

**IN THE COURT OF SH. PULASTYA PRAMACHALA,
DISTRICT JUDGE (COMMERCIAL COURT)-01,
PATIALA HOUSE COURT, NEW DELHI**

CS (COMM) 572/2023

In the matter of: -

M/s. Vira Auto Components Pvt. Ltd.

Having registered office at:
C-33, Phase-II, Focal Point,
Ludhiana, Punjab-141010.

... Plaintiff

Versus

1. M/s. Vira Industries

Having registered office at:
C-73, Focal Point, Ludhiana,
Punjab-141010.

Having Regional Office at:
10174/1A, Gurudwara Road,
Karol Bagh, New Delhi-110005.
Email: admin@viraindustries.com
viragears@gmail.com

...Defendant No.1

2. Mr. Ravinder Jain

Proprietor of M/s. Vira Industries,
Having office at C-73, Focal Point,
Ludhiana, Punjab-141010.
Email: admin@viraindustries.com
viragears@gmail.com

...Defendant No.2

Date of pronouncement of the order : 06.07.2026

ORDER

DESCRIPTION OF THE CASE

1. Vide this order, I shall decide application under Order XXXIX Rule 1 and 2 CPC filed by plaintiff.

2. Plaintiff has instituted present suit seeking permanent injunction for restraining defendants from infringement of copyright, passing off, damages, delivery-up etc.

CASE SET UP BY PLAINTIFF

3. Briefly stated, the case of plaintiff company, M/s Vira Auto Components (P) Ltd, is that it was engaged in business of manufacturing and marketing of all types of parts and components for motor vehicles and three wheelers. Plaintiff company was established under the group, namely “Vira group”.
4. Various trademarks registered by plaintiff has been mentioned in para 9 of the plaint. Plaintiff also obtained design registration over the plastic can for its products, details of which are mentioned in para 10 of the plaint. Plaintiff was the first and original adopter of its Artistic Work titled as PUNTEC as under:-

S. NO.	Title of Artistic work & Label,	Status	Registration No.
1.		Registered in favour of the Plaintiff Firm.	A-57852 of 1999

5. Plaintiff has extensively sold goods and products in the cans with the enumerated packaging of the plaintiff over the last three decades. For the year 2021-22 plaintiff's sales figures were 26,99,54,751.57, whereas its advertisement expenses were 2,26,500.00. Plaintiff has attained an unrivaled reputation and goodwill for its goods.
6. Defendant no.1 is a company incorporated under the Companies Act. It was founded and established in the year 1986 under the aegis and guidance of Late Sh. Vijay Jain, when he established the 'Vira Group'. In the year 1972, vide partnership deed dated 06.04.1972, defendant no.2 was got inducted into M/s. Vira Industries as a partner. Thereafter, vide Deed of Dissolution dated 01.04.1985, Late Sh. Vijay Jain withdrew his partnership from M/s. Vira Industries (defendant no.1) and said partnership stood dissolved, and defendant no.2/Mr. Ravinder Jain became sole proprietor of defendant no.1.
7. During existence of partnership, Late Vijay Jain and defendant no.2, got registered a Trademark **VIRA** for parts included in Class 12 of Scooters bearing Application No 291277 in Class 12. Subsequently, defendant no.2 has preferred the Trademark Application bearing number 1122336 in Class 12, Vira 1133654 in Class 12, 1133655 in Class 12, 1287983 in Class 12, 1384139 in Class 12, 1925096 in Class 12 and 2628403 in Class 12.
8. Plaintiff had filed rectifications to defendants' registrations bearing number 1122336 in Class 12, 1287983 in Class 12,

1384139 in Class 12, 1925096 in Class 12 and 2628403 in Class 12, which are pending adjudication inter-se the parties.

9. Plaintiff received the knowledge of defendant's usage of plaintiff's label/trade dress/copyright in a packaging of identical design, get-up, colour scheme, etc., which is an imitation of the plaintiff's prior adopted, prior used, prior registered label/copyright/artistic work registered under the provisions of Copyright Act. Plaintiff had filed suit bearing number CS(COMM) 886 of 2022 before Hon'ble High Court of Delhi seeking permanent injunction restraining infringement of registered design, damages, etc. against defendants. Plaintiff sought withdrawal of this suit bearing number CS(COMM) 886 of 2022 before Hon'ble High Court of Delhi, with liberty to file a fresh suit, which was allowed. Thereafter, plaintiff filed this fresh suit on 20.10.2026 in this court.

