

CS (COMM) 267/19  
M/S JAGRAN PRAKASHAN LTD. Vs. M/S KRISHI  
JAGRAN AND ANR.

25.05.2026

Present: Sh Jeevesh Mehta, Ld Counsel for plaintiff.  
Dr Alex Josphe and Ms Dhruvi Sikarwal, Ms  
Supriya Verma, Ld Counsel for defendant along  
with defendant

1. Vide separate judgment of even date, the suit as filed by  
the plaintiff stands dismissed.

For the public ignominy meted out to the defendants, and the fact  
that they were made to contest an unnecessary and protracted  
litigation, the plaintiff is directed to pay a cost of Rs 10 Lakhs to  
the defendants.

Further, considering irreparable injury that has been caused to the  
defendants despite them being prior users of the Trade Mark,  
order of injunction dated 29.09.2020 hereby stands vacated.

4. File be consigned to record room after necessary  
compliance.

(Arul Varma)  
District Judge-02/South District/  
Saket Courts/New Delhi/25.05.2026

Arul  
Varma

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INTHE COURT OF SH. ARUL VARMA,  
DISTRICTJUDGE-02, SOUTH DISTRICT, SAKET COURTS  
COMPLEX, NEW DELHI

CS (COMM)267/2019

Filing No.2195/2019

CNR No.DLST010057652019

M/s JagranPrakashan Limited  
Buildingno9&11, Okhla Phase-3  
New Delhi110020

.....Plaintiff

**Versus**

1.M/s KrishiJagran  
60/9, 3<sup>rd</sup>loor,Yusuf Sarai Market  
Near GreenPark,Metro Station,  
New Delhi-110016

2. Mr MezhukanalCherian Dominic  
Prop: M/sKrishiJagran  
Near GreenPark,Metro Station  
New Delhi-110016

.....Defendants

Date of Institution: 28.09.2019	
Date of reserving the judgment : 23.05.2026	
Date of Pronouncement : 25.05.2026	
Decision: Dismissed	

## JUDGMENT/ORDER

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## I. BRIEF FACTS/CASE OF THE PLAINTIFF

1. The facts as asseverated by the Plaintiff are hereby succinctly recapitulated:

(a) The Plaintiff is an Indian company, established in 1942 and is duly registered under the Company Act, 1956. The Plaintiff company is engaged in the business of print/online reporting & publication of newspapers, Magazines, Journals, outdoors advertisement, event management, ground activation and promotional business, value added services through mobile and maintaining and running various web portals under/with the brand name/trade mark “Jagran”.

(b) The Plaintiff has been using the mark over a long and continuous period of time. The plaintiff has registered Trademarks in combination with work JAGRAN in Hindi as well as in English apart from other languages. The business of the Plaintiff, and by extension, its trade marks have acquired tremendous reputation and goodwill across the India. The Plaintiff’s trade marks/brand name have become distinctive, and the country at large identifies, distinguishes and associates the Plaintiff’s business under the said trade marks. It has been emphatically underscored that in view of the Plaintiff’s proprietary rights in its trade

marks/labels and copyrights, the Plaintiff has the exclusive right to the use thereof to the exclusion of all others.

(c) It was brought to the fore, vide the present *lis*, that the Plaintiff discovered that the defendants were indulging in printing of magazine dedicated to agriculture, but they extended its engagements in newspapers, magazines, online content, publishing with the name and style "KRISHI JAGRAN" in 12 different languages all over the country. It was alleged that the defendants adopted and started using the word/mark JAGRAN styled in relation to its impugned services in course of trade on its various business platforms like print magazines, websites of which word/mark JAGRAN is an essential feature causing confusion and deception among consumers in the course of trade. It was also averred by the Plaintiff that the actions of the defendants have resulted in loss of reputation as well losses in business. Hence, the Plaintiff filed the present suit.

## II. WRITTEN STATEMENT OF DEFENDANTS

2. It was submitted by the defendants in their written statement that the plaintiff committed fraud in their pleadings by falsely claiming that the defendants had "now extended" their engagements into newspapers and magazines under the style

"KRISHI JAGRAN". It was established by the defendants that defendant No. 1 is one of the world's largest circulated agricultural monthly magazines and has been continuously published since September 1996. It was shown that the inaugural edition in Hindi was launched in 1996 in the presence of various Union Ministers and the then Chief Minister of Delhi, and has since expanded into 12 different languages across India over the last two decades.

3. It was brought to the notice of the Court that while the plaintiff claimed the cause of action first arose in August 2018, the defendants have actually been publishing since 1996, marking a massive delay of over 22 years. It was further highlighted that the plaintiff served as an official media partner to the defendants' programs since the year 2004. Therefore, even if the plaintiff claimed ignorance prior to that date, there remained an unexplained and fatal delay of 15 years in filing the present suit.

4. It was concluded that because the plaintiff knowingly made false or misleading statements regarding material particulars to obtain an injunction without giving proper, timely notice, the Court must vacate the injunction under the settled provisions of Order 39 of the Code of Civil Procedure, as the order had caused undue and unfair hardship to the defendants.

