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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **FAO(OS) (COMM) 111/2024 & CM APPL. 33733/2024 and CM**
APPL. 33736/2024

MOUNTAIN VALLEY SPRINGS INDIA

PRIVATE LIMITED

..... Appellant

Through: Ms. Swathi Sukumar, Adv. with Mr.
Essenese Obhan, Ms. Ayesha
Guhathakurta and Ms. Anjuri Saxena,
Adv.

versus

BABY FOREST AYURVEDA PRIVATE LIMITED

(FORMERLY KNOWN AS M/S LANDSMILL

HEALTHCARE PRIVATE LIMITED) & ORS.

..... Respondents

Through: Mr. Jayant K Mehta, Sr Advocate
with Mr. Sandeep Chatterjee, Ms.
Tanya Arora and Mr. Jaydeep Roy,
Adv.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MS. JUSTICE TARA VITASTA GANJU

ORDER

% **30.05.2024**

CM APPL.33734/2024 & CM APPL.33735/2024 (Exemptions)

1. Exemptions are allowed, subject to all just exceptions.
2. The applications stand disposed of.

FAO(OS) (COMM) 111/2024

3. Issue notice. Learned senior counsel for the respondent accepts notice.
4. The appellant has filed the present appeal impugning an order dated 15.05.2024 (hereafter *the impugned order*) passed by the learned Single Judge whereby the appellant's application under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908 preferred in CS (COMM) No.523/2023, was rejected.

5. The learned counsel appearing on behalf of the appellant submits that the learned Single Judge has misinterpreted the doctrine of ‘initial interest confusion’ to mean that the confusion must subsist till the transaction is completed. She refers to paragraphs 8.13, 8.23 and 8.24 of the impugned order which, *prima facie*, indicates the same. She submits that ‘initial interest confusion’ is only concerned with confusion at the threshold stage.

6. She also submits that the learned Single Judge has not addressed the issue of the confusion by projecting the said idea. She submits that the appellant’s brand ‘FOREST ESSENTIALS’ – which is an Ayurvedic brand – and the respondent’s ‘BABY FOREST-SOHAM OF AYURVEDA’ conveys a similar idea as the appellant’s ‘FOREST ESSENTIALS LUXURIOUS AYURVEDA’. In addition, the appellant claims that it also uses the trademark, ‘BABY ESSENTIALS’ and ‘FOREST ESSENTIALS-BABY ESSENTIALS’.

7. Admittedly, the appellant has been using the trademarks in question since a considerable period of time, wherein the respondent has entered the market with the impugned trademarks recently in the year 2022.

8. We have briefly heard arguments in this appeal and we were inclined to hear it finally.

9. *Prima facie*, we find merit in the appellant’s contention that the learned Single Judge has erred in its interpretation of the doctrine of ‘initial interest confusion’ to entail persistence of confusion till a stage that the transaction is consummated. The doctrine of ‘initial interest confusion’ entails that there is confusion only at the initial stage and there is no confusion when the transaction for sale and purchase is completed. The customers are in no doubt of the product they are buying when the sale is

completed. The confusion is only at the initial stage.

10. Mr. Mehta, learned senior counsel appearing for the respondents requests that further hearing of the matter be deferred to give the respondents full opportunity to prepare the matter.

11. In view of the above, further proceedings are adjourned.

12. Learned counsel for the parties agree that the appeal would be heard on the basis of the record and the impugned order. The Registry is directed to place on record the digital copy of the Trial Court Record before the next date of hearing.

13. List on 09.09.2024.

VIBHU BAKHRU, J

TARA VITASTA GANJU, J

MAY 30, 2024/SA

Click here to check corrigendum, if any