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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
 + CS(COMM) 466/2023, I.A. 12580/2023, I.A. 12581/2023, I.A. 12582/2023 & I.A. 12583/2023

VINIT DUA Plaintiff

Through: Mr. Rajesh Sharma, Adv.

versus

HARSHIL AND CO Defendant

Through: Mr. S. Nandakumar, Ms. Deepika Nandakumar and Mr. Anand Murthi Rao, Advs.

CORAM:
HON'BLE MR. JUSTICE C.HARI SHANKAR

J U D G M E N T (O R A L)

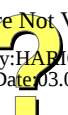
02.08.2023

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CS(COMM) 466/2023

1. This suit has been instituted by the plaintiff against the defendant, alleging infringement, by the defendant, of the plaintiff's registered trademark AFFINITY, which stands registered in favour of the plaintiff through its predecessor-in-interest on 15 March 2004. The mark was assigned by the plaintiff's predecessors to the plaintiff *vide* assignment dated 1 August 2018. The mark AFFINITY is used by the plaintiff for providing services of hairstyling and hair dressing in various salons maintained by the plaintiff, under the names AFFINITY ELITE and AFFINITY URBAN.

2. The plaint also contains assertions regarding the goodwill and





reputation of the plaintiff. However, as the defendant has agreed not to use the infringing mark, it is not necessary to enter into these aspects.

3. The plaintiff alleges that the defendant is using the mark/name “AFFINITY LOUNGE”, for providing hair and beauty salon services which are similar to the services provided by the plaintiff under its registered trademarks. Accordingly, the plaintiff instituted the present suit, seeking an injunction against the defendant using the mark AFFINITY LOUNGE or any other mark containing the word AFFINITY and bearing deceptive or confusing similarity to the mark of the plaintiff, for hairstyling and beauty services or any other allied or cognate services. The prayers clause in the plaint read thus:

“(i) for a decree of permanent injunction restraining the defendant, its proprietor, or partners (as the case may be), its servants, shopkeepers, agents, dealers, stockists, retailers, distributors, representatives, legal heirs, assignees, franchisees, family members or any other person acting on its behalf from providing hair and beauty salon services, advertising or displaying directly or indirectly dealing in hair and beauty salon services and allied services bearing identical trade mark AFFINITY, either as trade mark or part of trade name, domain name, if any, or email ID, or any other identical/deceptively similar trade mark and from doing any other things and acts as are likely to infringe the plaintiffs prior adopted, prior used, well-known and registered trade mark AFFINITY.

(ii) for a decree of permanent injunction restraining the defendant, its proprietor, or partners (as the case may be), its servants, shopkeepers, agents, dealers, stockists, retailers, distributors, representatives, legal heirs, assignees, franchisees, family members or any other person acting on its behalf-from providing hair and beauty salon services, advertising or displaying directly or indirectly dealing in hair and beauty salon services and allied services bearing identical trade mark AFFINITY, either as trade mark or part of trade name, domain name, if any or Email ID, or any other identical/deceptively similar trade mark, and from doing any other things and acts as are likely to pass-off the





services of the defendant as those of the services of the plaintiff under trade mark AFFINITY.”

4. The defendant has, even before the issuance of summons in the suit, placed on record an affidavit dated 20 July 2023, paras 9 and 10 of which read thus:

“9. I state that the Defendant after receiving notice dated 02.06.2023 decided to discontinue using the trademark "AFFINITY" without prejudice to their rights in accordance with law with effect from 01.07.2023. Accordingly, the change of trademark "Harshil's Lounge" given effect to by preparation of separate document from 13.07.2023. True copy of the Bill No. 2028 dated 13.07.2023 issued in the name of Harshil's Lounge along with photographs of Defendant's business as on 18.07.2023 are annexed hereto and marked as **ANNEXURE D2 (Colly)**.

10. I state that the Defendant is therefore not interested in using the brand name of the Plaintiff "AFFINITY" and the same is established as the Defendant has already changed its brand name even before the listing of the present suit before this Hon'ble Court and hence, the Defendant herein undertakes that the Defendant will not be using the Plaintiffs trademark "AFFINITY" in future under any circumstances.”

5. In view of the aforesaid undertaking contained in paras 9 and 10 of the affidavit dated 20 July 2023, the grievance in the suit does not survive for adjudication.

6. Mr. Rajesh Sharma, learned Counsel for the plaintiff seeks that the suit may be decreed in terms of prayers (i) and (ii) reproduced hereinabove.

7. He undertakes on behalf of his client not to press the remaining prayers in the suit.



8. In view thereof, the suit stands decreed in terms of prayers (i) and (ii) in para 29 of the plaint which stand reproduced hereinabove.
9. Let a decree sheet be drawn up accordingly.

C.HARI SHANKAR, J

AUGUST 2, 2023/ar