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

+ **CS(COMM) 430/2022**

**SILVERMAPLE HEALTHCARE
SERVICES PRIVATE LIMITED**

..... Plaintiff

Through: Mr. Tushar Singh, Mr. Sugandh
Virmani and Mr. Vaibhav Guliani, Advocates.

versus

DR. TAJINDER BHATTI

..... Defendant

Through: None.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

% **03.06.2022**

1. Let plaint be registered as a suit.
2. Upon filing of process fee, issue summons to the Defendant, through all permissible modes, returnable before the learned Joint Registrar on 17.08.2022. Summons shall state that the written statement shall be filed by the Defendant within 30 days from the receipt of summons. Along with the written statement, Defendant shall also file an affidavit of admission/denial of the documents of the Plaintiff.
3. Replication be filed by the Plaintiff within 15 days of the receipt of the written statement. Along with the replication, an affidavit of admission/denial of documents filed by the Defendant, shall be filed by the Plaintiff.
4. If any of the parties wish to seek inspection of any documents, the same shall be sought and given within the timelines.



5. List before the Court on 10.10.2022.

I.A. 9660/2022 (under Order 39 Rules 1 and 2 CPC, by Plaintiff)

6. Present application has been preferred by the Plaintiff under Order 39 Rules 1 and 2 read with Section 151 of the Code of Civil Procedure, 1908 for grant of *ex-parte ad-interim* injunction.

7. Issue notice to the Defendant through all prescribed modes, returnable on 10.10.2022.

8. It is averred that DHI (Direct Hair Implantation) is a brand name developed for a unique hair transplantation method invented and developed by Dr. Konstantinos P. Giotis, founder of DHI Global Medical Group, in Athens, Greece. Since the year 1970, DHI Global Medical Group has been involved in medical research and development concerning hair loss and has helped more than 2,50,000 patients worldwide to effectively deal with hair loss. In the year 2005, DHI Medical Group innovated and launched the direct Hair Transplant Implantation (DHI) technique.

9. It is averred that Plaintiff executed a Master Franchise Agreement dated 26.05.2010 with DHI Global Limited, owner of the brand name “DHI”, whereby, *inter alia*, Plaintiff has been given exclusive license for using and exploiting the Registered licensed DHI marks and DHI technique for undertaking, promoting and developing the business of providing hair restoration services and Plaintiff has also been granted the right to take all necessary actions for enforcing and protecting such rights. The entire business under the aforementioned agreement is conducted by the Plaintiff under the brand name DHI. The abovementioned Agreement was later substituted by Master Franchise Agreement dated 26.03.2018, executed between the Plaintiff and DHI Global Limited, whereby the geographical



boundaries were extended to the rest of the country, save and except Central and Western India and the term of the Agreement is initially for a period of 10 years. Plaintiff is free to use the aforesaid exclusive license either directly or indirectly through sub-franchisees, clinics, hospitals, doctors as may be appointed by the Plaintiff. Plaintiff has also been paying the Royalty Fees of €5000 regularly to DHI as envisaged in the said Agreement.

10. It is further averred that since acquiring the exclusive license for DHI in India, Plaintiff has worked tirelessly to establish the credibility of DHI brand across India by maintaining highest standards and educating the public about the quality of DHI hair restoration procedure using the DHI Total Care system and simultaneously advertising the same. In the past 11 years, Plaintiff has gained immense trust and faith of the members of public in India, as exemplary standards are maintained by various clinics owned and run by the Plaintiff and its sub-franchisees. At present, there are 13 fully-functional clinics located in various cities, run by the Plaintiff or sub-franchisees and follow strict operating protocols and maintain high standards of quality, health and hygiene, as contained in the Operations Manual, without any exception.

11. It is further averred that the intellectual properties of DHI Global Medical Group are owned and managed by M/s Dexpo Intellectual Properties Services Limited, a company registered in Cyprus and a part of DHI Medical Global Group. Details of registered trademarks owned by M/s Dexpo Intellectual Properties Services Limited in India are given in the plaint.

12. It is further averred that Plaintiff's DHI trademarks form and represent its valuable statutory and proprietary rights. The trademarks are



representative of its services, brand identity, business reputation and public identification throughout India. Plaintiff's DHI trademarks and brand name have been continuously and extensively used by the Plaintiff for the past several years, in respect of its services viz. hair transplantation, restoration and allied services, which has resulted in loyal and extensive patronage from numerous consumers all over the country. DHI is also a recipient of numerous prestigious awards.

13. It is also averred that Plaintiff has been extensively advertising the DHI technique in public media and has expended crores of rupees in popularising their services under the DHI trademarks and variants thereof, which has helped the brand name and trademark attain immense fame and goodwill. The DHI brand name and trademarks are prominently advertised amongst the general trade and public through magazines, journals, newspapers and other print and electronic media, including the internet. Such exposure has unquestionably contributed to the popularity of the "DHI Hair Transplantation" brand name and trademarks in various parts of India. Sales figures and promotional expenses incurred by Plaintiff for DHI for the year 2021-22 has been 15.11 Lakhs and 1.3 Lakhs, respectively. Details of revenues and advertisement expenses for the past six years are mentioned in the plaint.

14. It is averred that Defendant markets himself as a hair transplant doctor, running a hair transplant restoration in Mohali, Chandigarh under the name 'Darling Buds Clinic'. The Clinic operates very close to the clinic of the Plaintiff and is Plaintiff's competitor. Defendant also runs a YouTube channel by the name of 'Darling Buds Clinic' to promote his clinic and uploads videos. Services provided by the Defendant have approximately



26,600 subscribers, which have increased since the uploading of the impugned videos.

