

**Atlantic Industries and ors Vs. Simron Food Processors (P) Ltd**

**Atlantic Industries and ors Vs. Simron Food Processors (P) Ltd**

**SooperKanoon Citation :** [sooperkanoon.com/1170815](http://sooperkanoon.com/1170815)

**Court :** Delhi

**Decided On :** May-26-2014

**Judge :** G. S. Sistani

**Appellant :** Atlantic Industries and ors

**Respondent :** Simron Food Processors (P) Ltd

**Judgement :**

§~13. \* IN THE HIGH COURT OF DELHI AT NEW DELHI + CS(OS) 2185/2011 % Judgment dated 26.05.2014 ATLANTIC INDUSTRIES & ORS ..... Plaintiffs Through : Mr.C.M. Lall, Ms.Nancy Roy and Mr.Anuj Nair, Adv. versus SIMRON FOOD PROCESSORS (P) LTD ..... Defendant Through CORAM: HON'BLE MR. JUSTICE G.S.SISTANI G.S.SISTANI, J (ORAL) 1. Plaintiffs have filed the present suit for injunction and damages for infringement of registered trademark, passing off and for infringement of copyright. Summons were issued in the suit on 08.09.2011. An interim injunction was granted against the defendant on 08.09.2011. Counsel for the defendant entered appearance on 11.11.2011.

2. In the order dated 31.05.2012, defendant submitted that the defendant has already stopped using the trademark of plaintiffs and has no intention to use the same in future. Further, parties also sought time to file an application for recording the compromise. However, the counsel for the defendant was not able to get the compromise application signed from the defendant as the defendant stopped responding to the various letters sent by the counsel to defendant and

consequently, counsel sought and was discharged from appearing in the matter vide order dated 09.09.2013.

3. On 29.01.2014, Managing Director of the defendant company sought time to engage another counsel. However, none appeared on behalf of the defendant on 03.03.2014, hence defendant was proceeded ex parte vide order dated 03.03.2014.

4. Plaintiffs have filed evidence of the Constituted Attorney and authorized signatory of the plaintiffs, Ms. Danise Lopes (PW1). Affidavit by way of evidence of Ms. Danise Lopes has been exhibited as Ex.-PW1/A. Copy of the authorization in favor of Ms. Danise Lopes from the plaintiffs has been exhibited as Ex. PW-1/1.

5. PW1 has deposed that the Plaintiff No.1, Atlantic Industries, is a corporation organized and existing under the laws of the Cayman Islands. Plaintiff No.1 was incorporated in the year 1979 and is a wholly owned subsidiary of The Coca-Cola Company, which is an internationally renowned global player in the beverages industry. The Plaintiff No.2, Schweppes Holdings Limited, is a corporation organized and existing under the laws of Ireland. She has also deposed that the Plaintiff No.3 is a company incorporated under The Companies Act, 1956, and the registered office of the Plaintiff No.3 is 13, Abul Fazal Road, Bengali Market, New Delhi-110001.

6. PW1 has also deposed that the present action concerns the misuse of the trade mark SCHWEPPEES (word) and SCHWEPPEES (stylized logo) owned by the Plaintiff No.1. The Defendant has adopted and is using the trade mark SCHWEPPEES and has also copied the SCHWEPPEES trade dress as used by the Plaintiffs which comprises of SCHWEPPEES written in a stylized manner with a FOUNTAIN device and a unique colour combination consisting of the colours silver and yellow. She has also deposed that such acts of the Defendant amounts to infringement of the registered trademarks SCHWEPPEES (word) and SCHWEPPEES (stylized logo along with fountain device) and FOUNTAIN device (hereinafter referred to as SCHWEPPEES and its allied trademarks). The said acts of the Defendant also amounts to infringement of the copyright work in the SCHWEPPEES label which vests with Plaintiff No.1 and passing off their goods as

the goods of the Plaintiffs.

