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

+ CS (OS) 1694/2007

FREEMANS MEASURES PVT. LTD.

..... Plaintiff

Through

versus

FREEDOM MEASURES PRIVATE LIMITED AND ANR..... Defendants

Through: Mr.Sushant Singh, Adv.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

ORDER

% **28.03.2016**

1. There were two aspects with respect to reliefs for claim in the present suit. Two reliefs which are sought by the plaintiff as is argued before this Court are with respect to the trade mark/wordmark 'FITA' with respect to measuring tapes being manufactured by the plaintiff. The second aspect is the claim of plaintiff that the defendant is passing off its goods as that of the plaintiff because the name of the defendant's company M/s. Freedom Measures Private Ltd. is deceptively similar to the name of the plaintiff's company M/s. Freemans Measures Pvt. Ltd.

2. It is trite that a descriptive word used as trade mark with respect to product cannot be given exclusively to one manufacturer. The word 'FITA' in normal Hindi usage means a measuring tape, and therefore, to give the plaintiff exclusive right to use the word 'FITA' would be to violate well-settled principles with respect to grant of injunction in trademark matters.

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One judgment with respect to courts not granting trademark rights to descriptive words is the Division Bench judgment of this Court in the case of ***Marico Limited Vs. AgroTech Foods Limited. 2010 (174) DLT 279:2010 (44) PTC 736 (Del)***. Clearly therefore the plaintiff would have no legally valid case for claiming exclusive trademark rights over the wordmark 'FITA'. This Court was at the stage of passing of the judgment so far as the dismissal of the suit of the plaintiff claiming exclusive right to the trademark 'FITA' is concerned when the counsel for the plaintiff has sought adjournment to take instructions.

3. So far as the issue of passing off is concerned, *prima facie*, I do not find any deceptive similarity between the name of the defendant No.1 company Freedom Measures Pvt. Ltd. with the plaintiff company's name Freemans Measures Pvt. Ltd. The issue of passing off is argued with respect to the deceptive similarity between the word Freedom in the name of defendant No.1 company as compared with the word Freemans in the name of plaintiff company. In my *prima facie* opinion, there cannot be deceptive similarity between the word 'Freedom' and 'Freemans' more so because goods are sold not only because of the company's name which is written on the carton or the packaging, but the goods of both the plaintiff and defendant will be sold with reference to their trademarks. The name of a company indicates only the name of the manufacturer of the goods under a particular trademark. Even for the arguments sake if we take that the name of a company is a trademark for an issue of passing off to arise, in the facts of the present case, I do not believe that there could exist any deceptive similarity between the word 'Freemans' of plaintiff and 'Freedom' of the defendants as

used in the respective names of the companies being the plaintiff and defendant No.1.

4. At this stage, learned counsel for the plaintiff seeks time to take instructions.

5. List on 31st March, 2016.

VALMIKI J. MEHTA, J

MARCH 28, 2016/neelam