### III. REPLICATION FILED BY THE PLAINTIFF

5. During the course of proceedings, rejoinder was also filed by the plaintiff qua the written statement filed by the defendants. In the rejoinder, plaintiff submitted that It was contended that the defendants had raised issues that were entirely misconceived, wrong, and completely detached from the factual realities of the case, and therefore, all such assertions were categorically denied. It was forcefully argued that through their own written statement and the accompanying application under Order 39 Rule 4 CPC, the defendants had explicitly admitted to using the brand name "Jagran" by suffixing it with the word "Krishi".

6. It was brought to the notice of the Court that the defendants were utilizing this deceptive name not just for agricultural publications, but had extended their operations into other commercial domains such as News, Entertainment, Health & Lifestyle, Literature, Bollywood, and Politics via their various web portals. It was submitted that this clear and unequivocal admission on the part of the defendants fully entitled the plaintiff to a decree and judgment for passing off in its favor at this preliminary stage itself.

7. It was denied that the plaintiff had made any false or misleading statements in regarding the defendants' expansion into newspapers and magazines. It was submitted that the word "Newspapers" was merely included inadvertently and

that the core focus of the suit remained on the defendants' unauthorized publications across magazines, online content, and websites.

8. It was further stated that the defendants were acting in a clever, well-planned manner, first engaging themselves in the agricultural sector and then gradually expanding into mainstream digital media to unlawfully trade upon the immense goodwill, reputation, and brand value associated globally with the plaintiff's "Jagran Group" since 1942.

9. It was vehemently denied that any fraud, misrepresentation, or suppression of material facts was committed by the plaintiff to obtain the ad-interim injunction order dated 02.09.2019. It was submitted that the Dasti summons and notice issued by the Court were duly brought to the registered office of the defendants by the Process Server, but the staff on duty deliberately and maliciously refused to accept service. 10. It was further emphasized that the plaintiff had additionally served a copy of the suit via Email on 30.08.2019 through its Counsel, which constituted valid and sufficient service. It was contended that the defendants could not be allowed to take advantage of their own deliberate act of evading service, and that the shifting timelines and travel excuses presented by defendants No. 2 were merely lame pretexts intended to delay the judicial proceedings.

11.It was submitted that despite the clear operation of the interim injunction order dated 02.09.2019, the defendants had failed to comply with the directions of the Court, thereby rendering themselves liable for appropriate legal action under the law of contempt.

12. It was concluded that the plaintiff possessed a rock-solid prima facie case satisfying the triple test of injunctions, whereas the defendants had approached the Court with unclean hands. Consequently, it was prayed that the interim protections granted to the plaintiff be maintained and the defendants' objections be dismissed.

#### IV. ISSUES FRAMED

1.Vide order dated 07.09.2022 following issues were framed:-

- “1. Whether the defendants are infringing the registered trademark “JAGRAN” of the plaintiff? OPP*
- 2. Whether the defendants are the prior user of the mark/word KRISHI JAGRAN than the plaintiff use of mark/word JAGRAN and its effect? OPD*
- 3. Whether the plaintiff is entitled for decree of permanent and mandatory injunction against the defendants as prayed for?OPP*
- 4. Whether the defendants have by their acts, passed off their goods as those of the plaintiff and thus violated the plaintiff’s common law rights? OPP*

5. *Whether the plaintiff is entitled to a decree of delivery up of impugned goods of the defendants, finished as well as unfinished? OPP*

6. *Whether the plaintiff is entitled to a decree of rendition of accounts of the profits earned by the defendants on account of sale of the impugned goods? OPP*

7. *Whether the plaintiff is entitled for damages as prayed for? OPP*

8. *Relief.*”

#### V. APPOINTMENT OF LOCAL COMMISSIONER AND FILING REPORT THEREOF

13. Ms Promila Kapoor, Advocate was appointed as Local Commissioner on 07.09.2022 for recording of evidence in the present matter. The Local Commissioner also submitted a report in this regard as is apparent from a perusal of order dated 31.07.2023.

#### VI. EVIDENCE LED BY PLAINTIFF

14. In the proceeding before the Local Commissioner 03 witnesses were examined, succinct testimonies whereof are as follows:

15. PW-1 Shri Durgesh Kumar : He tendered his evidence by way of affidavit as Ex. PW1/1. He relied upon following documents:

- (a) First newspaper edition of the plaintiff company with brand name “Dainik Jagran” as Mark A1.
- (b) Electronic cover pages of the print magazine of the list of details of the registered trade marks of the plaintiff extracted from [www.ipindia.ni.in](http://www.ipindia.ni.in), being exhibited as Ex PW1/A.
- (c) Electronic printouts of the webpages of the websites of the plaintiff company, as Ex PW1/B
- (d) Coloured copies of cover pages of the print magazine of defendants as Ex P1
- (e) Electronic printouts of webpages/websites of the defendants websites as Ex P2
- (f) Extracts of original magazine of the plaintiff for the month of July 2019 as Ex PW1/E
- (g) release orders number 672 dated 18.09.2019 along with email dated 24.09.2019 received from Approach Advertising and Exhibitors Private Limited as Ex P9
- (h) Office Copy of the desist notice dated 21.09.2018 sent by the plaintiff to the defendants as Ex PW1/G
- (i) Office copy of the desist notice dated 03.10.2018 sent by the plaintiff to the defendants as Ex P5
- (j) Copy of reply dated 29.09.2018 as Ex P4
- (k) Copy of reply dated 15.10.2018 as Ex P6
- (l) Copy of trade mark application number 3965868 filed by the defendants before Registrar of Trademark on

