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

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Date of decision: 06.08.2021

+ CS(COMM) 600/2019

EXXON MOBIL CORPORATION

.....Plaintiff

Through

Ms. Anuradha Salhotra, Mr. Sumit
Wadhwa & Ms. Saugat Khurana,
Advocates

Versus

M/S XCEL AUTOMOTIVES PVT. LTD. &
ANR.

..... Defendants

Through

Mr. Anirudh Sarin, Advocate for
defendant No.1 with Shri Om Maurya
(Director)
Mr. Rohan Ahuja & Mr. Mizan
Siddqui, Advocates for defendant
No.2

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T (oral)

The hearing has been conducted through video conferencing.

I.A.9717/2021 (for early hearing)

1. By this application, plaintiff is seeking early hearing of the main petition.
2. Notice issued.
3. Mr. Anirudh Sarin and Mr. Rohan Ahuja, Advocates, accept notice on

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behalf of defendant No.1 and 2 respectively and submit there is no objection if the present application is allowed.

4. For the reasons stated in the application, it is allowed and with the consent of counsel for the parties, the main petition is taken up for hearing today itself. The date of 23.08.2021 already fixed in the suit is accordingly cancelled.

5. Application is disposed of.

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3. In view of order passed in I.A.9717/2021, the date already fixed i.e. 23.08.2021 is cancelled and the suit is taken up for hearing today itself.

4. The present suit for permanent injunction, infringement of trade mark, passing off and account of profits under the Trade Marks Act, 1999 has been filed by the plaintiff, who claims to be proprietor of "Pegasus device" marks



in India since the year 1942.

5. According to plaintiff, defendants are using the mark  in respect of business of manufacturing/trading of lubricants and greases, which is blatant imitation of plaintiff's registered trade mark. Plaintiff

claims that the defendants have deliberately adopted the mark



to cause confusion amongst the general public and consumers with a view to passing of their goods as those of plaintiff. Thus, plaintiff has prayed for grant of permanent injunction against the defendants from using the device



or any other device identical or deceptively similar to plaintiff's pre-registered device.

6. Learned counsel for contemnor No.1 submits that in terms of order dated 24.03.2021, Shri Om Maurya, Director of contemnor No.1, has tendered an unconditional apology by way of affidavit dated 16.04.2021 in terms mentioned in Para-3(a) to Para-3(j) thereof.

7. Contemnor No.1 is present before the Court through video conferencing and he has tendered an unconditional apology before this Court and prays that the contempt proceedings against him be brought to an end.

8. Learned counsel for plaintiff submits that plaintiff is satisfied with the terms mentioned in the affidavit dated 16.04.2021 tendered by Shri Om Maurya, Director of contemnor No.1 and submits that the same be taken on

record and the present suit be decreed in terms thereof. It is further submitted that in terms of Para-3(g) of the aforesaid affidavit, defendant/contemnor has to return / remove and destroy all product, stickers, labels, brochures, leaflets, banners, hoardings, visiting cards, invoices, bill

books and / or any other articles bearing the trade mark  in the presence of a representative of the plaintiff and this Court pass any directions in respect thereof.

9. Learned counsel for defendant No.1 undertakes to abide by the term mentioned in Para-3(g) of the aforesaid affidavit and submits that defendant No.1 shall cooperate the plaintiff in this regard.

10. In view of the above, the affidavit dated 16.04.2021 tendered by Shri Om Maurya, Director of contemnor No.1 pursuant to order dated 24.03.2021, is taken on record and his unconditional apology is accepted. He shall remain bound by the terms and conditions mentioned in the affidavit. The contempt proceedings initiated against contemnor No.1 pursuant to order dated 30.09.2020 are hereby brought to an end and the suit is decreed in terms mentioned in Para-3(a) to Para-3(j) of affidavit dated 16.04.2021 of Shri Om Maurya, Director of contemnor/defendant No.1.

11. At this stage, learned counsel for plaintiff insists for imposition of

costs upon defendant No.1 on the ground that despite imposition of cost of Rs.50,000/- in previous round of litigation, plaintiff has to again come to the Court for the same relief against this defendant. A direction is also sought to defendant No.2- IndiaMART InterMESH Ltd. to not solicit the business of defendant No.1 and refund of 50% of court fees.

12. Learned counsel for defendant No.2 submits that they have removed the list pertaining to products offered by defendant No.1 and in future also they will remove any such listings on intimation from the plaintiff.

13. The aforesaid undertaking furnished on behalf of defendant No.2 is taken on record and it is directed that if any further infringement is brought to the notice of defendant No.2 against defendant No.1 by the plaintiff or its subsidiaries through e-mail, defendant No.2 shall remove the infringed contents within 36 hours of the said intimation.

14. Keeping in view that this is second round of litigation between plaintiff and defendant No.1 and the cost imposed in the previous litigation has not proved deterrent against defendant No.1, this Court deems it appropriate to impose cost of Rs.50,000/- upon defendant No.1, which shall be paid to plaintiff within two weeks from today.

15. Since the subject matter of the suit is brought to an end prior to

commencement of evidence, this Court finds that under the provisions of Section 16A of the Court Fees Act, the plaintiff is entitled to refund of 50% of the court fee paid in respect of this suit. Registry is directed to issue necessary certificate/ authorization in favour of the plaintiff/authorized representative to seek refund before the appropriate authorities.

AUGUST 06, 2021
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(SURESH KUMAR KAIT)
JUDGE

