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

+ CS(COMM) 597/2022

IMPRESARIO ENTERTAINMENT
AND HOSPITALITY PVT LTD

..... Plaintiff

Through: Ms. Shikha Sachdeva, Ms. Mugdha
Palsula and Ms. Shreya Das, Advocates.

versus

SOCIAL 75 THROUGH ITS PROPRIETOR

..... Defendant

Through: None.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

% **31.08.2022**

I.A. 13933/2022 (Exemption)

1. Subject to the Plaintiff filing original, clearer and translated copies of the documents with proper margins, which it may seek to place reliance on, within four weeks from today, exemption is granted.

2. Application is allowed and disposed of.

I.A. 13934/2022 (Section 12(A) of the Commercial Courts Act, 2015 seeking exemption from pre-institution mediation)

3. For the reasons stated in the application, the requirement of pre-institution mediation is dispensed with.

4. Application is allowed and disposed of.

I.A. 13935/2022(exemption from advance service to Defendant)

5. Since there is an urgency in the matter and the matter is being heard today, Plaintiff is exempted from serving advance notice on Defendant.

6. For the reasons stated in the application, the same is allowed and disposed of.

I.A. 13936/2022 (Exemption from filing Court fees at this stage)

7. For the reasons stated in the application, Plaintiff is permitted to file requisite Court Fees within a period of two weeks from today.

8. Application is allowed and disposed of.

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9. Let plaint be registered as a suit.

10. Upon filing of process fee, issue summons to the Defendant, through all permissible modes, returnable on 30.11.2022 before the learned Joint Registrar.

11. 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 filed by the Plaintiff.

12. 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.

13. If any of the parties wish to seek inspection of any documents, the same shall be sought and given within the timelines.

I.A. 13932/2022 (under Order 39 Rules 1 and 2 CPC, by Plaintiff)

14. 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 an *ex-parte ad-interim* injunction.

15. Issue notice to the Defendant through all prescribed modes, returnable on 13.12.2022, before Court.

16. It is averred that Plaintiff Company is a company incorporated and existing under the Companies Act, 1956 and is engaged in providing

restaurant services, including but not limited to operating and managing restaurants and coffee shops and providing expertise relating to provision of food and drinks. It is the case of the Plaintiff that it is running various well-known restaurants and coffee shops including Smoke House Deli, Salt Water Cafe, Le Kebabiere, The Tasting Room, Prithvi Cafe, Flea Bazar and Social.

17. It is further averred that Plaintiff commenced business in the year 2001 and since then has opened various restaurants under different names including 'SOCIAL', Plaintiff is recognised as a provider of high-quality services and is a well-known name in the hospitality industry.

18. It is further averred that in India, Plaintiff is the registered proprietor of the trademark 'SOCIAL' and its variants in numerous classes and has over a hundred registrations, the details whereof are mentioned in para 12 of the plaint.

19. It is further averred that in the year 2011-2012, Plaintiff conceived unique concept of giving to its customers an environment of work space combined with coffee. The trademark 'SOCIAL' was adopted in respect of such cafes. The first 'SOCIAL' restaurant/bar of the Plaintiff was opened in the year 2014 in Bengaluru. Plaintiff's 'SOCIAL' restaurants/bars are a collaborative workspace, a hub for artists and innovators. Even the interiors of the 'SOCIAL' restaurants/bars of the Plaintiff have been designed to give a very rugged and bare feel to its visitors with brick walls and bare bulbs hanging down from the ceiling, along with simple wooden and leather furniture. Each 'SOCIAL' restaurant/ bar of the Plaintiff has a distinct theme and the interiors are designed around that theme. The theme itself has become a source identifier for the Plaintiff.

20. It is further averred that Plaintiff's trademark 'SOCIAL' is written in a stylized manner in a stencil font and since the business model of the Plaintiff was to open multiple 'SOCIAL' restaurants/bars in one city, it coined the unique concept of prefixing the trademark 'SOCIAL' with the particular area of the city in which the restaurant/bar would be located.