*06.10.2018 obtained by the plaintiff from*

*[www.ipindia.nic.in](http://www.ipindia.nic.in) as ExP10*

*(m) Affidavit u/s 65 B of Indian Evidence Act dated  
27.08.2019 as Ex PW1/L*

*(n) Affidavit u/s 65 B of Indian Evidence Act dated  
25.09.2019 as Ex PW1/M*

*(o) Affidavit u/s 65 B of Indian Evidence Act dated  
22.09.2020 as Ex PW1/N*

*(p) certificate of registration dated 15.05.2007 issued by  
office of the Registrar of Newspapers of India as Ex  
PW1/DX2.*

16.PW-1 was cross-examined by Ld Counsel for defendants

17.PW-2 Ms Afsana Khatun w/o Sh Dilshad Ahmad: She tendered  
her evidence by way of affidavit Ex PW2/A. She

relied upon the following documents:

*(a) Email dated 18.09.2019 already exhibited as Ex PW1/F  
(Ex P-9)*

18.PW-2 was also cross-examined at length by the Ld Counsel  
for defendants.

19. PW-3 Dinesh Yadav s/o Sh Mohan Yadav: He tendered his  
evidence by way of affidavit Ex PW3/A. He deposed in his  
evidence filed by way of affidavit that he was working as  
Manager -MIS in the plaintiff company. He deposed that in  
the month of September, 2019, an information was received  
in their office that Krishi Jagran has recently procured an

order of advertisement from “Approach Advertising & Exhibitors Pvt Ltd” in the name of “Dainik Jagran”, and that he was given the responsibility by the management to procure the copy of the said order and as such he contacted Approach Advertising & Exhibitors Pvt Ltd and requested them to send him a copy of the RO which was issued by them to Dainik Jagran.

20.He further deposed that defendants had been procuring orders, recruiting employees for their office and publications by portraying the clients and general public that they are sister concern or connected with Dainik Jagran or Jagran Group which is actually the plaintiff company. PW- 3 was cross-examined by Ld Counsel for defendants.

## VII.EVIDENCE LED BY DEFENDANTS

21.In the proceeding before the Local Commissioner 02 witnesses were examined, succinct testimonies whereof are as follows:

22.DW-1 Sh Mezhukanal Cherian Dominic : He tendered his evidence by way of affidavit as Ex. DW1/A. He relied upon following documents:

- (a) Certificate of registration of trademark of the defendants is already Exhibit D-1*
- (b) First issue of publication of magazine of Krishi Jagran published in September 1996 as Ex DW1/2*

- (c) *Second issue of publication of magazine of Krishi Jagran published in October, 1996 as Ex DW1/3*
- (d) *List of publication with the name Krishi as Ex DW1/5*
- (e) *List of publication with the name Jagran as Ex DW1/6*
- (f) *Details of events jointly organized by Dainik Jagran and Krishi Jagran as Mark DW1/4*
- (g) *Details of publication with the title Krishi Jagran as Ex DW1/7*
- (h) *Net generated print out of RNI Registration of Agricultural world Reg no DELENG/2015/65174 as EX DW1/8*
- (i) *The endorsement dated 11.09.2020 on the Release Order dated 18.09.2019 as Mark A-3*
- (j) *Email dated 26.09.2019 along with revised Release order dated 18.09.2019 as Mark A-3*
- (k) *Email dated 6.09.2019 as Ex DW1/10*
- (l) *Email dated 25.09.2018 as Ex DW1/12*
- (m) *Certificate u/s 65B of Indian Evidence Act as Ex Dw1/13*

23. DW-1 was cross-examined by Ld Counsel for plaintiff.

24. DW-2 Sh Krishna Bahadur Karki: He tendered his evidence by way of affidavit as Ex. DW1/A. He relied upon following documents:

- (a) *First page of various magazine published by Krishi Jagran in different languages, along with RNI certificates as Ex DW2/1*

- (b) Web print out of list of publications with the name 'Krishi' list of publication with the name Jagran list of publication with the name of 'Krishi Jagran', as Ex DW2/2
- (c) Agreement of Krishi Jagran with IFFCO and MOU with Community Friendly Movement as Ex DW2/4
- (d) Email Communications between Krishi Jagran and its clients/media partners as Ex DW2/3
- (e) Print outs of social media pages of "Krishi Jagran" as Ex DW2/5
- (f) Print out of domain page of "Krishi Jagran as Ex DW2/6
- (g) Print out of email dated 11.09.2020 along with attached with RO sent by Hyundai Motors to Krishi Jagran as Ex DW2/7
- (h) Print out of emails dated 23.01.2020 and 28.10.2020 along with attached RO sent by Hyundai Motors to 'Krishi Jagran" as Mark DW2/7
- (i) Print out of email dated 25.11.2019 along with attached RO sent by Hyundai Motors to 'Krishi Jagran' as Mark DW2/8
- (j) Certificate u/s 65 B of Indian Evidence Act as Ex DW1/9
- (k) Photographs of event jointly conducted by Krishi Jagran and Dainik Jagran as Ex DW2/10

25.DW-2 was cross-examined at length by Ld Counsel for plaintiff.

