

IN THE COURT OF SH. VIDYA PRAKASH
DISTRICT JUDGE (COMMERCIAL COURT)-02
NEW DELHI DISTRICT, PATIALA HOUSE COURTS
NEW DELHI

CS (COMM.)/346/2025

IN THE MATTER OF:

1. Somabrata Mandal
S/o Late Shri Dinabandhu Mandal
1st Floor, 27, Babar Lane
New Delhi- 110001
2. Fox Mandal & Co.
1st Floor, 27, Babar Lane
New Delhi- 110001

... PLAINTIFF

VERSUS

1. Shuvabrata Mandal
S/o Late Shri Dinabandhu Mandal,
1201, Ashoka Estate
24 Barakhamba Road
New Delhi 110001
2. Shouryabrata Mandal
S/o Late Shri Dinabandhu Mandal,
1201, Ashoka Estate
24 Barakhamba Road,
New Delhi 110001
3. Fox Mandal & Associates
1201, Ashoka Estate
24 Barakhamba Road,
New Delhi 110001
4. Fox Mandal & Associates LLP
1201, Ashoka Estate
24 Barakhamba Road,
New Delhi 110001

... DEFENDANTS



ORDER

1. Vide this order, I shall decide an application under Order XXXIX Rules 1 and 2 read with S. 151 CPC seeking an *ex parte ad interim injunction* against the defendants, filed by the plaintiffs.
2. The plaintiffs have filed this suit, *inter alia*, for permanent injunction restraining infringement/passing off of trade name/trade mark FOXMANDAL; dilution of trade mark, damages, mandatory injunction, delivery up and for damages and rendition of accounts etc. under S. 2(c)(xvii) of the Commercial Courts Act, 2015 and S. 27(2), 29, 134 read with S. 135 of the Trade Marks Act, 1999, against the defendants.
3. In nutshell, the case of the plaintiffs as set up in the plaint is as under:-



- 3.1 The plaintiff no.1, who is stated to be also known as Sh. Som Mandal, is an Indian National. He is claimed to be a well-known legal practitioner in India, and is engaged in the business of offering legal and consultancy services [*hereinafter referred to as 'the said business and services'*] in India and worldwide under the name and style of "Fox Mandal & Co.", which is stated to be a partnership firm, *i.e.* the plaintiff no. 2 herein.
- 3.2 It is stated that the plaintiff no.2 firm was initially set up by Late Shri Dinabandhu Mandal during his lifetime, who was father of plaintiff no.1, in the year

1984 in Delhi and the plaintiff no.1 had helped his father in opening the said firm. Subsequently in the year 1988, after enrolment with the Bar Council of West Bengal, the plaintiff no.1 started his practice in Kolkata and worked in the chambers of his father. Thereafter, in 1989, the plaintiff no.1 became the Managing Partner of plaintiff no.2 herein and he worked tirelessly and promoted the said business and services in law firm. It is stated that the plaintiff no.2 *i.e.* Fox Mandal & Co. is popularly known as **FoxMandal** by the public (particularly the legal fraternity/community) at large.

3.3 It is stated that after the plaintiff no.1 joined the

plaintiff no.2 firm, he designed the logo  himself and started using the same and in order to protect its statutory rights, the plaintiffs got registered the trade mark/ logo "FOXMANDAL"/

 [hereinafter referred to as 'the said trade mark/ logo'] in 2002 in classes 16 and 42 under the Trade Marks Act, 1999, which are stated to be valid and subsisting as on date in favour of the plaintiffs. It is averred that since its adoption in the year 2002, the plaintiffs have been using the said trade mark/ logos and various other formative, label and device marks along with prefix and suffix under Indian jurisdiction. The details of registrations of trade marks/ logos have been given in Para no. 12 of the



plaint. Thus, the plaintiffs have claimed themselves to be proprietor and owner of trade mark/ trade

name/ logo "FOXMANDAL"/ 

3.4 It is further stated that in the year 1988, the plaintiff no.1 had also secured domain name registration and maintains various domain names referring to and promoting the services of plaintiffs at www.foxmandal.com.

3.5 It is stated that the plaintiffs have been using the said trade mark/logo, since its adoption, in his firm, including *inter alia* on the business cards, letterheads, invoices, advertisement and promotional material etc.

