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

+ **CS(COMM) 505/2024 & I.A. 31384/2024, I.A. 31385/2024, I.A. 38553/2024, I.A. 43687/2024**

MALHOTRA SURGICAL INDUSTRIESPlaintiff

Through: Mr. Nitin Sharma, Ms. Surabhi Pande
and Mr. Rajit Ghosh, Advocates
Mob: 8527486543

versus

DHARAM PAL SINGH BHATIA & ANR.Defendants

Through: Mr. Pankaj Kumar, Advocate
Mob: 9810438450

CORAM:

HON'BLE MS. JUSTICE MINI PUSHKARNA

ORDER

11.11.2024

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1. The present suit has been filed seeking a decree of permanent injunction restraining the defendants from using the impugned mark



‘MICROTONE STETHOSCOPE’/ , or any other deceptively similar mark in relation to any surgical equipment or any other products, resulting in infringement of plaintiff's registered trademark.

2. As per the case canvassed on behalf of the plaintiff, the facts are as follows:

2.1 The present suit has been instituted against the unauthorised, unscrupulous, and illegal use of an identical mark ‘MICROTONE



STETHOSCOPE’/ , by defendant no. 1 and defendant no. 2 in relation to identical products, viz. surgical equipment and medical apparatus, resulting in infringement of plaintiff's registered



trademark/logo/label MICRO TONE STETHOSCOPE / MICROTONE

STETHOSCOPE



2.2 Plaintiff is a reputed Indian surgical equipment manufacturer and is engaged in the business of trading, marketing, promoting, sale, retail of surgical and medical devices, instruments, and apparatus under its registered trademark MICRO TONE STETHOSCOPE/ MICRO-TONE STETHOSCOPE



2.3 In the course of trade and business, the plaintiff has also adopted an email ID msimicrotone@gmail.com for interacting and corresponding with the business and trade and the said email-id features on almost all products of the plaintiff.

2.4 Ever since then, the packaging of the plaintiff's product 'MICROTONE STETHOSCOPE' has undergone several aesthetic changes and formative variations and the plaintiff has adopted different packaging in relation to its said goods while retaining MICRO-TONE as its most prominent and essential feature. The plaintiff's said goods bearing the said trademark/logo/label are being displayed, solicited, advertised and sold extensively through various third party interactive websites, namely, www.amazon.in, and www.flipkart.com.

2.5 The plaintiff in order to protect its intellectual property rights has obtained statutory protection over its said trademarks/logo/label in the relevant class. The details of the plaintiff's registrations and trademark applications for the said trademark/logo/device, are as follows:



S. No.	Trademark Application No.	Trade mark	Date of Application & User Detail	Class and Specification of Goods	Status
1.	584120	MICRO-TONE STETHOSCOPE  [LOGO]	03.11.1992 & 28.04.1978	Class 10: Surgical Goods	Registered
2.	2333204	SMS MICRO-TONE PAEDIATRIC  [LABEL]	17.05.2012 & 4.04.1973	Class 10: Stethoscopes and Medical Equipment	Registered
3.	3578411	MICRO TUNE STETHOSCOPE [WORD MARK]	26.06.2017 & Proposed to be used	Class 10: Surgical Goods	Registered

2.6 The plaintiff has been using the said trademarks/labels in an artistic way, comprising MICRO TONE STETHOSCOPE/ MICRO-TONE



STETHOSCOPE, as also the placement of the artistic features, writing style, font etc. involved therein.

2.7 The plaintiff possesses copyright registration for 'MICRO-TONE WITH DEVICE OF DOCTORS, NURSES, MEDICAL INSTRUMENTS & LOGO' since 2009 bearing *Registration No. A-85886/2009*. The art work involved in the plaintiff's said trademarks/logo/label are original artistic works and the plaintiff is the owner and proprietor of the said copyright therein within the meaning of the Indian Copyright Act, 1957. The plaintiff has been dealing with its said art works/copyright in the course of trade in relation to its said goods and business, *inter alia*, within the meaning of Section 14 of the Copyright Act, 1957.

2.8 The trademark/logo/label of the plaintiff, MICROTONE being a coined trademark/logo/label enjoys inherent distinctiveness indicating trade origin and source of the goods bearing the said trademark/logo/label of the plaintiff. Even otherwise, the plaintiff's trade mark guaranteed with regard to its said trademark/logo/label has acquired formidable goodwill, reputation and distinctiveness vis-à-vis such goods.