## VIII.ARGUMENTS OF COUNSELS FOR THE PARTIES

26.Ld Counsel for plaintiff submitted that the plaintiff has a reputation and goodwill since 1942. It was submitted that the trademark including word mark, labels, etc of the plaintiff company has been duly registered as is apparent from a perusal of Ex PW1/A. It was further submitted that the wordmark Jagran and label Jagran has also been registered under Class 35, 16 and 41 etc. It was further submitted that Ex PW1/A stands proved in light of the fact that certificate of Section 65 B of Indian Evidence Act Ex PW1/L has been attached therewith.

27.Ld Counsel for plaintiff placed reliance on Ex PW1/B to contend that the plaintiff has an online presence also and also publishes news etc online. It was further submitted that Ex PW1/B is a screen shot of website of plaintiff which contains *inter alia* the fact that the plaintiff is a top digital media platform in the country having different brands such as Jagran.com, Jagran Josh and Jagran Midday. Ld Counsel for plaintiff submitted that the plaintiff is in the business of disseminating news under various heads like Cricket, entertainment, Media, Agriculture etc.

28.Ld Counsel specifically highlighted that the plaintiff also disseminates information exclusive to the field of agriculture also, and this fact is evident upon a perusal of Ex PW1/E viz.,

copy of Khet Khalihan, a publication solely dedicated to agriculture by the plaintiff.

29.Ld Counsel further submitted that a perusal of Ex P2 would reveal that defendants also has online presence and publishes *inter alia* news, general news, agricultural news, blogs etc. It was submitted that Ex PW1/G would reveal that a legal notice was duly sent by the plaintiff to defendants informing them about the factum of violation of trademark of the plaintiff by the defendants. Vide Ex P4, Ld Counsel contended that defendants denied the factum of infringement of trade-mark of the plaintiff by them.

30.It was submitted by Ld Counsel that witness PW-2 Afsana Khatoon had categorically deposed in her evidence by way of affidavit that she was specifically told by defendants no 2 proprietor of Krishi Jagran that if any client asks that she must tell the client that Krishi Jagran is a sister concern of Dainik Jagran and Krishi Jagran has connections with Dainik Jagran.

31.Ld Counsel contended that this fact assumes significance in view of the emails exchanged between the advertising agency namely Approach Advertising and Exhibitor Pvt Ltd, and the plaintiff and defendants in period of September, 2019 whereby a release order was issued which displayed the name Dainik Jagran before Krishi Jagran.

32.*Per contra*, Ld Counsel for defendants has contended that the present suit is hopelessly barred by limitation. It was contended that the publication of the defendants Magazine namely Krishi Jagran commenced in the year,1996. It was further submitted that way back in 2004, plaintiff had requisite knowledge that the defendants is operating under the brand Krishi Jagran inasmuch as the plaintiff was a Media partner with defendants.

33.Ld Counsel contended that the plaintiff just filed the above suit only in the year, 2019 i.e. after a lapse of about 15-16 years and therefore the suit is barred by limitation. To substantiate his contention, Ld Counsel invited the Court's attention to Section 30(2)(c) (i) and Section 33 of Trademark Act Ld Counsel further contended that the defendant's magazine was operating in the field prior to the plaintiff's newspaper Khet Khalihan. To substantiate his contention, Ld Counsel further placed reliance on Ex DW1/2 viz. Edition of Krishi Jagran for September, 1996, Ex DW1/3, Hindi Edition of Krishi Jagran October, 1996.

34.Ld Counsel further contended that the Magazine Krishi Jagran had obtained certificate of registration way back in 1996 as is apparent from a perusal of Ex DW1/PX1 viz., certificate of registration issued by the Office of Registrar of Newspapers for Media.

35.Ld Counsel further submitted that Krishi Jagran was present in the field since 1996 as is apparent from ExDW2/3 collectively which reflects documents evincing the fact of continuous communication and business by the defendants with other entities. Ld Counsel further submitted that Ex DW2/4 (colly) also reflects that the defendants had entered into Agreement with *inter alia* IFFCO.

36.It was further contended that Krishi Jagran.com had got its domain name registered on 05.07.2008 as is apparent from a perusal of Ex DW2/6. It was further contended that the defendants and the plaintiff had entered into a joint collaboration since the year 2004 as is apparent from EX DW2/10 and therefore plaintiff cannot plead ignorance qua the existence of the defendants publication. Ld Counsel for defendants submitted that to prove its case and to produce the originals of Mark DW1/4 (colly), the defendants had moved an application under Order XI Rule 12 r/w Section 151 CPC seeking directions to the plaintiff to produce the originals thereof and vide order dated 11.04.2023, the said application was disposed of. However, Ld Counsel for defendants conceded that no specific directions were given while disposing of the application.