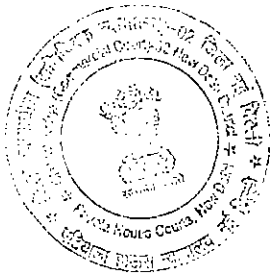
3.6 It is averred that through the efforts of plaintiff no.1, said trade mark/ logo have become a very well known international brand not only in India, but also overseas. The plaintiffs have a huge footprint with offices at Bangalore, Chennai, Dhaka, Hyderabad, Kolkata, London, Mumbai, Noida, New Delhi and Surat. It is claimed that the plaintiffs have won several accolades and awards both in India and internationally.

3.7 It is stated that the plaintiffs spend huge amount of costs towards promotion of their services all across the world. It is also stated that the plaintiffs have huge turnover against services provided by them and



year-wise details thereof from the financial year 2009-2010 till 2023-2024, have been given in Para no.10 of the plaint, according to which, it is shown that plaintiffs have earned ₹20,05,31,475/- in the financial year 2009-2010 and ₹2,47,39,879/- in the financial year 2023-24.

3.8 Thus, it is stated that on account of its good quality and untiring efforts in advertising and marketing, the said services of the plaintiffs' under the said trade mark/logo have become distinctive and have acquired secondary significance with the plaintiffs and the plaintiff's said business and services thereunder. Further, the public (particularly the legal fraternity/community) at large worldwide and in India identify, distinguish and associate plaintiffs' said services under the said trademark/logo with the plaintiffs and from the plaintiffs' source and origin alone and regard them as high quality services exclusively as that of the plaintiffs. It is further claimed that the said trademark/logo are well known trademarks and have acquired enviable reputation and goodwill across the globe including India.



3.9 Hence, in view of the plaintiffs' proprietary rights both under statutory and common law in their said trademarks/logos, and their goodwill & reputation, the plaintiffs have the exclusive right to the use thereof and nobody can be permitted to use the same or any other deceptively similar trade mark/ label/

trade name/ trade dress in any manner whatsoever in relation to any specification of goods/services without their leave and license.

3.10 It is stated that the defendant no.1, Shuvabrata Mandal, and defendant no.2, Shouryabrata Mandal, Indian Nationals are brothers of plaintiff no.1 and are engaged in the business of providing legal and consultancy services [*hereinafter referred to as 'the said impugned services'*], under the law firm trading as "Fox Mandal & Associates"/defendant no.3, from their office situated at 24 Barakhamba Road, New Delhi since 2022 and from their office at FM House, Bangalore-560025 since 1996. Fox Mandal & Associates LLP is defendant no. 4. Defendant no. 1 is the Managing Partner and defendant no.2, is the Co-Managing Partner of Fox Mandal & Associates/Defendant No.3 and Fox Mandal & Associates LLP/ Defendant No.4.



3.11 It is alleged that it had recently come to the knowledge of the plaintiffs that the defendants have imitated the trademark "FoxMandal" as **F³oxMandal** [*hereinafter referred to as 'the said impugned trade mark/ logo'*] on their website www.foxmandal.in [*hereinafter referred to as 'the said impugned website/ domain name'*].

3.14 It is stated that when Plaintiff No.1's father Late Shri Dinabandhu Mandal, filed for registration of the trademark, "Fox Mandal & Associates" in 2011 along with Defendant No.1, Plaintiff No.1 agreed for defendants to use and operate under mark "Fox Mandal & Associates" only and not "FoxMandal".

3.15 It is further stated that Defendant No. 1 never took any steps for registering the Plaintiffs' trademarks from 1996 till 2018. Despite the undertaking given in 2018 that the defendants would not use the domain name, namely www.foxmandal.in, the defendants, all of a sudden after 22 years, sought to register the trademark/words "FoxMandal",



"FOXMANDAL" and "FOX MANDAL" which was the registered trademark of Plaintiff No.1. Defendant No.1 in 2020 applied for trademarks containing the words 'FoxMandal'/ 'FOXMANDAL' (registered mark of Plaintiff No. 1) as part of the mark, including "Fox Mandal Group" bearing no. 4600574, "Fox Mandal Global" bearing no.