2.9 The plaintiff has remained actively engaged in promoting and marketing their goods under the trademark/logo/label MICRO TONE STETHOSCOPE/ MICRO TONE STETHOSCOPE



. The plaintiff in order to expand its market reach has engaged in various branding activities and promotional events, both independently as well as along with their trusted dealers. Additionally, the



plaintiff's dealers have represented them at various trade fairs, exhibitions and conferences, showcasing the range of goods associated with the said trademark/logo/label. This level of active promotion and consistent participation in various marketing activities indicates a strong effort to establish and maintain a presence in the market with regard to products bearing the said trademark/logo/label including but not limited to MICRO TONE STETHOSCOPE, MICRO - TONE STETHOSCOPE,



2.10 On account of such long, continuous, uninterrupted, exclusive use and impeccable quality control, the plaintiff's trademark/logo/label in relation to the said goods have acquired enviable goodwill and reputation amongst the members of trade and public at large and is therefore, entitled to be accorded statutory protection against any form of misappropriation and dilution of distinctiveness by any third party, irrespective of nature of goods or business. The plaintiff, therefore, has the exclusive right to use the said trademark/logo/label and ought to be protected against imitation, confusion, deception, dilution and unfair competition by competitors in trade.

2.11 As per the information available on the internet, the plaintiff came across multiple listings on the e-commerce platforms, namely, www.amazon.in, www.lmg.com, www.vmed.in, whereby, the plaintiff was shocked to learn that the defendant no. 1 has dishonestly adopted the



impugned mark 'MICROTONE STETHOSCOPE'/ identical to that of the plaintiff's said trademark/logo/label as its product



name, with defendant no. 1 's trading entity, M/s Surgical Enterprises being the manufacturer.

2.12 The defendant no. 2, Mr. Kamaljeet Singh Bhatia, trading as M/s JAS Enterprise, is also engaged in the identical business of manufacturing, marketing and selling of surgical equipment and medical apparatus and has in due course adopted the said impugned mark 'MICROTONE



STETHOSCOPE'. To the best of the plaintiff's knowledge, Mr. Kamaljeet Singh is the sole proprietor of defendant no. 2 and happens to be the elder brother of defendant no. 1.

2.13 The defendants being real brothers are dependent on each other in trade and business and are acting in collusion with each other and that the infringing trademark 'MICROTONE



STETHOSCOPE' is being used by the defendants in collusion and connivance. The infringing impugned trademark



'MICROTONE STETHOSCOPE' happens to be visually, phonetically and structurally identical to the plaintiff's prior, established, registered, reputed and well recognized trademark/logo/label, i.e., MICRO TONE STETHOSCOPE/ MICRO - TONE STETHOSCOPE,



in relation to the identical business. The rival trademarks are identical and deliberate imitation to that of the plaintiff's registered trade mark. The defendants' impugned adoption and user thereof,



is tainted at inception and is a pirate use of the plaintiff's said trademark/logo/label.

2.14 The defendants have adopted and started using the impugned trademark 'MICROTONE STETHOSCOPE' /



, dishonestly, fraudulently, and out of positive greed with a view to take advantage of and trade upon the established goodwill, reputation, and proprietary rights of the plaintiff in the plaintiff's trademark MICRO TONE STETHOSCOPE/ MICRO-TONE STETHOSCOPE



. The dishonesty of the defendants are further apparent from the fact that the defendants were one of the primary retailers/wholesalers of the plaintiff's goods, specifically surgical goods and medical equipment, under the trademark/logo/label MICRO TONE STETHOSCOPE/ MICRO-TONE STETHOSCOPE



from 2011, until the first quarter of 2019. The said factual matrix clearly demonstrates that the defendants had prior knowledge of the plaintiff's trademark and its associated market value. Hence, the impugned use of the mark 'MICROTONE STETHOSCOPE' /



, is particularly egregious and indicative of deliberate infringement of the plaintiff's said trademark/logo/label.

2.15 Thus, the present suit has come to be filed.

3. When the present suit was listed for hearing on 1st October, 2024, it



was recorded that defendant no. 1 has filed an affidavit, wherein, it had undertaken not to sell, promote or distribute the impugned goods under the variant 'MICROTONE'.

