



\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

**Reserved on: 24<sup>th</sup> January, 2024**

**Pronounced on: 23<sup>rd</sup> April, 2024**

+ **CS(COMM) 542/2018 & I.As. 8255/2004, 14930/2013**

HEIFER PROJECT INTERNATIONAL ..... Plaintiff

Through: Ms. Julien George and Mr. Arjun  
Gadhoke, Advocates.

versus

HEIFER PROJECT INDIA TRUST ..... Defendant


Through: None.

**CORAM:**


**HON'BLE MR. JUSTICE SANJEEV NARULA**

**JUDGMENT**

**SANJEEV NARULA, J.**

1. This lawsuit, instituted by Heifer Project International (Plaintiff), seeks *inter-alia* permanent injunction against Heifer Project India Trust (Defendant No. 1) and Late Mr. Pran K Bhatt (Defendant No. 2), in his capacity as the Managing Trustee of Defendant No. 1. Through this legal action, the Plaintiff aims to safeguard their intellectual property rights in the mark “HEIFER”, leaping cow device mark “”, oval logo-



“”, by preventing the Defendants from using any trademarks and logos that are deceptively similar or nearly identical to their own.




PLAINTIFF'S CASE

2. The Plaintiff's case as put forth by counsel for the Plaintiff, can be summarised as follows:


2.1. Plaintiff was incorporated in the year 1953 and is an Arkansas non-profit corporation under the Arkansas Nonprofit Corporation Act of 1993. Plaintiff was originally incorporated under the laws of the State of Indiana, USA, in 1953 and is the surviving corporation following a merger between HPI, Inc. and Heifer Project International, Inc. in the year 1997. Its mission is to alleviate hunger, poverty, and environmental degradation by: (i) supporting people in sustainable development and the stewardship of the environment through responsible management of animal resources and training in farming with livestock; (ii) local resource development assistance; (iii) educating people about the root causes of hunger and poverty; (iv) developing veterinary services and training in animal nutrition; and (v) conducting any other nonprofit activity that is not inconsistent with law. Plaintiff has conducted several projects in over 51 countries including India and carries out various charitable projects including but not limited to projects in the nature of disaster rehabilitation, environmental protection and peace, etc.

2.2. The Plaintiff adopted a unique and uncommon word "Heifer" in the year 1953 as its corporate name and identity for its activities and continued to use the same continuously and uninterruptedly, as or in connection with, its trade names, corporate name, and trademarks. Subsequently, the Plaintiff coined and adopted two trademarks namely "Heifer International" and "Heifer Project" in relation to its activities. Furthermore, they adopted a



device mark of a leaping cow “”, which was placed in the left-hand top corner of the “Heifer International” trademark and a pictorial mark having the shapes of several animals namely a cow, a goat etc. in an





oval device “”, which was also used jointly with “Heifer International” (collectively referred to as ‘Plaintiff’s marks’).

2.3. At the time initiation of this lawsuit, all five of these marks were registered with the United States Patent & Trademark Office (US PTO), affirming Plaintiff’s legal claim to their use. However, the Court now notes that three of the five registrations bearing registration no. 2159113, 2235711 and 158216 now stand cancelled.

2.4. That apart, the copyright for these artistic creations is held by Plaintiff, extending globally and also within India. To further strengthen its trademark portfolio, Plaintiff also successfully registered four ‘Heifer’ trademarks with the Indian Trademark Office, ensuring comprehensive protection of its intellectual property. The said marks were granted registration during the pendency of the present suit. Details of the said registrations are as follows:



Sl No.	Trademark	Application no.	Class	Date of registration	User details
1		1271907	36 and 41	11.03.2004	31.12.1986
2	HEIFER INTERNATIONAL	1271908	36 and 41	11.03.2004	31.12.1986
3	HEIFER PROJECT	1271011	36 and 41	08.03.2004	01.01.1986
4		1271012	36 and 41	08.03.2004	01.01.1986

2.5. Plaintiff's engagement in widespread promotional activities, through the dissemination of advertisements on websites, brochures, pamphlets, and catalogues both internationally and domestically, underscores the extensive use and recognition of these trademarks. The operation of the website, [www.heifer.org](http://www.heifer.org), further exemplifies Plaintiff's proactive measures in establishing and maintaining its presence within the digital domain, thereby reinforcing its trademark rights.

2.6. Furthermore, since its inception, Plaintiff has achieved global recognition, including in India, through its distinctive trade/service marks "Heifer," "Heifer International," and "Heifer Project," along with its logo marks. This recognition is attributed to the successful completion of numerous projects both within India and internationally, which has



culminated in the marks acquiring substantial reputation and goodwill worldwide.

2.7. The Plaintiff, has a longstanding history of significant contributions in India, having been actively involved in funding, fundraising, and educational services since 1955. The specifics of the projects undertaken and financed by the Plaintiff in India are detailed in paragraph no. 9 of the plaint. It is important to note that after decades of contributing to various initiatives, the Plaintiff resolved to streamline their activities and programs through a dedicated Indian entity. Consequently, Defendant No. 1, the Trust, was established with the Plaintiff's support on 24<sup>th</sup> December 1992. Nonetheless, it is essential to recognize that the Plaintiff also spearheaded several projects in India independently prior to 1992.

2.8. The "Heifer Project" mark, along with the other Heifer marks and logos, has become synonymous with the high-quality ethical programs, and teachings in various countries, including India. The mark "Heifer Project" has evolved to not only symbolize the high-caliber initiatives undertaken by the Plaintiff but also to become synonymous with Plaintiff's corporate identity itself.

2.9. Defendant No. 1, ("Defendant Trust"), a non-profit charitable trust, was formed on 24<sup>th</sup> December, 1992, with its headquarters located in New Delhi. It operates under the name 'Heifer Project - India Trust,' but is more widely recognized as 'Heifer Project India.' In 1997, the Late Mr. Pran Bhatt, Defendant No. 2, became associated with the Defendant Trust, assuming the role of 'Country director- India' and was simultaneously appointed as the 'Managing Trustee'. Prior to this engagement, Defendant No. 2 was employed by the Plaintiff, with their professional relationship



governed by a series of contracts periodically executed and renewed by Plaintiff. However, the contractual relationship between Plaintiff and Defendant No. 2 ceased on 30<sup>th</sup> June, 2003, when Plaintiff opted not to renew their contract.