4695839, "FOX MANDAL" bearing no. 4695843, and "



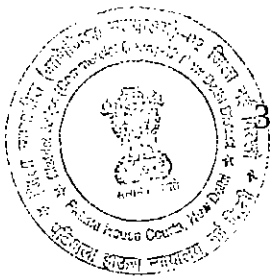
FoxMandal" bearing no. 4865958. The defendants are now attempting to use the Plaintiff No.1 trademark "FOX MANDAL" which is clear violation of the statutory rights as mandated under



the Trademarks Act, 1999. It is stated that when defendants filed for registration of trademark/Logo, practically identical with and/or closely similar to the Plaintiff No.1 registered trademarks



“FoxMandal”, “FOXMANDAL” and “FOX MANDAL” and other formative marks, the same were opposed by Plaintiff No.1 as shown in Table III provided in the plaint. As per same, it is shown that the impugned trade mark / logo ‘Fox Mandal & Associates’ and ‘FMA’ was registered in favour of defendants and was valid upto 24.10.2021, whereas, trade mark applications filed by defendants for registration of the impugned trade marks/ logos ‘Fox Mandal Legal’, ‘FM-Fox Mandal’, ‘Fox Mandal’ were opposed either by the plaintiffs and/or trade mark registry itself due to similarity with the plaintiff’s trade mark.



3.16 It is stated that adoption and registration of the impugned domain name www.foxmandal.in by the defendants, which is identical to the plaintiffs’ registered domain name www.foxmandal.com, has caused confusion amongst the plaintiffs’ clientele as there are several instances of confusion of emails between the plaintiffs and the defendants. Details thereof have been given in Para no.28 of the plaint, wherein it is, *inter alia*, stated that recently, the plaintiffs have received an email on 14th January,

2025, from the clients which was for the defendants, extracts whereof is also reproduced in the plaint.

3.17 It is further stated that the plaintiffs had in or around 2012, created a profile of plaintiff no.2 firm on the professional networking platform '*LinkedIn*' wherein it had many followers. Recently, the defendants changed the LinkedIn page by removing the Plaintiffs' mark "FoxMandal",



"FOXMANDAL" and "FOX MANDAL" and instead, put the impugned trade mark/ logo

 as a result of which, the followers of the Plaintiffs dwindled. The defendants have managed to do so, as the same LinkedIn page was managed and maintained by them. Plaintiffs have now created a new LinkedIn profile which uses the Plaintiffs' mark.



3.18 It is stated that when plaintiff no.1 objected to the registration of aforesaid marks by the defendant no.1, the defendants started using the mark  and trading and promoting as  instead of "Fox Mandal & Associates" on their impugned website www.foxmandal.in. It is also averred that the defendants, in order to enjoy the benefit of the already established goodwill and reputation of the

plaintiffs in North India, have changed themselves from “FoxMandal & Associates” to “FoxMandal” with logo , thereby diluting the well known mark of the plaintiffs.

3.19 Hence, it is alleged that the defendants have dishonestly and malafidely adopted the said impugned trademark/ logo ‘FoxMandal’ and , which are identical and /or deceptively and confusingly similar to plaintiffs’ said trademark/

logo ‘FoxMandal’/  with regard to identical services, thereby causing confusion and deception amongst the unwary public/ clients by making them believe that the origin of those services is that of the plaintiffs. It has been averred that by doing so, the defendants are not only damaging the reputation and goodwill of the plaintiffs by passing off their substandard services as that of the plaintiffs, but are also causing financial loss to the plaintiffs by reaping unfair advantage of the repute and distinctive character of the said trademarks / logos of the plaintiffs.



4. On these grounds, by way of application under Order 39 Rule 1 & 2 CPC, the plaintiffs have, thus, sought an *ex parte ad interim* injunction thereby restraining the defendants and all others acting on their behalf from **using** the impugned trademark/ logo FoxMandal, FOX

MANDAL /  **FoxMandal** or any other trade mark/ word mark / logo in any form and manner which may be visually, structurally identical and /or deceptively and confusingly similar to the said well known trademark/ logo

FoxMandal/  of the plaintiffs, besides using impugned domain name www.foxmandal.in.

