2024:DHC:9377

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

% ***Date of Decision: 28th November, 2024***

\+ CS(COMM) 608/2021 & I.A. 15582/2021, I.A. 7145/2022, I.A. 8644/2022, I.A. 15271/2022, I.A. 15272/2022, I.A. 15325/2022

EXXON MOBIL CORPORATION .....Plaintiff

Through: Mr. Zeeshan Khan and Mr. Ayush Samadar, Advs.
M: 9958257119

versus

MOBILFUELS PRIVATE LIMITED & ANR. .....Defendants

Through: Mr. Vikhyat Oberoi, Mr. Ravi Shalima, Ms. Nishita Gupta and Mr. Shivam Prakash, Advs.

CORAM:

HON'BLE MS. JUSTICE MINI PUSHKARNA

MINI PUSHKARNA, J *(ORAL)*

1. The present suit has been filed seeking permanent injunction restraining infringement of the plaintiff's registered and well-known trade mark MOBIL as part of the defendants' trade mark MOBILFUELS/ MOBIL FUELS used in relation to a Mobile App available for download on the Google Play Store all over the country and in relation to door step fuel delivery services.

2. Case as canvassed on behalf of the plaintiff, is as under:

2.1 The plaintiff is the world's largest publicly traded petroleum and petrochemical enterprise, having its presence in most of the countries around the world including in India. The plaintiff apart from the said goods and services, owns and operates gas stations all over the United States of America.

2.2 The plaintiff is the proprietor of the registered trademark MOBIL and a number of MOBIL formative marks like MOBIL SUPER, MOBIL SUPER MOTO, MOBILOIL, MOBILUBE under various Classes in India.

2.3 The trade mark MOBIL was coined and adopted as a trade mark in 1899 in respect of petroleum and related products thereto, and as a trade name in the year 1966 and is registered in at least 163 jurisdictions of the world, including, India.

2.4 The trade mark MOBIL was registered in India as early as 1942 in relation to goods such as *illuminating oils, burning oils; diesel oils and oils for operating internal combustion engines, fuel oils, lubricating oils, and greases; motor spirit; dust laying materials and substances; industrial oils (except edible and essential oils); industrial grease*s included in Class 4.

2.5 The plaintiff owns and maintains the websites www.mobil.com since 31st January, 1991, www.exxonmobil.com since 24th November, 1998, and www.mobil.co.in since 16th February, 2005, which, *inter alia*, have the details about the history, activities and products of the plaintiff and its affiliates.

2.6 The goods sold by the plaintiff's authorized users, including those sold in India, are recognized for their quality and as a result, there is tremendous consumer trust in the brands MOBIL, EXXONMOBIL, MOBIL 1, MOBIL SUPER, MOBIL SUPER MOTO.

2.7 The plaintiff in or around September 2021, learnt that the defendants are using the plaintiff's registered and well-known trade mark MOBIL as part of the defendant's trade mark MOBILFUELS/ in relation to a Mobile App available for download on the Google Play Store and in relation to door step fuel delivery services.

2.8 Subsequently, enquiries revealed that defendant no. 1 is a private limited company with Mr. Ishaan Mishra and Mr. Bijay Kumar listed as Directors and defendant no. 2 is a limited liability partnership with Mr. Ishaan Mishra and Mr. Bijay Kumar listed as the Partners.

2.9 The plaintiff, through its attorney issued a cease-and-desist letter dated 06th September 2021 to defendant no. 1, wherein, the defendant refused to comply with the requisitions stated in the said legal notice. On account of the plaintiff's refusal to cease the infringing use, the present suit has been filed.

3. This Court notes that vide order dated 29th November, 2021, this Court had passed an *ex parte* injunction order restraining the defendants from using the trade mark MOBILFUELS/ , trade name MOBILFUELS PRIVATE LIMITED and MOBILFUELS SERVICES LLP and domain name www.mobilfuels.com as name of their mobile app available for download on Google Play Store.

4. Pursuant thereto, this Court vide order dated 27th May 2022 had recorded that the defendants have chosen not to appear before this Court and clearly continued to run their business. Therefore, an application had also been moved by the plaintiff for appointment of a Local Commissioner to

visit the premises of the defendants to ascertain the continuous violation. Thus, a Local Commissioner was appointed to visit the premises of the defendants.

5. The local commission was executed on 02nd June 2022, wherein, upon inspection of the premises, it was found out that the impugned mark and logo was being used by the defendants on various products. Further, the said products bearing the impugned mark MOBILFUEL were also seized by the Local Commissioner.

