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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% **Date of decision: 29th August, 2024**+ **CS(COMM) 304/2024 & I.A. 8161/2024, I.A. 8162/2024****FMI LIMITED****.....Plaintiff**

Through: Mr. Neeraj Bhardwaj, Mr. N.K. Bhardwaj, Mr. Bikash and Mr. Rahul Maratha, Advocates.
Mob: 9711912500

versus**FAKHURUDDIN SAIFUDDIN BHARMAL****.....Defendant**

Through: Mr. Rishub Kapoor, Advocate

CORAM:**HON'BLE MS. JUSTICE MINI PUSHKARNA****MINI PUSHKARNA, J (ORAL)**

1. The present suit has been filed seeking permanent injunction against the defendant and all other acting on his behalf, thereby restraining them from using the plaintiff's trademark 'FREEMANS' and/or any other mark, which is identical or deceptively similar in respect of any goods, including, protective hand gloves, bearing the infringing trademark.
2. The defendants were restrained from using the mark 'FREEMANS PROFESSIONAL' which is deceptively similar to the plaintiff's mark 'FREEMANS', vide order dated 10th April, 2024.
3. Learned counsel appearing for the plaintiff draws the attention of this Court to the admissions made by the defendant in his written statement to submit that the defendant was indeed dealing in the products with the impugned trademark, which infringed the trademark of the plaintiff.



4. On the other hand, Mr. Rishub Kapoor, learned counsel appearing for the defendant submits that the defendant is not the manufacturer of the impugned products. It is submitted that the defendant is only a reseller and purchases its products from various manufacturers, in this aspect.

5. I have heard learned counsels for the parties and have perused the record.

6. At the outset, this Court notes the submission made by the defendant in his written statement, relevant paragraphs of which, read as under:

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3. *The Defendant primarily sells its products through its brick-and-mortar store located at Vardhaman Chambers, Opposite Indian Overseas Bank, 7, Raghuveer Para Comer, Raghuver Pura, Rajkot, Gujarat. Additionally, the products can be purchased through its website www.bmtradingcorporation.com and its webpage on www.indiamart.com. It is submitted that Indiamart is India's largest online B2B marketplace, holding a 60% share of the online B2B classifieds market. The website and webpages act as digital stores for small and medium enterprises, such as the Defendant. Consequently, the Defendant does not have much control over the appearance of their webpage, nor do they have many options for editing it. Indiamart provides a standard template to each trader, which can be easily filled and submitted. After submitting the necessary details, Indiamart sets up a standard page on its website.*

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5. *Defendant operates on an asset-light model, keeping minimal stock of hand gloves, safety masks, boiler suits, caution tape, barrier reflectors, welding safety products, road safety equipment, and safety shoes in its physical store. When an inquiry or a potential customer places an order, Defendant contacts its known wholesalers and manufacturers for the arrangement of the particular product.*

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8. *As stated in para 4 above, Defendant is merely a reseller or trader of goods and had no intention of violating any right in marks of Plaintiff or diluting it. The safety gloves*



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bearing the mark “FREEMANS PROFESSIONAL” were purchased by Defendant from its wholesaler/importer based out in Chennai, Tamil Nadu named “Trade Agencies” having its registered address, NO: 12 - B, Errabalu Chetty Street, Broadway, Chennai - 600 001, GSTIN/UIN: 33AAIPA3027F1ZF, contact number +91-8056176655, +91-9884258568.

9. It is humbly submitted that Defendant in the past has also purchased products such as gloves, shoes and caution tape from the abovementioned wholesaler/importer and has never received any complaint either for quality or for infringement in any products. It is not out of place to mention that Defendant was under the bonafide belief that there was no trademark registered under Plaintiff's name.

10. In December 2023, the Defendant received orders for 600 pieces of safety gloves bearing the mark “FREEMANS PROFESSIONAL” from Mr. Kushal Shah based in Ahmedabad, Gujarat, and for 720 pieces from M/s Shri Shyam Enterprises based in New Delhi. The orders were completed on 09.12.2023 and 30.12.2023, respectively.