WRITTEN STATEMENT OF DEFENDANTS

10. Defendants filed their written statement contesting the claim of plaintiff. Defendants have raised legal objections contending that plaintiff has not complied with the mandatory requirement of exhausting the remedy of pre-institution mediation under Section 12A of the Commercial Court Act, 2015 ("CCA"). Defendants have further contended that plaintiff had earlier filed a suit bearing CS (COMM) No. 886 of 2022 titled as "*Vira Auto Components vs. Vira Industries*" before Hon'ble High Court of Delhi. The said suit was instituted on 15.12.2022 and was then dismissed as withdrawn on 27.02.2023. Thereafter, suit was filed

impugning the same product and packaging of the defendant as was impugned before the Hon'ble Delhi High Court. Defendants have contended that plaintiff did not contemplate any urgent relief and there was no question of circumventing the mandate of Section 12A of the Commercial Courts Act. The reliefs being sought for in the present suit were certainly available at the time of filing the earlier suit bearing CS (COMM) No. 886 of 2022 titled as "Vira Auto Components vs Vira Industries" before Hon'ble High Court of Delhi, which was disposed of on 27.02.2023. Defendants have contended that the suit is further liable to be dismissed as this Hon'ble Court does not have the appropriate jurisdiction to adjudicate upon the matter.

11. Defendants have contended that there is no identity or similarity between the packaging of defendant and that of plaintiff. Defendants have further contended that they have been using their own packaging for last 8 years and the same has become distinctive of the products. Defendants contended that there was no question of any association or confusion between the two packaging in question. It is further contended that defendants designed and adopted a distinctive device having a unique appeal, out of their intellectual capacity to distinguish their mark with respect of the said goods & services. Defendants have been using the said trademarks continuously, extensively and voluminously without any interruption since the year of adoption i.e.1969. Defendants further submitted that adoption of trademark "VIRA " is honest and bona fide. It was further

submitted that defendant has been using their registered trademark continuously, extensively and openly without any objection and interruption from any corner in course of trade. Defendants further submitted that mark "VIRA" of the Defendant, by virtue of continuous use, honest and bona fide adoption in respect of said services, has acquired immense popularity coupled with factual distinctiveness and also secondary significance meaning/denoting/indicating the goods & services of defendant only. Defendants further submitted that defendant has honestly and in a *bona fide* manner adopted their trademark "VIRA" having goods & services, which are highly capable of distinguishing their trademark and services with that of others as per the provision of section 2(1), (m), 2(1) (za) and 2(1) (zb) of Trademarks Act, 1999. Defendants have further submitted that defendants are the prior adopter and continuous user of the said trademarks under the banner "VIRA" since 1969 which have acquired secondary distinctiveness due to such in the market are prior.

12. It is further replied that defendants dispute the plaintiff's incorporation details, the authority of its Managing Director, and the validity of its Memorandum and Articles of Association. Defendants have denied that plaintiff is engaged in the business as claimed or that it is the original adopter or proprietor of the trademark "VIRA" or any associated artistic works, labels, or packaging. Defendants have denied that plaintiff or its predecessor coined or adopted the trademark "VIRA" or that

plaintiff has valid trademark or copyright registrations as alleged. Defendant have further replied and challenged the originality and validity of the plaintiff's copyright claims, especially regarding color combinations and packaging, arguing that such elements are not protectable. Defendants have further replied and asserted that their bona fide use of the "VIRA" trademark since 1969, with multiple registrations in their favor, and claim to have developed their own distinctive packaging and branding. Defendants have denied copying the plaintiff's packaging, labels, or color combinations, and have rejected any claim of passing off or unfair competition.

REPLICATION TO THE WRITTEN STATEMENT

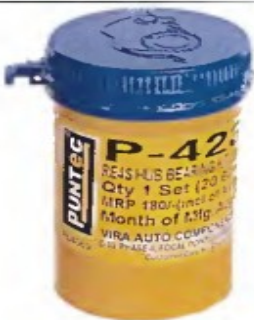
13. Reiterating the averments pleaded in the plaint, a replication was filed on behalf of the plaintiff.