5. I have already heard Sh. Pramod Kumar Dubey, Sr. Advocate for the plaintiffs and have duly considered the submissions made by him. I have also gone through the material available on record, including the plaint and the documents relied upon by the plaintiffs.

ARGUMENTS:

6. It is submitted by Ld. Sr. Advocate for the plaintiffs that the plaintiffs are honest, bonafide and prior adopter and user of the said trademark/ logo and various formative trademarks, wherein the mark FoxMandal, forms the essential, dominant and prominent part thereof. Further, it is submitted that said trade mark /logo is registered under various classes with the Trade Mark Registry under the provisions of the Trade Mark Act, which are valid and subsisting as on date in favour of the plaintiffs.
7. Further, it is contended that the defendants have malafidely and dishonestly adopted and started using the impugned trademark/logo, which is phonetically identical and/or deceptively similar to the trademark/ logo of the plaintiffs



in all material particulars. Further, it is contended that the impugned trade marks/logos as adopted by the defendants, are still not registered under the provisions of Trade Marks Act, 1999, as same are still lying opposed from the side of the plaintiffs, whereas, the trade mark/logo of the plaintiffs are duly registered under the provisions of the Trade Marks Act, 1996. It is also contended that impugned trade marks/ logos, which were registered in favour of defendants, are not valid and subsisting as on date in their favour as they were valid upto 2021 only. It is further contended that the plaintiffs have bonafidely adopted and using the trade mark/word mark since the year 1984 and therefore, the plaintiffs are the prior and senior user of the said trademark. Thus, it is prayed that an *ex parte ad interim injunction* may be granted in favour of the plaintiffs and against the defendants, thereby restraining them from using the said impugned trademark/ label

¹³
'FoxMandal'/ FoxMandal.



8. In support of his aforesaid contentions, Ld. Sr. Advocate for the plaintiffs has relied upon the following judgments:-

- 8.1 '*Cadila Health Care Ltd v. Cadila Pharmaceuticals Ltd.*' reported as (2001) 5 SCC 73;
- 8.2 '*FDC Limited v. Faraway Foods Pvt. Ltd.*' reported as 2021 SCC OnLine Del 1539;
- 8.3 '*Laxmikant V. Patel v. Chetanbhai. Shah Anr.*', reported as (2002) 3 SCC 65;
- 8.4 '*Midas Hygiene Industries (P) Ltd. v. Sudhir Bhatia & Ors.*' reported as (2004) 3 SCC 90;

- 8.5 '*Mankind Pharma Ltd. v. Sepkind Pharma Pvt. Ltd.*', reported as 2024 SCC OnLine Del 3982;
- 8.6 '*Sketchers South Asia Pvt. Ltd. & Ors. v. Delhi Polymer & Ors.*' reported as 2024 SCC OnLine Del 7669;
- 8.7 '*M/s Reflect Sculpt Private Ltd. & Anr. v. Abdus Salam Khan*' CS (COMM) 278/2024, date of decision 03.04.2024, passed by Hon'ble Delhi High Court;
- 8.8 '*Burger King Corporation v. Swapnil Patil & Ors.*' CS (COMM) 303/2022, date of decision 15.02.2025 passed by Hon'ble Delhi High Court;
- 8.9 '*Satyam Infoway Ltd. v. Siffynet Solutions (P) Ltd.*', reported as (2004) 6 SCC 145; and
- 8.10 '*Yahoo! Inc. v. Akash Arora & Anr.*' reported as 1999 SCC OnLine Del 133.

CONSIDERATION & ANALYSIS

9. Before advertng to the present case, it is relevant here to note down certain principle of law. The broad principle on which the foundation of the right to restrain the user of a similar name, was enunciated in "*British Vacuum Cleaner Co. Ltd. Vs. New Vacuum Cleaner Co. Ltd.*" (1907) 2 Ch.312 referred to and relied upon in "*Office Cleaning Services Limited Vs. Weiminster Office*" as under:-

"The foundation of the right to restrain the user of a similar name is the principle that no one is entitled to represent his business or goods as being the business or goods of another by whatever means that result may be achieved and it makes no difference whether the representation be intentional or otherwise; but a distinction has been and must always be drawn between cases in which the trade name or the part of it in question consists



of word or words complained of, is or are of the character of a fancy word or words and primarily have no relation to such business or article but only to the person carrying on the business or dealing in the article”.