11. To complete the above orders, Defendant placed two purchase orders with Trade Agencies on 01.12.2023 and 23.12.2023, respectively. The purchase price of each glove is INR 8 per piece and they were sold at INR 28 per piece. Thus, the total sales of the products are as follows:

S. No.	Particulars	Qty	Sale Price (INR)
1	Sale of safety gloves (invoice GT/807)	600	17,640
2	Sale of safety gloves (invoice GT/884)	720	21,168
.	Total	1,320	38,808

xxx xxx xxx



25.1 The contents of para 2 of the suit are vehemently denied. It is denied that Defendant is manufacturing protective hand gloves bearing the mark “FREEMAN PROFESSIONAL”. The Defendant is merely a reseller and trader of the gloves. The safety gloves



bearing the mark “FREEMANS PROFESSIONAL” were purchased by Defendant from its wholesaler/importer based out in Chennai, Tamil Nadu named Trade Agencies. Defendant was selling the gloves under the bonafide belief that there was no trademark registered under Plaintiffs name or that selling the goods wouldn't lead to legal action. The contents of Preliminary submissions are reiterated and not repeated for the sake of brevity.

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25.20. In addition to the contents of para 30 of the suit, it is humbly submitted that Defendant does not have any intention of getting the mark “FREEMANS Professional” registered in any class. In fact, post-filing of the suit Defendant has removed all the products infringing Plaintiffs trademark from his website and undertakes that it will no longer sell the said goods.

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25.28. The contents of para 38 and 39 of the suit are vehemently denied. It is submitted that safety gloves are not manufactured by the Defendant, they were only sold at a mark up by him. It is again reiterated that The Plaintiffs primary business involves providing tools for precise measurement and surveying, a sector requiring specific technical expertise and market focus. The Defendant's trade, focused on selling safety gloves, serves a different market segment that prioritizes occupational safety and health. While both sets of products technically fall under Class 9, the distinct nature of the trades and the specific market applications of each party's products mean that no infringement claim can be substantiated. The Plaintiff and Defendant's operations do not overlap in a manner that would lead to confusion or imply a breach of trademark laws. Furthermore, the Plaintiff is put to strict proof that they have suffered any loss of business and sales on account of Defendant selling the gloves. It is



also denied that Defendant manufactures any gloves or that the gloves that he sold are of poor quality or in any way has caused loss to the reputation of Plaintiff. It is also denied that Defendant's products are an instrument of fraud, and there is no likelihood of confusion among the consumers as stated above. It is humbly submitted that Defendant made only 2 sales, which includes the purchase made by Plaintiff's investigator. The gloves were purchased for INR 8 per piece and sold at INR 28 per piece. Thus, the total sales of the products are as follows:

S. No.	Particulars	Qty	Sale Price (INR)
1	Sale of safety gloves (invoice GT/807)	600	17,640
2	Sale of safety gloves (invoice GT/884)	720	21,168
.	Total	1,320	38,808

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7. Considering the aforesaid, it is clear that the defendant has categorically admitted that though he was not manufacturer of the infringing goods, however, he has dealt in the said products, as is manifest from the submissions made in the written statement.

8. Accordingly, this Court is of the view that the present suit can be decreed in favour of the plaintiff, in view of the submissions made in the written statement.

9. At this stage, learned counsel appearing for the plaintiff submits that he has no objection if the suit is decreed in his favour. However, he presses for some cost.

10. Accordingly, in the facts and circumstances of the case, and considering the submissions made by the defendant in his written statement, the present suit is decreed in favour of the plaintiff and against the defendant in terms of paragraph 43 (a) to (d) of the prayer clause in the plaint.



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11. It is further directed that cost of ₹ 50,000/- shall be paid by the defendant to the plaintiff within a period of six weeks from today.
12. Considering the fact that the suit is at its nascent stage, the Registry is directed to issue a certificate for refund of full Court fees to the plaintiff.
13. Decree sheet be drawn up.
14. The suit along with the pending applications, stands disposed of.

MINI PUSHKARNA, J

AUGUST 29, 2024

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