed to conduct search and seizure operations at the Defendants' premises. The Commissioners confirmed the existence of a substantial counterfeiting operation involving manufacture, storage, and international distribution of infringing medical devices. An IT Expert Commissioner was subsequently appointed to examine seized electronic devices, which revealed incriminating email records and WhatsApp communications containing instructions for falsification of expiry dates and other fraudulent activities.

IV. ISSUES

Although the Hon'ble Court did not formally frame issues, the judgment substantially revolved around the following legal questions –

1. Whether the Defendants' manufacture, sale, and distribution of counterfeit surgical products bearing the marks 'SURGICEL', 'ETHICON', and allied formative marks constitute infringement under the relevant provisions of the *Trademarks Act 1999, s 29*, particularly Sections 29(1), 29(2), and 29(7)?

2. Whether the Defendants' acts also amount to passing off in respect of non-registered marks and misappropriation of trade dress?
3. Whether a decree of permanent injunction restraining the Defendants from further infringing use of the Plaintiff's registered trademarks ought to be granted?
4. Whether the Defendants acted with deliberate and premeditated intent to deceive consumers, thereby aggravating the infringement?
5. Whether the Defendants are liable for compensatory and exemplary damages, and if so, what principles should govern the quantification of such damages in cases involving counterfeit medical devices affecting public health?

V. ARGUMENTS ON BEHALF OF THE PLAINTIFF

1. The Defendants' action posed a severe risk to public health in the absence of stringent quality control.
2. There has been trademark infringement and passing off. The Defendants falsely applied the Plaintiff's marks on counterfeit surgical devices and their packaging without authorisation. They also misappropriated the Plaintiff's unique trade dress.
3. The Defendants have made only vague assertions and bare denials of the evidence in their amended written statement. They failed to provide plausible explanations for blatant counterfeiting activities.

VI. ARGUMENTS ON BEHALF OF THE DEFENDANT

The Defendant's case setup and amended written statement filed by Defendant no. 1 (Mr. Pritamdas Arora) and Defendant no. 2 (Ms. Ritika Arora) contained the following assertions –

1. The Defendants strategically either accepted certain claims or undertook categorical denials.

2. The Defendants undertook to comply with the permanent injunction prayer of the Plaintiff. They also undertook that websites containing infringing content were already taken down.
3. The Plaintiff also prayed for delivery, recall, and disclosure of all counterfeit products, packaging materials, labels, and infringing articles. However, the Defendants denied possession of any infringing goods or materials.
4. The Defendants also provided only some bare denials to the Plaintiff's claim for damages, without producing any financial statements, accounts for profits, or damages assessments. They denied to participate in proceedings for the computation of damages.
5. Although the Plaintiff sought recovery of litigation expenses, the Defendants refused to participate in the cost determination proceedings. They effectively endeavoured to deny the claims by non-appearance and inaction.

VII. DECISION

The Hon'ble Court decided the matter in favour of the Plaintiff, holding—

1. **Trademark infringement and counterfeiting:** The Plaintiff was the registered proprietor of the mark, and the Defendants were guilty of trademark infringement and counterfeiting. For the non-registered marks, there was passing off.
2. **A decree of permanent injunction:** The Hon'ble Court passed this decree of permanent injunction against Defendant nos. 1 and 2 against prayer clauses A(i) to (iii) of the plaint. The Defendants were restrained from infringing the trademarks 'SURGICEL', 'SURGICEL ORIGINAL', 'SURGICEL FIBRILLAR', 'SURGICEL SNOW', 'SURGICEL NU-KNIT', 'LIGACLIP', 'ETHICON', and their formative marks thereof.
3. **Destruction of Counterfeit Products:** Regarding the prayer clause B(ii) of the plaint, the Plaintiff was permitted to destroy the counterfeit products seized by the Local Commissioners during execution of the Commission and kept in possession of the Plaintiff thereafter.

4. **Compensatory Damages:** A sum of Rs. 2,34,82,986/- (Rupees Two Crore Thirty-Four Lakh Eighty-Two Thousand Nine Hundred Eighty-Six only) was awarded as compensatory damages in favour of the Plaintiff and against the Defendants, jointly and severally.
5. **Exemplary Damages:** A further sum of Rs. ₹1,00,00,000/- (Rupees One Crore only) was awarded as exemplary damages in favour of the Plaintiff against the Defendants.
6. **Costs and Additional Court Fees:** The Plaintiff was directed to submit its bill of costs and pay additional court fees on the awarded amount within four weeks. All pending applications were disposed of.