10. It was in view of this principle that their Lordships held that “if it can be established that the descriptive word or words has or have acquired among the public, or that class of the public likely to deal with the business or goods in question, a subsidiary or secondary meaning denoting or connoting the business or the origin of the article, the person claiming to restrain the user of that word or those words, can obtain the relief he seeks.
11. The expression “*mark*” has been denied in the Trade Marks Act, 1999 as under:-

“2. Definition and interpretation - (1) In this Act, unless the context otherwise requires:

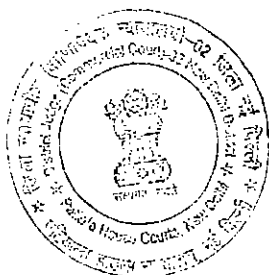
(m) “mark” includes, a device, brand, heading, label, ticket, name, signature, word, letter, numeral, shape of goods, packaging or combination of colours or any combination thereof”.

12. The expression ‘*trade mark*’ has been defined in S. 2 (zb) of the Trade Marks Act, 1999 as a mark capable of being represented graphically and which is capable of distinguishing the goods or services of one person from those of others and may include shape of goods, their packaging and combination of colours; and a registered trade mark or a mark used in relation to goods or services for the purpose of indicating or so as to indicate a connection in the course of trade between the goods or services, as the case may be, and some person having the right as proprietor to use the mark; and if any mark is used



in relation to other provision of this Act, a mark used or proposed to be used in relation to goods or services for the purpose of indicating or so as to indicate a connection in the course of trade between the goods or services, as the case may be, and some person having the right, either as proprietor or by way of permitted user, to use the mark whether with or without any indication of the identity of that person, and includes a certification trade mark or collective mark.

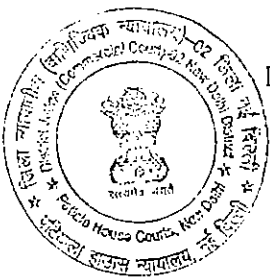
13. Now coming back to the case in hand.
14. Firstly, as regards jurisdiction of this Court, the plaintiffs have invoked jurisdiction of this Court under S. 134(c) of the Trade Marks Act, 1999 on the basis of fact that the plaintiffs work for gain from their office situated at 1st Floor, 27, Babar Lane, New Delhi-110001, which falls within the territorial jurisdiction of this Court. Apart from same, it is also contended that the defendants also work for gain from their office situated at 1201, Ashoka Estate, 24 Barakhamba Road, New Delhi-110001, which also falls within the territorial jurisdiction of this Court. Besides, it is also contended that the defendants are passing off their impugned services under the impugned trademark/logo through online services, which can be accessed through internet at www.foxmandal.in.
15. In view of the aforesaid submissions which are duly substantiated from the record, the Court is of the *prima facie* view that this Court has got territorial jurisdiction to entertain and try the present suit.



16. Now coming to *ex parte injunction*. The plaintiffs have

claimed that FoxMandal /  under classes 16 and 42 are registered in their favour since 2002 and Registration Certificates and Status Report thereof have been filed on record. At page no.232 of the paper book, the plaintiffs have placed Registration Certificates and Status thereof of TM Application No.1126124, according to which, it is shown that FOX MANDAL is registered as word mark in favour of plaintiff no.1 (Som Mandal), vide application made on 14.08.2002. It is also shown that said registration is valid upto 14.08.2032, apart from the fact that a rectification thereof has been filed. Besides that, the plaintiffs have also filed registration certificate at page no. 245-248 of the paper book, according to which, it is shown

that label of FoxMandal is registered as  vide TM No.: 2343368 in their favour.



