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

+ **FAO (COMM) 117/2024, CM APPL. 34386/2024(Stay)**

MAX HEALTHCARE INSTITUTE LIMITEDAppellant

Through: Mr. Raunaq K., Mr. Sidharth
Varshney, Mr. Yash Raj, Advs.

versus

IMAX HEALTHCARE PRIVATE LIMITED & ANR.

.....Respondent

Through: Mr. Rachit Mittal, Mr. Parish
Mishra, Mr. Kanishk Raj, Mr.
Adarsh Srivastava., Advs.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

ORDER

% **25.09.2024**

1. The present appeal is directed against the order dated 15 May 2024 in terms of which the learned District Judge has proceeded to reject the application for temporary injunction which was made in the suit.

2. The plaintiff appellant had sought the issuance of a temporary injunction restraining the defendants from using the name 'IMAX' asserting that it was deceptively similar to the registered trademarks which were held by the appellants. The Court takes note of the following averments made in the plaint:-

“3. The Plaintiff is a pioneer in the healthcare industry and one of India's premier providers of comprehensive and integrated world class healthcare services. The Plaintiff has launched several MAX hospitals and medical centers over the years which include the



following:

- i. Max Medcentre at Panchsheel Park, New Delhi in 2000;
- ii. Max Hospital at Pitampura, New Delhi in 2002;
- iii. Max Multi Speciality Centre at Noida, Uttar Pradesh in 2002;
- iv. Max Heart and Vascular Institute at Saket, New Delhi in 2004;
- v. Max Super Speciality Hospital at Patparganj, New Delhi in 2005;
- vi. Max Eye and Dental Care Centre at Panchsheel Park, New Delhi in 2005;
- vii. Max Super Speciality Hospital at Saket, New Delhi in 2006;
- viii. Max Hospital in Gurgaon, Haryana in 2007;
- ix. Max Super Speciality Hospital at Shalimar Bagh, New Delhi in 2011;
- x. Max Super Speciality Hospital in Mohali, Punjab in 2011;
- xi. Max Super Speciality Hospital in Bathinda, Punjab in 2011;
- xii. Max Super Speciality Hospital in Dehradun, Uttarakhand in 2012;
- xiii. Max Multi Speciality Hospital at Greater Noida, Uttar Pradesh in 2014.

4. At present, the Plaintiff has around 17 MAX hospitals. The Plaintiff has a dedicated team comprising over 15,000 employees and 4,800 world class clinicians. The Plaintiffs MAX hospitals are recognized for their state-of-the-art infrastructure which has been rated the best in India. The Plaintiff also organizes regular health camps and health awareness / check-up programs in various parts of India and abroad. In 2022-23 the Plaintiff treated over 27 lakhs unique patients including over 363,000 underprivileged patients; provided free medical treatment to underprivileged worth over INR 202.9 crores; funded around 100 ongoing clinical studies; and published over 350+ high index journal research publications.

5. The subject matter of the present suit is the Plaintiffs trade mark MAX which the Plaintiff has extensively used in relation to hospital and healthcare services since the year 2000. The Plaintiff is also the proprietor of a MAX family/ series of marks, all of which contain MAX as the essential and dominant feature thereof



(hereinafter collectively referred to as the 'Max Marks'). The Max Marks include MAX HOSPITAL, MAX HEALTH CARE, MAX DIAGNOSTICS, MAX PHARMACY, MAX CHEMIST, MAX MEDICAL, MAX LAB, MAX@HOME, MAX HOME CARE, KMAX DIGI CARE, DR. MAX CLINIC, MAX EMERGENCY, MAX BALAJI HOSPITAL, MAX PATH LAB, MAX PATHOLOGY, MAX MEDCENTRE, MAX HEALTHSTAFF, MAX HEALTH CIRCLE, MAX X RAY AND ULTRASOUND CENTRE, MAX BIKE RESPONDER, MAX DEVKI DEVI HEART & VASCULAR INSTITUTE, to name a few.”

3. Before us, it is not disputed that the mark of the plaintiff appellant has been duly acknowledged by courts as being a “well-known trademark”. We in this respect firstly take note of the following declaration which came to be made in the suit instituted by the appellant being CS (COMM) 603/23:-

“9. Insofar as the claim of plaintiff regarding declaration of well known trademark is concerned, the plaintiff has filed several cases and has got injunction from this Court itself. Injunction granted in one of the cases filed by plaintiff was upheld up-till Hon’ble Supreme Court within the knowledge of the Court.