VIII. THE HON'BLE COURT'S REASONING

A. Counterfeiting and Money Laundering

1. After the examination of witnesses and exhibits, the Hon'ble Court found that the Plaintiff had proprietary rights over the impugned trademarks.
2. Based on the Local Commissioner's evidence, the counterfeiting operations and distribution networks, and manufacturing and repackaging operations by the Defendant were well established. The Hon'ble Court also appreciated evidence of expired product repackaging and falsification.
3. Evidence was also placed on record to show that the Defendants had knowledge of multiple complaints from clients regarding health implications that resulted from the lack of authenticity of the counterfeit products. The Hon'ble Court also found evidence of explicit admissions of counterfeiting made by the Defendant.
4. The Hon'ble Court also found evidence of money laundering and tax evasion. The Defendants did not accept payments through bank transactions. Defendant no. 1 operated 13 to 14 foreign bank accounts, where international clients deposited money for counterfeit goods.

5. The Defendants also evaded Court proceedings, remaining untraceable to the Delhi Police, Bureau of Immigration, the MHA, UIDAI, the GST Department, and the Income Tax Department.

B. Trademark Infringement

1. The Hon'ble Court observed that the Plaintiff's intellectual property rights extend beyond the bare statutory marks and encompass trade dress protection as well. This doctrine protects the distinctive visual appearance of goods, and the Plaintiff was entitled to such protection.
2. Owing to the extensive use of the trade dress, the consumers could associate the product with the Plaintiff. This is a secondary meaning acquired through extensive use.
3. The protection extended was for the product's "get-up" from misappropriation, even where the specific marks might have faced challenges.

C. Defendants' Unauthorised Adoption and Use of the Plaintiff's Markson Counterfeit Goods

1. In paragraphs 45.2 and 76 of the judgment, the Hon'ble Court held that the Defendants' adoption of the trademark and trade dress, and subsequent misappropriation, constitute clear acts of trademark infringement and passing off.
2. The intention was not mere market competition, but deliberate manufacture of infringing materials. The knowledge and intent were well established for infringing the marks 'SURGICEL', 'ETHICON', and 'LIGACLIP'.

D. Passing Off and Consumer Deception

1. For the misappropriation of the other non-registered marks, the Hon'ble Court established a clear case of passing off.
2. It was observed that there have been actionable misrepresentations, distinct from trademark infringement.

3. First, there was misrepresentation through forgery. The Defendants had fabricated false authorisation letters purportedly from the Plaintiff's subsidiary companies.
4. By forging signatures, the clients were made to believe that the Defendants had a connection with the Plaintiff. Thus, there was a deliberate and false attribution.
5. There was also evidence of conscious efforts to suppress detection by bribing and passing off the counterfeit goods as genuine.

E. Public Health Concerns

1. Counterfeiting of medical devices is not restricted to a mere case of trademark infringement.
2. Such acts endanger human life. The defendants tried to exploit consumer trust for financial gain.
3. Using such substandard surgical devices could lead to severe complications like foreign body reactions, infections, and surgical adhesions. This indicates quality degradation.
4. Further, there was deliberate falsification of the expiry dates, which constitutes a serious harm to society at large.

F. Fraudulent Exploitation of the Plaintiff's Goodwill

1. The trademark fraud was of a specific kind. The mark was not used to benefit from a legitimate reputation, but to conceal defective goods.
2. The deliberate false attribution constituted misrepresentation as to the source and authorisation.
3. Further, the concealment of expired goods as "cotton foam" demonstrates a deliberate attempt to disguise defective products and misuse the trademark. It was beyond intentional deception or consumer confusion.

G. International IPR Dimensions

1. The impugned matter also demonstrates extraterritorial enforcement of IP law principles. A parallel litigation was taking place before the Hon'ble District Court, Middle District of Florida, USA.
2. This demonstrates how IP owners may pursue international enforcement against global counterfeiting networks.
3. Further, the operation of multiple foreign bank accounts by the Defendant in at least nine countries reflects how modern counterfeiting is more than a domestic trademark infringement- a form of transnational intellectual property violation.
4. The Hon'ble Court also took international shipping records as evidence relevant to assessing the liability and damages under the Indian trademark law.
5. Overall, deliberate counterfeiting was understood to be an aggravated infringement.
6. The injunctive relief granted was also extended beyond the domestic territory.

H. The Damages Framework for Trademark Counterfeiting: Proportionate Relief for Deliberate and Calculated Infringement

Courts generally assess damages proportionately according to the nature and extent of mala fide conduct. Instead of uniform damages, the common law jurisprudence has evolved, making the quantum of damages dependent on the level of bad faith involved. In this matter, the Hon'ble Court analysed the following decisions –

I. Koninklijke Philips N.V v. Amazerstore & Ors., 2019²

The framework discussed in this case identifies five distinct classifications –

² *Koninklijke Philips N.V v. Amazerstore & Ors.*, (2019) SCC OnLine Del 8198.