*PLAINTIFF'S ALLEGATION: INFRINGING ACTIVITIES AND CONTRACTUAL BREACH BY THE DEFENDANTS*

2.10. The Plaintiff granted Defendant Trust permission to utilize the “Heifer” and “Heifer Project” names and associated logo, even prior to the formation of the Defendant Trust. This authorization was contingent upon a broad agreement that Defendant Trust could employ these trademarks and logo if they operated in a manner that was harmonious and cooperative with Plaintiff’s mission and facilitated Plaintiff’s activities within India. This cooperative arrangement included Plaintiff’s commitment to funding specific projects in India through Defendant Trust. In return, Defendant Trust was obligated to regularly report on the progress and financial details of the projects financed by the Plaintiff. A fundamental aspect of the agreement was the explicit understanding that the Defendant Trust would utilize the “Heifer” and “Heifer Project” trademarks within India, strictly in accordance with the Plaintiff’s instructions, thereby functioning as a licensee of the Plaintiff. This stipulation underscored the Trust’s responsibility to represent the Plaintiff’s interests in India, ensuring that the use of the trademarks conformed to the Plaintiff’s guidelines and objectives.

2.11. In 2002, Defendant No. 2 began to deviate from his contractual obligations under his employment agreement, showing a marked reluctance to adhere to Plaintiff’s basic requirements for reporting and accountability. Despite numerous discussions addressing these concerns and Defendant No.



2's assurances to rectify the issues, he ultimately failed to fulfill his responsibilities. As a consequence, his contract to serve as the Country Director for India was not extended beyond 30<sup>th</sup> June, 2003. Nevertheless, Defendant No. 2 maintained his role as Managing Trustee of Defendant Trust, during which he directed the Trust's operations in a manner that was both whimsical and arbitrary.

2.12. In light of the aforementioned issues, and with its image, reputation, and goodwill at stake, the Plaintiff, on 9<sup>th</sup> October, 2003, notified Defendant Trust, through a letter that it would be suspending all project funding in India. Additionally, Plaintiff explicitly instructed Defendant Trust to cease the use of the "Heifer Project" trademark, trade name, and logo. This instruction was based on the terms of the agreement which stipulated Defendant's right to use these marks was contingent on continuous funding from the Plaintiff for projects in India and satisfactory financial reporting of such projects by the Defendant. Defendants were further instructed to return all materials, cash, and other properties belonging to Plaintiff. Despite these instructions, Defendants persisted in their use of the marks "Heifer" and "Heifer Project" and associated logo/ oval device mark containing the




pictures of several animals (collectively referred to as 'Impugned marks'). As a result of this defiance, Plaintiff was compelled to issue a Cease-and-Desist notice on 11<sup>th</sup> March, 2004, through their lawyer to Defendant Trust. In turn, the Defendant Trust, responding *via* their attorneys on 17<sup>th</sup> April, 2004, presented numerous arguments and firmly declared their intention to continue utilizing the "Heifer Project" mark in India.




2.13 The Defendants' continued utilization of Plaintiff's marks evidences a clear and dishonest intention to infringe upon these marks. This deceitful strategy is ostensibly designed to attract subscriptions, donations, or grants from the public and various organizations, leveraging Plaintiff's established reputation for their benefit. Defendants' refusal to cease the use of these trademarks constitutes a flagrant infringement attempt, directly undermining the goodwill and reputation that Plaintiff has meticulously built over the years. The *malafide* intent behind these actions is further highlighted by Defendant No. 2's move to register the "Heifer" trademark in his own name, an act that starkly illustrates the dishonesty in their operations. This duplicity is blatantly reflected in their use of Plaintiff's marks on their letterhead and other stationery materials, including the word 'Heifer' and the



oval mark '  ' on its letterhead, all of which are employed in a manner that is unequivocally in bad faith and *malafide*. Defendants are dishonestly using the said stationery and other basic materials as that of Plaintiff. Such use is completely illegal and unlawful and constitutes infringement of trademark and copyright of Plaintiff's marks. The said letterhead evidences the use of the trademark "Heifer Project" and the oval



device mark "  " on the Defendant Trust's letter head despite issuance of letters dated 09<sup>th</sup> October, 2003 and 11<sup>th</sup> March, 2004 by Plaintiff. The above-said facts establish, beyond any doubt, the *malafide*





intention of Defendants to continue its use of the Plaintiff's mark and logo in their operation.

2.14. Defendants are infringing the registered trademarks of Plaintiff and illegally usurping the enormous goodwill and reputation built by Plaintiff since 1953. In particular and more specifically, Defendants are guilty of the following acts: (a) continuous usage of the trademarks and logos of Plaintiff by Defendants after the expiry of the contract and withdrawal of permission to use the said marks; and (b) conveying to the public that Defendants are in some manner still connected and/ or are a part of / with Plaintiff. Thus, the actions of Defendants clearly constitute infringement of trademark and copyright. Defendants do not have any right to use or apply for the registration of the Impugned marks or have any right to carry on any business activities thereunder.

*DEFENSE OF DEFENDANTS, PER WRITTEN STATEMENT*

3. The Defendants articulated several defences in their written statement, asserting reasons for the dismissal of the suit, which are summarized as follows:

3.1 Defendants challenged the validity of the institution of the present suit and sought dismissal on the ground of lack of proper authorization in favour of the signatory who instituted the suit on behalf of the Plaintiff. Central to their argument is the Power of Attorney, dated 20<sup>th</sup> September, 2004. This document, which facilitated the initiation of this lawsuit, expressly authorized Mr. Pankaj Srivastava to represent the Plaintiff in the legal capacity. A careful examination of this Power of Attorney reveals that Mr. Srivastava was appointed as Plaintiff's advocate, a role that is in conflict with the legal standards that prohibit an advocate from serving



simultaneously as a ‘Constituted Attorney’ for an entity. Based on this interpretation, the lawsuit, as filed, lacks legal standing and should therefore be deemed not maintainable.

