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

+ CS(COMM) 981/2024 & I.A. Nos. 44184/2024, 44185/2024,
44186/2024, 44187/2024 & 44188/2024

FRESENIUS MEDICAL CARE DEUTSCHLAND GMBH &
ANR.Plaintiffs

Through: Mr. Peeyoosh Kalra with Ms. V.
Mohini and Ms. Aarti Aggarwal,
Advocates.
(M): 9818386010

versus

MARUTI LIFECAREDefendant
Through: Ms. Rashi Bansal, Advocate.

CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA

ORDER
25.11.2024

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1. The present suit has been filed seeking permanent injunction restraining the defendant from the use of the plaintiffs' registered

trademarks i.e., BIBAG, , 4008, 5008, 'FRESENIUS MEDICAL

CARE', .

2. It is the case of the plaintiffs that such use by the defendant violates the plaintiffs' trademarks/trade dress constituting infringement of their



trademark and causing significant harm to the plaintiffs' reputation and goodwill.

3. When the present matter was listed for hearing on 06th November, 2024, it was recorded as follows:-

"1. Learned counsel appears on advance notice on behalf of the defendant and submits that the defendant has already discontinued the use of the mark "BIBAG" since the year 2019 and has adopted a new mark i.e., MLC. She further submits that the defendant has also changed its trade dress and the same is not similar in any manner, to the trade dress of the plaintiff.

2. Let learned counsel appearing for the defendant, bring the requisite documents before this Court.

xxx xxx xxx"

4. Subsequently, vide order dated 11th November, 2024, it was recorded as follows:-

"xxx xxx xxx

2. Thus, she submits that she has not been able to file affidavit, however, she reiterates her submission that the defendant has stopped using the trade name "BIBAG" and is dealing with its product under the name 'MLC Bags'.

3. She further submits that the defendant is also ready and willing to change the trade dress of its product and shall adopt a new trade dress, which is not similar or deceptively similar to the plaintiffs' trade dress.

xxx xxx xxx"

5. Pursuant to the aforesaid orders, an affidavit of compliance has been filed by the defendant, relevant portions of which, read as under:-

"xxx xxx xxx

2. I state that the Defendant Firm ceased the use of the impugned trademark "BIBAG," including both the word mark and device mark, in the year 2019. The Defendant Firm has since adopted a new trademark, i.e., "MLC."



3. *I further state that the Defendant Firm has discontinued the use of the impugned trademarks “4008” and “5008”, along with the trade dress/packaging/layout alleged in the captioned suit.*

4. *In furtherance of this, the Defendant Firm has taken proactive measures to ensure the removal of its products bearing the impugned name, trade dress, and packaging from e-commerce platforms.*

5. *Despite the Defendant Firm's efforts, it is not feasible to control or remove listings of the said products uploaded by third parties. The Defendant Firm cannot assume responsibility for such third party actions, as it has no control over the same.*

xxx xxx xxx”

(Emphasis Supplied)

6. Learned counsel appearing for the plaintiffs submits that the plaintiffs are satisfied with the aforesaid undertaking. He, however, draws the attention of this Court to the averment made in the plaint, with respect to the use of “FRESENIUS BI BAG” by the defendant, which also infringes the plaintiffs’ registered trademark. He, thus, submits that the defendant ought to be enjoined from usage of the said mark also.

7. Learned counsel appearing for the defendant undertakes that the defendant shall not use the mark “FRESENIUS BI BAG”.

8. The aforesaid undertaking is accepted by learned counsel appearing for the plaintiffs, who submits that in view of the affidavit and the undertaking given by the defendant, the suit can be decreed in favour of the plaintiff.

9. The defendant is held bound by the statements made in the affidavit and the undertaking.

10. Accordingly, the suit is decreed in favour of the plaintiffs and against the defendant in terms of para 42(a) to (d) of the plaint.

11. Considering the fact that the present suit is being disposed of at a



nascent stage on the statement and undertaking of the defendant, and even summons have not been issued in the present suit, the Registry is directed to issue a Certificate of Refund of full Court fees in favour of the plaintiffs.

12. At this stage, learned counsel appearing for the plaintiffs submits that refund be granted to the plaintiffs' counsel i.e. Remfry & Sagar.

13. Accordingly, the Registry is directed to issue the Certificate of Refund of full Court fees in favour of the plaintiffs through Remfry & Sagar, counsel for the plaintiffs.

14. Let decree sheet be drawn up.

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

MINI PUSHKARNA, J

NOVEMBER 25, 2024

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