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

+ CS(COMM) 718/2019, IA No.18253/2019(u/O.XXXIX R.1&2 CPC)

BRIO BLISS LIFE SCIENCE PVT. LTD. Plaintiff

Through: Mr. Deepak Kumar Mahapatra, Adv.

Versus

NISHU MEDICAL STORE & ORS. Defendants

Through: Mr. Kumar Sumit with Mr. Chirag
Gupta & Mr. Rajendra Beniwal,
Advs. for D-2.
Mr. Neeraj Gulati, Partner D-4.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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18.02.2020

1. The plaintiff instituted this suit against defendants no. 1, 2, 3 and 4 namely (i) Nishu Medical Store; (ii) Vatave Pharma India Pvt. Ltd.; (iii) Infalife Pharma Inc; and, (iv) Indian Medicare, for permanent injunction to restrain the defendants from passing off their goods/food supplements as that of the plaintiff by adopting the same mark as of the plaintiff i.e. COGNICARE and for ancillary reliefs.

2. The suit came up first before this Court on 23rd December, 2019, when though the summons thereof were ordered to be issued, but no *ex parte* relief claimed granted.

3. On the next date i.e. 15th January, 2020, only the counsel for the defendant no.2 Vatave Pharma India Pvt. Ltd. appeared and the suit,

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insofar as against the defendant no.2, decreed. However, the counsel for the defendant no.2 continues to appear.

4. Besides the counsel for the defendant no.2, only Mr. Neeraj Gulati claiming to be one of the partners of defendant no.4 Indian Medicare, appears today and states that the defendant no.4 had sourced the goods under the infringing mark from defendant no.3 Infalife Pharma Inc and has already returned all the goods and will not deal in goods under the said mark in future.

5. The said Mr. Neeraj Gulati on enquiry, whether has any proof of identity, has handed over his Aadhar Card to the Court Master who confirms the photograph thereon to be of the person present. A copy of the said Aadhar Card has been made and be tagged to Part-I File and the original be returned to Mr. Neeraj Gulati.

6. Mr. Neeraj Gulati Partner of defendant No.4 states that the defendant no.4 Indian Medicare has no objection to a decree for permanent injunction being passed.

7. The counsel for the plaintiff states that the documents supplied by the said Mr. Neeraj Gulati show the return of the goods to one Sh. Balaji Distributors.

8. Mr. Neeraj Gulati states that Sh. Balaji Distributors and Infalife Pharma Inc are both operated by one Mr. Rajesh and are at the same address.

9. Though the Registry has reported that the plaintiff, after 15th January, 2020 did not take any steps for issuance of fresh notice to the unserved defendants but the counsel for the plaintiff states that an affidavit of service

of defendants no.1, 3 and 4 has been filed on 13th February, 2020. He states that in the said affidavit, it has been stated that the defendant no.1 Nishu Medical Store and defendant no.3 Infalife Pharma Inc have been served.

10. There is no reason to disbelieve the counsel.

11. None appears for the defendants no. 1 and 3 and no written statement has been filed.

12. The defendants no. 1 and 3 are proceeded against *ex parte*.

13. The counsel for the plaintiff states that subject to a decree for permanent injunction as sought being passed, the plaintiff will not pray for any other reliefs.

14. The plaintiff, on the basis of averments in the plaint and documents filed therewith, has made out a case for grant of permanent injunction, as sought.

15. A decree is accordingly passed, in favour of the plaintiff and against the defendants no. 1, 3 and 4, namely (i) Nishu Medical Store; (iii) Infalife Pharma Inc; and, (iv) Indian Medicare, of permanent injunction in terms of prayer paragraph 51(a) of the plaint dated 11th December, 2019, leaving the parties to bear their own costs.

Decree sheet be prepared.

RAJIV SAHAI ENDLAW, J.

FEBRUARY 18, 2020

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