4. The affidavit dated 24th September, 2024, was filed by defendant no. 1, reads as under:

“xxx xxx xxx

6. *However, to end the dispute and focus on my business and family matters, I hereby undertake not to sell, promote or distribute the impugned goods under the variant MICROTONE as submitted by me on 31.05.2024. I further undertake not to sell, promote or distribute the impugned goods under the trademark MEDIGOLD MICROTONE as impugned in the case by the plaintiff.*



7. *That I say that*  *is my registered trademark and I will continue to use the same without the word/mark/logo MICROTONE with other variants as mentioned above.*

8. *That I say that I am complying with the order dated 31.05.2024 passed by this Hon'ble Court. I have neither procured nor sold any product bearing the trademark MEDIGOLD MICROTONE since 31.05.2024. I have not listed any product bearing the trademark MEDIGOLD MICROTONE for sale on any e-commerce web-site after passing of the order dated 31.05.2024.*

9. *The impugned product shown on certain e-commerce website as mentioned in plaintiff's application bearing I.A No. 38553/2024 may have been listed by third party who purchased the same from me or from my purchasers prior to 31.05.2024. One such listing shown in the application is of the product with trademark MICROTONE. I have never used the word/mark MICROTONE in isolation.*

10. *I have written email to the e-commerce web-sites for not listing any product under the trademark MEDIGOLD MICROTONE at the instance of any party as the same will amount to violation of order dated 31.05.2024 passed by the Hon'ble Delhi High Court in CS(COMM) 505/2024.*

xxx xxx xxx”

5. It was further recorded by this Court in the order dated 01st October, 2024, that defendant no. 1 had also written to the various e-commerce websites requesting them to take down the listing of the infringing products



marketed by the defendants.

6. The order dated 1st October, 2024, reads as under:

“1. An affidavit has been filed on behalf of the defendant no. 1, wherein, the defendant no. 1 has undertaken not to sell, promote or distribute the impugned goods under the variant ‘MICROTONE’.

2. Learned counsel appearing for the defendant no. 1 also points out to this Court, the letter dated 23rd September, 2024, that has been written by the defendant to the various social media sites, viz. Flipkart, Amazon, Meesho, and care@lmg.com, wherein, the products under the trademark ‘MICROTONE’ are being sold by the defendant. By referring to the said letter, it is submitted that the defendant no.1 is not selling the infringing product and has already requested the various intermediaries to take down the listings of the infringing products.

3. Learned counsel appearing for the plaintiff submits that despite the letter by the defendant no. 1 and the order passed by this Court, the impugned products are still available online.

4. Accordingly, plaintiff is directed to file an affidavit giving the details of the listings, where the infringing products of the defendant, are available.

5. Let an affidavit in that regard be filed by the plaintiff within a period of ten days, from today.

6. The defendant no. 1 is also directed to file an affidavit to bring on record the name and details of the distributors, to whom the infringing products have been sold by the defendant no. 1. Let the said affidavit be filed by the defendant no. 1 within a period of ten days, from today.

7. Since the affidavit undertaking not to sell the infringing product of the plaintiff, has been filed only on behalf of defendant no. 1, learned counsel appearing for the defendants is directed to file the requisite affidavit with respect to giving an undertaking as given by defendant no. 1, by defendant no. 2 as well.

8. Let the said affidavit be filed by defendant no. 2 within a period of ten days, from today.

9. This Court is of the view that if the requisite affidavits are filed by the respective parties, then appropriate directions can be passed by the Court and the suit can be closed accordingly.



10. Re-notify on 23rd October, 2024.”

7. Subsequently, in compliance of the directions to disclose the name and details of the distributors/retailers, vide order dated 1st October, 2024, an affidavit dated 11th October, 2024, has been filed by defendant no. 1, relevant portion of which, reads as under:

“xxx xxx xxx

4. That the name and details of distributors/retailer to whom I sold the products bearing the trademark MEDIGOLD MICROTONE are as under:

(i) Sri Umraji Surgical and Vaccine, Malao Bhawan, Gandhi Park, Gorakhpur, Uttar Pradesh- 273001

(ii) Matushree Pharma, 9 1st Floor Near Padam Complex, S D M Lane Manverthpet, Bangalore- 560053

(iii) Hemant Surgical Co. Madras, 62 (Old 33), Nyniappa Naicken, Street (1st Floor), Madras- 3

Invoices issued to them are filed herewith

5. That neither I am procuring the product (Stethoscope) under the trademark MEDIGOLD MICROTONE nor the same are available with me or any of the said distributors/retailers.

xxx xxx xxx”

8. On similar lines, an affidavit dated 5th November, 2024 has been filed by defendant no. 2, relevant portion of which, reads as under:

“xxx xxx xxx

Medcheck

*2. That I adopted the trademark **Medcheck** in relation to surgical products and medical instruments including Stethoscope on 07.03.2023. I recently started MICROTONE variant for my product Stethoscope under the said trademark MEDCHECK. Earlier, I was selling Stethoscope bearing the trademark MEDIGOLD and its variants including MICROTONE of my brother defendant no. 1 in the suit. I had been procuring/getting manufactured the impugned product namely Stethoscope from S.S Surgical.Co., 8/56, Geeta Colony, Delhi-110031.*

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4. However, in order to end the present litigation, I hereby



undertake not to procure, sell, promote and/or distribute the impugned goods under the variant MICROTONE. I further undertake not to procure, sell, promote and/or distribute the impugned goods under the trademark MEDCHECK MICROTONE as impugned in the case by the plaintiff. However, I will continue to use my trademark MEDCHECK without the word/mark/logo MICROTONE.