3.2 Defendant Trust was formed by three like-minded individuals namely Brig. Brij Chandra, Mr. J. B. Singh and Mr. Hanuman Prasad. Immediately upon formation of the Trust, the Defendant Trust applied for Foreign Contribution (Regulation) Act, 1976 (‘FCRA’) license to the Ministry of Home Affairs, Government of India. Attention of this court is drawn to the rules and regulations in regard to grant of FCRA license, which clearly stipulates that such a certificate shall only be granted to registered Indian NGOs, trusts and other organizations which receive independent foreign contributions. The Income-Tax Department granted 100% exemption to Defendant Trust after scrutinizing their accounts. Right since the inception of Defendant Trust, Plaintiff and the said Trust have worked in co-operation with each other with the clear understanding that both entities are distinct and separate entities. The mutual co-operation and understanding extended to collection of funds by Plaintiff from donors internationally for and on behalf of Defendant Trust. It was clearly understood that all donations concerning India were to be sent to Defendant Trust, who could also independently collect donations again for utilization of the funds for charitable purposes in India alone.

3.3. While initially these funds were transferred to the Defendant Trust, over a period of time, a large part of these funds started getting siphoned elsewhere and did not reach the Defendant Trust. This eventually became the cause of discontentment between the two parties. Nonetheless, the manner in which activities have been conducted in the past has given rise to



the situation where the donor community, desirous of donating funds for Indian projects, associates the name ‘HEIFER’ with the Defendant Trust. Even for the donation to Plaintiff outside India, for projects in India, the donor expects the funds to reach the Defendant Trust.

3.4. Furthermore, the word ‘HEIFER’ has not been coined by Plaintiff. On the contrary, ‘Heifer’ is a common dictionary and descriptive word, which means a “young cow” and is thus incapable of being used as a trademark by Plaintiff.

3.5. The Plaintiff’s website wrongly displays that they are working in India, when in fact they have no operations in India whatsoever. Moreover, when the Plaintiff has taken a stand before this Court that they have severed relationship with the Defendants, this stand ought to be communicated to the donors as well.

3.6. Additionally, the Plaintiff has never worked in India on a continuous or regular basis. Its activities in India, if any, have at best been sporadic and intermittent, which could not entitle it to claim any user or rights as alleged in the instant suit. This is supported by the fact that the Plaintiff has failed to disclose the amounts raised and disbursed by it for its alleged activities in India.

3.7. It is denied that the Defendant Trust was established with the support of Plaintiff. It is pertinent to note that the Plaintiff has failed to provide the particulars of the alleged support extended by it towards the formation of the Trust. Clause 4 (v) of the Trust Deed, as highlighted by Plaintiff, lays no obligation over Defendant Trust except to work in harmony and co-operation with Plaintiff as is evident from a mere reading of the said provision.



COURT PROCEEDINGS

4. On the basis of the pleadings and supporting documents, following issues were framed on 27<sup>th</sup> July, 2009:-

- “1. Whether this Hon’ble Court has the territorial jurisdiction to try and entertain the present suit? OPD
2. Whether the plaint has been signed, verified and instituted by a competent person? OPD
3. Whether the Defendant No. 1 has infringed the trade mark, trade name and corporate name HEIFER of the Plaintiff? OPP
4. Whether the Plaintiff is entitled to the relief of permanent injunction or mandatory injunction as prayed for? OPP
5. Whether the Plaintiff is entitled to the relief of rendition of accounts and damages and if so for what period and for what amount? OPP”

5. The Plaintiff examined Mr. Mahendra Lohani, Plaintiff Witness 1 [PW-1]. Defendants produced oral evidence of Late Mr. Pran Bhatt, Defendant Witness 1 [DW-1].

6. On 25<sup>th</sup> March, 2022, Defendants’ counsel informed the Court that Defendant No. 2 had passed away. The subsequent order dated 14<sup>th</sup> December, 2022 records as follows:

- “1. As already noted in the order dated 25<sup>th</sup> March, 2022, Defendant No. 2 - Mr. Pran K. Bhatt, who was a Managing Trustee of Defendant No. 1 - Heifer Project India Trust, is deceased. Ms. Nancy Roy, counsel for Defendants, states she neither has details of legal representatives- of the deceased Defendant nor particulars of any other trustee(s) of the Defendant No. 1. Ms. Roy, accordingly, seeks and is granted a discharge from representing the Defendants.
2. In light of the above, Mr. Arjun Gadhoke, counsel for Plaintiff, seeks time to take instruction as to further course of action.
3. Re-notify on 12<sup>th</sup> April, 2023.”

Although no death certificate confirming Defendant No. 2’s death was placed on record, the Plaintiff did not contest the aforesaid statement and, in



fact, sought time to decide their next course of action considering this development. Additionally, there has been no attempt by the Plaintiff to implead his legal representatives, as evidenced by the Court records. Given that no legal representatives were brought in to represent Defendant No.2, the suit is considered abated against him. Nonetheless, the facts and evidence are also being analyzed against him as he was the managing trustee of Defendant Trust.

7. After the discharge of counsel for Defendants, there has been no representation on behalf of Defendant No.1 since 12<sup>th</sup> April, 2023. Accordingly, the Court has heard arguments of the Plaintiff and considered the oral and documentary evidence led by both parties and has proceeded to determine the following issues:

ISSUE NO. 1

*‘Whether this Hon’ble Court has the territorial jurisdiction to try and entertain the present suit? OPD’*

8. The Plaintiff has asserted that this Court has territorial jurisdiction as Defendant Trust’s registered office is located in Delhi, where both Defendants are engaged in business activities. It is also contended that the cause of action arose in Delhi, as the Defendants are conducting their infringing activities under the Impugned marks within this territory. Consequently, this Court is vested with territorial jurisdiction under Section 20(c) of the Civil Procedure Code (‘CPC’) to adjudicate the instant lawsuit. Conversely, the Defendants, in paragraph 20 of their joint written statement to the amended plaint, challenge the territorial jurisdiction of this court. They argue that the Delhi office of Defendant Trust was relocated to Noida



in 2002, prior to the institution of this suit. They also assert that no cause of action has accrued within this Court's jurisdiction.

