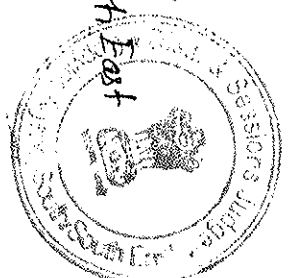


TM 16/11/15
01/10/2015

2



BEFORE THE HON'BLE DISTRICT JUDGE, SAKET COURT, NEW
DELHI
TM No. of 2015

SOUTH EAST

IN THE MATTER OF:

Metro Institutes of Medical Sciences P. Ltd
Having its registered Office at:
14, Ring Road
Lajpat Nagar -IV
New Delhi -110 024

Present:-
This case has been
spoken to the court
put on for the concerned under
recall at 2 PM.
District & Sessions Judge
(South-East)
Saket Courts Complex
..Plaintiff Date 01/10/15

VERSUS

Dr. Nitin Zabak
Partner
M/s Metro Criticare Hospital
1st Floor, Shubham apartment
Above Bata Showroom
Near Commissioner Bungalow
Syndicate, Murbad Road, Kalyan (W)
Dist Thane - 421301

...Defendant No. 1

Dr. Neeta Zabak
Partner
M/s Metro Criticare Hospital
1st Floor, Shubham apartment
Above Bata Showroom
Near Commissioner Bungalow
Syndicate, Murbad Road, Kalyan(W)
Dist Thane - 421301

...Defendant No. 2

SUIT FOR PERMANENT INJUNCTION RESTRAINING
INFRINGEMENT OF TRADE MARK, FOR RENDITION OF
ACCOUNTS OF PROFITS, DELIVERY UP, ACTS OF UNFAIR
COMPETITION E.T.C.

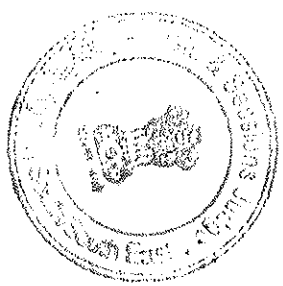
The Plaintiff above named most respectfully submit as under:-

- 31609
01/10/15
1. The Plaintiff namely, Metro Institutes of Medical Sciences Private Limited, is a company incorporated under the Companies Act, 1956, India having its registered office at 14, Ring Road, Lajpat Nagar -IV, New Delhi -110 024. Mr. Govind Kumar Sharma is the

ATTESTED

1

Exhibits
01/10/15



IN THE COURT OF SH. LALIT KUMAR;
ADDITIONAL DISTRICT JUDGE 01 - SOUTH EAST DISTRICT, SAKET
COURTS, NEW DELHI

TM /15

Metro Institutes of Medical Sciences Pvt. Ltd.
Versus
Dr. Nitin Zabak & Anr.

Order:
01.10.2015

Present: Ld. Counsel for plaintiff.

This is a fresh suit for permanent injunction, restraining infringement of Trade Mark, for rendition of account of profits, delivery of Acts of unfair competition etc. received by assignment. It be checked and registered.

Ld. Counsel for the plaintiff submitted that ad-interim ex-parte injunction/protection may be granted to the plaintiff as prayed in his application u/o 39 r. 1&2 CPC as defendants are infringing the Trade Marks registered in the name of plaintiff.

Heard on the prayer for ex-parte ad-interim injunction and have perused the records. The brief facts of the case are that :

1. The plaintiff was originally incorporated as U.G Hospitals Pvt. Ltd. As on 20.02.1990. The name of plaintiff changed to its present name i.e. Metro Institutes of Medical Sciences Pvt. Ltd on 17.05.2007. The aforementioned registrations were applied in the name of U G Hospitals Pvt. Ltd. (plaintiff as originally incorporated). These registrations are duly renewed and valid. The plaintiff has filed appropriate applications on Form TM 33

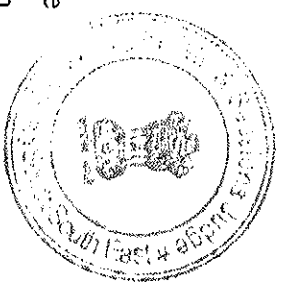
TM /15

Metro Institutes of Medical Sciences P. Ltd. Vs. Dr. Nitin Zabak & Anr

1



01.10.15

ATTESTED
01/10/15
EXAMINER DATED.....

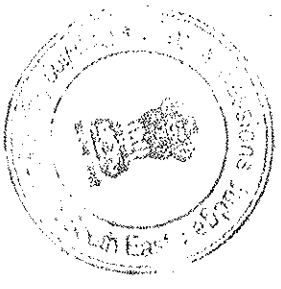


with the Trade Mark Registry to record the change in the name of the plaintiff to its present name. The same is pending with the Trade Mark Registry. Though, the plaintiff is the registered proprietor of the trade marks Metro, Metro Heart Institute and Metro Hospital, which is a composite mark / label incorporating the essential component i.e. Trade name Metro used since 1997.

