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

% *Date of decision: 11<sup>th</sup> March, 2025*

+ CS(COMM) 652/2024 with I.A. 35557/2024 and I.A. 39510/2024

FMC CORPORATION AUTHORISED  
REPRESENTATIVE MR SACHIN DESAI & ORS.....Plaintiffs

Through: Mr. Adarsh Ramanujan, Mr. Parth  
Singh, Ms. Surabhi Mahajan and Ms.  
Asmita Shrivastava, Advocates.

versus

HINDUSTAN FERTILIZERS PRIVATE  
LIMITED & ANR. ....Defendants

Through: None.

**CORAM:**  
**HON'BLE MR. JUSTICE AMIT BANSAL**

**AMIT BANSAL, J. (Oral)**

1. The present suit has been filed by the plaintiffs seeking relief of permanent injunction restraining the defendants from infringing the trademark, trade dress, passing off, along with other ancillary reliefs.

**CASE SETUP IN THE PLAINT**

2. Plaintiff no.1 [FMC Corporation] is a company organised and existing under the laws of Delaware, United States of America. Plaintiff no.2 [FMC Agro Singapore] is a company existing and organised under the laws of Singapore.

3. Plaintiff no. 4 [FMC India Private Limited] is an Indian company,



incorporated in the year 2000, through which the plaintiff no.1 and 2 carry their business in India. The plaintiffs no.1 and 2 are registered proprietors of the trade mark 'CORAGEN'.

4. Plaintiff no.3 [FMC IP Technology] is a company existing and organised under the laws of Singapore. Plaintiff no.2 has assigned its rights in the trade marks in favour of the plaintiff no.3, *vide* assignment agreement dated 1<sup>st</sup> May 2024. It is stated that since the corresponding modifications were not completed in the records of the Trade Marks Registry, both the plaintiffs were made parties in the suit.

5. The plaintiffs are a group of agricultural sciences companies engaged in the production and sale of chemicals, including agrochemicals. The plaintiffs provide innovative and cost-effective solutions to enhance crop yield and quality by controlling insects, weeds, and diseases, as well as offering pest control solutions for non-agricultural markets. It is stated that the plaintiffs have established a strong presence in multiple countries, including India, by offering advanced insecticides, securing a leading position in the segment. Further, the plaintiffs' products include a powerful combination of advanced technologies in leading insect control products based on 'Rynaxypyr' and 'Cyazypyr' active ingredients.

6. Plaintiff no.1 entered India in the year 1973 and it is averred that the plaintiffs have established themselves as a leader in their market sphere ever since they entered the Indian market. It is further stated that India, being an agrarian economy, is a key market for the plaintiffs in Asia.

7. The subject matter of the present suit is related to the mark 'CORAGEN'. It is stated that the mark 'CORAGEN' is a distinctive, unique



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and coined trade mark. The plaintiffs adopted the said mark in 2006 and have been using the same for pesticides. Since its launch, the plaintiffs' product under the mark 'CORAGEN' has been among the plaintiffs' most successful brands. By 2012, global sales for the plaintiffs' 'CORAGEN' branded products had crossed USD 750 million and the plaintiffs sold 400,000 litres of 'CORAGEN' in India in 2012. The sale figures for 'CORAGEN' branded products between the years 2018-2023 are given in paragraph 34 of the plaint. The plaintiffs also widely advertise their products about the benefits of the insecticides provided under the brand 'CORAGEN'. The details of the promotional activities carried out by the plaintiffs are given in paragraphs 35 to 38 of the plaint.

8. The mark 'CORAGEN' was registered in India on 14<sup>th</sup> September 2006 under Class 5 for insecticides by one M/s E.I. du Pont de Nemours and Company.


9. It is stated that on 1<sup>st</sup> November 2017, after satisfying all necessary conditions and government approvals, plaintiff no.1 acquired E.I. Du Pont's crop protection business, including the brand 'CORAGEN'. Thereafter, on an application made before the Trade Marks registry, plaintiff no.1 and plaintiff no.2 were brought on record as the subsequent proprietors of the mark 'CORAGEN' based on an assignment deed dated 1<sup>st</sup> November 2017.