10. In view of facts discussed hereinabove, the judgments cited on issue; continuous presence of plaintiff in healthcare services for more than 23 years; recognition of the mark for healthcare services by various benches including Hon’ble supreme Court and also considering the revenue of plaintiff of last 4-5 years, it being INR 185,446 lacs in 2021 itself; the plaintiff can safely be declared as “well known” mark in respect of health care services and is declared as such.

The suit is decreed in above terms. File be consigned to record room.”

4. Of equal significance are the following observations rendered by this Court in **Max Healthcare Instituted Ltd. Vs. Sahrudya Healthcare Pvt. Ltd**¹:-

“13. No merit is found in any of the elaborate contentions of the senior counsel for the defendant and the plaintiff is found entitled to interim injunction. I herein below record my reasons therefor:

¹ 2019 SCC OnLine Del 9036



A. First I have considered de hors the legalities, whether adoption by the defendant, admittedly much after adoption by the plaintiff, of the trade marks/trade name MAXCURE/MAXKURE/MAXCURE MEDICITI, for the purposes of its hospital and/or healthcare services, is likely to confuse public at large and whether it is likely to result in the public at large believing the hospital and healthcare services provided by the defendant to be those of the plaintiff under the mark MAX HEALTHCARE, MAX HOSPITAL, MAX MEDCENTRE, DR. MAX CLINIC and MAX HEALTHSTAFF. I have not an iota of doubt that the two marks are similar/deceptively similar and are likely to cause confusion, resulting in the hospital/healthcare services of the defendant being confused by public at large and/or persons in need thereof as hospitals/healthcare services of the plaintiff.

B. I now proceed to consider, whether notwithstanding the same, a case of infringement under the Trademarks Act is made out. Ordinarily, in the light of the conclusion aforesaid, the law cannot be without remedy therefor and/or ought not to be interpreted as having no cure for the purpose for which it has been enacted. The argument of the senior counsel for the defendant, of the remedy being in an action for passing off and not in an action for infringement, assumes the statutory law of trade mark, enacted to protect rights in trade marks and in public interest of preventing consumers from being misrepresented/cheated, to be weaker than the common law of trade marks whereunder an action for passing off lies. It would be a travesty of law making and would render law making into an ass (as echoed by Mr. Bumble in Oliver Twist), if it were to be held that inspite of the trade marks of the plaintiff being registered under the provisions of the Trademarks Act, and the defendant also having applied for registration of its trade mark, and inspite of the two trade marks being similar/deceptively similar and having potential of causing misrepresentation/cheating the public and consumers, the remedy would be under the common law and not the statutory law. I reiterate that statute laws cannot be so rendered to make them toothless and weak, defeating the very purpose of enactment thereof.

.....

E. MAX is not an abbreviation in English language of the word 'maximum' and can at best be said to be used in slang language. It is also not as if the word MAX, in relation to hospital and healthcare services, is a generic or a laudatory word. Moreover, the plaintiff admittedly holds registration for MAX in relation to hospital and healthcare services and it is not in the jurisdiction of this Court to hold the registration to have been wrongly granted. The exclusive jurisdiction therefor is with the Registrar of Trade



Marks and/or with the Intellectual Property Appellate Board (IPAB). The defendant did not take any objection to registration sought by the plaintiff of the label/device marks with the word MAX in relation to hospital/healthcare services in the last 16 years since when the marks of the plaintiff have been registered. On the contrary, the defendant, also in the business of providing hospital/healthcare services under the name of Sunshine, when desirous of changing the said name, chose the word MAX and also applied for registration of label/device marks with the said word. The consistent view of this Court in *Automatic Electric Ltd. v. R.K. Dhawan* (1999) 77 DLT 292, *The Indians Hotel Company Ltd. v. Jiva Institute of Vedic Science and Culture* (2008) 37 PTC 468 (Del) (DB), *Anchor Health & Beauty Care Pvt. Ltd. v. Procter & Gamble Manufacturing (Tianjin) Co. Ltd.* 2014 SCC OnLine Del 2968, appeal preferred whereagainst was dismissed vide judgment reported as *Procter & Gamble Manufacturing (Tianjin) Co. Ltd. v. Anchor Health & Beauty Care Pvt. Ltd.* (2014) 211 DLT 466 (DB) and SLP(C) No. 15928-15929/2014 preferred where against were dismissed on 3rd July, 2014, and *Vega Auto Accessories (P) Ltd. v. S.K. Jain Bros Helmet (I) Pvt. Ltd.* 2018 SCC OnLine Del 9381 has been that a defendant who has itself applied for registration of a mark is stopped from contending the mark to be not registrable, when faced with an action for infringement. The said argument is thus not available to the defendant.