2. Immediately after foraying into the heart care segment in 1997, the plaintiff started in September 1998, a multi speciality wing under the name Metro Multi-speciality Hospital was set up. This was followed by establishing different specialties under the name, Metro Centre for Liver & Digestive Diseases and Metro Center for Respiratory Diseases at multi-speciality wing MHHI. It is further averred that the plaintiff has established ten state of the art Hospitals and three satellite units under the trade name METRO, which are collectively known as METRO Group of Hospitals as i) Metro Heart Institute, Faridabad, 2002 ii) Metro Hospital and Heart Institute, Meerut, 2003 iii) Metro Hospital and Heart Institute, Lajpat Nagar, Delhi 2004 iv) Metro Hospital and Cancer Institute, Preet Vihar, Delhi 2005 v) RLKC Hospital metro Heart Institute, Naraina; 2006 vi) Metro Hospital & Research Centre, Vadodara; 2009 vii) Metro Hospital & Heart Institute, Gurgaon; 2012 viii) Metro Hospital and Heart Institute, Jaipur; 2012 ix) Metro Hospital and Heart Institute, Haridwar; 2013. It is further averred that there are four other Metro hospitals coming up at Greater Noida and Punjab shortly. The plaintiff has received prestigious Accreditations for six of its hospitals being the National Accreditation Board for Hospitals & Healthcare Providers (NABH) & two of their labs being the



6/10/15

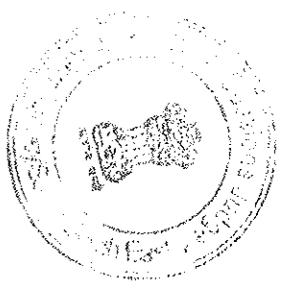

29/10/15
District Court Jaipur



National Accreditation Board for Testing and Calibration Laboratories (NABL). Since 1997, Metro has helped to enhance the lives of thousands of people who choose the plaintiff for quality healthcare services. The trade name METRO has been thus extensively used by plaintiff since 1997 in India and has acquired formidable goodwill and reputation. The plaintiff, in order to accord statutory protection to its trade mark applied for and has obtained registrations for its trade name i.e. Trade Mark – Metro, Class – 42, Registration No. & date – 1551499 dated 20.04.2007, Services – Medical Services: Hospital, Heart Institute, Pharmacy, Healthcare, Specialty Hospital, Research Institute, Medical Sciences Included in Class 42; Trade Mark – Metro Heart Institute , Class – 42, Registration No. & date – 1551500 dated 20.04.2007, Services – Medical Services: Hospital, Heart Institute, Pharmacy, Healthcare, Specialty Hospital, Research Institute, Medical Sciences Included in Class 42 and Trade Mark – Metro Hospital, Class – 42, Registration No. & date – 1551501 dated 20.04.2007, Services – Medical Services: Hospital, Heart Institute, Pharmacy, Healthcare, Specialty Hospital, Research Institute, Medical Sciences Included in Class 42. The reputation and goodwill attached to the trade name Metro can be gauged from the revenues earned by the plaintiff. On account of prior adoption, long and continuous use, extensive, exclusive and enormous publicity, excellent quality control, the trade name Metro has acquired secondary significance and distinctiveness as indicative of source and origin of medical and hospital services provided by the plaintiff. The said trade name has come about to enjoy enviable goodwill and reputation amongst patients and consumers for quality


01.10.15


Examiner Darsh...

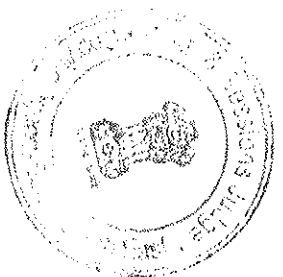


medical and hospital services. The trade name Metro thus connotes and denotes the services originating from the plaintiff and none else.

3. It is further averred that the plaintiff came to know about the defendants namely "Dr. Nitin Zabak & Arr" that they are using the identical trade mark of plaintiff as infringed one and accordingly issued a legal notice dated 01.06.2015 to which defendants have not responded . It is further submitted that the plaintiff earned annual revenues to the tune of Rs. 189 crores and incurred Rs. 66 lacs in promoting its hospitals under the mark Metro during the financial year 2013-14, the conduct of the defendants in adopting the impugned mark "Metro Criticare Hospital" is fraudulent, dishonest, unethical, unlawful and solely motivated to cheat the patients and encash upon the goodwill and reputation of the plaintiff's trade name Metro and to earn easy and illegal profits by passing off their medical services for those of the plaintiff. The use of the impugned trade name Metro of the plaintiff by the defendants amounts to misrepresentation to the consumers that such services are being offered by the plaintiff. Such use also amounts to misappropriation of plaintiffs' goodwill and reputation in the trade name Metro by the defendants. The defendants are actually committing multiple offences and playing fraud upon members of public. Considering that the services in question are medical services and the fact that such services are without any quality control by the plaintiff, the defendants ought to be enjoined by this court on urgent basis. It is further averred that the plaintiff has been offering medical and hospital services under the trade mark / name Metro in India since 1997 and the