7. PW1 has further deposed that in India, the Plaintiff No.1s earliest registration for the trade mark SCHWEPPEES dates back to January 7, 1943 in class 32 bearing registration No.10473. Further, the Plaintiff No.1 also holds trademark registrations for the trade mark SCHWEPPEES (stylized logo). Details of such registrations are tabulated herein below:

Trade Mark Number	Date	Class	Goods
SCHWEPPEES10473	January 7, 1943	32	Mineral and aerated waters and other non alcoholic drinks and preparations for making beverages
SCHWEPPEES Fountain 179051	March 26, 1957	32	Mineral and aerated waters and other non-alcoholic drinks and preparations for making beverages.
SCHWEPPEES WATER61643	January 12, 1994	32	Mineral and aerated waters
CS(OS) 2185/2011	January 12, 1994	32	Drinking water, mineral and aerated water and other non-alcoholic drinks.
1662321	March 7, 2008	32	Non-alcoholic beverages, fruit-flavoured beverages and preparations for making such beverages
179051	March 26, 1957	32	Beers; mineral and aerated waters and other nonalcoholic drinks; fruit drinks and fruit juices; syrups and other preparations for making beverages.
632705	April 7, 1994	32	Mineral and aerated waters and other non-alcoholic drinks; syrups and other preparations for making beverages.

Certified copies of the registration Nos. 10473, 179051, 616431, 630454, and 1662321 have been exhibited as Exhibit PW15. Copies of the registration certificates for the aforementioned registrations along with the printout from the Trade Marks Registry website with respect to the said registrations have been marked as Mark A.

8. PW1 has also deposed that the trade marks SCHWEPPEES and its allied trademarks are registered in numerous jurisdictions of the world such as Afghanistan, Albania, Algeria, Angola, Anguilla, Antigua and Barbuda, Argentina, Armenia, Aruba, Azerbaijan, Bahrain, Bangladesh, Barbados, Belarus, Belgium, Belize, Bermuda, Bhutan, Bolivia, Bosnia and Herzegovina, Botswana, Brazil, Brunei, Bulgaria, Burundi, Cambodia, Cayman Islands, Chile, China, Colombia, Congo (Democratic Republic of formerly Zaire), Costa Rica, Croatia, Cuba, Cyprus (Republic of), Cyprus (Turkish Republic of Northern), Djibouti, Dominica, Dominican Republic, Ecuador, Egypt, El Salvador, Estonia, Ethiopia, Fiji, Gambia,

Georgia, Ghana, Gibraltar, Greece, Grenada, Guatemala, Guernsey, Guinea, Guyana, Haiti, Honduras, Hong Kong, Iceland, India, Indonesia, Iran, Iraq, Ireland (Republic of), Jamaica, Japan, Jersey, Jordan, Kazakhstan, Kenya, Kiribati, Korea, Democratic People's Republic of (KP), Korea (Republic of KR), Kuwait, Kyrgyzstan, Laos, Latvia, Lebanon, Lesotho, Liberia, Libya, Lithuania, Luxembourg, Macau, Macedonia, Madagascar, Malawi, Malaysia, Maldives, Mali, Malta, Mauritius, Moldova, Mongolia, Montserrat, Morocco, Mozambique, Myanmar, Namibia, Nepal, Netherlands, Netherlands Antilles, New Zealand, Nicaragua, Nigeria, O.A.P.I., Oman, Pakistan, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Qatar, Romania, Russian Federation, Rwanda, Sabah, Samoa, Sao Tome and Principe, Sarawak, Saudi Arabia, Serbia and Montenegro, Seychelles, Sierra Leone, Singapore, Slovenia, Solomon Islands, Somalia, South Africa, Sri Lanka, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Sudan, Suriname, Swaziland, Syria, Taiwan, Tajikistan, Tangier, Tanzania, Thailand, Tonga, Trinidad and Tobago, Tunisia, Turkey, Turkmenistan, Turks and Caicos Islands, Uganda, Ukraine, United Kingdom, Uruguay, Uzbekistan, Vanuatu, Venda, Venezuela, Vietnam, Virgin Islands (British), Yemen (Republic of), Zambia, Zanzibar and Zimbabwe to name a few. This list is in no manner comprehensive or exhaustive. Copies of some such registration certificates have been exhibited as Exhibit PW1/6.

9. PW1, Danise Lopes, has also deposed that the brand SCHWEPPEES has a truly remarkable heritage. In 1783, a young Swiss watchmaker and keen amateur scientist, Jacob Scheppe, became the first person to perfect an economical process for making carbonated mineral water, much loved by the gentry and widely administered by doctors to cure indigestion and gout. He founded Schweppes in Geneva the same year and within seven years expanded into England with a factory in Drury Lane, London. The Schweppes Company introduced fizzy lemonade in 1831, the success of which led to a flood of other flavoured fizzy drinks. The most famous was Schweppes Tonic Water, introduced in the 1870s. By 1897, Schweppes had established itself sufficiently to float on the stock exchange and, in the following century, rapidly expanded its international interests.