37.It was further submitted that qua the application, no written reply was filed by the plaintiff, nor grounds of opposition of the said application are mentioned in order dated 11.04.2023.

Ld Counsel placed reliance on *Principal, SV Doshi Girls High School & Ors Vs Lilaben Somabhai Gadasa 2008 GLH (1) 286, Angshuman Mandal Vs State of West Bengal & Ors 2018 (5) CHN 2018* and *Union of India Vs Ibrahim Uddin and Ors 2012 (1) 191 AF 16* party has asked the Court to direct the other party to produce a document and the other party so requested fails to comply Court's order, the Court may be justifying in drawing adverse inference against the said party.

38.It was also contended that the burden of proof in the present case was discharged by the defendants when it moved an application under Order XI Rule 12 CPC and Order VIII Rule 1 CPC seeking production of documents in possession of the plaintiff inasmuch as the documents sought to be produced were copies of newspaper cuttings of the newspaper belonging to plaintiff. Thus, in nutshell, Ld Counsel for defendants submitted that an adverse presumption ought to be drawn against the plaintiff for non production of original Mark Ex DW1 to DW4 collectively.

39.Ld Counsel further contended that there is no deceptive similarities in the label mark also of the publication of the plaintiff and of the defendants. In this context, Ld Counsel placed reliance on *Parakh Vanijya Pvt Ltd Vs Baroma Agro Product & Ors AIR 2018 SC 3334* to contend that the word "Jagran" is generic. It was further clarified that the word

Jagran used in conjunction with Dainik makes the entire word Dainik Jagran as distinct trade-mark. However, Jagran used in isolation is merely a generic mark. Ld Counsel further contended that the sole motive of the plaintiff is to eliminate the competition and the Courts should not allow this. To substantiate this contention, Ld Counsel placed reliance on para 56 *Dabur India Ltd Vs Emami Limited* 261 (2019) DLT 474.

40. It was also contended that it is trite law that injunction cannot be granted against the prior user of trade-mark, and in the present case, Krishi Jagran is a prior user. To buttress his contention, Ld Counsel placed reliance on *Orient Papers Industries Ltd Vs Jayanta Lamp Industries Pvt Ltd* 2011 (3) CHN 44. In rebuttal, Ld Counsel for plaintiff contended that the intention of the defendants qua passing off has to be discerned. It was further contended that the defendants filed the application for registration of trade-mark under Class 35, only after the cease and desist, notice by the plaintiff was issued to defendants. It was further submitted that the defendants did not examine any witness to prove Mark DW1/4 (colly). It was submitted that the defendants could have examined the official of Registrar of Newspaper of India in this regard, but the defendants failed to do so.

41. It was contended that a perusal of the application for registration of trade-mark by the defendants would reveal that

in affidavit annexed therewith, that the proprietor of the defendants publication has averred in his affidavit that he was using the word mark Krishi Jagran since 02.08.2016. Thus, it was submitted by Ld Counsel for plaintiff that the affidavit belies the assertion of the defendants that they were using trade-mark Krishi Jagran since 1996. Ld Counsel further invited the Court's attention to contradictions in the testimony of DW-1 to contend that DW-1 stated in his evidence by way of affidavit that he had started online operations in the year 2008, whereas in his cross-examination dated 03.02.2023, the defendants averred that he started using website in the year 2000. It was further submitted that the defendants admitted that he had started online portals in the year 2003 and that had print media up to the year 2003, which is a statement, which is contrary to his plea that till date the publication is being physically printed.

42. It was submitted that release order no 672 dated 18.09.2019 Ex PW1/F is a document which has been proved as per law and not a photocopy Mark A3 wherein the name of Dainik Jagran has been deleted. It was submitted that the defendants have been unable to prove Mark A3 inasmuch as the person making the endorsement namely Sh Prem Singh has not been examined as a witness by the defendants. It was submitted that Mark A3 is a forged and fabricated document. It was also submitted that testimony of PW-2 Afsana Khatoon cannot be

demolished by the defendants. Lastly, Ld Counsel for plaintiff contended that there has been no delay in instituting the present suit. To substantiate his contention, Ld Counsel placed reliance on *Reddy's Laboratories Vs Reddy Pharmaceutical 2004 SCC OnLine Del 668* to contend that the plaintiff herein instituted the present suit upon learning that the defendants had infringed /committed an action of passing of qua his trademark. It was further contended that an infringer cannot claim equity on the basis of continue dishonest use. Thus, Ld Counsel submitted that the suit be decreed in his favour.

43. In rebuttal, Ld Counsel for defendants contended that Mark A3 i.e. email dated 19.09.2019 containing the fresh release order and conspicuously deleting the name of Dainik Jagran therein, stood prove as an affidavit u/s 65 B of Indian Evidence Act was furnished, and the said document was later on Ex DW1/10. It was contended that the certificate u/s 65 B of Indian Evidence Act was Ex DW1/13. It was submitted that this fact also gets corroborated upon a perusal of Ex PW1/12 and Ex PW1/12A. It was contended that the witness DW1 was never confronted with affidavit annexed with application for registration of trade-mark and therefore this discrepancy ought not to be confronted into particularly in light of the fact that vide Ex P1, a document admitted by the plaintiff, a factum of publication of Krishi Jagran was not disputed.

