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

+ CS(COMM) 714/2024

IMPRESARIO ENTERTAINMENT & HOSPITALITY
PVT. LTD.

.....Plaintiff

Through: Ms. Shikha Sachdeva, Ms. Kriti
Rathi and Ms. Annie Jacob,
Advocates

Versus

STAR HOSPITALITY

.....Defendant

Through: None.

CORAM:

HON'BLE MR. JUSTICE SAURABH BANERJEE

ORDER

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27.08.2024

I.A. 37338/2024 (*pre-litigation mediation*)

1. The plaintiff vide the present application seeks exemption from instituting pre-litigation mediation.

2. Considering the averments made in the present application wherein the plaintiff seeks urgent ad-interim relief and in view of *Yamini Manohar vs. T.K.D. Krithi* 2023 SCC OnLine 1382 and *Chandra Kishore Chaurasia vs. R. A. Perfumery Works Private Limited*. 2022:DHC:4454-DB, the plaintiff is exempted from instituting pre-litigation mediation.

3. Accordingly, the present application is allowed and disposed of.

I.A. 37337/2024 (*exemption*)

4. Exemption allowed as sought, subject to all just exceptions.

5. The application stands disposed of.

I.A. 37336/2024 (*additional documents*)

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6. The plaintiff vide the present application seeks time of thirty days to file additional documents.

7. The plaintiff will be at liberty to file additional documents within thirty days, *albeit*, strictly as per the provisions of the Commercial Courts Act, 2015 and Delhi High Court (Original Side) Rules, 2018.

8. Accordingly, the present application is disposed of.

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9. The plaintiff by way of the present suit seek permanent and mandatory injunction restraining infringement of trade mark and copyright, passing off, dilution, unfair competition, damages/rendition of accounts of profits and delivery.

10. Let the plaint be registered as a suit.

11. Upon filing of the process fee, issue summons of the suit to the defendant through all permissible modes returnable before the Joint Registrar on 27.11.2024.

12. The summons shall state that the written statement be filed by the defendant within a period of *thirty days* from the date of the receipt of the summons. Written statement be filed by the defendant along with affidavit of admission/ denial of documents of the plaintiff, without which the written statement shall not be taken on record.

13. Replication thereto, if any, be filed by the plaintiff within a period of *fifteen days* from the date of receipt of written statement. The said replication, if any, shall be accompanied by with affidavit of admission/ denial of documents filed by the defendant, without which the replication shall not be taken on record within the aforesaid period of *fifteen days*.

14. If any of the parties wish to seek inspection of any document(s), the



same shall be sought and given within the requisite timelines.

15. List before the Joint Registrar for completion of pleadings on 27.11.2024. It is made clear that if any party unjustifiably denies any document(s), then it would be liable to be burdened with costs.

16. List before the Court on 16.01.2025.

I.A. 37335/2024 (Order XXXIX rule 1 & 2 CPC, 1908)

17. The plaintiff vide the present application seeks an ex-parte ad-interim injunction against the defendant.

18. As per plaint, plaintiff is an incorporated company which commenced its business in the year 2001 and has opened various well-known and award winning restaurants under different names including 'SOCIAL'. The plaintiff is engaged in providing restaurant services, including but not limited to conducting and managing restaurants and coffee shops, operating restaurants and coffee shops and providing expertise relating to provision of food and drink whereas defendant runs a restaurant/ café under the trade mark 'SOCIAL AFFAIR'/'



' in Vadodara, Gujarat.

19. The plaintiff in the year 2011-2012 thought of a unique concept of blending the best of office and cafe by offering to the general public a collaborative work space and a multi cuisine and trade mark 'SOCIAL' was adopted in respect of such cafes. The first 'SOCIAL' restaurant/ bar of the plaintiff was opened in the year 2014 in Bengaluru.