5. That I say that I am complying with the order passed by this Hon'ble Court. I have neither procured, nor sold nor listed any product bearing the trademark MEDCHECK MICROTONE for sale on any e-commerce web-site after coming to know of the order dated 31.05.2024. No stock of infringing product is available with me.

xxx xxx xxx”

9. Though, the aforesaid affidavits were filed by the defendants, wherein, they had undertaken not to procure, sell, promote and/or distribute the goods under the variant ‘MICROTONE’, however, the plaintiff submitted that the defendants had not disclosed the names of all the distributors/dealers with whom the defendants had business. Accordingly, this court vide order dated 28th October, 2024, had directed as follows:

“xxx xxx xxx

1. Affidavit of compliance has been filed on behalf of the defendants pursuant to the order dated 1st October, 2024.

2. However, learned counsel appearing for the plaintiff has drawn the attention of this Court to the said affidavit to submit that only three distributors have been disclosed in the said affidavit.

3. He submits that written statement has been filed on behalf of the defendants, wherein, they have listed nine more distributors.

4. Though, written statement is stated to have been filed and served upon learned counsel appearing for the plaintiff, the same is not before this Court.

5. However, learned counsel appearing for the plaintiff has relied upon the said written statement and has further drawn the attention of this Court to the invoices issued by the defendants for the sale of their products dated 7th June, 2024 and 14th June, 2024.

6. It is submitted that the undertaking on behalf of the defendants was recorded vide order dated 31st May, 2024. Therefore, any sale by the defendants after 31st May, 2024, is in violation of the order passed by this Court.



7. Responding to the aforesaid, learned counsel appearing for the defendants submits that affidavit of undertaking was filed by the defendants on 24th September, 2024 and that there has been no sale by the defendants after the said date.

8. He further extends unconditional apology and submits that the sale by the defendants after the undertaking as recorded vide order dated 31st May, 2024, is inadvertent and that the defendants have not intentionally violated the order passed by this Court.

9. The apology is accepted by this Court.

10. Learned counsel appearing for the plaintiff presses for cost and submits that considering the fact that the defendants have been in violation of the order passed by this Court, the defendants ought to be saddled with cost.

11. Considering the submissions made before this Court and the fact that the defendants have sold their infringing product, even after the order dated 31st May, 2024, wherein, the undertaking of defendants is recorded, this Court is of the view that ends of justice shall meet, if cost of ₹ 2,00,000/- is imposed upon the defendants, i.e., ₹ 1,00,000/- each.

12. Considering the submission made before this Court, it is directed that both the defendants shall file a fresh affidavit, bringing forth the correct name of all the distributors, wherein, the infringing products have been supplied.

13. Let the said affidavits be filed by the defendants within three working days.

14. Re-notify on 11th November, 2024.”

10. Pursuant to the aforesaid order, an affidavit dated 5th November, 2024, has been filed on behalf of defendant no. 1, wherein, the details of the distributors/dealers/retailers have been filed.

11. Learned counsel appearing for the plaintiff submits that the plaintiff is satisfied with the affidavit filed on behalf of the defendants.

12. This Court notes that vide order dated 28th October, 2024, this Court has already opined that considering the facts and circumstances of the present case, ends of justice shall be met, if cost of ₹ 1,00,000/- each is paid by the defendants to the plaintiff.

13. Accordingly, considering the undertaking on behalf of the defendants



that they shall not procure or market or deal with the products under the name 'MICROTONE', following directions are issued:

I. Suit is decreed in favour of the plaintiff and against the defendants in terms of Para 63 (a) and (b) of the plaint.

II. Cost of ₹ 1,00,000/- each, shall be paid by the defendants to the plaintiff, within a period of two weeks, from today.

III. The defendant no. 1 is at liberty to continue to do its business under its mark, i.e., MEDIGOLD, in respect of its products.

IV. Defendant no. 2 is at liberty to continue to do its business under its

mark **Medcheck**.

14. Decree sheet be drawn up, in terms of the aforesaid directions.

15. The suit, along with the pending applications, stands disposed of.

16. The next date of hearing, i.e., 26th November, 2024, before the learned Joint Registrar, stands cancelled.

MINI PUSHKARNA, J

NOVEMBER 11, 2024

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