## IX. ISSUE WISE ANALYSIS & FINDINGS THERETO

i. *Issue no 1: Whether the defendants are infringing the registered trademark “JAGRAN” of the plaintiff?*

44. At the first instance, plaintiff is required to establish its proprietary rights qua the Trademark in question. In other words, plaintiff is required to establish that its trade-mark is registered inasmuch as it is only Section 28 of the Trade Mark Act, which clarifies that the valid registration of Trademark shall confer on the registered owner of trade-mark exclusive right to use the trade-mark in question to the goods or services in respect of which the trade-mark is registered. The Section further empowers the owner of the trade-mark to obtain relief in respect of infringement of trade-mark in the manner provided under the Act.

45. The plaintiff has contended that “Jagran” is a duly registered trade-mark of plaintiff. To establish that *inter alia* ‘Jagran’ is the trade-mark of plaintiff and that it was duly registered, PW-1 Durgesh Kumar averred in his evidence by way of affidavit Ex PW1/1 that electronic copies of the list of details of the registered trade-mark of plaintiff extracted from [www.ipindia.nic.in](http://www.ipindia.nic.in) are Ex PW1/A. A perusal of Ex PW1/A would reveal that the application for registration of the trade-mark ‘Jagran’ was made on 10.12.2004. Barring this printout from the website of the Ministry of Commerce and Industry,

no other certificate of Registration of Trade Mark 'Jagran' has been adduced or proved on record. No certificate of registration qua the trade-mark 'Jagran' has been produced or proved by the plaintiff.

46. In any case, the trade-mark 'Jagran' would not have been registered prior to 10.12.2004 i.e. the date of application. On the other hand, a perusal of Ex DW1/1 viz., Certificate of Registration of Trademark issued to defendants would reveal that the Trademark of the defendants 'Krishi Jagran' was accorded the Certificate of Registration of Trademark in 1996 itself. On this ground alone, the plaintiff is disentitled to sue the defendants for alleged infringement of its trade-mark. Thus, issue no 1 is decided in favour of defendants and against the plaintiff.

ii. ~~Whether~~ *Issue no 2. Whether the defendants are the prior user of the mark/word KRISHIJAGRAN than the plaintiff use of mark/word JAGRAN and its effect?*

47. The doctrine of prior use recognizes that prior user of a Trademark holds superior and exclusive rights over the registered proprietor. It was thus contended that the plaintiff used the trade-mark 'Jagran' first in point of time and therefore, its rights take precedence over the rights of the defendants. This contention too cannot be countenanced. The reasons are not far to seek.

48. Plaintiff had contended that they were publishing and had goodwill since 1942. however, they could not adduce any documentary evidence to substantiate this claim. Only Ex PW1/A was sought to be proved, which is nothing but a printout from the website of Ministry of Commerce and industry, and is inconclusive qua the goodwill or long usage of the Trademark by the plaintiff. Plaintiff has not led any evidence to establish goodwill in the market. No documents giving sales figures, coverage etc have been

49. On the other hand, the defendants had categorically asseverated that they were in the business of publishing since 1996. Ex DW1/2 viz., edition of Krishi Jagran for September, 1996, Ex DW1/3, Hindi edition of Krishi Jagran for October, 1996 etc substantiated this contention. Furthermore, Ex DW2/3 are documents which reflect various correspondences and business dealings by defendants, thereby lending credence to the fact that they were in business since 1996. Ex DW2/4 viz., an agreement with IFFCO further corroborates the existence and presence of defendants.

50. defendants had also endeavored to demonstrate that even the plaintiff was aware of the existence of defendants since 2004 as plaintiff and defendants had entered into a joint collaboration in 2004. An application under Order XI Rule 12 CPC was filed seeking direction to plaintiff to produce original extracts of newspapers of plaintiff company which

would reflect such details. However, plaintiff failed to adduce such documents and an adverse inference ought to be drawn against them. In this context, it would be apt to refer to *Principal , SV Doshi Girls High School (supra)*, It was held as thus:

*“10. The question of burden of proof would lose its importance when the question of onus of proof is taken up for consideration. In a given case, the basic burden may be upon a particular party and if the party does all what is required under the law, then the basic burden would stand discharged and the burden would be shifted upon the other side to disprove what has been said by the first party. It cannot be disputed nor can be argued that the official records are always available with the Department. A workman, if appears in the Court, enters the dock and makes a statement on oath that he had worked for 240 days in a year and the statement is not denied by the other side, or not controverted either, then the said statement can be taken to be correct. In the present matter, the workmen did work for 240 days and if that be so, the burden shifted and the burden was on the other side to disprove the allegations made by the workman. The best of the evidence would be the records which are regularly maintained by the Department. The Department cannot be allowed to say that even if the basic burden was discharged, they were not required to produce the records which they possessed. If the best evidence is kept back or is not produced in the Court, then the Court would be justified in drawing an adverse inference against the party which could produce the best evidence in the Court.”*

