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

% *Date of decision: 13th December, 2024*

+ CS(COMM) 24/2019 with I.A. 733/2019

**BOSTON IVY HEALTHCARE SOLUTIONS
PRIVATE LIMITED**

.....Plaintiff

Through: Ms. Meenakshi Ogra, Mr. Tarun
Khurana, Mr. Sampat S. Kang, Mr.
Amarjeet Kumar, Mr. Rishi Vohra,
Ms. Chhavi Pande and Ms. Yashika
Chadha, Advocates.

versus

**M/S ACCORD MEDICAL PRODUCTS
PRIVATE LIMITED**

.....Defendant

Through: None.

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

AMIT BANSAL, J. (Oral)

1. The present suit has been filed seeking relief of permanent injunction restraining the defendant from infringing the trademarks of the plaintiff, passing off their goods and services as that of the plaintiff, and other ancillary reliefs.

CASE SET UP IN THE PLAINT

2. The plaintiff company operates one of the leading medical e-commerce websites, <http://medikabazaar.com> and <http://medikabaraar.biz>. The plaintiff through the above two websites carries on its wholesale business of providing healthcare products and services like medical devices,



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hospital equipment and healthcare I.T. solutions.

3. The plaintiff registered its e-commerce websites, <http://medikabazaar.com> and <http://medikabaraar.biz>, on 4th August, 2014 and 4th September, 2014 respectively and has been continuously and extensively doing business using the trade name/style “Medikabazaar” since 2014. The WHOIS details of the plaintiff’s registered domain names have been filed along with the plaint and have been exhibited as Ex. PW 1/5 (Colly).

4. Since its inception, the plaintiff has exclusively and uninterruptedly conducted its business under the trade name/style bearing the term “Medikabazaar” and has garnered tremendous goodwill and reputation in the market in India and internationally.

5. The plaintiff has provided its revenue figures for the period 2014 to 2018 in paragraph 11 of the plaint, which shows the immense popularity and success of the plaintiff in the medical healthcare sector. It is pertinent to note that the plaintiff’s revenue for the financial year 2017-2018 was approximately Rs. 21.30 crores.

6. The plaintiff has widely advertised and promoted its websites bearing the “Medikabazaar” marks, the details of which have been provided in paragraph 12 of the plaint. It is stated that the expenses incurred by the plaintiff for the advertising and publicity of its marks were approximately Rs. 86.81 lakhs.

7. The defendant company uses and operates a website ‘<https://medicalbazzar.com>’ containing the infringing term “MEDICALBAZZAR” in the same line of business as the plaintiff i.e. providing healthcare products.



8. In October, 2015, the plaintiff came to know of the defendant and its website under the domain name '<https://medicalbazzar.com>' which incorporates conceptually, phonetically, deceptively and visually identical/similar trademark and trade name/style '*MEDICALBAZZAR*'.

9. On 23rd October, 2018, the plaintiff sent a cease-and-desist notice to the defendant calling upon the defendant to refrain from infringing the plaintiff's marks.

10. On 24th November, 2018, the defendant replied to the aforesaid cease-and-desist notice denying all the averments made by the plaintiff in the said notice.

CASE SET UP IN THE WRITTEN STATEMENT

11. The defendant is the prior user of the impugned mark '*MEDICALBAZZAR*' since the date of registration of its domain name "www.medicalbazaar.com" is 6th January, 2014.

12. The services offered by the defendant are distinct from those of the Plaintiff as the plaintiff functions as a business-to-business model, whereas the defendant functions as a business-to-consumer model.