20. The business model of the plaintiff was to open multiple 'SOCIAL'



restaurants/ bars in one city, they coined the unique concept of prefixing the trade mark 'SOCIAL' with the particular area of the city in which the restaurants/bars would be located. The plaintiff coined the trade marks according to the area of the city in which the 'SOCIAL' restaurants/ bars was being opened, to indicate to the general public the area in which the cafe was located in each city and would be nearest to them for a visit for

e.g.



etc. At present, the plaintiff has set up, managing and operating fifty three 'SOCIAL' restaurants/ bars pan India. The plaintiff, in India, is the registered proprietor of the trade mark 'SOCIAL' and its formative marks in Classes 43, 42, 41, 35, 33, 32, 30, 25, 21, 16 and 09. The plaintiff has obtained registrations for the trade mark 'SOCIAL' and its formative



marks like on and so forth in Class 43, which are still valid and subsisting in its name. 21. The plaintiff has also purchased rights in the distinctive stencil font to represent the trade mark 'SOCIAL' in orange colour in the stencil font



as:

SOCIAL

22. The plaintiff owns and operates an exclusive website at www.socialoffline.in. The plaintiff also advertises all its restaurants, including 'SOCIAL' restaurants/bars on its group/corporate website <https://impresario.in> and is also popular on various social media platforms having substantial public engagement with large number of followers. The plaintiff's restaurants are also listed on several third-party restaurant search engine guides such as Zomato, Swiggy, Dineout, Eazydiner etc. Not limiting to these platforms, the plaintiff's restaurants/bars also deliver food/beverages through its own website <http://order.socialoffline.in/>, dedicated specifically for online food delivery services.

23. Learned counsel for plaintiff submits that 'SOCIAL' restaurants/bars of the plaintiff have become synonymous solely with the plaintiff and none else and also the members of the public and trade are well-aware of the said brand, trade marks and recollect the same as being connected/affiliated/ associated with the plaintiff alone. Thus, 'SOCIAL' and its formative marks have attained the status of a "well-known" trade mark in India.

24. Learned counsel further submits that in January, 2020, the plaintiff's attention was drawn towards the fact that defendant is operating a restaurant/ café under the impugned trade mark(s) 'SOCIAL AFFAIR'/'



and is offering food delivery for a wide variety of cuisine, beverages and desserts at its outlet in Vadodara, Gujarat. The




offending trade mark 'SOCIAL' is prominently visible at the restaurant and/ or on the merchandise therein such as table napkins, etc.

25. Learned counsel then submits that the defendant is operating a website <http://www.socialaffair.in/>, which prominently displays the impugned trade mark and that the defendant is also advertising/promoting its restaurant with the impugned trade mark through various interactive restaurant search engine guides including Zomato, Swiggy, Eazydiner and Dineout as also promoting the impugned trade mark on the various social media platforms.

26. Learned counsel also submits that the plaintiff has filed opposition



to the mark '  'under No.4474323 in Class 43 applied for registration by the defendant before the Trade Marks Registry.

27. Learned counsel then submits that the plaintiff had issued a Cease and Desist Notice dated 30.01.2020 and 24.09.2021 to the defendant and followed them with various letters till 25.04.2024. In the interregnum, the plaintiff also filed various complaints with Facebook, Instagram and Zomato, requesting them to takedown the impugned mark.

28. Learned counsel submits that the use of impugned mark by the defendant is causing confusion and deception to the customers of the plaintiff pan India including Delhi and also damaging the business of the plaintiff.

29. Learned counsel lastly submits that the confusion will get further exacerbated, as and when the plaintiff decides to expand and open a 'SOCIAL' restaurant/café/bar in the city of Vadodara, Gujarat, which is a



very realistic possibility, given the plaintiff’s expansion plan under the ‘SOCIAL’ brand is very aggressive in India.

30. This Court has heard the learned counsel for plaintiff and also gone through the pleadings as also perused the documents on record.

31. The defendant is advertising and/ or promoting the impugned mark on Instagram, Facebook, Twitter as well as interactive restaurant search engine interactive guides such as Zomato, Swiggy, Eazydiner and Dineout, websites throughout India, including in Delhi.


32. Comparative marks of the parties involved before this Court are as under:

Plaintiff’s Trade Marks	Defendant’s Manner of Use
SOCIAL	SOCIAL AFFAIR
S(#)CIAL / SOCIAL OFFLINE	

33. The aforesaid reflects that the defendant has adopted an identically similar mark as that of the plaintiff’s registered trade mark ‘SOCIAL’ in its entirety by merely adding a suffix ‘AFFAIR’ to it to somehow completely associate itself with the plaintiff’s registered trade mark ‘SOCIAL’ and chain of restaurants/ cafes/ bars with ‘SOCIAL’.