10. PW1 has further deposed that on 29th July, 1999, the Plaintiff No.1 acquired the SCHWEPPEES brand, including all trademarks, copyrights and other IP rights from Schweppes International Limited in 150 countries, including India. Today, the product SCHWEPPEES of the Plaintiff No.1 is sold in a number of countries all over the world, with the number growing each year. India is amongst the countries where the product SCHWEPPEES is sold.

11. PW1 has also deposed that in December 1999, Plaintiff No.1 granted Plaintiff No.2 a license to use the trade mark SCHWEPPEES and its allied trademarks amongst other trademarks owned by Plaintiff No.1 in connection with preparing, packaging, distributing and selling of beverages in and through the territory (wherein the Plaintiff No.1 had acquired rights to the brand SCHWEPPEES and allied trade marks) which includes India, along with a right to sub-license the preparation, packaging, distribution and sale of the Beverages sold under the said licensed trademarks. Accordingly by virtue of the said license, Plaintiff No.2 has the right to use the trade mark SCHWEPPEES and sub-license the manufacturing and use of the same to others.

12. Denise Lopes, PW1 has also deposed that the Plaintiff No.3 is an authorized bottler of the Plaintiff No.2 who has the right to license the trade mark SCHWEPPEES, and its allied trade marks in India. Plaintiff No.3 is authorized to prepare, package, sell and distribute specified beverages under the trade mark SCHWEPPEES and its allied trademarks, in Authorized Containers under terms and conditions stipulated in Bottler's Agreement. These (trademarked) Authorized Containers are required to be purchased by authorized bottlers from manufacturers approved by the Plaintiff No.2. The Plaintiff No.3 is engaged in production, manufacture, bottling, sale, distribution and supply of nonalcoholic carbonated and non-carbonated soft drinks bearing the trade marks SCHWEPPEES and its allied trademarks. Copy of the extension of the Bottlers Agreement to February 10, 2015 has been exhibited as Exhibit PW18.

13. PW1 has also deposed that the drinks under the brand name SCHWEPPEES are a big success worldwide including India. The sales figures in the unit of cases sold under the brand name SCHWEPPEES worldwide for the years 2006 to 2011

(till April) and the sales figures in the unit cases sold under the brand SCHWEPPEES for India for the years 2000 to 2011 (till April) are as mentioned herein below: Year Sales in Unit Cases (worldwide) 2006 176,437,995 2007 195,382,370 2008 191,426,929 2009 182,895,850 2010 204,136,566 2011 62,456,289 Year Sales in Unit Cases (India) CS(OS) 2185/2011 2000 790,427 2001 886,337 Page 8 of 22 2002 824,897 2003 140,669 2004 503,616 2005 467,369 2006 91,881 2007 165,734 2008 152,383 2009 127,429 2010 116,824 2011 51,611 The above figures have been obtained from the original books of accounts and records maintained by the Plaintiff No.1 in the ordinary course of business.

14. PW1 has further deposed that the products of the Plaintiffs sold under the trade mark SCHWEPPEES have been extensively advertised, discussed and publicized in both Indian and international press as well as on the Internet. In India, the products bearing the trade mark SCHWEPPEES have been advertised in leading publications such as Hindustan Times, India Today, Cosmopolitan, Outlook Traveler and Maxim. Further by way of illustration, a search on the Internet as on 16 th April 2014 for the Plaintiff No.1s trade mark SCHWEPPEES on two popular search engines Google and Yahoo revealed the following results: Trade Mark Google SCHWEPPEES About references CS(OS) 2185/2011 Yahoo 19,50,000 About 2,310,000 references Page 9 of 22 Printouts from www.google.com and www.yahoo.com where SCHWEPPEES is entered as a keyword have been exhibited as Exhibit PW1/9 (Colly).