13. There is no similarity between the plaintiff's mark "*Medikabazaar*" and the impugned mark '*MEDICALBAZZAR*'

PROCEEDINGS IN THE SUIT

14. Summons in the suit were issued on 22nd January, 2019.

15. The defendant entered appearance in the present suit and filed a written statement on 15th March 2019.

16. *Vide* order dated 2nd August, 2019, the following issues were framed in the suit:



“1. Whether the defendant is guilty of infringement of the trademark of the plaintiff *MEDIKABAZAAR.*, “*MEDIKABAZAAR.COM*”, “*MEDIKABAZAAR.BIZ*”, “*MEDIKABAZAAR*”? **OPP**

2. Whether the trademark of the defendant, *MEDICALBAZZAR* is deceptively similar to the registered trademark of the plaintiff, *MEDIKABAZAAR*? **OPP**

3. Whether the defendant is a prior user of the mark *MEDICALBAZZAR*? If so, its effect? **OPD**

4. Relief.”

17. The plaintiff filed affidavit of evidence (Ex. PW1/X) of its sole witness, Mr. Kamlesh Kumar, PW1 who was examined on 17th December, 2019 and cross-examined by the defendant’s counsel on 9th January, 2020 and 28th July, 2022 after which the recordal of the plaintiff’s evidence was concluded.

18. The defendant was given multiple opportunities to file a list of witnesses and evidence by way of affidavit. However, the defendants failed to file the same.

19. Consequently, the defendant’s right to lead evidence was closed *vide* order dated 28th July, 2023 and the matter was listed for final arguments.

20. Since none had appeared on behalf of the defendant for the past several dates, *vide* order dated 5th November, 2024 the defendant was proceeded against *ex-parte*.

ANALYSIS AND FINDINGS

21. I have heard the submissions of the counsel for the plaintiff and also perused the material on record. My issue-wise findings are as under:

ISSUE NO.3 : WHETHER THE DEFENDANT IS A PRIOR USER OF THE MARK ‘MEDICALBAZZAR’? IF SO, ITS EFFECT? OPD



22. The defendant in its written statement has averred that it is “prior user” of the term “*MEDICALBAZZAR*” in respect of providing and selling medical products goods and services through its online platform/website under the name and title “medicalbazzar.com” with the domain name being claimed to have been registered on 6th January, 2014. However, the defendant has failed to lead any evidence to prove the aforesaid claim and thus, all assertions of alleged “prior use” as made in the written statement remain uncorroborated.

23. Therefore, in view of section 114 of Indian Evidence Act, 1872 an adverse inference is drawn against the defendant that it was not the prior user as claimed by the defendant in the written statement.

24. Hence, Issue no.3 is decided in favour of the plaintiff and against the defendant.

ISSUE NO.1 : WHETHER THE DEFENDANT IS GUILTY OF INFRINGEMENT OF THE TRADEMARK OF THE PLAINTIFF MEDIKABAZAAR., “MEDIKABAZAAR.COM”, “MEDIKABAZAAR.BIZ”, “MEDIKABAZAAR”? OPP

AND

ISSUE NO.2 : WHETHER THE TRADEMARK OF THE DEFENDANT, MEDICALBAZZAR IS DECEPTIVELY SIMILAR TO THE REGISTERED TRADEMARK OF THE PLAINTIFF, MEDIKABAZAAR? OPP

25. Both Issues no.1 and 2 are taken up together for consideration.

26. The plaintiff has claimed that it has established goodwill and market presence *vis-à-vis* its use of the domain names ‘<http://medikabazaar.com>’ and ‘<http://medikabaraar.biz>’, and its registered ‘*Medikabazaar*’ trademarks. In this regard, the plaintiff has placed on record the following:



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- i. Printouts from whois.com website showing domain name registration of 'http://medikabazaar.com' registered on 4th August, 2014 and 'http://medikabazaar.biz' registered on 4th September, 2014 [Ex. PW 1/5 'Colly']
- ii. Screenshots of the plaintiff's official website '<http://medikabazaar.com>' [Ex. PW 1/6 'Colly']
- iii. Various Social media websites used and operated by Plaintiff:
 - Facebook pages of the plaintiff [Ex. PW 1/9 and Ex. P7 (Colly)]
 - Twitter pages of the plaintiff [Ex. P8 (Colly)]
 - LinkedIn pages of the plaintiff [Ex. P9 (Colly)]
 - YouTube pages of the plaintiff – [Ex. P10 (Colly)]
- iv. Mobile App created, used and operated by the plaintiff company as available on "Google Play" under the title "Medikabazaar: BRB Medical Supplies" [Ex. PW 1/9]
- v. Sale invoices for the period 2015-2018 issued by the plaintiff company [Ex. PW 1/15 'Colly']
- vi. CA certificate showing the plaintiff's turnover for the FY 2014-2017 in the medical healthcare sector operating under the trade name/style "*Medikabazaar*" [Ex. PW 1/11], the details of which are given below:

S.No.	Financial Year	Revenue (in INR)
1.	2014-15	204057
2.	2015-16	21145986
3.	2016-17	76060374
4.	2017-18	213018899
TOTAL:		31,04,29,316/-







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vii. Copies of invoices evidencing expenses incurred by the plaintiff on advertising and publicity of the trade style/name “*Medikabazaar*” [Ex. PW 1/12 ‘Colly’] take to other issues

viii. Copies of sale invoices of the plaintiff’s services in the international market [Ex. PW 1/15 ‘Colly’]







27. The Plaintiff has also obtained various registrations for the plaintiff’s different “*Medikabazaar*” trademarks [Ex. PW 1/7 (Colly)], the details of which are given below:

Mark	Trade Mark No.	Class	User Date	Registration w.e.f.
	3223059	16	31.03.2016	29.03.2017
	3223061	42	31.03.2016	07.02.2018
	2840760	42	12.11.2014	11.10.2017
	2840759	35	12.11.2014	20.09.2018
Medikabazaar	3771413	16	07.03.2018	19.10.2018
Medikabazaar	3771415	42	07.03.2018	19.10.2018

28. From the averments made in the plaint and the evidence on record, the plaintiff has been able to prove that the plaintiff is the registered proprietor of the ‘*Medikabazaar*’ marks.

29. A comparison between the plaintiff’s marks and the defendant’s marks as seen on their websites is set out below:



IMPUGNED MARK OF DEFENDANT	PLAINTIFF'S MARKS
	
	
SIMILAR WEBSITE DESIGN HAVING SIMILAR COLOR THEME	
	

30. The following similarities emerge from the above comparison:
- i. The defendant has used the impugned mark/term ‘MEDICALBAZZAR’ which is phonetically, visually and conceptually similar to the trading style/name “Medikabazaar” of the Plaintiff.
 - ii. The defendant has even copied the dual-colour theme as used by the Plaintiff on its websites.

31. In the written statement, the defendant has simply denied any similarity without explaining or elaborating its claim of there being no similarity between “Medikabazaar” and ‘MEDICALBAZZAR’. Under Order VIII Rule 3 of the Code of Civil Procedure, 1908, bare denials are not



sufficient as the defendant is required to deal specifically with each allegation made by the Plaintiff.

32. The defendant has failed to provide any cogent reasons for adopting the impugned mark/term '*MEDICALBAZZAR*' which is phonetically, visually and conceptually similar to the trading style/name "*Medikabazaar*".

33. In my view, the adoption of the impugned mark and colour scheme by the defendant was not *bona fide* and shows the *malafide* intent of the defendant to attempt to pass off their goods and services as that of the plaintiff's in order to avail of the enormous goodwill created by the plaintiff *qua* use and promotion of the term '*Medikabazaar*'.

34. Based on the discussion above, a clear case of infringement of trademarks is made out. The defendant is using an almost identical trademark in relation to similar services which is likely to cause confusion in the public.

35. In light of the aforesaid, Issues no.1 and 2 are decided in favour of the plaintiff and against the defendant.

RELIEF

36. A decree of permanent injunction is passed in favour of the Plaintiff and against the defendant in terms of prayer clauses 33 A and B of the plaint.

37. In terms of prayer clause 33 D of the plaint, the defendant is directed to take down its domain '<http://medicalbazaar.com>' which infringes the plaintiff's registered '*Medikabazaar*' trademarks.

38. In view of the above, the counsel for the plaintiff does not press for the remaining reliefs prayed for in the suit.

39. Let a decree sheet be drawn up accordingly.



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40. The pending application stands disposed of.

DECEMBER 13, 2024

Corrected and uploaded on 3rd January, 2025

Vivek/-

AMIT BANSAL, J