F. The mere fact that others, also providing hospital/healthcare services may be using the word MAX is no ground for depriving the plaintiff of injunction against the defendant if otherwise a case therefor is made out. I have in *Sunil Mittal v. Darzi On Call* (2017) 242 DLT 62, *Insecticides (India) Ltd. v. Parijat Industries (India) Pvt. Ltd.* (2018) 252 DLT 129, *H&M Hennes & Mauritz AB v. HM Megabrand Pvt. Ltd.* 2018 SCC OnLine Del 9369 and *Purshotam Keshwani v. Nishant Mitrasen Mahimtura* 2019 SCC OnLine Del 7392 held that the owner of a registered trade mark is not expected to indulge in the business of litigation of suing each and every person adopting the same/similar mark, irrespective of impact thereof on the business of the plaintiff. It is in the discretion of a plaintiff, whom to sue and whom not to sue and merely because a plaintiff in a suit for infringement of trade mark has not sued another, is no ground to defeat the suit against the infringer against whom the plaintiff has chosen to act.

G. That brings me to the star argument of the senior counsel for the defendant, of the label/device mark of the plaintiff being entirely different from the label/device mark of the defendant. I must admit that I myself being a resident of Delhi since birth, and familiar as any other citizen of Delhi with Max Hospitals, having not only visited patients therein but having also umpteen times passed in



front of Max Hospitals/Healthcare Services, had never noticed the device of a single/double cross appearing on the label/device marks of the plaintiff or even the words Healthcare or Health Staff. If at all any other word besides MAX stuck to the mind, that was of Super Speciality as one of the twin MAX hospitals in Saket is called. My mind always identified the hospitals of the plaintiff with the word MAX, and not necessarily along with the word Healthcare or Hospital or Medcentre or Health Staff or with the medical cross. I can well imagine others, not having dealings with the plaintiff, also associating plaintiff only with MAX and with no other device or word. In addition, what my mind was familiar with, was the earlier names of the hospitals, management whereof has been taken over by the plaintiff and/or management whereof was taken by the plaintiff and on which take over, the plaintiff invariably adds MAX to the earlier/existing names. Mention in this context can be made of Janki MAX and MAX Centre for Liver & Biliary Sciences also. The same would be the position of others. Again, I have wondered whether the legislators of Trademarks Act providing for registration of label/device marks can be presumed to be ignorant of human psychology and/or the way the human mind perceives such marks. The answer is again no. It has been held in *Allied Blenders & Distillers Pvt. Ltd. v. Shree Nath Heritage Liquor Pvt. Ltd.* (2014) 211 DLT 346 affirmed by the Division Bench in *Shree Nath Heritage Liquor Pvt. Ltd. v. Allied Blender & Distillers Pvt. Ltd.* (2015) 221 DLT 359, *Prathiba M. Singh v. Singh & Associates* 2014 SCC OnLine Del 1982 and *Gillette Company LLC v. Tigaksha Metallics Pvt. Ltd.* (2018) 251 DLT 530 that the test for infringement of a label/word mark is the test of prominent word of the mark. Besides the judgment cited by the senior counsel for the plaintiff, mention may be made of *Ramdev Food Products (P) Ltd. v. Arvindbhai Rambhai Patel* (2006) 8 SCC 726 where it has been held that adoption by the defendant of a prominent word in the label/device mark of the plaintiff amounts to infringement. The label/device marks may be of different kinds. Those with words only as prominent part thereof with a not so prominent device, have in *Keshav Kumar Aggarwal v. NIIT Ltd.* (2013) 199 DLT 242, *Jagdish Gopal Kamath v. Lime & Chilli Hospitality Services* 2015 SCC OnLine Bom 531, *Mallcom (India) Ltd. v. Rakesh Kumar* 2019 SCC OnLine Del 7646 and *New Balance Athletics, INC v. Apex Shoe Company Pvt. Ltd.* 2019 SCC OnLine Del 7393, appeal preferred whereagainst was dismissed vide order dated 26th March, 2019 in FAO(OS) (COMM) No. 59/2019 titled *Apex Shoe Company Pvt. Ltd. v. New Balance Athletics, INC*, held to be infringed by the defendant who in his label/device adopts the same word/s by making only variation in the not so prominent device. The nature of business/services also are of several kind. A label/device mark in relation to some businesses, as of textile and/or prints, may invite the attention of



the public and/or the consumer to the brand of the label/device mark but not so in others. The business of providing hospitals/healthcare services is such, where people/consumers pay least attention to the device or the label mark and read generally the first word of the label mark by which the hospital/healthcare services come to be known and recognized.