17. The requirements that the plaintiffs have to satisfy in order to make out a case of infringement of their mark by the defendants, and in a passing off action, have been succinctly laid down by Hon'ble Division Bench of Delhi High Court in the case titled as "*M/s Atlas Cycle Industries Ltd. v. Hind Cycles Limited*" reported as ILR 1973 1 Delhi 393, to quote:-

"Therefore, the aforesaid requirement in (b) may be made out by the, plaintiff by showing that the defendant's mark is identical with or so nearly, resembles the plaintiff's mark either visually, phonetically or otherwise that, it is likely to deceive or cause confusion in relation to the goods in respect, of which the plaintiff got his mark

registered. In other words, if the, essential features of the trade mark of the plaintiff have been adopted by the, defendant, the fact that there are some additional features in the defendant's, mark which show marked differences is immaterial in an action for infringement. An action for passing off, on the other hand, is in substance an action in, common law for actual or probable passing off by the defendant of his own goods as those of the plaintiff. In such an action, the use by the defendant of the, trade mark of the plaintiff as such is not essential. The plaintiff has only to, show that the similarity of the defendant's mark or goods is such that the, defendant can pass off his goods as those of the plaintiff. The defendant may, escape liability in an action for passing off if he can show that his mark or, goods, besides the essential features which are sufficient to distinguish the, same from that of the plaintiff. Thus, while in an action for infringement of a, registered trade mark the plaintiff has to establish either an use of his, registered trade mark as such or of an identical mark or of a deceptively, similar mark by the defendant, he has to establish in an action for passing off, that the defendant's mark or goods are such that the defendant can pass off his, goods as those of the plaintiff.

18. In the above-referred case, the trademark of the plaintiff "EASTERN STAR" and the impugned trademark of the defendant "ROYAL STAR" were in question before Hon'ble Delhi High Court. In that case, it was observed that the meaning of neither word, whether, EASTERN' or 'STAR has any relation at all cycles, and are thus not, descriptive or suggestive of the goods i.e., cycles and therefore, the most important thing that has to be noticed is that both names, when uttered end in the same sound. Therefore, a person average intelligence and imperfect, memory would logically remember only the sound of the ending word 'STAR' and is, therefore likely to be deceived or confused between the two names or marks. Hon'ble Delhi High Court further held that since the two marks have an overall structural, and phonetic similarity



and considering their use in respect of the same kind of goods *i.e.* cycles, the use of the defendant's trademark is likely to cause, deception or confusion as discussed under Section 29 of the Trade and, Merchandise Act, 1958 (as it then was) and thus, the defendant was restrained from using the impugned trade mark ROYAL STAR.

19. In the cited case of *Cadila Health Care Ltd (supra)*, Hon`ble Supreme Court of India has held as under:-

"Broadly stated in an action for passing off on the basis of unregistered trade mark generally for deciding the question of deceptive similarity the following factors to be considered:

a) The nature of the marks i.e. whether the marks are word marks or label marks or composite marks, i.e. both words and label works.

b) The degree of resemblance between the marks, phonetically similar and hence similar in idea.

c) The nature of the goods in respect of which they are used as trade marks.

d) The similarity in the nature, character and performance of the goods of the rival traders.

e) The class of purchasers who are likely to buy the goods bearing the marks they require, on their education and intelligence and a degree of care they are likely to exercise in purchasing and/or using the goods.

f) The mode of purchasing the goods or placing orders for the goods and g) Any other surrounding circumstances which may be relevant in the extent of dissimilarity between the competing marks."

20. Now coming to the case in hand. Ld. Sr. Advocate has vehemently argued that words 'Fox Mandal' form essential part of trade mark/ logo of the plaintiffs. The trade mark/ logo as adopted by the defendants, are identical to plaintiffs' trade mark/ logo as the impugned trade mark contains a logo of flag illustrating 'FM' alongwith the



word 'Fox Mandal' below it. The word 'Fox' is in a smaller font size than the word 'Mandal'. It is also contended that the plaintiffs' trademark are depicted in black and blue colour and similarly the impugned trade marks/ logos of the defendants contain different shades of blue. It is stated that in the impugned trade mark/ logo, while the word 'Fox Mandal' is written in a dark blue or indigo blue colour, the flag logo and the words 'Solicitors & Advocates' are in lighter shades of the colour blue.

21. In order to have better appreciation, it would be apposite to reproduce the comparative chart of the competing marks, which are here as under:-

Plaintiffs' Mark	Defendants' mark
FoxMandal	FoxMandal
	



22. Thus, a bare perusal of the registered trademark/logo of the plaintiffs and the impugned trademark/logo used by the defendants, as placed on record, would show that the impugned trade mark /logo FoxMandal/  **FoxMandal** are phonetically identical and / or deceptively similar to registered trademark/ word mark/ device mark FoxMandal/  of the plaintiffs.