WRITTEN SUBMISSION OF PLAINTIFF

14. In the written submission, it has been mentioned on behalf of plaintiff that plaintiff was granted copyright registration in the year 1999 in respect of its artistic work titled "PUNTEC", comprising a distinctive yellow cardboard box having a unique colour combination of yellow and blue, first published in the year 1991. It is further mentioned that in the year 2018, plaintiff had adopted a distinctive yellow plastic can with a blue cap for sale of scooter parts and obtained a design registration dated 29.06.2018 in respect thereof. The said can has been illustrated in the table provided in paragraph 10 of the plaint. It has been further mentioned in paragraphs 11 to 25 of the plaint that it

enjoys copyright in overall get-up, trade dress, and colour combination of packaging. It has been further mentioned that the distinctive yellow and blue packaging/trade dress is exclusively associated with the plaintiff and was not being used by any other trader in the market. It has further been pleaded that while other manufacturers were using cardboard boxes, plaintiff conceived and adopted unique plastic can packaging, thereby distinguishing its goods from those of others. It has been further pleaded that owing to long, continuous, and extensive use, plaintiff acquired immense goodwill and reputation in the said packaging/trade dress. It has been further mentioned that defendants have slavishly imitated and copied said packaging/trade dress.

15. It has been further mentioned that plaintiff also disclosed substantial sales figures in paragraph 22 of the plaint. In particular, goods worth approximately Rs. 26.9 crores were sold under the said cans during the financial year 2021-22, thereby demonstrating extensive commercial use and goodwill associated with the impugned trade dress. It has been further mentioned that in paragraph 38 of the plaint, plaintiff has specifically averred that defendant was earlier using a yellow cardboard box bearing mark "VIRA" written in a black device and only subsequently adopted the impugned packaging. The comparison of the rival packagings, has been set out in detail in paragraphs 36 to 42 of the plaint, which clearly demonstrates deceptive similarities between competing trade dresses. A comparison of plaintiff's product and defendants' product is as under: -

Plaintiffs packaging Artistic Features of the get-up, colour scheme	Defendants labels /packaging Artistic Features of the get-up, colour scheme
	



16. It has been further mentioned that plaintiff came to know defendant's impugned adoption sometime in the year 2023 and immediately instituted the present suit without any delay. It has been further mentioned that defendant in its written statement, has merely issued bald and evasive denials to the averments contained in the aforesaid paragraphs of the plaint. It has been further mentioned that in paragraph 9 of the written statement, defendants have only contended that no monopoly could be claimed over a colour combination and that the rival packagings

are dissimilar. The defendants have also alleged that defendants have been using the impugned packaging for last eight years, but no material in this respect has been placed on record to substantiate such alleged use. It has been further mentioned that assertions unsupported by documentary evidence cannot displace plaintiff's prior adoption, statutory rights, and extensive goodwill. For the purpose of comparison of both the Plaintiffs Artistic Work/Labels/Packaging and the colour combination on its products as well as Defendant's Artistic Work/Labels/Packaging and colour combination, same are reproduced as hereunder: -

PLAINTIFF'S PACKAGING/ARTISTIC WORK:



DEFENDANT'S PACKAGING/ARTISTIC WORK :

but was using cans with same colour combination. It was further submitted that Hon'ble High Court of Delhi observed that in the first glance without going into minute details, defendant's container and packaging give the impression of deceptive similarity, which shall cause confusion and amount to passing off.

- ii. Reliance has been further placed upon the case of **M/s. Vicco Laboratories Bombay v. M/s. Hindustan Rimmer, Delhi, 1979 SCC OnLine Del 18**, to submit that plaintiff's product 'Vicco Turmeric Vanishing Cream' was being sold in cartons having red background with floral design in yellow colour. Defendant also started selling 'Cosmo Turmeric Vanishing Cream' in cartons having red background with floral design in yellow colour. Accordingly, defendants, their servants, agents and dealers were restrained from using in relation to their product the carton and the tube pertaining to 'cosmo turmeric vanishing cream' and/or any other carton or tube which was deceptively similar to the plaintiff's carton and the tube pertaining to 'vicco turmeric vanishing cream'.
- iii. Reliance has been further placed upon the case of **M/s. Castrol Limited & Anr. v. Iqbal Singh Chawla & Anr. 2018 SCC OnLine Del 6396**, to submit that plaintiff was the registered proprietor of the trade mark 'CASTROL' and adopted the trade mark 'ACTIV' in respect of lubricant oils sold. Defendant adopted the mark 'LUMAX ACTIVE', along with get up, label and bottle, which was similar to plaintiff bottle and label containing red, white &

green colours. Court injuncted defendant from using ACTIV, and impugned label.