9. The original letter dated 24<sup>th</sup> March, 2004 [Ex P-9 (Admitted Document)] evidences usage of Plaintiff's marks by the Defendants on its letterhead. This document also makes a specific mention of Defendant's Delhi address and does not specify any Noida Address. The relevant portion of the document is reproduced hereunder for ease of reference:



During the cross-examination recorded on 22<sup>nd</sup> April, 2015, Late Mr. Pran K Bhatt, Defendant No. 2, [DW-1], admitted that the above document [Ex P-9] is the letterhead of Defendant Trust as evidenced from the following response to the question put to him:

*“Q. Is the impugned trade mark HEIFER being used right now?*

*A. Heifer is using so many trademarks. Please clarify.*

*Q. (The witness is shown Ex. P-9 with the following question):*

*Is this your letterhead?*

*A. It is correct that the same is Defendant No. 1's letterhead. The letterhead is of 2004.”*

10. The reply dated 17<sup>th</sup> April, 2004 [Ex P-8 (Admitted Document)] which was sent on behalf of Defendants, in response to the Cease and Desist Notice dated 11<sup>th</sup> March, 2004 issued by Plaintiff, categorically states as under:-



*“We write on behalf of and on instructions of our client Heifer Project India Trust of the address Post Box: 4244, Greater Kailash, New Delhi - 110048, India.”*

[Emphasis Supplied]

Furthermore, the said document reveals that a copy of the reply was marked to the Delhi address and there is no mention of any Noida address:

*“Mr. Pran Kishore Bhatt,  
Managing Trustee  
Heifer Project India Trust,  
Post Box:4244, Greater Kailash  
New Delhi-110048”*

11. Besides, during cross-examination conducted on 22<sup>nd</sup> April, 2015, DW-1 – Late Mr Pran Bhatt, deposed that Defendant Trust operated three bank accounts, which contained the funds collected under the infringing mark “HEIFER”, and those were located within the territorial jurisdiction of this Court. The said deposition is as follows:

*“Q. How many Bank Accounts were there in the name of Defendant No. 1 and details thereof?*

*(Learned counsel for the Defendants objects that the question is irrelevant because it does not pertain to the issues involved for consideration).*

*(Observation of CC: To be decided by the Hon'ble Court).*

*A. The Defendant No. 1 had three bank accounts, (i) Canara Bank, SDA Area, New Delhi; (ii) Canara Bank, East of Kailash, New Delhi; and (iii) Bank of Baroda, East of Kailash, New Delhi.*

*Q. When were these accounts closed?*

*A. I do not remember the exact dates but it was somewhere in 2004 and 2005.*

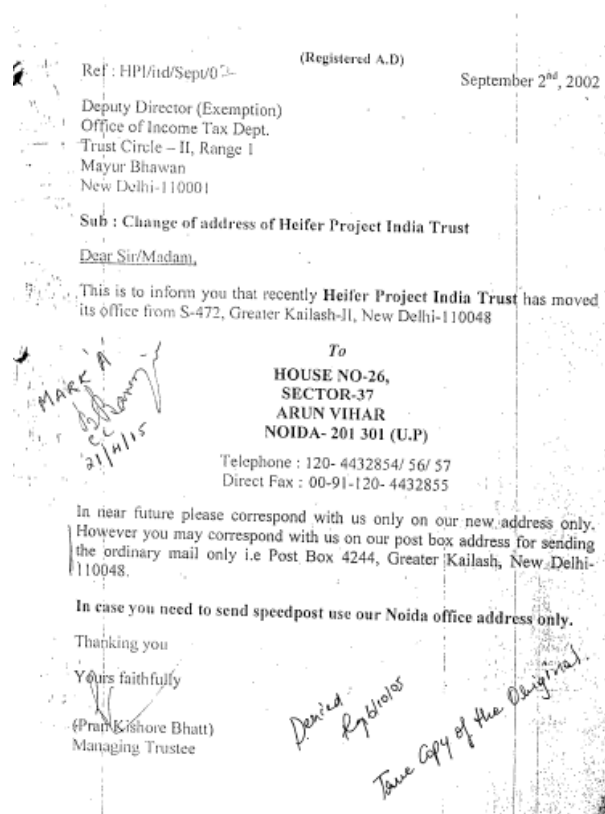
*Q. Were all funds received as donations by Defendant No. 1 deposited into the abovementioned bank accounts?*

*A. Yes.”*

12. The Defendants have in their joint written statement to the amended plaint, claimed that Defendant Trust’s address was shifted to Noida in the year 2002 and to prove the same, reliance had been placed on a copy of the official communication issued to the Income Tax Department on 2<sup>nd</sup>



September 2002 along with the postal receipt to prove the dispatch. The said communication marked as 'Mark A' reads as follows:



Although in the above communication, it has been stated that in the near future Defendants desire to be corresponded on their new address, however, at the same time it is also mentioned “*However, you may correspond with us on post box address for sending the ordinary mail only i.e., Post box 4244, Greater Kailash, New Delhi.*” This indicates that the Defendants continued their business activities in Delhi and had not ceased their activities in Delhi.

13. Thus, based on the evidence presented by the parties, it is proved that both Defendants were still operating from Delhi even after their alleged shifting of office to Noida in 2002. The infringing use of the trademark “HEIFER” occurred within Delhi, within the territorial jurisdiction of this court. Thus, the cause of action for infringement falls within the jurisdiction





of this Court. Accordingly, Issue No.1 regarding territorial jurisdiction is resolved in favour of the Plaintiff and against the Defendant Trust.