01.08.15

ATTESTED
29/10/15
Registrar Chennai



annual revenues of plaintiff arising from services offered under the name Metro for the period 1997-2014 is more than Rs. 1500 Crores. The plaintiff's trade mark Metro, therefore, enjoys substantial goodwill and reputation in India, sale of identical services under identical trade name / mark Metro by the defendants, unless enjoined, would completely destroy the goodwill and reputation of the plaintiff and trust of the patients and consumers in plaintiff's services. The plaintiff will suffer irreparable loss and injury unless and order of interim injunction is granted during the proceedings restraining the defendants from providing medical and hospital services under the impugned trade mark Metro. The use of the trade name Metro by the defendants constitutes infringement of plaintiff's registered trade mark Metro. The unauthorised use of the mark Metro which is an essential feature of the registered trade name / mark by the defendants amounts to infringement of the trade mark registration no. 1551499, 1551500 and 1551501 of the plaintiff as well as misappropriation of the goodwill and reputation that vests therein of the plaintiff and it is prayed to grant an order of interim injunction restraining the defendants, their directors, partners or proprietor, as the case may be, assignees in business franchisees, licensees, distributors, dealers and agents from in any manner using Metro as trade name / trade mark or as a part of its corporate name and / or trading name in respect of medical services or any other trade mark or trade name as may be deceptively similar thereto, amounting to infringement of the plaintiff's registered trade marks being above mentioned registration numbers.

4. It is further argued that plaintiff has got incorporation

TM /15

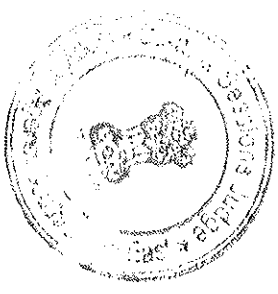
Metro Institutes of Medical Sciences P. Ltd. Vs. Dr. Nithin Zebak & Anr

5

[Signature]
01.10.15

ATTESTED

[Signature]
29/10/15



certificate as well as certificate of trademark registration in the year 2007. Plaintiff argued that the said registration is still valid in his favour and has not been overruled by the registration authorities or has not been expired yet. defendants have maliciously using its name and deceptively projecting himself as Metro Hospital. The goodwill earned by the plaintiff from the last 19 years are on the stake due to the above and is adversely affecting the interest and reputation of plaintiff. defendants by using the plaintiff's trademark is indeed deceiving the common people.

5. To support his contention plaintiff has relied upon **Siefel Laboratories Inc. & Anr. Vs. Ajanta Pharma Ltd., 2014 (59) PTC (Del)**, wherein the plaintiff were the registered proprietors of the mark CLINDOXYL while the defendants were the registered proprietor of the mark CLINOXIDE. The Hon'ble Court proceeded to injunct the defendants, holding the defendant's mark to be deceptively similar to that of the Plaintiffs.

6. **Ld. Counsel** for plaintiff further relied on "**Midas Hygiene Industries (P) Ltd Vs. Sudhir Bhatia**" wherein the law of infringement is described as:-

In cases of infringement either of trade mark or of copy right normally an injunction must follow. Mere delay in bringing action is not sufficient to defeat grant of injunction in such cases. The grant of injunction also becomes necessary if it prima facie appears that the adaption of mark was itself dishonest.

7. The plaintiff has established a prima facie case and the balance of convenience is in favour of the plaintiff. The plaintiff will suffer irreparable loss and injury unless an order of interim


01.10.15

~~ATTORNEY~~
29/10/15
Examiner dated.....



Injunction is granted during the proceedings restraining the defendants from providing medical and hospital services under the impugned trade mark METRO.

8. Considering the circumstances, defendants, their directors, partners or proprietor, as the case may be, assignees in business franchisees, licensees, distributors, dealers and agents are restrain from using "Metro" as trade name / trade mark or as a part of its corporate name and / or trading name in respect of medical services or any other trade mark or trade name as may be deceptively similar thereto till the next date of hearing. **However, it is made clear that this order shall come into effect after 15 days from the service to the defendants.** Compliance of order 39 rule 3 be done within a week.
9. Nothing stated herein shall tantamount the expression of any opinion on the merits of the case.

Notice of the suit be issued to the defendants on filing of PF/RC for 30.11.2015, Steps within 7 working days.

(LALIT KUMAR)
Additional District Judge 01(SE),
Saket Courts, New Delhi.
01.10.2015.

PF/RC
Received
5/10/15

01.10.15