15. PW1, Danise Lopes has also deposed that the trade marks SCHWEPPEES and its allied trademarks under which the Plaintiffs offer its products are famous and well-known throughout the globe. As such, these marks come within the definition of well-known marks as defined by Section 2 (1) (zg) of the Trade Marks Act, 1999. They are, therefore, liable to the protection accorded to well-known marks by the Trade Marks Act, 1999.

16. PW1 has further deposed that, as mentioned above, the Plaintiffs are also the copyright owner of the artistic work in the SCHWEPPEES label. By virtue of ownership of copyright and by virtue of the provisions of the Copyright Act, the

Plaintiffs have the exclusive right, subject to the provisions of the said Act, to do, or authorize the reproduction of the work (or any substantial part thereof) in any material form. A reproduction of the label in which the Plaintiffs copyright vests in as below: The original SCHWEPPEES label has been exhibited as Exhibit PW111.

17. PW1 has also deposed that the Plaintiffs first became aware of the Defendant when their applications for the trade marks SCHWAPPES (label) bearing No.1605349 in class 5 dated September 25, 2007 (filed on proposed to be used basis) and SCHWEPPEES (label) bearing No.1613761 in class 5 dated October 22, 2007 (filed on proposed to be used basis) were advertised in the Trade Marks Journal No.1400 dated September 16, 2008 which was made available to the public on September 29, 2008. She has also deposed that since the said marks of the Defendant were a blatant copy of the Plaintiff No.1s registered trademarks SCHWEPPEES and SCHWEPPEES (stylized logo), the Plaintiff No.1 lodged oppositions against the said advertised marks of the Defendant. At this time the Plaintiffs were not aware of any actual use made by the Defendant of the marks SCHWEPPEES or SCHWAPPES. Further the Plaintiff No.1 received an official notice from the Trade Marks Registry wherein it was mentioned that the oppositions filed by Plaintiff No.1 are time barred. The said notice was duly responded and is being contested by the Plaintiff No.1. Currently the status of the Defendants aforesaid applications on the Trade Marks Registry's website is reflected as Opposed by Plaintiff No.1. Printouts from the Trade Marks Registry website reflecting the current status of the Defendants applications bearing No.1605349 and 1613761 as opposed have been exhibited as Exhibit PW1/12. Copies of the notice of oppositions as filed by the Plaintiff No.1 qua the Defendants applications bearing No.1605349 and 1613761 have been exhibited as Exhibit PW113. An illustrative comparison between the representations of the label marks of the Defendant and the Plaintiffs label are reproduced below:

PLAINTIFFS	DEFNDANTS	LABEL	SCHWEPPEES	SCHWEPPEES	label
SCHWAPPES	label				

18. PW1 has further deposed that the Defendants dishonesty in the adoption of the above labels is clear as though the labels clearly depict that the product on which the labels would be used is tonic water, the goods for which the labels have been applied for are in Class 5 which are completely different goods. The specification of goods in Class 5 as applied by the Defendant is

reproduced below:

pharmaceutical and veterinary preparations; sanitary preparations for medical purposes; dietetic substances adapted for medical use, food for babies; plasters, materials for dressings; material for stopping teeth, dental wax; disinfectants; preparations for destroying vermin; fungicides, herbicides.

19. PW1 has also deposed that since the aforementioned applications of the Defendant were on proposed user basis, and the Plaintiffs had not received any information from their market sources relating to the Defendants product being available in the market, no action was warranted or taken by the Plaintiffs, other than initiating the statutory remedy of oppositions.

20. Ms. Danise Lopes, PW1, has also deposed that in July 2010, since the oppositions were not proceeding further, the Plaintiffs thought it prudent to confirm that the Defendant had not commenced use of the marks SCHWEPPEES and/or SCHWAPPES. Accordingly an investigation was instructed into the activities of the Defendant to check if the Defendant had commenced use of the marks SCHWEPPEES and/or SCHWAPPES or any other mark similar to the Plaintiffs SCHWEPPEES and allied trademarks. The said investigation revealed that the Defendant was indeed not using the abovementioned impugned marks/labels. The investigation reported that during conversations the Defendant claimed to have used the impugned mark in the past but now stated that the same had been discontinued. Investigation further disclosed that the Defendant claimed its intention to recommence the use of the said impugned marks/labels soon.