- iv. Reliance has been further placed upon the case of **Deere & Company & Anr. v. Mr. Malkit Singh & Ors., 2018 SCC OnLine Del 8527**, to submit that plaintiff was dealing in agricultural vehicles under the trade mark JOHN DEERE under a distinct shade of green with yellow strip. Defendant also started selling agricultural vehicles under the mark MALKIT using identical colour combination. Defendants were injuncted from using the identical colour combination.
18. In the rejoinder written submission, it has been mentioned that Section 15 of the Copyright Act places an embargo only where the same article is sought to be protected under both copyright and design. The two are entirely different articles- one being paper box and other being plastic can (**S. 2(a) of Design Act**). It has been further mentioned that where the two registrations (one under Copyright Act and other under Design Act) operate on different articles, no conflict arises, and Section 15 has no application. It has been further mentioned that plaintiff is also claiming passing off in the trade dress of the overall packaging of the plastic can, which includes the shape of the plastic can, yellow and blue colour combination, placement of features, logo/label etc. All these elements are Trade Mark as per S.2(1) (m) of Trade Marks Act. It has been further mentioned that plaintiff is not seeking any relief on the basis of design registration and design registration is only mentioned in the

plaint, to show the relevant dates of adoption of the plastic can.

19. It has been further mentioned that it is settled law that if design infringement is not made out in a case; the relief of passing off may still be granted. Reliance has been placed upon the case of **Crocs Inc USA v. Bata India, 2025 SCC OnLine Del 4626 (DB)**, wherein **Crocs Inc.** was proprietor of registered design for a specific shape of footwear. After the design registration of plaintiff's Crocs was cancelled by Hon'ble Single Judge due to prior publication, Crocs initiated suits alleging passing off, based on trade dress rights in the same footwear shape. Hon'ble DB clarified that once the design is expired/cancelled, the design enters the public domain for purposes of the Designs Act, but that does not extinguish common law rights in trade dress/trade mark arising from continuous use and goodwill, and it was also clarified that a common suit for the design infringement and passing off can be filed.
20. It has been further mentioned that defendant is guilty of misleading and overreaching this Court by not disclosing that the judgment cited by them, namely **Micolube India Limited v. Rakesh Kumar and Mohan Lal v. Sona Paint & Hardware, 2013 SCC OnLine Del 1984**, is the minority and dissenting view given by HMJ Manmohan Singh and not the majority view. It has been further mentioned that the majority view judgment was given by HMJ Rajeev Shakdhar, which was reported as **Mohan Lal v. Sona Paint & Hardware, & Hardware, & Micolube India Limited v. Rakesh Kumar, 2013 SCC OnLine Del 1980 (FB)**. It has been

further mentioned that in the case of **Mohan Lal** (supra) the majority view judgment observed that both relief, one against design and one against passing off, can be claimed but in 2 different proceedings filed one after the other. However, the said view was considered again by the 5 Judges Bench of Hon'ble High Court of Delhi in **Carlberg Breweries v. Som Distilleries 2018 SCC OnLine Del 12912**, wherein Hon'ble 5 Judges Bench unanimously held that both reliefs (passing off and Design infringement) can be clubbed together in view of Order II Rule 3 CPC in order to avoid multiplicity of proceedings. It has been further mentioned that said judgment also clarified that even if a design infringement case is not made out, for whatever reason, the court can, on the same facts and evidence, find a case of passing off to be made out, and grant relief.