51. Further, in *Angshuman Mandal* (supra) the Hon'ble Court held as thus:

*16. Whether or not the appellant had stolen a march while gaining admission in the training course by producing a fake mark-sheet could have been cleared if only the application form submitted by him together with copy of the mark-sheet annexed to it was produced. Mr. Panda has conceded that despite vigorous search in the institute, such application could not be traced out. Copy of the mark-sheet that the appellant had submitted along with the application form, as required, has also not been produced. What has been produced is a copy of mark-sheet attested on December 16, 2003 by the principal of the institute. Mr. Panda could not explain as to how the principal could attest such mark-sheet without looking at the original which has never been produced. Without looking at the original, which admittedly was not before the principal at the time of such attestation, the exercise of attestation is totally flawed. There is no direct evidence of the appellant having sought to rely on the mark-sheet suggesting that he had obtained 659 marks in the school final examination. The best piece of evidence was available with the institute. Failing to trace out the best piece of evidence tantamounts to withholding the same for consideration and an adverse presumption can legitimately be drawn that had the same been produced, it would have operated to the detriment of the institute. On consideration of all the above factors, we are inclined to the view that there was no material before the director to arrive at a finding that the appellant had secured admission in the institute taking the aid of a fake mark-sheet.*

52. Significantly, in *Ibrahim Uddin* (supra) the Hon'ble Court observed as thus:

*“16. Thus, in view of the above, the law on the issue can be summarised to the effect that, issue of drawing adverse inference is required to be decided by the court taking into consideration the pleadings of the parties and by deciding whether any document/evidence, withheld, has any relevance at all or omission of its production would directly establish the case of the other side. The court cannot lose sight of the fact that burden of proof is on the party which makes a factual averment. The court has to consider further as to whether the other side could file interrogatories or apply for inspection and production of the documents etc. as is required under Order XI CPC. Conduct and diligence of the other party is also of paramount importance. Presumption or adverse inference for non-production of evidence is always optional and a relevant factor to be considered in the background of facts involved in the case. Existence of some other circumstances may justify non-production of such documents on some reasonable grounds. In case one party has asked the court to direct the other side to produce the document and other side failed to comply with the court's order, the court may be justified in drawing the adverse inference. All the pros and cons must be examined before the adverse inference is drawn. Such presumption is permissible, if other larger evidence is shown to the contrary.”*

53. By burking such documents, viz., original copies of newspapers extracts of the plaintiff's own publication, an adverse presumption has to be drawn qua the plaintiff.

54. It was also asserted by plaintiff that defendants had affirmed in his affidavit filed along with the application for trademark registration that defendants had been using the work mark Krishi Jagran since 2016. On this score, Ld Counsel for defendants had contended that this was a typographical mistake. There is merit in the submissions of the Counsel inasmuch as the certificate of registration of the magazines of defendants bear the year 1996 and therefore it has to be assumed that the affidavit bore a wrong date.

55. Further, the only solitary instance of infringement that was brought to the fore that testimony of PW-2 Afsana Khatun wherein she stated that she was told to tell customers of Krishi Jagran that Krishi Jagran was a sister concern of Dainik Jagran. However, as rightly pointed out by Ld Counsel for defendants that her testimony stood demolished in light of the fact that she was a disgruntled employee, who immediately started working with a competitor FASAL KRANTI. Significantly, she could not remember the names of those clients who had asked whether Krishi Jagran was part of Dainik Jagran. Moreover, merely because the words Dainik Jagran were inserted in a release order qua Krishi Jagran, that alone would not furnish evidence of infringement or passing off, particularly in light of the fact that a revised/release order was issued promptly, after the discrepancy was brought to the notice of Approach Advertising and Exhibitors Ltd.

56. It is also significant to note that strangely in the prayer clause, the plaintiff has not asked for prayer a specific of decree of infringement or passing off qua the defendants despite claiming to have filed a suit u/s 134 and 135 of the Trademark Act.

It was also brought to the fore that as per Ex DW2/4 there are 57.258 publications in India with the title in which the word 'Krishi' is used and there are 178 publications in which the word 'Jagran' is used out of which the majority belongs to entities other than the plaintiff. Krishi Jagran is a magazine whereas Dainik Jagran is newspaper. The magazine is published on a monthly basis, whereas the newspaper has daily editions. Naturally, there would be a substantial difference in the price of the same. The nature of the defendant's publication is specific i.e. agriculture and agriculture related articles whereas the plaintiff's publication covers a broader spectrum covering sports, entertainment, news, politics, health, lifestyle etc. Moreover, PW-1 Durgesh Kumar had argued that only Khet Khalihan is an agricultural publication of the plaintiff company. But he was not aware since when the company was publishing Khet Khalihan. No evidence could be adduced qua the factum of registration of Khet Khalihan with the Registrar of Newspapers of India. The only cause, if any, that the plaintiff would have with Krishi Jagran, could be if Krishi Jagran has affected the sales etc. of

Khet Khalihan or has cause confusion or deception in the minds of readers. No instances of the confusion of deception could be established by the plaintiff. Nor has Khet Khalihan been registered as a magazine or has a trademark. Drawing analogy, if the word 'Times' is registered as a Trademark or if an entity claims to be a prior user of the word 'Times', newspapers like 'Times of India', 'Hindustan Times' 'Navbharat Times' etc would cease to be in publication. That cannot be the intention of the legislature. Law suits like the present one give an inference that the same was filed with an intention to curb the fundamental right of speech and expression of the defendants herein, and such practice has to be deprecated. Therefore the issue no 2 is decided against the plaintiff and in favour of defendants.