1. **The first-time innocent infringers:** They receive an injunction alone. Inadvertent or technical violations of IPR should be penalised with prospective corrective relief, not punitive damages.
2. **The first-time knowing infringers:** They face injunctions and partial costs because of their deliberate but isolated misconduct.
3. **Repeated knowing infringers causing minor impacts:** They face injunctions, costs, and limited damages. The compensation is proportionate to the harm caused.
4. **Repeated knowing infringers causing major impacts:** They are penalised with injunctions, costs, and full compensatory damages. There may be higher liability for serious market disruption.
5. **Deliberate and calculated infringers acting with wilful contempt:** This refers to organised counterfeiting, which attracts the most severe response. The injunctions, costs, and aggravated damages comprise both compensatory and exemplary elements.

J. **Cartier International A.G. v. Gaurav Bhatia, 2016**³

The Hon'ble Delhi High Court held that a defendant who deliberately avoids court proceedings cannot be allowed to profit from such non-appearance. Such an approach would indirectly reward evasion. The ones who produce account books will be liable for damages, while absentees would escape liability for the lack of evidence. Counterfeiting was called a "rank case of dishonesty," which can be compared with forgery of currency. The Hon'ble Court held that the culpability in such cases is prima facie evident.

The quantification of damages generally depends on the defendant's financial disclosures. However, the defendants may withhold such information by non-appearance. To prevent this injustice, the Hon'ble Court held that the non-appearing defendants "must suffer the consequences of damages as stated and set out by the

³ *Cartier International A.G. v. Gaurav Bhatia* (2016) SCC OnLine Del 8.

plaintiffs.” The damages in such cases shall be determined by the evidence placed on record by the plaintiff under section 135(1) of the Trademarks Act, 1999.

K. Rookes v. Barnard, 1964,⁴ reaffirmed in Cassell & Co. Ltd. v. Broome, 1972⁵

The above House of Lords decisions established the basic common law difference between compensatory and exemplary (punitive) damages. According to the cases, exemplary damages may be awarded in the following ways –

- 1. Abuse of Public Authority:** Oppressive, arbitrary, or unconstitutional acts by the government servants.
- 2. Wrongful conduct calculated by the Defendant for Personal Gain:** This is mostly applied in IP cases. When the profits from the wrongdoing exceed the claimant’s loss, there must be a punitive intervention to neutralise the economic incentive.
- 3. Statutory Damages:** Exemplary damages are expressly authorised by the statute.

It was clarified in *Cassell v. Broome* that exemplary damages have two functions. First, it punishes the defendant for “egregious” conduct, and second, it has a deterrent effect on society. It acts as a civil deterrent to criminal wrongdoings. Further, for their civil nature, exemplary damages must supplement and not supplant compensatory damages. In other words, exemplary damages should be awarded only when compensatory damages alone do not serve justice.

L. Hindustan Unilever Limited v. Reckitt Benckiser India Limited, 2014⁶

The *Rookes* and *Cassell* jurisprudence from the House of Lords was made applicable in India. Previously, exemplary damages were only applied to cases involving constitutional violations. However, they may be extended to commercial IP disputes, given their unique dynamics. The Hon’ble Bench noted that mechanical applications must be prevented, and proper standards must be developed to ensure

⁴ *Rookes v. Barnard* (1964) 1 All E.R. 367.

⁵ *Cassell & Co. Ltd. v. Broome* (1972) A.C. 1027.

⁶ *Hindustan Unilever Limited v. Reckitt Benckiser India Limited* ILR (2014) 2 Del 1288.

proportionality in the award of exemplary damages. The Hon'ble Court established a two-step test to assess when exemplary damages may adequately supplement compensatory damages –

1. Compensatory damages corresponding to the plaintiff's actual loss must be quantified by the court.
2. Whether this amount adequately deters the defendant's conduct must be assessed.

M. Koninklijke Philips N.V v. Amazerstore & Ors., 2019⁷

This framework was referred to again to illustrate the “rough and ready” calculations put forth in *Hindustan Unilever*. It is difficult to determine the defendant's precise profits when the evidence is destroyed or withheld. In such cases, the courts may employ conservative profit margin assumptions as a fair methodology to estimate the compensatory damages. The amount may not be mathematically exact, but a reasonable approximation when the defendant does not cooperate.

N. Whatman International Ltd. v. P. Mehta, 2019⁸

The Indian doctrine of proportionate punitive damages was reiterated in this case. The aggravating factors were deliberate dishonesty, false pleadings, and misleading testimony. The evaluation primarily focussed on repetitive infringers.