> *"xxx xxx xxx*
> *6.......*
> *B. The Local Commissioner shall ascertain as to whether the Defendants are continuing to use the mark, name, domain name, website name, logo or MOBIL FUEL in any form whatsoever; and The Local Commissioner shall collect the evidence in respect of the said usage including pamphlets, invoices, brochures, photographs of the premises, photographs of the trucks etc.*
>
> ***Findings**: **Upon inspection of the premises, I found that the mark and logo as mentioned in paragraph 2 of the Order dated 27.05.2022 passed by this Hon'ble Court was being used by the Defendants in the form of (i) Coffee Mug; (ii) ID Card Ribbon Band; (iii) affixation of news articles about the Defendants; (iv) affixation of photographs of the vehicles used by Defendant which bear the Impugned Logo and the Trade Name ("Mobil Fuels"); (v) letter head; (vi) Map bearing Impugned Logo; (vii) round rubber stamp of Mobilfuels Services LLP; and (viii) director stamp of Mobil Fuels Private Limited**. I state that no pamphlets, brochures, trucks were found at the premises and thus, I could not ascertain whether the impugned logo and the marks were used by the Defendants through these modes or not. On enquiry from Mr. Isaan and Mr. Bijay, they informed me that the trucks are not present at the Premises and are out in relation to the business of the Defendant and will not return before the night.*
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

6. Subsequently, this Court vide order dated 12th December, 2022 recorded the submission of the defendants that they have given up the

impugned mark. Pursuant thereto, an affidavit dated 18th January, 2023 was filed on behalf of the defendants, relevant portions of which, read as under:

> *"xxx xxx xxx*
>
> ***8. I state that thus, the Defendants are no more using the name "Mobilfuels" and we have adopted the name "Mishrafuels". To that end, we have also removed "Mobilfuels" from our truck, and placed the name "Mishrafuels" on it.***
>
> > *Photographs showing the removal of 'Mobilfuels' and placing of Mishrafuels' on the truck of the Defendants are annexed hereto and marked as Document 5(Colly).*
>
> ***9. I state that subsequent to the execution of the local commission, we not only stopped using "Mobilfuels", but infact immediately gave up the said trade name altogether, as can be seen from the aforesaid facts deposed.***
>
> ***10. I further state that the Google Web Application that was started by the Defendants has already been suspended and is no longer available on Google Play Store.*** *Further, the Defendants do not have the intention to restart the operation of the said Application.*
>
> > *A true copy of the screenshot from the Google Play Store showing the suspension of the Application of the Defendant No. 2 along with its true typed copy is annexed hereto and marked as Document 6.*
>
> ***11. I further state that the Defendants have also given up their website "www.mobilfuels.com".***
>
> > *A true copy of the screenshot from the world wide web showing that the website of the Defendants is no longer available is along with its true typed copy annexed hereto and marked as Document 7.*
>
> ***12. I state that in light of the aforesaid, it is most respectfully prayed to this Hon'ble Court to dispose off the instant matter, without any cost or damages.***
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

7. Further, vide order dated 31st January, 2023, counsel for the defendants reiterated the position that defendants have given up the impugned mark and therefore, the suit may be disposed of.

8. This Court further notes the submission of the counsel for the plaintiff

as recorded in order dated 27th February 2023, that plaintiff is not pressing for any damages, but is pressing for costs in view of the exorbitant costs that had been incurred in the present matter.

9. In view of the submissions made and documents placed on record, this Court notes that despite being served with the cease-and-desist letter dated 06th September, 2021, the defendants did not give up using of the impugned mark and continued to sell the infringing products in the market, which resulted in the plaintiff filing the present suit and incurring legal costs.

10. Further, it is pertinent to note that it was only after the execution of the commission by the Local Commissioner, that the defendants had undertaken to cease the use of the impugned mark.

11. In view of the entire facts and circumstances of the case, the plaintiff is entitled to a decree and costs in its favour.

12. Accordingly, the following directions are issued:

I. A decree of permanent injunction is passed in favour of the plaintiff and against the defendants, in terms of Para 42 (i) of the plaint.

II. The goods, that were seized and released on *superdari* to the defendants, shall be handed over by the defendants to the plaintiff.

III. The counsel/representative of the plaintiff shall contact the counsel for the defendants, and fix a convenient date and time for the purpose of taking over the goods in question from the defendants.

III. Cost of ₹ 3,00,000/- (Rupees Three Lacs), shall be paid by the defendants jointly to the plaintiff, within a period of six months.

IV. The cost of ₹ 3,00,000/- shall be paid through the counsel for the plaintiff, who shall be at liberty to remit the said amount to the plaintiff, stationed outside India, in accordance with law.

13. The present suit is disposed of accordingly, along with the pending applications.

MINI PUSHKARNA, J

NOVEMBER 28, 2024