21. It has been further mentioned that identical colour combination and placement of features has been copied by the defendant and the defendant is guilty of passing off its goods as those of plaintiff. It has been further mentioned that comparison of competing products to be made from the perspective of a person with: - (i) average intelligence; (2) imperfect recollection; and (3) who does not have the benefit of side-by-side comparison. (Ref. **Parle Products P. Ltd. v. JP and Co. (1972) 1 SCC 618**)
22. It has been further argued on behalf of plaintiff that defendants have chosen to copy plaintiff's trade dress, which itself is the strongest evidence of its uniqueness and appeal. One does not copy what is ordinary or undistinctive. It has been further

mentioned that if a rival designer copies the same colour combination out of the infinite options available, he cannot turn around and say that choosing a combination of colours involves no creativity. It has been further mentioned that defendant cannot on the one hand slavishly reproduce the plaintiff's complete trade dress/trade mark and, on the other hand, turn around and contend that the same trade dress lacks uniqueness or appeal. It has been further mentioned that no other player in the market uses the same combination/trade dress and this fact has not been denied in Written Statement. It has been further mentioned that bare denials have been made in the Written Statement, which amounts to admission. It has been further mentioned that no cancellation has been filed against plaintiff's Copyright.

WRITTEN SUBMISSION OF DEFENDANTS

23. Per contra, refuting the contentions of plaintiff, written submission was filed on behalf of defendants. In the written submission, it has been mentioned that plaintiff cannot claim copyright in the blue and yellow plastic can, in view of Section 15 of the Copyright Act. The design has been reproduced more than 50 times. It has been further mentioned that Design Act and the Copyright Act cannot overlap and one cannot claim relief against passing off by relying upon a design registration. It has been further mentioned that features of paper carton are different vis-a-vis features of the plastic can and plaintiff is not entitled to any relief. It has been further mentioned that there is no uniqueness in plaintiff's colour combination, hence, plaintiff

cannot claim any right.

24. In support of the contentions, reliance has been placed upon distinguishing judgments on behalf of defendants, which are as under: -
- i. **Cryogas Equipment Pvt. Ltd. v. Inox India Ltd. (2025) 10 SCC 317.**
 - ii. **Microfibres, Inc. v. Girdhar and Co., 2006 SCC OnLine Del 60.**
 - iii. **OK Play India Limited v. Mayank Aggarwal, 2016 SCC OnLine Del 3880.**
 - iv. **Micolube India Limited v. Rakesh Kumar Trading as Saurabh Industries (Delhi) (F.B.), 2013 SCC OnLine Del 1984.**
 - v. **Urooj Ahmed, Lords Enterprises (India) v. Preethi Kitchen Appliances Pvt. Ltd. (Madras) (DB) 2013 SCC OnLine Mad 2969.**
25. I heard the learned counsels and have carefully perused the plaint and the documents filed on record.

APPRECIATION OF ARGUMENTS, LAW & FACT, AND FINDINGS

26. As far as design is concerned, as per S. 2(d), Designs Act, 2000, a design means the features of shape, configuration, pattern, ornament, or composition of lines/colours applied to an article, judged solely by the eye. It must be novel and original. It must be applied to an article of manufacture. In design functional aspects are excluded and only aesthetic appeal matters. A design registered for one product does not automatically protect the

same design if applied to another product.

27. Section 15 of the Indian Copyright Act, 1957 deals with the overlap between copyright and design law. It essentially says that if a design is registered under the Designs Act, 2000, copyright protection will not apply; and if a design is capable of registration but not registered, copyright protection ends once the design is reproduced more than 50 times by an industrial process. Thus, design is product specific, but does not apply to copyright. Design relates to the visual appearance of a functional product viz. shape, configuration, pattern or ornamentation. Copyright pertains to original literary, dramatic, musical or artistic work and protects the specific expression of an original idea. Copyright does not require registration for the purpose of protection, though design does require.
28. I shall accordingly deal with the rival claims and description of rival products' get up. In the present case, plaintiff has not claimed protection of its design, which was the relief sought by plaintiff in the previous suit. A certified copy of plaint of that suit was filed on the record, and on perusal of the same I do not find overlapping in the relief claimed in the previous suit and present suit. Moreover, Hon'ble High Court had granted liberty to plaintiff to file fresh suit. As per allegations, infringement of trade mark rights is continuing, meaning thereby cause of action is continuous. Therefore, objection of defendants against filing of present suit is not impressive.
29. In the case of *Colgate Palmolive Co. v. Anchor Health and*

Beauty Care (P) Ltd., (supra), Hon'ble High Court made following observations, which are much relevant in this case: -

“53. It is the overall impression that customer gets as to the source and origin of the goods from visual impression of colour combination, shape of the container, packaging, etc. If illiterate, unwary and gullible customer gets confused as to the source and origin of the goods which he has been using for longer period by way of getting the goods in a container having particular shape, colour combination and getup, it amounts to passing off. In other words if the first glance of the article without going into the minute details of the colour combination, getup or layout appearing on the container and packaging gives the impression as to deceptive or near similarities in respect of these ingredients, it is a case of confusion and amounts to passing off one's own goods as those of the other with a view to encash upon the goodwill and reputation of the latter.