ISSUE NO. 2

*‘Whether the plaint has been signed, verified and instituted by a competent person? OPD’*

14. The suit is signed, verified and instituted by Mr. Pankaj Srivastava, who is duly authorised to do under Powers of Attorney dated 20<sup>th</sup> September, 2004 and 31<sup>st</sup> August, 2005. In their joint written statement to the amended plaint, the Defendants deny his authority and raise following objections:

“Preliminary submissions and objections

*19. The suit is further vitiated and liable to be dismissed on the short ground that by way of the aforesaid Power of Attorney dated September 20, 2004, on the basis of which the present suit has been filed, the said Mr. Pankaj Srivastava was authorized to act in the capacity of Advocate of the Plaintiff. This fact stands proved by a mere perusal of the impugned power of attorney. It is submitted that it is settled law that an Advocate cannot act in dual capacity of an Advocate as well as a Constituted Attorney of an entity. The suit as filed is thus not maintainable.”*

xxx

xxx

xxx

Reply on Merits

*2. The averments in the corresponding paragraph are wrong and vehemently denied. The submissions made in paragraph 19 of the preliminary objections may kindly be read as part and parcel of this paragraph. In view thereof, it is vehemently denied that Mr. Pankaj Srivastava is duly authorized by a Power of Attorney of the Plaintiff or that he is competent to institute and maintain the present proceedings for and on behalf of Plaintiff and to sign and verify pleadings, applications and documents in the present case.”*

15. In light of the Defendants’ assertions, the burden to prove the issue in question was assigned to the Defendants. During the trial, the Defendants’ reinforced their objection and contested the authorization purportedly granted to Mr. Pankaj Srivastava. The Defendants’ witness, Late Mr. Pran



Bhatt, submitted an affidavit as evidence (referenced as DW-1/A). In paragraphs 3 to 6 of this affidavit, he specifically alleges that the lawsuit was initiated without the authorization from the Plaintiff by two individuals, described as “busybodies,” namely Mr. Pankaj Srivastava and Mr. Mahendra Lohani.

16. The Defendants’ objections focused specifically on the validity of the Power of Attorney granted to Mr. Srivastava, rather than his familiarity with the facts of the case or his competence. Beyond mere denials in the written statement and contesting the authority of Mr. Pankaj Srivastava and Mr. Mahendra Lohani, the Defendants have not discharged the burden of proof to resolve the issue in their favour. However, given that this matter pertains to the initiation of the lawsuit, the court must also determine whether the Plaintiff has adequately shown that the suit was validly instituted.

17. In the instant case the evidence presented reveals that the Plaintiff, established in 1953, functions as a non-profit corporation under the Arkansas Non-Profit Corporation Act of 1993. Mr. Pankaj Srivastava’s authority to initiate this lawsuit stems from Powers of Attorney dated 20<sup>th</sup> September, 2004, and 31<sup>st</sup> August, 2005, which were executed by Ms. Jo Luck. Although these POAs, purportedly executed by Ms. Jo Luck, have conclusively not been proved, yet there exists ample evidence on record to affirm that the suit was validly initiated. Notably, Ms. Jo Luck’s role as the CEO within the Plaintiff’s organization was confirmed during the cross-examination of the Defendants’ witness on 22<sup>nd</sup> April, 2015 as highlighted by the following responses:

*“Q. Do you know who is Ms. Jo Luck?”*

*A. Yes.*



*Q. How do you know her in professional capacity?*

*A. She was CEO (Chief Executive Officer) of Heifer international USA.*

18. In trial, Mr. Mahendra Lohani (Vice President of Asia/South Pacific Programs, Heifer Project International) was specifically authorized to testify in this case under Plaintiff's Directive No. 2011-010 [Ex. PW-1/A], highlighting the Plaintiff's awareness of the filing and its continued interest in prosecuting the lawsuit. The Defendants' argument is therefore a baseless endeavour to confuse and detract from the factual basis of the case. This is further established during the cross-examination of the Late Mr. Pran K Bhatt (Defendant No. 2) recorded on 22<sup>nd</sup> April, 2015 which reads as follows:

*“Q. In your evidence affidavit you have stated at page 3 para 4 that Mr. Mahendra Lohani has no authorization from the Plaintiff whatsoever. Would the document at pages 161-162 of the main file constitute appropriate authorization from the Plaintiff?*

*(Observation of CC: This document can be exhibited subject to decision by the Hon'ble Court, as the same is not admitted document).*

*A. The said document is of 11.01.2011, whereas the present suit was instituted in the year 2004 and as such the said authorization cannot be said to be proper authorization for the reasons mentioned in my affidavit Ex. DW-1/A particularly in paragraphs 3 and 4.*

*Q. In your affidavit you have stated that the suit has been instituted by Mr. Pankaj Srivastava and Mr. Mahendra Lohani and not the Plaintiff, while in subsequent paragraphs you further state that as per Mr. Lohani's evidence he does not know Mr. Srivastava. How can two persons who do not know each other jointly institute a suit against the Defendants?*

*A. I do not know. It is incorrect to state that the Plaintiff has properly instituted the suit, giving appropriate authorization to Mr. Pankaj Srivastava. It is also incorrect to state that appropriate authorization was given to Mr. Mahendra Lohani for appearing as a witness in the present proceedings.”*



Moreover, it is important to recognize that the suit was filed under the Plaintiff's name, the employee of Plaintiff -Mr. Lohani has under specific directive from the Plaintiff also testified on their behalf. Given these facts, the only reasonable conclusion is that the suit was filed and pursued with the Plaintiff's full knowledge and authorization. It is also logical to infer that Mr. Pankaj Srivastava was authorized to sign the plaint. Keeping in mind the facts, conduct and evidence discussed above, the Plaintiff's intent in pursuing the suit is evident. Consequently, the Defendants' technical objection to challenge the validity of the institution of the lawsuit is untenable, affirming that the suit was validly instituted and appropriately ratified by the Plaintiff.

19. We must now also address the Defendants' contention that the suit filing is improper because it was initiated based on an invalid Power of Attorney dated 20<sup>th</sup> September, 2004. They argue that this document authorized Mr. Pankaj Srivastava solely to act as the Plaintiff's advocate—a fact that is verifiable by reviewing the said Power of Attorney itself. Furthermore, they argue that it is a well-established principle that an advocate cannot simultaneously serve as both an advocate and a Constituted Attorney for the same party. Consequently, they contend that Mr. Srivastava's action of filing this suit while serving in these dual capacities is legally untenable.

20. The court finds the Defendants' contention unconvincing. There is no established legal prohibition against an advocate serving as an attorney for the purpose of filing a lawsuit. Moreover, it is important to note that the Power of Attorney dated 20<sup>th</sup> September, 2004, explicitly authorized Mr. Pankaj Srivastava to act on behalf of the Plaintiff in the capacity of a



constituted attorney, not as their advocate. The Plaintiffs have appointed M/s King Stubb & Kasiva, represented by Ms. Navina K., as indicated in the Vakalatnama, to serve as their legal counsel. This clear distinction confirms that Mr. Srivastava's role was appropriately confined to that of a constituted attorney only, thereby rendering the Defendants' argument legally untenable.

