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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ CS(COMM) 1253/2018, IA No.16159/2018 (u/O XXXIX R-1&2  
CPC) and IA No.16160/2018 (u/O XXVI R-9&10 CPC).

NAOS

..... Plaintiff

Through: Mr. Chander M. Lall, Sr. Adv. with  
Mr. Afzal B. Khan and Mrs. Suhrita  
Majumdar, Advs.

versus

BIODERMA SOLUTIONS & ORS.

..... Defendants

Through: Mr. N. Mahabir, Adv.

**CORAM:**

**HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

**ORDER**

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**05.12.2018**

1. The plaintiff has sued the four defendants i.e. (i) Bioderma Solutions, (ii) Kirankumar Harshadrai Dubal, (iii) Bhavnaben Malavbhai Shah, and (iv) Aesthetix Cosmeceuticals, for permanent injunction restraining infringement of the plaintiff's marks 'BIODERMA', 'SENSIBIO', 'ATODERM' and 'SEBIUM' and passing off by the defendants of their goods as that of the plaintiff by the defendant no.1 using 'BIODERMA' as dominant part of its trade name and domain name and for ancillary reliefs.

2. The suit came up first before this Court on 28<sup>th</sup> November, 2018 when, though a *prima facie* case was found in favour of the plaintiff and the plaintiff was also found to be suffering irreparable loss and injury and balance of convenience was also found in favour of the plaintiff and it was further observed that the *mala fides* of the defendants are evident from the counter statement of the defendant no.1 to the opposition filed by the plaintiff to the application of the defendant no.1 for registration of its mark,

but *ex parte* injunction not granted owing to the plaintiff admittedly having Knowledge since June, 2017 of the defendant no.1 having applied for registration.

3. The counsel for the defendants no.1&4 appears and states that the defendants no.2&3 are partners of defendant no.1 and since he is representing defendant no.1, the defendants no.2&3 would also be bound by the orders in this suit.

4. The counsel for the defendants to hand over *Vakalatnama* to the Court Master in the course of the day.

5. The counsel for the defendants states that the defendants have no objection to suffering a decree for permanent injunction as sought in prayer paragraph 78 (i)&(ii) of the plaint dated 24<sup>th</sup> November, 2018 and a decree for mandatory injunction as sought in para 78 (iii) of the plaint, but needs three months' time to implement the order and seeks permission to use the existing trade name for a period of three months. With respect to the domain name, it is stated that the defendants shall, within this week, suspend the operation thereof.

6. The senior counsel for the plaintiffs, on instruction is satisfied with the aforesaid and states that in such event, the plaintiff will not press for ancillary reliefs claimed.

7. A decree is accordingly passed, in favour of the plaintiff and jointly and severally against the defendants, of (a) permanent injunction in terms of prayer paragraph 78 (i)&(ii) of the plaint dated 24<sup>th</sup> November, 2018, to be effective w.e.f. 5<sup>th</sup> March, 2019; (b) mandatory injunction in terms of prayer paragraph 78 (iii) of the plaint dated 24<sup>th</sup> November, 2018, to be

implemented by 12<sup>th</sup> December, 2018; and, (c) delivery, in terms of prayer paragraph 78(iv) of the plaint dated 24<sup>th</sup> November, 2018, of any of the goods remaining with the defendants under the impugned marks. The parties to bear their own costs.

8. Decree sheet be drawn up.

9. A certificate entitling the plaintiff to refund of 50% of the court fees paid on the plaint be issued in the name of the advocate for the plaintiff as sought, and to be handed over to the advocate.

*Dasti* under signature of Court Master.

**RAJIV SAHAI ENDLAW, J**

**DECEMBER 05, 2018**

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