23. Therefore, the impugned trade mark / label "FoxMandal"/

 **FoxMandal** is *prima facie*, in the opinion of this Court, phonetically identical and /or deceptively similar to registered trademark/ word mark of the plaintiffs

FoxMandal/  and an unwary consumer of justice can be easily misled and deceived by the said infringed trademark and can be trapped in availing the impugned service as coming from the house of the plaintiffs.

24. Therefore, it is clearly seen that the defendants have adopted the impugned trade mark / logo FoxMandal/

 **FoxMandal** which are identical and/ or deceptively, confusingly, phonetically and visually similar to plaintiffs'

registered trade mark FoxMandal/  in respect of identical services, which creates the same impression.

25. Moreover, the plaintiffs have claimed to be prior user and adopter of the trademark / device mark FoxMandal/

 as they claimed to have adopted the trademark / word mark since 1984, when the plaintiff no.2 firm was set up by father of the plaintiff no.1 and subsequently, the plaintiff no.1 had created the logo and got the same registered under the provisions of Trade Mark Act, 1999 in the year 2002, and since then, they have been using said trade mark / logo continuously in relation to



their services, which are duly substantiated from the record.

26. On the other hand, the defendants are shown to have applied for registration of the impugned trademark / logo  **FoxMandal** recently in the year 2021, vide impugned TM No.4865958, which is lying opposed as per status thereof, as on 10.04.2025, placed at page no. 565 of paper book. The defendants are also shown to have applied registration of other trade marks/ logos consisting of FOX MANDAL, which are also lying opposed from the side of the plaintiffs. Thus, as on date, none of the trade marks/ logos is stated to be registered in favour of either of the defendants.

27. As regards the point as to whether there is similarity between two marks, now, it is no more *res integra* that the test of deceptive similarity is that of a perspective from common man with average intelligence and imperfect recollection as laid down by Hon'ble High Court of Delhi in the case titled as "*Himalaya Drug Company v. M/s S.B.L. Limited*", 2012 (194) DLT 536, as also in recent case of "*Mankind Pharma Limited v. Novakind Bio Sciences Private Limited*" CS (COMM) 188/2021 decided on 07-08-2023. Further, it is *trite law* that it is the overall get up and similarity which has to be seen and not the minor variations because it is similarity which strikes and not the dissimilarities which distinguish when an ordinary person recollects an object seen in the past.



28. While applying the prudent test from the stand point of common/lay man, it is *prima facie* shown that the defendants are passing off their impugned services by prominently using phonetically identical and/or deceptively similar trade mark/ logo "FoxMandal"/  **FoxMandal**, thereby giving an impression in the minds of common man that those services are coming from the house of the plaintiffs.
29. In view of the above discussion, this Court is of the opinion that a *prima facie* case of infringement of trademark, and passing off is made out in favour of the plaintiffs and balance of convenience also lies in their favour. It can also be foreseen that irreparable loss in terms of goodwill would be caused to the plaintiffs if no *ex parte ad interim injunction* is passed in their favour.
30. For the forgoing reasons and till further orders, the defendants and all others acting on their behalf are hereby restrained from using the impugned trade mark/ label/ FoxMandal /  **FoxMandal** in any form and manner which are identical and / or confusingly or deceptively similar to trade mark/ logo FoxMandal /  of the plaintiffs in relation to similar services. Further, the defendants are also restrained from using the impugned domain name www.foxmandal.in or any other domain name which is identical and /or deceptively similar to plaintiffs' domain name *i.e.* www.foxmandal.com.



31. Provision of Order XXXIX Rule 3 CPC be complied with immediately.
32. With these directions, the application under Order XXXIX Rules 1 & 2 CPC with respect to *ex parte* prayer is allowed and stands disposed off.
33. Dasti order be given to Ld. counsel for the plaintiffs, if so requested.



Announced in the open court
On 15th Day of May, 2025.

(VIDYA PRAKASH)
DISTRICT JUDGE (COMMERCIAL COURT)-02
PATIALA HOUSE COURTS, NEW DELHI

New Delhi District
Room No. 25, Annex B
पटौली हाउस नए दिल्ली
पटौली हाउस नए दिल्ली