21. PW1 has further deposed that upon receipt of the investigation report, the Plaintiffs also thought it prudent to conduct a search of the Trade Marks Register to check whether the Defendant had applied for additional applications for marks which are identical or similar to the Plaintiff No.1s registered trademarks. The search revealed that the Defendant had applied for the following additional marks:-  
Trade Mark Number Date Class & Goods 1605350 September Class 32:

25. 2007 Beer; mineral and aerated water and other non-alcoholic drinks; fruit drinks fruit juices; syrups and other preparations for making beverages. 1779879

February Class 32:

2. 2009 Beers; mineral and aerated waters and other non alcoholic drinks; fruit drinks and fruit syrups CS(OS) 2185/2011 juices; and other preparations making beverages. 1943345 March 30, Class 32:

2010. Fruit, Drinks And Fruit Juices The first mark, namely SCHWAPPES bearing No.1605350, currently stands as withdrawn as per the records of the Trade Marks Registry website. Printouts from the Trade Marks Registry website reflecting the current status of the Defendants applications bearing No.1605350 as withdrawn have been exhibited as Exhibit PW1/14. Shockingly, the remaining two applications for SCHWEPPE bearing Nos. 1779879 and 1943345 are identical copies of the Plaintiff No.1s registered trademarks SCHWEPPE and SCHWEPPE (stylized logo) bearing registrations Nos. 10473, 179051 and 1662321. She has also deposed that the Plaintiffs further believe that in relation to the Defendants application for the mark Schweppes (label and bottle) bearing No.1943345, the representation of the bottle that has been used for the filing is actually the Plaintiffs own product which has been quite simply photographed by the Defendant and is now used to falsely claim trade mark protection for the same. Printouts from the Trade Marks Registry website reflecting the status of the Defendants applications bearing No.1779879 and 1943345 as Objected at the time of filing of the present suit have been exhibited as Exhibit PW1/15. Moreover, during the pendency of the present proceedings, the Defendant has abandoned its application bearing No.1779879 and application bearing No.1943345 has been refused. Printouts from the Trade Marks Registry website reflecting the current status of the Defendants said applications have been exhibited as Exhibit PW1/16. Copies of the examination reports of the Defendants application bearing nos. 1779879 and 1943345 reflecting that only the Plaintiffs trade marks being cited as conflicting marks have been exhibited as Exhibit PW117.

22. PW1 has also deposed that after discovering the aforesaid additional trade mark applications, Plaintiff No.1 immediately through its attorneys addressed a letter dated September 09, 2010 to the counsel of defendant, with a copy marked to the Defendant. Vide the said letter the Defendant was called upon to cease and

desist from manufacturing, selling or offering for sale any goods under the mark SCHWEPPEES, SCHWAPPES and/or any other mark deceptively or confusingly similar to the registered trade mark SCHWEPPEES of Plaintiff No.1. The Defendant was further called upon to withdraw the trade mark applications Nos. 1605349, 1613761, 1605350, 1779879 and 1943345 and make a full and fair disclosure of any other trade mark application(s) filed for registration by them, which is deceptively or confusingly similar to the Plaintiff No.1s registered trade mark SCHWEPPEES and its allied trademarks, and to withdraw those as well. Office copy of the said letter has been exhibited as Exhibit PW118.

23. PW1 has further deposed that as no response was received from the defendant to the letter dated September 9, 2010, on October 10, 2010 the Plaintiffs through its attorneys sent a reminder letter to the Defendants counsel. This letter was also copied to the Defendant. Office copy of the said reminder letter has been exhibited as Exhibit PW119.

24. PW1, Danise Lopes, has also deposed that the Defendants counsel finally responded to the aforementioned letters, sent on behalf of Plaintiff No.1, vide their letter dated November 10, 2010. In the said letter, it was contended by the Defendants counsel that the claims made by the Plaintiff No.1 are false and denied and the impugned marks/labels are dissimilar to that of the Plaintiff No.1s trademarks. It was also mentioned that the Defendant has been using the mark Schweppes Indian Tonic Water (label) since 2007 and the same is a composite mark along with a device of a dolphin and hence when compared as a whole, the same was dissimilar to the Plaintiff No.1s registered trademarks. It was further stated that any proceeding initiated by the Plaintiffs against the Defendant shall be defended at the Plaintiffs risk as to costs and consequences. Copy of the said letter has been exhibited as Exhibit PW120. She has also deposed that on December 23, 2010, plaintiffs through their attorney replied to the said letter of defendant. Office copy of the said letter has been exhibited as Exhibit PW121.