34. Under these circumstances, the defendant has dishonestly adopted and is wrongly using the impugned mark(s) ‘SOCIAL AFFAIR’,




‘’, with a sole intention to come as close as possible to the plaintiff to ride upon the goodwill and reputation earned by the plaintiff



and take benefit thereof. The defendant has adopted and continuing to use



the impugned mark(s) 'SOCIAL AFFAIR', '  ' without any justifiable cause and/ or reasons as also without seeking any permission and/ or authority from the plaintiff. The defendant had no reason to have chosen a mark with the trade mark 'SOCIAL' of the plaintiff and which has a suffix thereto.

35. By doing so, the defendant is trying to portray that the plaintiff, who has an all India presence, is now in Vadodara, Gujarat. The same is likely to cause unwanted confusion and deception amongst the general public at large.


36. Since, the plaintiff is the prior adopter, owner and registrant of the trade mark 'SOCIAL' and its formatives, it has a right for seeking protection in and to them. In fact, the manner of adoption by the defendant in merely adding a suffix to the trade mark 'SOCIAL' of the plaintiff is in no way decipherable and/ or distinguished separately to show that it is not associated with the plaintiff. An average consumer with an imperfect recollection is likely to be deceived into thinking that the plaintiff has opened a new 'SOCIAL' outlet in Vadodara, Gujarat where the defendant is operating its outlet.

37. As the defendant is operating in the same field of restaurant and hospitality services, dealing with the same kind of operatives and catering to the same set of customers as also since the plaintiff has an all India presence, it cannot be disputed that the defendant was not aware of the plaintiff, its wide fame and repute.



38. As such, the defendant cannot be allowed to take any advantage by exploiting the goodwill and reputation of the already existing registered trade mark 'SOCIAL' of the plaintiff by portraying that it is having some kind of association and/ or connection with the plaintiff. Further, allowing the defendant to further continue using the impugned mark(s) 'SOCIAL



AFFAIR', '  ' is not warranted.


39. In the aforesaid backdrop, the plaintiff has been able to make out a *prima facie* case with the *balance of convenience* for grant of an *ad interim ex-parte injunction* in its favour and against the defendant. In case the defendant is not restrained by way of an *ad interim ex-parte* injunction, there is a likelihood of the plaintiff suffering *irreparable harm, loss, injury and prejudice*.

40. Accordingly, till the next date of hearing, the defendant, their partners, principals, proprietor, directors, officers, employees, agents, distributors, franchisees, suppliers, licensees, affiliates, subsidiaries representatives, group companies and assignees is/are restrained from marketing, advertising and/or offering its services and/or in any other manner using and/or allowing or permitting third parties to market, advertise and/or use the trade mark 'SOCIAL' and/or any other trade mark or name identical and/or similar to the plaintiff's trade mark 'SOCIAL' and its variants either as a trade mark, trade name, corporate name, domain name, social media handles or part thereof or in any other manner whatsoever so as to infringe the registered trade marks of the plaintiff and/ or any part thereof, pass off its goods/ services as and for the goods/



services of the plaintiff and infringe the copyright of the plaintiff and/ or remove all references of the impugned mark from all third-party websites where it is offering for sale and/ or selling its goods and/ or services under



the impugned trade mark(s) 'SOCIAL AFFAIR', '  , and/ or 'SOCIAL' and/ or any other trade mark deceptively similar to the plaintiff's trade marks and discontinue any websites/domains.

41. Upon filing of the process fee, issue notice to the defendant by all permissible modes returnable before the Joint Registrar on 27.11.2024.

42. Reply, if any, be filed within a period of *thirty days* from the date of service. Rejoinder thereto, if any, be filed within a period of *fifteen days* thereafter.

43. The provisions of Order XXXIX Rule 3 CPC be complied within two weeks.

44. List before the Court on 16.01.2025.

SAURABH BANERJEE, J.

AUGUST 27, 2024/akr