15. It is further averred that Defendant asserts and advertises that his techniques are better and safer, by issuing exaggerated statements of having made certain modifications to the DHI Technique which would yield better results for the customers. Defendant is representing to the public that the techniques used by the Plaintiff are bad and extremely harmful, including its surgical procedures carried out by trained MBBS/MD Doctors. The said statements are completely baseless and without any evidence as also without reference to any medical or scientific research. Such statements and claims, according to the Plaintiff, constitute disparagement/denigration of Plaintiff's brand "DHI" and its hair transplant technique "DHI Technique", carried out using a patented instrument.

16. It is further averred that unmistakably, the objective and intent of the Defendant, through the videos, is to discourage the consumers from using Plaintiff's hair transplant technique and instead accept the hair transplant technique offered by the Defendant at his clinic, which he claims is more beneficial and comparatively safe. Such claims and denigration erode the reputation of Plaintiff's brand and technique, which has been built over the world over past 50 years and in India in the last 11 years, with painstaking efforts and investments. Defendant has clearly, with a view to push his sales has indulged in disparagement/denigration of an old, existing, acknowledged and renowned brand and technique under Plaintiff's licensed and registered marks. Defendant, instead of carving out a market for himself, based on his own value, if any, seeks to malign and defame the Plaintiff, to boost his sales. Some of the excerpts from the impugned videos as brought out in the



plaint are as follows:

“g) At 6:10 to 6:47: Defendant emphatically asserts following disadvantages – (i) **achieving high density hairline not possible with the DHI Technique**, (ii) **Implanter does not allow the grafts to hold in place and** (iii) **DHI Technique causes brisk bleeding leading to overall decrease in density**

i) At 7:20 & 7:40: Defendant further asserts that **natural curl of hair cannot be replicated with the DHI Technique** and summarized the video by repeating the Darling Buds Clinic has improved upon the DHI Technique.

l) At 7:30 – 8:10: DHI method involves **very awkward positioning**, calling it **back breaking**, laborious and a tedious process which **can cause severe spinal problems and fatigue. Staff will shirk**

n) At 9: 28 to 10:05: **DHI method only going to cause excessive scarring leading to less growth and less outcome and less happiness quotient. DHI method NOT PRACTICAL NOT PRAGMATIC.”**

17. It further averred that Defendant has no certification from DHI nor has he ever worked with any of the DHI Clinics or contacted the Plaintiff or DHI Global Ltd. or any of its group companies, as a doctor or a client or an expert or as a business partner and thus is in no position, whatsoever, to have any knowledge of the DHI Technique, let alone comment on it. Furthermore, Defendant does not have any license either to use the patented DHI instrument for carrying out any procedure or to use the brand name “DHI”, the same being a registered trademark of DEXPO Intellectual Properties Services Limited, licensed to the Plaintiff.



18. It is further averred that in the impugned videos, Defendant is promoting his hair transplant business by blatantly and deliberately tarnishing the reputation of DHI and DHI hair transplant technique, without having any authority or so much as even an iota of proof as to its knowledge or usage by him in the past. Defendant has never been trained in the DHI technique nor has he ever stepped into a procedure room of a DHI clinic. In these circumstances, it is not understood how the Defendant can even claim to know of the drawbacks or the benefits of the DHI techniques.

19. Learned counsel appearing on behalf of the Plaintiff contends that Defendant has deliberately put out impugned videos with false, misleading and defamatory remarks about DHI and DHI technique by impersonating himself to be an expert on DHI Technique, only to mislead the general public and publicly malign the reputation and goodwill of Plaintiff and brand DHI, with a view to unjustly enrich himself at the cost of the Plaintiff as well as the general public.

20. It is further averred that despite having received the legal notice sent by the Plaintiff, Defendant has not stopped his illegal activities including uploading of the impugned videos. At the time of sending out the legal notice, views of the defamatory content were around 26,000, which have now gone up to almost 30,000 and are expected to continue to grow.

21. It is contended that defamatory content has a continuing effect of damaging, harming and destroying the reputation and goodwill of the Plaintiff and its brand in the eyes of general public and business community, specifically the current and potential customers of the Plaintiff. The conduct of Defendant fortifies the fact that defamatory content was deliberately and intentionally published and circulated with the *malafide* intention to harm



the reputation and goodwill of the Plaintiff and its brand so as to reap unlawful benefits for his brand and clinic and hair restoration/transplant services.

22. Learned counsel submits that the act of the Defendant in posting defamatory content in the cyber space, which is accessed by innumerable internet surfers all over the world, especially, the potential hair restoration/transplant clients, in this booming industry, is clearly defamatory and is tarnishing the image and reputation of the Plaintiff.

23. Having heard learned counsel for the Plaintiff, this Court is of the view that Plaintiff has made out a *prima facie* case for grant of an *ex parte ad-interim* injunction. Balance of convenience lies in favour of the Plaintiff and it is likely to suffer irreparable harm in case the injunction, as prayed for, is not granted.

24. Accordingly, Defendant, his management, members, affiliates, servants, officers, employees, representatives, agents and all other persons claiming through or under him or acting in concert with him or on his behalf or acting on his instructions, are restrained from in any manner disseminating, telecasting, printing, broadcasting, publishing or otherwise communicating to the public or making available the impugned videos or any part thereof. They are also restrained from putting in public domain any advertisement, video, information, publication of a similar nature through any mode/media, which amounts to infringement of the licensed registered marks of the Plaintiff as well as from disparaging or denigrating or depicting in bad light Plaintiff's services and products under the DHI licensed brand name and marks, till the next date of hearing. Defendant shall ensure that all such videos shall be taken down forthwith from the public domain.



25. Plaintiff shall comply with the provisions of Order 39 Rule 3 CPC within ten days from today.

JUNE 03, 2022/sn

JYOTI SINGH, J