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

+ **CS(COMM) 706/2024 & I.A. 36959/2024**

AKEMI CHEMISCH TECHNISCHE SPEZIALFABRIK GMBH

.....Plaintiff

Through: Mr. Neeraj Bhardwaj, Mr. N.K. Bhardwaj, Mr. Bikash Ghorai, and Mr. Rahul Maratha, Advocates
Mob: 9818318973

versus

DEVKI NANDAN MALIK T/A DELHI HARDWARE AND ENGG WORKS

.....Defendant

Through: Mr. Akhil Sabharwal, Advocate
Email: ak9legal@gmail.com
Mob: 9958034177

CORAM:

HON'BLE MS. JUSTICE MINI PUSHKARNA

ORDER

16.12.2024

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1. The present suit has been filed seeking prayer for permanent injunction restraining infringement of trademark and copyright, passing off, delivery up, damages and rendition of accounts, etc.

2. As per the plaint, the plaintiff launched its products firstly, under the brand name 'AKEMA' for the years 1933-1952. Thereafter, the plaintiff renamed the brand under the name 'AKEMI' in 1952. Subsequently, the sale of the AKEPOX series, started in the year 2003. Since the year 1952, the plaintiff, honestly, *bonafidely*, continuously, commercially, openly, exclusively and to the exclusion of others, uninterruptedly and in the course



of trade, has been using the said trademark in relation to its goods and business.

3. The plaintiff has obtained separate registrations for the trademark 'AKEMI' and 'AKEPOX', details of which, are as follows:-

S. No.	Trademark	Class	Registration No.	Registration Date	Status
1.	AKEPOX	1	1010043	17.05.2001	Registered
2.	AKEMI	3	1010044	17.05.2001	Registered
3.	AKEMI	17	1010045	17.05.2001	Registered
4.	AKEMI	1,2	4897626	10.03.2021	Registered

4. The defendant was found to be manufacturing, distributing and selling counterfeit Akepox-5010 products under the mark



'AKEMI'/'AKEPOX'/'Akepox-5010' which is a gel-like, 2-component construction adhesive used for bonding of face joints indoors and outdoors. Thus, the present suit came to be filed.

5. It is the case of the plaintiff that the defendant has been manufacturing, distributing and selling counterfeit 'Akepox-5010' in imitation packaging under the impugned marks, which are identical/deceptively similar to the trademarks/labels of the plaintiff's trademark and labels and other formative marks. A comparative chart showing the plaintiff's and defendant's product, as given in the plaint, is



reproduced as under:

PLAINTIFF'S SAID TRADEMARKS/LABELS/ TRADE DRESS	DEFENDANT'S IMPUGNED MARKS/LABELS/ TRADE DRESS
AKEMI AKEPOX 5010	AKEMI AKEPOX 5010
 	 

6. Vide order dated 21st August, 2024, the defendant was restrained from using the impugned mark and a Local Commissioner was also appointed.

7. The report of the Local Commissioner has been filed, wherein, it has been stated as under:

“xxx xxx xxx

7. That after having duly inspecting and enquiring at the location, I am of the view that the infringing product named as 'AKEMI'/'AKEPOXV Akepox-5010' is bought by the defendant on demand of the customer from other shopkeepers for which the



defendant has given undertaking to same and named other shopkeepers in the undertaking.

8. Therefore, I hereby conclude my report by stating that no counterfeit goods of the defendant bearing the impugned trademarks 'AKEMI'/'AKEPOXV' Akepox-5010 were found at the premises of Defendant. That the copy of the Spot Proceedings along with the copy of the attendance sheet is enclosed herewith and marked as Annexure-LC-4.

xxx xxx xxx”

8. Today, learned counsel appearing for the defendant submits that the defendant is ready to suffer a decree of permanent injunction. He further submits that the defendant is not dealing in the counterfeit products of the plaintiff.

9. The defendant is held bound by the aforesaid undertaking.

10. Learned counsel appearing for the plaintiff submits that though he is satisfied with the undertaking given by the defendant. However, he submits that the defendant had admitted to transaction with respect to goods with the infringing mark, and presses for some cost.

11. Considering the submissions made before this Court, with the consent of the parties, the following directions are issued:

- I. The suit is decreed in favour of the plaintiff and against the defendant in terms of Para 35(a) of the plaint.
- II. The defendant shall pay a sum of ₹ 10,000/ -, to the plaintiff within a period of ten days from today on account of costs.
- III. The said amount shall be paid to the plaintiff, through the plaintiff's counsel.

12. Considering the fact that this is the second hearing before this Court, and the plaintiff has accepted the undertaking of the defendant, the Registry



of this Court is directed to issue a Certificate of Refund of Full Court Fees in favour of the plaintiff.

13. Decree sheet be drawn up.

14. The present suit along with the pending application, stands disposed of.

MINI PUSHKARNA, J

DECEMBER 16, 2024
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