*Issue no 3: Whether the plaintiff is entitled for decree of permanent and mandatory injunction against the defendants as prayed for ?*

*Issue no 4 : Whether the defendants have by their acts, passed off their goods as those of the plaintiff and thus violated the plaintiff's common law rights?*

*Issue no 5 : Whether the plaintiff is entitled to a decree of delivery of impugned goods of the defendants finished as well as unfinished ?*

*Issue no 6 : Whether the plaintiff is entitled to a decree of rendition of account of the profits earned by the defendants on account of sale of impugned goods?*

*vii. Issue no 7 : Whether the plaintiff is entitled for damages as prayed for?*

58. The above five issues are being dealt with collectively.

59. In view of the findings given under head issue no 1 and issue no 2, issue no 3,4 5, 6 and 7 are also decided against the plaintiffs and in favour of defendants.

X. RELIEF.

60. The above discussion makes it pellucid that the plaintiff's action exhibits a malafide intention to perhaps extirpate a competitor, by means which are contrary to the law. In this

context, it would be apt to refer to the seminal observations made in *Dabur India* (supra) wherein the Hon'ble Court held as thus:

*“36. Mr. Singh asserts that the recipe of Chyanwprash requires the inclusion of sugar in large portion and relies upon the ayurvedic texts to contend that sugar is an essential ingredient and the Plaintiff’s product cannot thus be denigrated because it contains sugar. This to my mind is a pedantic and is an extremely narrow view. defendants is not portraying that Chyanwprash is a harmful product. The focus is only on one of the ingredients. defendants claims that the merits and benefits of Chyanwprash can be absorbed and drawn from an alternative which does not contain sugar. Its selling point is that it does not contain sugar. defendants would like this to be the focal issue in the advertisements in print and TVC. The Courts should not stifle innovation and fair competition. If the defendants claims that its product solves the needs of the present times where public is shunning sugar based products, it should be allowed to inform the public about the same. It claims that sugar free product achieves the same level of efficacy without the harmful or negative effect of sugar, if any. The Court should not restrain the defendants, merely because the stakeholders in the industry feel that advertisement is hurting them. The impending challenge faced by the Plaintiff on account of defendants’s product cannot be allowed to be achieved by muffling or smothering the message of the defendants. The Courts should not be asked to suffocate the competitors on a perceptive understanding of the competitor that the message delivered through the advertisements is disparaging. defendants’s right of free speech needs to be weighed upon and protected. defendants*

*should be allowed to use marketing skills and sell its products, as long as they are not disparaging. In the present case, the cautionary messages of sugar content cannot be termed as disparagement.”*

61. Ergo, in view of the above *in extenso* discussion, the suit stands dismissed.
62. For the public ignominy meted out to the defendants, and the fact that they were made to contest an unnecessary and protracted litigation, the plaintiff is directed to pay a cost of Rs 10 Lakhs to the defendants.
63. In view of the above dismissal, any injunction granted, has also to be reversed. In *Orient Papers Industries Ltd Vs Jayanta Lamp Industries Pvt Ltd 2011 (3) HN 444*, it was held as thus:

*“32. We have already pointed out that the law relating to passing off enables a prior user of a trademark to get an order of injunction restraining a subsequent user of the same name in respect of a different type of business under certain circumstances (Sony Kabushiki Kaisha) (supra), but it does not approve grant of injunction against a prior user of the same name at the instance of a subsequent user in respect of a different business when apart from trade name, no other distinctive features of the product of the subsequent user has been alleged to have been adopted by the prior user.*

*33. We, therefore, find that the learned Single Judge in granting the order of injunction against the defendants did not follow the well-settled principles which were required to be followed in this type of a case and it is a clear case of wrong exercise of discretion causing irreparable injury to the defendants being restrained from manufacturing*

*and selling EFL and fluorescent tube lights in its own trade name in spite of the fact that it is the prior user of the name and apart from name, no case has been made out that the defendants had adopted any other distinctive features of the goods sold by the plaintiff. Moreover, as pointed out earlier, the business turnover of the defendants is much higher than that of the plaintiff.”*

64. In view thereof, considering irreparable injury that has been caused to the defendants despite them being prior users of the Trade Mark, order of injunction dated 29.09.2020 hereby stands vacated.

65. File be consigned to record room after necessary

compliance  
Pronounced in the Open Court  
on this 25<sup>th</sup> May, 2026

Arul  
Varma

Digitally signed  
by Arul Varma  
Date:  
2026.05.25  
16:47:28  
+0530

(ARUL VARMA)

DISTRICT JUDGE-02/SOUTH,  
SAKET COURTS/NEW DELHI