



OA No.713 of 2022

WEB CO **KRISHNAN RAMASAMY, J.,**

This application has been filed to grant an order of temporary injunction restraining the respondents its men, partners, agents, distributors, successors in business, dealers, stockists, wholesalers, retailers, shopkeepers, proprietors, representatives and assignees and any other person acting on its behalf from manufacturing, selling, distributing, advertising the registered trade mark of the third applicant Taiyo with similar or deceptively similar trade dress, get up or packaging, which in any manner would be considered to be similar to the label, get up or packaging of the third applicant, pending disposal of the arbitration proceedings.

2. Today, when the matter is taken up for hearing, the learned counsel for the applicants would submit that since the respondents filed an affidavit before this Court, stating that they have not been using the colour



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'red' in any trademarks and produced the entire catalogue of their products and even in respect of item 12 also, the respondents assured that they would change the said trademark to shades of orange. Therefore, in view of the affidavit filed on behalf of the respondents, the learned counsel would submit that there would be no necessity to refer the dispute to arbitration. The learned counsel also produced a Memo, dated 23.12.2022 and prayed this Court to record the admitted position of the respondents and close the petition.

3.The learned counsel for the respondents would submit that they have not at all been using any colour "red" in any of their trade marks as contended by the applicants and they are acting strictly in compliance with the MOU dated 19.12.2012 and supplementary MOU dated 29.06.2019. In this regard, the learned counsel for the respondents has filed a common affidavit dated 14.12.2022 stating that they have not been using the above mentioned trade marks as stated in paragraph no.5 i.e., "TAIYO DISCOVERY" in "red" colour and they have been using the



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trade mark TAIYO PLUSS DISCOVERY in various colours to distinguish its products in the market.

4. The said common affidavit dated 14.12.2022 filed on behalf of the respondents is taken on record.

5. The learned counsel for the applicants has submitted that it would be suffice to record the admissions made by the respondents which are extracted in paragraph no.4(i) & (ii) of the memo dated 23.12.2022. The learned counsel for the respondents has also fairly agreed for the same.

6. Accordingly, paragraph no.4(i) & (ii) of the memo dated 23.12.2022 is extracted as follows:

"4(i) That the respondents do not intend to use the colour "red" in any of their trademarks in their products in compliance with the MOU dated 19.12.2012 and supplementary MOU dated 29.06.2019.



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(ii) That the respondents do not intend to use the colour "red" in any of their trademarks in their social media pages, marketing material and exhibition displays as per MOU dated 19.12.2012 and supplementary MOU dated 29.06.2019.

7. Recording the above, this Original Application is disposed of.

23.12.2022

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