10. The plaintiffs have obtained trademark registration for their mark 'CORAGEN' in Indian regional languages as well. Plaintiff no.1 has also obtained the registration for the device mark/ logo 'Cory Scarecrow'. The details of the registrations obtained by the plaintiffs are given below:



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<b>Trade Mark</b>	<b>Registration No.</b>	<b>Date of Registration</b>	<b>Renewed upto</b>	<b>Class</b>	<b>Proprietor</b>
CORAGEN (word mark)	1487406	14.09.2006	14.09.2026	5	Plaintiff No. 1 with Plaintiff No.2
CORAGEN in Punjabi (word mark)	2454602	04.01.2013	04.01.2033	5	Plaintiff No. 1 with Plaintiff No.2
CORAGEN in Hindi (word mark)	2454603	04.01.2013	04.01.2033	5	Plaintiff No. 1 with Plaintiff No.2
CORAGEN in Telegu (word mark)	2454604	04.01.2013	04.01.2033	5	Plaintiff No. 1 with Plaintiff No.2
 Cory Scarecrow device/logo	1947195	07.04.2010	07.04.2030	5	Plaintiff No.1



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11. In addition to securing registrations in India, plaintiff no.1 and plaintiff no.2 have obtained registrations for 'CORAGEN' in numerous jurisdictions worldwide, including an international registration under registration no. 898744 dated 22<sup>nd</sup> September 2006.

12. It is stated that the plaintiffs 'CORAGEN' branded products are packaged in a unique and highly distinctive bottle shape, which is given below:



13. On 20<sup>th</sup> March 2024, the plaintiffs discovered that the same product bearing the mark 'CORAGIN' ("Impugned Mark") was being advertised and offered for sale on the IndiaMart website. As per the label on the bottle seen on the said website, the plaintiffs identified the defendant no.1 [Hindustan Fertilisers Private Limited] as the manufacturer of the impugned products.

14. Additionally, the website indicated that the product bearing the impugned mark was being distributed by the defendant no.2 [Sudershan Bio Crop Science].

15. Upon investigation, the plaintiffs found that the product bearing the impugned mark was also being offered for sale and marketed on the



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defendant no. 2's website.

16. Being aggrieved by the aforesaid activities, the plaintiffs filed the present suit for infringement of trademark, trade dress and passing off.

### **PROCEEDINGS IN THE SUIT**

17. The matter came up before this court for the first time on 6<sup>th</sup> August 2024, and the matter was adjourned on the ground that some averments in the plaint had been left out.

18. On 13<sup>th</sup> August 2024, the predecessor bench allowed the plaintiffs' application under Order VI Rule 17 of the Code of Civil Procedure, 1908 ('CPC') seeking amendment of the plaint and the application for an interim injunction. Further, the court granted an *ex-parte ad interim* injunction in favour of the plaintiffs restraining the defendants from using the word 'CORAGIN' and the device mark. Further, a local commissioner was appointed by the court to visit the premises of the defendants and seize the infringing goods.

18.1. Pursuant to the said order, a Local Commission was executed at the address of defendant no.2 on 21<sup>st</sup> August 2024. However, no establishment was found by the plaintiffs at the given address. Furthermore, attempts were made by the plaintiffs to effect service upon the defendants at other addresses.

19. Since the addresses of the defendants available with the plaintiffs were not correct, the Joint Registrar, *vide* order dated 28<sup>th</sup> November 2024, allowed the application of the plaintiffs for effecting substituted service on defendants no.1 and 2, through publication in the newspaper 'TIMES OF INDIA', Delhi edition.



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20. An affidavit of service dated 11<sup>th</sup> December 2024 has been filed on behalf of the plaintiffs stating that the plaintiffs have affected a substituted service on the defendants.

21. Since none entered appearance on behalf of the defendants, this court *vide* order dated 7<sup>th</sup> February 2024, directed that the defendants be proceeded against *ex-parte*.