21. To conclude, the Plaintiff has successfully proved that the Plaint was signed, verified, and instituted by a competent person. This issue is thus resolved in favour of the Plaintiff and against the Defendant Trust.

### Issue No. 3

*'Whether the Defendant No. 1 has infringed the trademark, trade name and corporate name HEIFER of the Plaintiff? OPP'*

22. The crucial question in this case is whether the Defendant Trust has infringed upon the Plaintiff's trademark, trade name, and corporate identity, "HEIFER." The Plaintiff has proved its status as the registered proprietor of trademarks with registration numbers 1271907, 1271011, 1271908, and 1271012 in India. The certificates of registration for these marks have been duly proved by Plaintiff's witness (PW1) as Exhibits PW-1/16 to PW-1/19. The pleadings and documents mentioned above unequivocally establish the Plaintiff as the rightful owner and proprietor of the "HEIFER" trademark, trade name, and corporate identity, encompassing logos and other associated marks. Furthermore, in the cross-examination of DW-1 on 23<sup>rd</sup> April, 2024, Defendant No.2 confirmed Plaintiff's registration of the "HEIFER" trademark within Indian jurisdiction, highlighting the Defendants' lack of challenge with regards to the Plaintiff's rights over its registered marks in India. Additionally, DW-1 acknowledged that the Defendants had not filed



any cancellation petition against the Plaintiff's trademark registration, thereby affirming the Plaintiff's unchallenged ownership of the trademark rights. The relevant evidence recorded on 23<sup>rd</sup> April, 2015, as borne from the testimony of DW-1 is as follows:

*“Q. Are you aware that the mark HEIFER, along with other trademarks of the Plaintiff are registered within the Indian Jurisdiction?”*

*A. Yes, only the trademark 'HEIFER' from 2008 or 2009.*

*Q. Have you filed any cancellation petition against the registration of the trademark HEIFER in favour of the Plaintiff?”*

*A. As per my knowledge, Defendants have not filed any cancellation petition till today.”*

23. We must take note of one of the objectives of Defendant Trust, as clarified in Clause 4 of its Trust Deed, was *“To work in harmony and cooperation with “Heifer Project International” organisation and facilitate its working in India”* [Ex. PW-4 (Admitted document)]. The aforementioned objective indicates a broad understanding between the Plaintiff and the Defendant Trust for the grant of permissive use of the trademark “Heifer” and “Heifer Project” and logo. Specifically, this entailed the Defendant Trust working in harmony and cooperation with the Plaintiff and facilitating its working in India.

24. Given the uncontested trademark rights of the Plaintiff and the objectives outlined in Defendant No. 1's Trust Deed, it is clear that the Defendant Trust's use of the Plaintiff's trademarks without explicit permission constitutes an infringement of those trademark rights. The credibility of the defence presented by Defendant No. 2, on behalf of Defendant Trust, is significantly undermined by DW-1's admissions during cross-examination. DW-1 acknowledged his lack of awareness regarding the



origins of Defendant Trust's adoption of the Impugned marks. The cross examination conducted on 21<sup>st</sup> April, 2015 and 22<sup>nd</sup> April, 2015 revealed DW-1's limited involvement with Defendant Trust:

*“Q. How are you connected with Defendant No. 1 right now?”*

*A. I joined the Defendant No. 1 Trust in the year 1997 as Programme Coordinator and was also simultaneously appointed as Trustee of Heifer Project India Trust along with three others who were already there as trustees. Till this case is pending, I am connected with the Defendant No. 1. Presently, Defendant No. 1 is not in existence as far as programme activities are concerned in the field.*

*Q. When was Defendant No. 1 established?*

*A. In the year 1992. Somewhere in November-December, 1992 but I do not remember exactly, because I was not with them.*

*It is incorrect to say that since I was not a part of Defendant No. 1 from 1992 to 1997 I am not the proper person to depose on the actual meaning of the clauses given in the Trust Deed dated 24.12.1992 exhibited as Exhibit P-4.*

*Q. Are you aware of how Defendant No. 1 came to adopt the trademark Heifer Project India?*

*A. No.*

*Q. Are you aware how Defendant No. 1 came to adopt the logo 'Globe with the shapes of animals'?*

*A. No.”*

25. Although the Defendants have relied upon an FCRA license — which is only issued to registered Indian NGOs, trusts, and other organizations receiving foreign contributions — as proof of their autonomy, there is sufficient evidence on record to show that a relationship with the Plaintiff was established from the very inception of the Defendant Trust and the same continued for a stretch of time. The evidence produced during trial, also proves that Defendant No. 2 was an employee of Plaintiff. The Defendant Trust was sending financial reports and accounts to Plaintiff for the funds



received by it. Defendant No. 2 had often referred to Plaintiff as being the Headquarters managing the affairs of Defendant Trust, thereby evidencing the supervisory power of Plaintiff over the Defendants. The relevant portion of the cross examination of DW-1 dated 22<sup>nd</sup> April, 2015 is reproduced for ease of reference:

*“Q. When were you appointed as Country Director for India by the Plaintiff?”*

*A. The first contract of appointment was in the year 1998. (Vol. Before being appointed as Country Director, I was appointed as Managing Trustee by the Trust).*

*Q. What were your duties as Country Director?*

*A. To deal and implement livestock based projects with their partners in India.*

*Q. Please see document at page 12 of the Plaintiffs List of Original Documents, is this the contract by which you were appointed as Country Director in the year 1998?*

*A. Yes, I was appointed for 3 years, from 1998 to 2001, but it did not contain any salary details.*

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*Q. Was your salary being paid by the Plaintiff?*

*A. Only salary was paid by the Plaintiff, while the rest was coming from different projects funded partially by Plaintiff as well as other donors.*

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*Q. Please see Ex. P-10 was this status report No. 4 shared with you requiring you to fulfill certain accountability issues in the year 2003?*

*A. This document was shared with me in USA and not in India. It is incorrect to say that I did not comply with the accountability requirements mentioned in Ex. P-10.*