O. Uflex Limited v. Government of Tamil Nadu & Ors., 2022⁹

The Hon'ble Court determined three principles for cost determination –

1. Costs should ordinarily follow the event- The losing party can bear the prevailing party's litigation expenses.
2. The costs must reflect present-day legal expenses.
3. Costs must discourage vexatious litigation.

⁷ *Koninklijke Philips N.V v. Amazerstore & Ors.*, (2019) SCC OnLine Del 8198.

⁸ *Whatman International Ltd. v. P. Mehta*, (2019) SCC OnLine Del 6856.

⁹ *Uflex Limited v. Government of Tamil Nadu & Ors.* (2022) 1 SCC 165.

P. The Proportionate Model of Accountability

In accordance with Sections 29, 103, and 47 of the Trademarks Act, 1999, a framework was developed by the Hon'ble Court, having regard to the above cases and the *Halsbury Laws of England* –

1. **The “Rough and Ready” Principle of Hindustan Unilever:** A conservative 25% profit margin will be applied to the proven sales figures, which can be gotten hold of even when the defendant does not cooperate.
2. **The Rookes-Cassell Doctrine of Exemplary Damages:** When the defendant's conduct is deliberate and calculated to evade court proceedings, additional punitive damages are necessary for deterrence.
3. **Costs as per the Uflex Framework:** The losing defendant must bear the plaintiff's actual and reasonable litigation expenses, subject to proportionality safeguards, which prevent costs from becoming punitive themselves.

IX. ANALYSIS

In this matter, the Hon'ble Delhi High Court intersects the jurisprudence of the constitutional values of human health and public welfare with intellectual property jurisprudence. It did not let the commercial nature of the case hinder the broader perspectives of public welfare. Counterfeit medical products are not only detrimental to therapeutic efficacy but also erode patient trust in the original proprietor. As the World Health Organisation (WHO) has warned,¹⁰ the issue of counterfeiting is not restricted to only developing countries but has turned into a global menace that affects all regions and economic categories. The main problem in enforcement is jurisdictional fragmentation, which raises evidentiary challenges in the global supply chains. Through this judgment, the Hon'ble Court has endeavoured to grant a private right protection through a means that serves a public welfare function. It not only established a deterrent legal framework but also engaged in extensive inquisitorial functions through the appointment of Commissions. The measures also included the

¹⁰ World Health Organization (WHO), *Counterfeit medical products: Report by the Secretariat*, Executive Board, 124th Session, Provisional Agenda Item 4.11. EB124/14. (2008), https://apps.who.int/gb/ebwha/pdf_files/EB124/B124_14-en.pdf.

prevention of the circulation of hazardous products in the healthcare supply chains. It may be said that this case is an instance of transformative constitutionalism within the intellectual property jurisprudence that strives to preserve constitutional morality, enshrined under Article 21, and to some extent, Article 47.

X. CONCLUSION

The decision is important because it clarified and discussed seven areas of trademark infringement jurisprudence. First, registration of trademarks in a jurisdiction is the prima facie requirement for statutory exclusionary rights and infringement proceedings. Second, passing off remedies may be granted even without registration of the mark, when fraudulent misrepresentation of the source and authorisation can be proved. Third, trade dress protection can be given through the secondary meaning doctrine. Fourth, deliberate counterfeiting is an aggravated infringement that requires exemplary damages. Fifth, trademarks implicitly also represent the quality standards of the goods. Sixth, documentary evidence from seized electronic devices, like WhatsApp chats, is admissible in court. Seventh, counterfeiting goods for medical devices is an offence much graver than mere trademark infringement. Lastly, there can be transnational enforcement against global counterfeiting networks. Such acts are not merely economic harm to the proprietor but lead to consumer fraud and public health endangerment.

XI. REFERENCES

A. Table of Cases

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2. *Cassell & Co Ltd v Broome [1972] AC 1027 (HL).*
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4. *Johnson & Johnson v Pritamdas Arora t/a M/S Medserve & Anr [2025] DHC 1585 (Delhi HC).*

5. Koninklijke Philips NV & Anr v Amazestore & Ors CS(COMM) 737/2016 (*Delhi HC, 22 April 2019*).
6. Rookes v Barnard [1964] AC 1129 (HL).
7. Uflex Ltd v Government of Tamil Nadu & Ors (2022) 3 SCC 1.
8. Whatman International Ltd v P Mehta CS(COMM) 80/2017 (*Delhi HC, 2019*).

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1. Trademarks Act 1999.
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2. World Health Organization, *Substandard and Falsified Medical Products* (WHO, latest available report).