H. I am also unable to accept the contention of the senior counsel for the defendant, that the test of infringement is not in the mark or its use but on paper. The same cannot possibly be. The Courts adjudicate trade mark disputes applying the test of similarity/deceptive similarity, and which test has to be in relation to how similarity/deceptive similarity is perceived in the minds of the concerned persons and not on paper. Moreover it is only in Courts that the two marks are available side by side, for comparison. Not so in the market. The test to be applied is of the market place.

I. A person visits a hospital or a healthcare facility in an anxious state of mind, whether for himself or for near and dear ones and is not prone to pay minute attention to all the contents of the label/word mark and is prone to identify the hospital by the most prominent word on the label/device mark and which in the case of the label/device mark of the plaintiff is, MAX. As aforesaid, the hospitals of the plaintiff are known as MAX, and mere mention of MAX, even without the word hospital or healthcare, brings to mind the hospital/healthcare services of the plaintiff and nothing else, unless mention is in the context of insurance and/or financial services. When I was told for the first time that Malhotra Heart Institute, Lajpat Nagar, New Delhi was being taken over by 'Metro', I asked, why would Delhi Metro Rail Corporation take over a heart hospital, only to be told of Metro Hospitals, till then not having presence in Delhi, though having hospitals outside.

K. The business of hospitals/providing healthcare services today is such which is no longer territorial. Though a doctor practicing medicine individually may have his medical practice confined to a particular region, but once the hospitals/healthcare services have been corporatized, the business of providing medical facilities is no longer territorial. The plaintiff, in the plaint has already listed a large number of hospitals under its umbrella and it is not as if the defendant also is a one man show. The structure on which the defendant has designed itself appears to be the same as the plaintiff. Thus merely because presently the plaintiff does not have a hospital/services in Andhra Pradesh and Telangana and the defendant today is confined to Andhra Pradesh and Telangana is no reason to deny injunction. Neither can the plaintiff be restrained from expanding, nor the defendant. Moreover, today we are living in an era of medical tourism where each of such corporate as the



plaintiff and the defendant vie with each other to earn maximum foreign exchange by providing cheaper and better medical treatment than available in a large number of other countries. In such an atmosphere, when a prospective patient desires to avail of services of the plaintiff and scouts on the internet for the most convenient hospital from the plaintiff's stable from his/her perspective, the possibility of ending up confusing the hospital/healthcare of defendant for that of the plaintiff, is writ large. Moreover, once the registration of trade mark granted is valid throughout India, it is no ground to deny injunction that the defendant for the time being has no intent to enter National Capital Region where presently the hospitals/healthcare centres of the plaintiff are primarily located.

L. Merit is also found in the contention of the senior counsel for the plaintiff, of the mala fides of the defendant being evident from the adoption by the defendant of the same marks with same prominent word as in the marks of plaintiff, in relation to same services as offered by plaintiff. It is not the case of the defendant and indeed it cannot be of anyone claiming any knowledge of providing hospital/healthcare services, that the defendant did not know of the plaintiff. The defendant, in spite thereof, when desirous of changing the name of its hospitals/healthcare services from that of Sunshine, chose to adopt impugned marks similar to that of the plaintiff's and which can be nothing else but in an attempt to ride over the goodwill of the plaintiff and to make patients believe that they were getting treatment of the same standard/quality, for which the plaintiff has identified itself. There is no explanation, why the defendant chose to adopt the same name for its hospitals as that of the hospitals of the plaintiff."