*Q. As Country Director were you required to give complete accountability reports of the funds received from the Plaintiff?*

*A. Yes, and we gave it from time to time.*

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*Q. What were your reasons for applying for the post of Country Director with the Plaintiff?*

*A. I did not directly apply for the post of Country Director but I was promoted as Country Director from Program Coordinator of Heifer Project India Trust.*

*Q. What were your reasons for applying for the post of Program Coordinator with the Plaintiff?*

*A. I did not apply with the Plaintiff. I applied with the Trust.*

*Q. Are you saying that you were promoted from the post of Program Coordinator with Defendant No. 1 to Country Director with Plaintiff?*

*A. Yes, on the request of Plaintiff.*

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*Q. Is it not true that your removal from the post of Country Director as per Ex. P-6 was due to your inability to seek prior approvals from the Plaintiff regarding projects to be implemented within India among other issues of accountability?*

*A. No. There were other reasons, which I want to directly address to the Court.*

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*Q. You have stated previously that progress and financial reports were duly given to the Plaintiff on various occasions. Please clarify as to on an estimate in a yearly basis how many such reports were sent by you on behalf of Defendant No. 1?*

*A. Defendant No. 1 used to send two reports in a year of only those projects which were funded by Plaintiff only. Defendant No. 1 used to share activities funded by other donors too.*

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*Q. Previously when asked if Mr. Mahendra Lohani was present in your interview for the position of Program Coordinator you stated that there were three persons in the interview board and that the interview was for +the post of Country Director but they appointed you as Program Coordinator. Please explain how could the trustees of Defendant No. 1 take your interview for the post of Country Director?*

*A. I do not know. It is incorrect to say that I am contradicting myself. It is also incorrect to say that I am unable to explain because in actuality Defendant No. 1 was functioning under the control and directions of the Plaintiff. It is further incorrect to say that only if the Defendants complied*



*with the directions of the Plaintiff the Defendants were allowed to use the Plaintiff's trademark.”*

26. Thus, even if it is accepted that the Defendant Trust is an independent legal entity, this does not negate the fact that a relationship existed between the Plaintiff and Defendant Trust. This relationship could be characterized as that of a licensor and licensee, specifically concerning the lawful use of the Plaintiff's trademarks.

27. That apart, during the deposition on 22<sup>nd</sup> April, 2015, Late Mr. Pran K. Bhatt, on behalf of Defendants, provided critical admissions that highlight their lack of proprietary claims over the “HEIFER” trademark and logo. Mr. Bhatt conceded that he was unaware of the process through which Defendant Trust adopted the “HEIFER” trademark and the logo depicting a globe with animal shapes. When questioned about his status as the proprietor of the “HEIFER” trademark, Mr. Bhatt unequivocally denied any ownership, thereby rendering the application for the trademark's registration untenable under section 18 of the Trademarks Act. His rationale for filing and subsequently not pursuing the trademark registration application bearing no. 1236903— is clear acknowledgment of his lack of proprietorship over the “HEIFER” mark— further proving Defendants' admission of the Plaintiff's exclusive rights. Thus, Late Mr. Bhatt's attempt to register the “HEIFER” mark in his personal name reveals Defendants' *malafide* intentions to usurp Plaintiff's trademark rights. The following exchange during the cross-examination Late Mr. Pran Bhatt on 22<sup>nd</sup> April, 2015 crystallizes this point:

*“Q. Are you the proprietor of the trademark HEIFER?  
A. No.*



*Q. Then how could you move an application for registration of the mark HEIFER before the Trademarks Registry?*

*A. I moved the application but did not pursue the same.*

*Q. Why did you move the aforementioned application when you were not the proprietor of the mark HEIFER?*

*A. Since I was not proprietor of the mark, I did not pursue the application.”*

28. Defendants have also admitted to taking funds from the general public even after the termination of their relationship with the Plaintiff. On 23<sup>rd</sup> April, 2015, DW-1 admitted this fact, as follows:

*“Q. Has Defendant No. 1 received any funds from other donors, after your termination from the Plaintiff s organization on 09.10.2003 for any projects, if so, please specify?*

*A. Yes, from individuals, within India. I do not remember the how much funds, but it was for Orissa project.*

*Q. What was the Orissa Project about?*

*A. Empowerment of tribal women for various livelihood activities.*

*Q. How many tribal women were you successful in empowering?*

*A. I do not remember.*

*Q. You have mentioned previously that funds were received from other donors, who were these donors and for which projects were these funds received?*

*A. Care India (DFID funded project) for the Orissa Project during the super cyclone. Bothar Ireland, for Rajasthan Project.*

*Q. Are you aware of the full form of the abbreviation mentioned above DFID?*

*A. Yes. Department of Foreign International Development and it is a part of British High Commission, U.K.*

*Q. Are you aware that both the donors mentioned by you enjoy association with the Plaintiff much prior to the existence of Defendant No. 1. Both Bothar and DFID are global partners of the Plaintiff?*

*A. No.”*

29. The legal defences presented by Defendants cannot withstand scrutiny once it is factually established that their role was limited to that of a licensee for the use of Plaintiff’s marks. The admitted document marked Exhibit P-9, a letter dated 24<sup>th</sup> March, 2004, provides compelling evidence of the



Defendants' infringement. This letter, which prominently features the Plaintiff's marks, was clearly used by the Defendants to solicit contributions from various donors. Such usage, of nearly identical trademark used for identical services subsequent to express revocation of permission, constitutes clear infringement. This unauthorized and illegal appropriation of the Plaintiff's registered trademark also demonstrates the Defendants' disregard for the Plaintiff's intellectual property rights.