25. PW1 has also deposed that in May 2011 the Plaintiffs doubt of whether the Defendant is actually using the mark SCHWEPPEES were resolved when they came across the Defendants website [www.simronfood.com](http://www.simronfood.com). The Defendant has

on the said website stated that they are the brand owners of SCHWEPPEES. Further they have mentioned that they manufacture the following products under the brand SCHWEPPEES:- Tonic Water - Lemon - Ginger Ale - Soda 26. PW1 has further deposed that, a search on the WHOIS database has disclosed that the owner of the domain name [www.simronfood.com](http://www.simronfood.com) is Mr. Aditya Media. There are no further particulars on the WHOIS records. Printouts from the website of the Defendant [www.simronfood.com](http://www.simronfood.com) along with the WHOIS search report have been exhibited as Exhibit PW1/24 (colly).

27. PW1, Danise Lopes, has also deposed that though the Plaintiffs do not have any evidence of actual use of the offending product in Delhi, the claims made in the Defendants letter and on its website raise serious concerns that either the Defendant is and has in the past marketed and sold its products under the offending brand in Delhi, or is likely to do so in the near future. The claims made in the letter of the Defendant are not restricted to particular territories in India, but appear to be a broad claim intended to cover the whole country. In fact, the Defendant is also advertising its products on third party websites such as [www.indiamart.com](http://www.indiamart.com). From such websites products can be purchased by consumers anywhere in India.

28. PW1 has also deposed that the adoption of an identical mark and packaging with an identical get up, by the Defendant, wholly and solely dedicated to the same market as that of the Plaintiffs, is nothing but a deliberate attempt by the Defendant to ride upon the goodwill and reputation of the well-known and registered trade mark SCHWEPPEES and its allied trademarks. Additionally, the use of the trade mark SCHWEPPEES and/or SCHWAPPES and a nearly identical label by the Defendant constitutes infringement of the rights of Plaintiff No.1 in and to its well-known trademarks SCHWEPPEES and its allied trademarks, infringement of the copyrights in the SCHWEPPEES label which vests in Plaintiff No.1, as well as passing off its goods as for and those of the Plaintiffs. The Defendant has adopted each and every element of the Plaintiffs products sold under the well-known trade mark SCHWEPPEES including the Plaintiffs style of writing SCHWEPPEES, the colour combination used by the Plaintiffs, the distinctive FOUNTAIN device used by the Plaintiffs above the word SCHWEPPEES and the shape of the bottle. On a

few occasions the Defendant has instead of the Plaintiffs FOUNTAIN device used the device of a dolphin. The Defendant has copied the entire label of the Plaintiffs product SCHWEPPEES, the copyrights of which vests in Plaintiff No.1. In the instant case, owing to the identical mark being used by the Defendant coupled with the fact that it is being used for identical products as that of the Plaintiffs, the likelihood of confusion is much higher than in the case of any general use of the mark. Resultantly, the product of the Defendant is bound to be thought, by the general public, to be connected or affiliated with those of the Plaintiffs when in fact no such connection or affiliation exists.

29. I have heard counsel for the plaintiffs and carefully perused the documents which have been placed on record along with the affidavit by way of evidence which have been filed. Evidence of plaintiffs has gone unchallenged and un-rebutted. Certified copies of the registration Nos. 10473, 179051, 616431, 630454, and 1662321, copies of registration certificated along with the printout from the Trade Marks Registry website with respect to plaintiffs trademark SCHWEPPEES and stylized logo have been exhibited as Ex. PW15 and Mark A, respectively. Copies of some registration certificates of various jurisdictions of the world with respect to trademark SCHWEPPEES and its allied trademarks have been exhibited as Ex. PW16. Printouts from the Trade Marks Registry website reflecting the current status of the Defendants applications bearing No.1605349 and 1613761 with respect to trademark SCHWAPPES and SCHWEPPEES, respectively in class 5 have been exhibited as Ex. PW112. Printouts from the Trade Marks Registry website reflecting the current status of the Defendants applications bearing No.1605350 as withdrawn with respect to trademark SCHWAPPES have been exhibited as Ex. PW114 and Trademark Registry printouts reflecting the current status of application No.1779879 and 1943345 as objected with respect to trademark SCHWEPPEES and Logo have been exhibited as Ex. PW115 and Ex. PW116. Printouts from the websites of the defendant [www.simronfood.com](http://www.simronfood.com) alongwith WHOIS search report have been exhibited as Ex. PW124(colly).