55. May be, no party can have monopoly over a particular colour but if there is substantial reproduction of the colour combination in the similar order either on the container or packing which over a period has been imprinted upon the minds of customers it certainly is liable to cause not only confusion but also dilution of distinctiveness of colour combination. Colour combination, getup, layout and size of container is sort of trade dress which involves overall image of the product's features. There is a wide protection against imitation or deceptive similarities of trade dress as trade dress is the soul for identification of the goods as to its source and origin and as such is liable to cause confusion in the minds of unwary customers particularly those who have been using the product over a long period.

56. The difference in the style of the words appearing on the container or packing identifying its manufacturers by way of style, colour combination or textures or graphics is certainly significant or relevant for determining the overall imitation of the container but if a product having distinctive

colour combination, style, shape and texture has been in the market for decades as in this case it is in the market since 1951 it leads to ineluctable inference of having acquired secondary meaning on account of its reputation and goodwill earned at huge cost.”

30. In the present case, it is not the design on the label of plaintiff's product which is sought to be protected. Plaintiff has come up with the grievance of trade dress and get-up of its trade mark being substantially copied by defendants for sale of similar product. Defendants have pleaded about using trade name of VIRA, but even trade name is not under challenge. It is the overall appearance of product of defendants, which is alleged to be similar to the appearance of product of plaintiff. In order to show user of the given get-up and trade dress, color combination etc. of the trade mark of its product, plaintiff has referred to the facts of registration of Copyright or Design. Their limited purpose is to show the period, since when such trade mark is being used by plaintiff. Defendants have not challenged the comparative photograph of rival products. Perusal of the given photographs leave no doubt that product of defendants looks very much similar to the product of plaintiff, in respect of color combination and overall trade dress and get-up. Plaintiff has shown adoption and user of such get-up and trade dress since 1999, when Copyright was registered. Therefore, plea of defendants about using given label of their product for last eight years, does not affect the claim of plaintiff. In the case of **Mohan Lal** (supra) it was made clear that irrespective of claim of design, a claim of passing off is separately maintainable.

31. The basic principles on which the law of infringement of intellectual property rights is based are: -

- i. To protect the consumers from being misled;
- ii. To maintain purity and morality in trade, as close or deceptive similarity, affinity and proximity, is not permissible;
- iii. To preserve the reputation and goodwill of bonafide owner of intellectual property rights.

32. Supreme Court in the case of **Kaviraj Pandit Durga Dutt Sharma v. Navaratna Pharmaceutical** AIR 1965 SUPREME COURT 980, observed that: -

“In an action for infringement, the plaintiff must, no doubt, make out that the use of the defendants mark is likely to deceive, but where the similarity between the plaintiffs and the defendants mark is so close either visually, phonetically or otherwise and the court reaches the conclusion that there is an imitation, no further evidence is required to establish that the plaintiffs rights are violated.”

33. In view of my foregoing discussions and observations, I do find a prima facie case in favor of plaintiff. It is needless to say that continuation of alleged conduct of defendants, shall cause irreparable loss to the plaintiff, because loss of business and goodwill cannot be completely compensated. Balance of convenience also lies in favor of plaintiff, as defendants may switch to a different color combination and get-up of their trade mark, if they genuinely have demand for their product on the basis of goodwill of their trade mark. Hence, application is allowed and defendants are restrained till final disposal of this suit, from selling or marketing their product in any manner with

the alleged label or any such label which is similar to the trade mark of plaintiff, be it color combination, trade dress or overall get-up of the trade mark.

**Pronounced in the
Open Court on this
06th Day of July, 2026**

**(PULASTYA PRAMACHALA)
District Judge (Commercial Court)-01,
Patiala House Court, New Delhi**