5. The appellant had also set out in the plaint the details of the injunctions, ex parte, interim and final granted by this Court in various suits instituted by it. This becomes evident from a reading of paragraph 16 of the plaint which is extracted below:-

"16. The Plaintiff has been vigilant in protecting its rights and interest in its intellectual property in India and has consistently monitored and taken appropriate measures to tackle misuse of its trade marks by unrelated third parties in different forums. The Plaintiff has obtained several interim injunctions, including ex-parte ad interim injunctions and decrees of permanent injunctions from the Delhi High Court and this Hon'ble Court restraining the following third parties from using the trade mark MAX in any manner:

i. Max Care Hospitals, Hyderabad



- ii. Max Health Hospitals, Hyderabad
- iii. Max Care Hospital, Warangal
- iv. Max Care Hospital, Trichy
- v. Max Care Hospital, Ahmednagar
- vi. Max Care Hospital, Gwalior
- vii. Maxcare Hospital, Pune
- viii. Max Care Hospital & Hemodialysis Centre, Bijnor
- ix. Maxcure Hospital / Maxkure / Maxcure Mediciti, Telangana
- x. Max Hospital, Varanasi
- xi. Max Global Pharmacy, Delhi
- xii. Max 24x7 Medicos, Delhi
- xiii. Max Hospital, Moradabad
- xiv. Max Associates, Kannur
- xv. Max Care Hospital/ New Max Care Hospital, Patna
- xvi. Care Max Superspecialty Hospital, Jalandhar
- xvii. New Max Care Hospital, Patna
- xviii. Max Care Chemist, New Delhi
- xix. Caremax Hospital, Jalandhar
- xx. Max Aid Hospitals, Hyderabad
- xxi. Maxicure Hospitals, Hyderabad

6. The District Judge, however, has made the following observations while rejecting the application for temporary induction:-

“So far as plaintiff’s case is concerned, there is no doubt that plaintiff is claiming itself to be a user of this trademark “Max” since 2000 and has also got the registration in its favour, however, all the registrations which the plaintiff holds are of “composite trademark” and not in respect of singular word “Max” alone. Since plaintiff as well as defendant both are operating in the same area of



health care, hence plaintiff cannot claim any exclusive right or domain over the use of word “health care”.

Even the composition and structure of both the entities is also different as plaintiff herein is a limited company whereas defendant is a private Ltd. Company having different composition and constitution.

So far as the deception is concerned, though the word “IMAX” used by the defendant within the territory of state of Tamil Nadu may prima facie gives an impression, as if it is a part of plaintiff company, however, since the plaintiff is not operating in the said State at any place whatsoever, hence, this possibility is also ruled out.”

7. As is evident, the District Judge appears to have been influenced by a perceived distinction between the “composition” and “structure” of both the entities. We find ourselves unable to fathom or comprehend how the perceived distinction in the corporate composition of the appellant and the defendant could have constituted a factor relevant or germane for the purposes of examining whether the grant of an injunction was warranted.

8. The District Judge further, and while accepting that the use of the word ‘IMAX’ may prima facie give an impression that it was connected with the plaintiff company and lend credence to the assertion of deceptive similarity, held against the appellants solely on the ground that the defendant was not operating in the State. This finding is rendered ignoring the allegation of the appellants of sales being in fact affected within its territorial jurisdiction as well as its online presence.

9. Equally unsustainable are the following observations entered by the District Judge in the order impugned before us:-

“Lastly it has been submitted and argued that plaintiff had already more than 21 injunction (including ex-parte injunctions) in its favour is also of no use and avail as the orders passed by



coordinate benches of this court are not binding as a precedent on this court and law of injunction is very clear and provides that injunction is purely a discretionary relief and even if the plaintiff or the defendant as the case may be, is able to successfully establish a *prima facie* case, balance of convenience as well as irreparable loss and injury being caused to it, then also the court has the discretion to refuse and decline the injunction.”

10. The aforesaid finding is yet again demonstrative of a complete non-application of mind bearing in mind the indisputable fact of some of those injunctions having been granted by this Court and which were clearly not orders made by “*coordinate benches*” of the trial court. The District Judge also chose to ignore the final decree which had come to be passed in the suit instituted by the appellant and details whereof have been noticed hereinabove. Equally unsustainable is the understanding of the District Judge that since the grant of injunction is “discretionary”, it could be refused even if factors such as *prima facie* case, balance of convenience and irreparable injury are established. The District Judge clearly fails to bear in consideration that when courts chose to describe the grant of injunction in exercise of jurisdiction conferred upon a court to be discretionary, those precedents clearly did not intend to lay down a precept that the refusal or grant could be arbitrary.

11. We would hope and trust that, in the future, the District Judge would be more circumspect and cautious in the exercise of the salutary power and jurisdiction vested in it.

12. We for reasons aforesaid allow the instant appeal and set aside the order dated 15 May 2024. The application under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure, 1908 shall consequently stand revived on the board of the concerned District Judge to be disposed of afresh and in accordance with law. All rights and



contentions of respective parties on merits are kept open.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

SEPTEMBER 25, 2024/neha