30. On the basis of the documents placed on record, the plaintiffs have established that plaintiff No.1 is the owner of the trademark, logo SCHWEPPEES and its allied trademarks and plaintiffs are also the copyright owner of the artistic

work in the SCHWEPPEES label and by virtue of the same plaintiffs have the exclusive right to use the said mark and logo and authorize the reproduction thereof. Plaintiffs have also established that on account of enormous amount spent on advertisement of brand SCHWEPPEES in India, plaintiffs have been able to generate vast turnover for years and that during the past many years, the plaintiffs have built up an unparalleled reputation and goodwill with respect to their trademark SCHWEPPEES and its allied trademarks. Plaintiffs have also established that the Defendant has adopted and is using the trade mark SCHWEPPEES and has also copied the SCHWEPPEES trade dress as used by the Plaintiffs which comprises of SCHWEPPEES written in a stylized manner with a FOUNTAIN device and a unique colour combination consisting of the colours silver and yellow. Plaintiffs have also established that said acts of the Defendant amounts to infringement of the registered trademarks SCHWEPPEES (word) and SCHWEPPEES (stylized logo along with FOUNTAIN device) and also amounts to infringement of the copyright work in the SCHWEPPEES label which vests with Plaintiff No.1 and passing off their goods as the goods of the Plaintiffs.

31. In view of the above, the plaintiffs are entitled to a decree of permanent and mandatory Injunction against the defendant from dealing with the goods having infringing mark in terms of clause (a) and (b) of prayer of the plaint.

32. Although under clause (c) of the prayers, the plaintiffs have sought a decree of rendition of accounts of transactions concerning the offending activities the defendant, it is prayed that punitive damages may be awarded in this case.

33. In Microsoft Corporation v. Deepak Raval reported at MIPR2007(1) 72, this Court observed that in our country the Courts are becoming sensitive to the growing menace of piracy and have started granting punitive damages even in cases where due to absence of Defendant, the exact figures of sale made by them under the infringing copyright and/or trademark, exact damages are not available. The justification given by the Court for award of compulsory damages was to make up for the loss suffered by the plaintiff and deter a wrong doer and like-minded from indulging in such unlawful activities.

34. In *Larsen and Toubro Limited v. Chagan Bhai Patel* reported at MIPR2009(1) 194, this Court has observed that it would be encouraging the violators of intellectual property, if the Defendants notwithstanding having not contested the suit are not burdened with punitive damages.

35. In the case of *Time Incorporated v. Lokesh Srivastava and Anr* reported at 2005 (30) PTC3(Del), apart from compensatory damages of Rs.5 lakhs, punitive damages were also awarded.

36. I am in agreement with the aforesaid submission of learned counsel for the plaintiff that damages in such cases must be awarded and a defendant, who chooses to stay away from the proceedings of the Court, should not be permitted to enjoy the benefits of evasion of court proceedings. Any view to the contrary would result in a situation where a defendant who appears in Court and submits its account books would be liable for damages, while another defendant who, chooses to stay away from court proceedings would escape the liability on account of failure of the availability of account books. A party who chooses not to participate in court proceedings and stays away must, thus, suffer the consequences of damages as stated and set out by the plaintiffs. There is a larger public purpose involved to discourage such parties from indulging in such acts of deception and, thus, even if the same has a punitive element, it must be granted. R.C. Chopra, J.

has very succinctly set out in *Time Incorporated's* case (supra) that punitive damages are founded on the philosophy of corrective justice.

37. For the reasons stated above, the plaintiffs have made out a case for grant of decree as prayed in the plaint. Accordingly, the order dated 08.09.2011 is confirmed and the suit is decreed in favour of the plaintiffs and against the defendant. Plaintiff is also entitled to damages to the tune of Rs.2.00 lacs.

38. Decree sheet be drawn up accordingly. I.A. No.443/2012 39. Application stands disposed of in view of the order passed in the suit. G.S.SISTANI, J MAY26 2014 msr