### **ANALYSIS AND FINDINGS**

22. I have heard the submissions of the counsel and also perused the material on record.

23. The plaint has been duly verified and is supported by the affidavit of the plaintiffs. In view of the fact that no written statement has been filed on behalf of the defendants, all the averments made in the plaint have to be taken to be admitted. Further, since no affidavit of admission/denial has been filed on behalf of the defendants in respect of the documents filed with the plaint, in terms of Rule 3 of the Delhi High Court (Original Side) Rules 2018, the same are deemed to have been admitted. Therefore, in my opinion, this suit does not merit trial and the suit is capable of being decreed in terms of Order VIII Rule 10 of CPC.

24. From the averments made in the plaint and the evidence on record, the plaintiffs have been able to prove that they are the registered proprietors of the mark 'CORAGEN' and its formative marks.

25. A comparison table of the plaintiffs' product and the product bearing the impugned mark sold by the defendants is produced below:



<u>PLAINTIFFS' PRODUCT</u>	<u>DEFENDANTS' IMPUGNED PRODUCT</u>
	

26. A perusal of the aforesaid comparison would show that the defendants are using a mark 'CORAGIN' that is deceptively similar to the plaintiffs' registered trade mark 'CORAGEN'. The mark adopted by the defendants is visually, structurally and phonetically similar to the plaintiffs' trade mark 'CORAGEN'. The only difference in both the aforesaid marks is the substitution of the letter 'E' with the letter 'I' which in my view is not sufficient to make it distinguishable.

27. Further, the defendants have adopted a device mark which is deceptively similar to the device mark of the plaintiffs' registered device mark 'Cory Scarecrow'. Additionally, the overall label/packaging, use of white and purple colour scheme (white letters in the purple banner), placement and arrangement of all elements, including the man device in the product containing the impugned mark, are all deceptively similar to the plaintiff's product. Moreover, the defendants are using the impugned product bearing the impugned mark in relation to the same product.



28. The target consumers of the plaintiffs' products are farmers who rely mostly on experience rather than detailed label reading, and they are likely to be deceived into purchasing the product bearing the impugned mark. Given that the contents of the defendants' product are untested and unverified, such misrepresentation is likely to affect the plaintiff's goodwill, which has been built over years of extensive research, marketing efforts, and rigorous quality control measures.

29. Furthermore, the use of a deceptively similar mark on identical products and their distribution through the same commercial channels exacerbates the likelihood of confusion among potential consumers.

30. Clearly, in the present case, the plaintiffs' name, trade mark and copyrights have been used by the defendants with the clear intent to deceive the public. Their unauthorized actions, including the creation and adoption of a deceptively similar mark and sale of such products through the same commercial channels, are likely to cause consumers to falsely believe that the impugned product is affiliated with the plaintiffs. In view of the above, a clear case of infringement of trademarks is made out in favour of the plaintiffs and against the defendants no.1 and 2.

31. The plaintiffs, through their long and continuous use of their trade marks in India, significant sales made thereunder and promotion thereof, have been able to establish their goodwill and reputation under the 'CORAGEN' marks in India. The defendants have been taking unfair advantage of the plaintiffs' reputation and goodwill under the 'CORAGEN' marks and have also deceived the unwary consumers of their association with the plaintiffs by dishonestly and unauthorizedly adopting and using the



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plaintiffs' 'CORAGEN' marks without any plausible explanation. Therefore, the plaintiffs have established a case of passing off as well.

32. At this stage, it may be relevant to note that defendants have not appeared before this court despite service of summons. Since the defendants have failed to take any requisite steps to contest the present suit, despite having suffered an *ad-interim* injunction order, it is evident that they have no defence to put forth on merits.

33. Accordingly, the plaintiffs are entitled to the reliefs claimed in the plaint.

#### **RELIEFS**

34. In view of the foregoing analysis, a decree of permanent injunction is passed in favour of the plaintiffs and against the defendants no.1 and 2 in terms of prayer clauses 30 (i) to (iii) of the plaint.

35. Counsel for the plaintiffs does not press for the remaining reliefs claimed in the suit.

36. Let the decree sheet be drawn up.

37. All pending applications stand disposed of

**AMIT BANSAL, J**

**MARCH 11, 2025**

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