30. Indeed, the present case is a classic instance of *'triple identity.'* The Impugned trademarks are nearly identical, as are the areas of operation, and the segments of the public they target. Therefore, the Defendants' use of these nearly identical and deceptively similar marks is certain to cause deception and confusion among the general public. Besides, the Defendants have persistently engaged in activities that unlawfully exploit Plaintiff's reputation and goodwill. Even after the termination of their contractual relationship and the explicit withdrawal of rights to use the Plaintiff's trademarks and logos, Defendants have unauthorisedly continued use of their deceptively similar marks. This defiance not only violates the agreement but also misleads the public and the relevant stakeholders regarding the nature of Defendants' affiliation with Plaintiff. Defendants have further compounded their infringement by falsely representing their relationship with Plaintiff. They have insinuated to the public and stakeholders that they remain affiliated or integrally connected with Plaintiff, thereby undermining Plaintiff's brand/ trademark integrity and causing confusion about its unique identity in the marketplace. Defendants lack any legal right or justification to the use of contested marks, or applying



for their registration of identical marks for conducting any business activities.

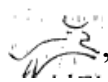

31. Thus, it becomes unequivocally clear that Defendants have engaged in the infringement of Plaintiff's trademark, trade name, and corporate identity, "HEIFER." This infringement contravenes Plaintiff's established legal rights governing trademark usage rights, particularly in cases where prior authorization has been explicitly withdrawn.<sup>1</sup> Defendants' continued utilization of the "HEIFER" mark, post-revocation, constitutes a clear violation of Plaintiff's intellectual property rights, affirming the untenability of their defence.

32. To conclude, the Plaintiff has proved that the Defendant Trust has infringed the trademark, trade name and corporate name HEIFER of the Plaintiff. This issue is thus resolved in favour of the Plaintiff and against the Defendant Trust.

#### ISSUE NO. 4

*'Whether the Plaintiff is entitled to the relief of permanent injunction or mandatory injunction as prayed for? OPP'*

33. For the aforesaid reasons, Plaintiff is entitled to a permanent injunction restraining Defendant Trust, and anybody acting on their behalf from infringing the trademarks, tradename and corporate name of the Plaintiff or any part thereof and/or any other name which is deceptively similar to the trademark "HEIFER and/ or the leaping cow device mark

“” and/or the oval logo- “”,



ISSUE No. 5

*‘Whether the Plaintiff is entitled to the relief of rendition of accounts and damages and if so for what period and for what amount? OPP’*

34. The Plaintiff in their written note of submission dated 22<sup>nd</sup> January, 2024 has prayed for compensatory and punitive damages to the following effect:

*“The Plaintiff humbly prays before this Hon’ble Court to also award punitive damages and legal costs, over and above any compensatory damages that are due in favour of the Plaintiff, due to the deliberate and egregiously illegal acts of infringement of the Defendants.”*

Furthermore, the Plaintiff, in the prayers made in the amended plaint has also sought for rendition of accounts.

Section 135(1) of the Trademarks Act, 1999 allows one to ‘either’ seek damages ‘or’ an account of profits and not both. While damages are a matter of right, the account of profits is an equitable remedy, and the Court has a discretion whether or not to grant it.<sup>2</sup> Furthermore, the relief of rendition of accounts is granted only in exceptional cases.<sup>3</sup> The Plaintiff has failed to make a case as to why the present suit is an exceptional case which deserves the relief of rendition of accounts. Furthermore, the Plaintiff has not led any empirical evidence of profit that the Defendants may have made on account of the use of the Impugned marks.<sup>4</sup> For the foregoing reasons, in the opinion of the court, this is not a fit case for the grant of relief of rendition of accounts. However, this Court cannot gloss over the Defendant Trust’s

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<sup>1</sup> *Morgardshammar India Limited and Ors. vs. Morgardshammar* 2012 SCC OnLine Del 4945

<sup>2</sup> *Titan Industries v. Nitin P. Jain and Anr.*, (2005 SCC OnLine Del 1311)

<sup>3</sup> *E-merge Tech Global Services P Ltd. v. MR Vindhyasagar and Anr.* in CS No. 258/2020

<sup>4</sup> *Burberry Ltd v. Aditya Verma*, 2022 SCC OnLine Del 882 . *Tata Sons Limited v. Rama Nerusu* 2010 SCC OnLine Del 430



conduct which has been deliberate and egregiously illegal in use of the Impugned marks after the revocation of the permission by the Plaintiff. Thus, the Plaintiff is entitled to award of nominal damages and legal costs.

RELIEFS

35. In light of the aforementioned facts and circumstances, the suit is decreed in favour of the Plaintiff and against the Defendant Trust in the following terms: -

A. A decree of permanent injunction restraining the Defendant Trust, or any other person acting for and on their behalf from infringing the Plaintiff's marks by using Plaintiff's trademarks HEIFER and/ or the Leaping Device





“” / Oval Logo “” or any other deceptively similar trademark;

B. A decree of a mandatory injunction directing the Defendant Trust or anyone acting on their behalf to:

i. hand over to the Plaintiff all goods, visiting cards, letter heads, packaging and promotional material, catalogues, stationery and any other material whatsoever bearing the trademark HEIFER and/ or the Leaping



Device “”/ Oval Logo “” and/ or any other trademark deceptively similar to the Plaintiff's trademarks, trade name and corporate;



ii. recall all the products, marketing, promotional and advertising materials bearing the Impugned marks or any other trademark deceptively similar to the Plaintiff's trademarks, trade name and corporate name "HEIFER", amounting to unauthorised use/trademark infringement of the Plaintiff's marks and hand it over to the representatives of the Plaintiff;

iii. to deliver to the representatives appointed by the Plaintiff for destruction of all products, labels, signs, prints, packages, moulds, visiting cards, letter heads and advertisements in its possession or under its control bearing the Plaintiff's marks.

C. The Plaintiff is awarded nominal damages in the amount of Rs. 3,00,000/-. The Defendant Trust is hereby held liable for this sum and directed to pay it to the Plaintiff.

D. Further, the Plaintiff is found entitled to actual legal costs recoverable from the Defendant Trust, in terms of the Commercial Courts Act, 2015 and Delhi High Court (Original Side) Rules, 2018 read with Delhi High Court Intellectual Property Division Rules, 2022. Plaintiff shall file their bill of costs in terms of Rule 5 of Chapter XXIII of the Delhi High Court (Original Side) Rules, 2018 on or before 15th May, 2024. As and when the same is filed, the matter will be listed before the Taxing Officer for computation of costs.

36. Decree sheet be drawn up.

37. Disposed of, along with all pending applications.

**SANJEEV NARULA, J**

**APRIL, 23 2024**

*d.negi*