

ADDITIONAL DISTRICT JUDGE-01
Room No. 114, Sixth Floor
South East District Court
Saket Court Complex, New Delhi

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

TM - 20/16

Metro Institutes of Medical Sciences Pvt. Ltd.

Versus

Deepak Solanki

Order:

09.06.2016

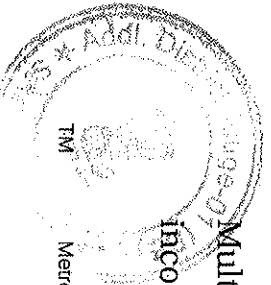
Present: Sh. Sachin Gupta, Id. Counsel for plaintiff.

This is a suit for permanent injunction, restraining infringement of Trade Mark, rendition of accounts of profits, delivery up etc. received by assignment. It be checked and registered.

Id. Counsel for the plaintiff submitted that ad-interim ex-parte injunction/protection may be granted to the plaintiff as prayed in his application under Order XXXIX rule 1 & 2 read with Section 151 CPC as defendant is 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:

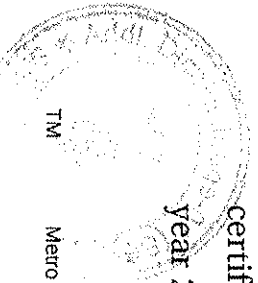
1. The plaintiff was originally founded the first hospital under the name Metro Hospital and Heart Instituted at Noida in June 1997 and lateron a Multispecity Wing under the name Metro Multispecity Hospital were set up. The plaintiff was originally incorporated as U.G Hospitals Pvt. Ltd. As on 20.02.1990. 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 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. It is further averred that the plaintiff came to know about the defendant who is running a hospital under the name and style of "Metro Hospital" at Hisar (Haryana) and is using the identical trade mark of plaintiff as infringed one. However, plaintiff submitted that he is not aware of the legal composition of the said hospital and craves liberty to implead necessary party if the need arises. Plaintiff came to know about the defendant from the publication of the defendant's Trademark application for "Physico Max" under no. 2175254 in the Trademark General no.1742 dated 25.04.2016 and accordingly issued a cease and legal /desist notice dated **06.05.2016** which was received by the defendant on 11.05.2016 but has not been responded till date.

3. It is further argued that plaintiff has got incorporation certificate as well as certificate of trademark registration in the year 2007. Plaintiff argued that the said registration is still valid



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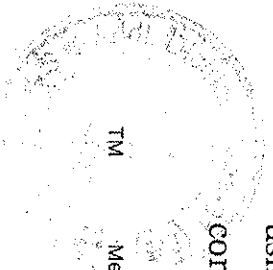
in his favour and has not been overruled by the registration authorities or has not been expired yet. Defendant has maliciously using its name and deceptively projecting himself as Metro Hospital. The goodwill earned by the plaintiff from the last 19 years are on the stake due to the above and is adversely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

4. Id. Counsel for plaintiff relied upon case titled as *Morgan Stanley Mutual Funds; Arvind Gupta Vs. Kartick Das; Securities and Exchange Board of India 1994 Law Suit (SC)549* qua the territorial jurisdiction of this court to entertain the present petition.

Id. Counsel for plaintiff relied upon a case law as **CS (OS) 3289/2012 Metro Institutes of medical Sciences P. Ltd. Vs. Dr. Fahad Islahi and Anr** in support of his arguments qua present application.

5. 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 injunction is granted during the proceedings restraining the defendant from providing medical and hospital services under the impugned trade mark METRO.

6. Considering the circumstances, the defendant, proprietor or its partners as the case may be, assignees in business franchisees, licensees, distributors, dealers and agents are restrained from using "METRO" as trade name / trade mark or as a part of its corporate name and / or trading name in respect of medical

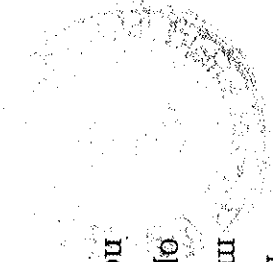


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Metro Institutes of Medical Sciences P. Ltd. Vs. Deepak Solanki

Pg. 3 of 4

- 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 defendant.** Compliance of Order 39 rule 3 be done within a week.
7. Nothing stated herein shall tantamount the expression of any opinion on the merits of this case.
8. Notice of the suit alongwith application under Order XXXIX Rule 1 and 2 CPC be issued to the defendant on filing of PF/RC for 12.07.2016. Steps within 7 working days.
9. Ld. Counsel for plaintiff further submitted that defendant has applied for trademark registration from the address being mentioned as Smart Brain, 88 Ground Floor, Defence Enclave, opposite Corporation Bank, Vikas Marg, Delhi – 110092. Let notice to defendant be also issued on this address also.



True copy

sd/-

(LALIT KUMAR)

Additional District Judge 01 (SE),
Saket Courts, New Delhi/ 09.06.2016

Adl. District Judge-01
Saket, New Delhi

Handwritten signature of the Additional District Judge, Saket, New Delhi.