21. It is the case of the Plaintiff that it is also operating a website www.socialoffline.in and the website is dedicated only to the 'SOCIAL' restaurants/bars of the Plaintiff, which is accessible throughout the world. The website also provides the details of all the 'SOCIAL' outlets of the Plaintiff. Plaintiff also advertises all its restaurants, including 'SOCIAL' restaurants/bars on its website being www.impresario.in which is accessible from all over the world. Plaintiff's 'SOCIAL' restaurants/bars have become very popular among the general public and have also received various national awards for excellence in the hospitality industry, as brought forth in para 10 of the plaint.

22. It is stated that Plaintiff extensively advertises its trademarks including the trademark 'SOCIAL' and its variants and due to such extensive advertising and excellence in service, the turnover of the Plaintiff has been steadily increasing. Promotional expenses for the year 2020-21 were Rs.3,25,07,590/- and turnover of the Plaintiff for the year 2020-21 was Rs.1,33,85,81,233/- for all the brands and was Rs.91,55,30,142/-, with respect to SOCIAL Brand.


23. It is averred that Plaintiff's 'SOCIAL' has also got an extensive social media presence. Plaintiff is very active on social networking sites such as Instagram, Facebook, Twitter and You Tube. 'SOCIAL' also has a large number of followers on these websites, which further establishes its fame

and reputation among the general public.

24. It is averred that to the best of the Plaintiff's knowledge, Defendant is the sole proprietor of the restaurant with the offending trademark 'SOCIAL 75' in Jamshedpur. A search of the records of the Trade Marks Registry has disclosed that Defendant has filed a trademark application for the offending trade mark 'SOCIAL 75' which has been opposed by the Plaintiff. The details of the trademark application of the Defendant are as follows:

Trade Mark	Application No.	Class	Date of application	Status
	4113306	43	11/03/2019	Opposed
Goods and Services: Providing services of food, drink & temporary accommodation.				

25. It is stated that Defendant has intentionally used the number '75' as a suffix to the trademark 'SOCIAL', and it is plausible to conclude that the intent is to indicate to the public that the Plaintiff has opened its 75th 'SOCIAL' in the city of Jamshedpur. A comparative of the competing trademarks of the Plaintiff and Defendant is as under:

Plaintiff's Trade Mark	Defendant's Trade Mark
	
SOCIAL	SOCIAL 75

Similarity:

1. The trademark 'SOCIAL' is copied in its entirety by the Defendant;
2. The trademark 'SOCIAL 75' is being represented in colour orange by the Defendant, which is identical to the colour used by the Plaintiff for representing 'SOCIAL';
3. The manner of suffixing the trademark 'SOCIAL' with another phrase, in this case being '75' is identical to the Plaintiff's concept, the only difference being that the Plaintiff prefixes the trademark 'SOCIAL' usually with the name of the area in which the restaurant/bar is located;
4. The services provided by the Plaintiff and Defendant are identical and have same target audience.

26. It is stated that in the past, this Court has granted interim injunctions in favour of the Plaintiff, recognising the need to protect its proprietary rights and details of several orders has been furnished in the plaint.

27. Learned counsel contends that the adoption of the impugned trademark by the Defendant is dishonest and deliberate, with a view to encash on the formidable reputation of the Plaintiff and is contrary to honest practices in business and trade. Plaintiff is a prior adopter and user of the registered trademark 'SOCIAL' and its variants and use of the impugned mark by the Defendant amounts to infringement under Section 29 of the Trade Marks Act. It is clear that the adoption of a deceptively similar trademark by the Defendant is aimed at misrepresenting to the general public that the source of these goods is the Plaintiff. There is no plausible explanation to adopt a well-known and reputed mark of the Plaintiff and the continuous use by the Defendant is leading to dilution and tarnishment of

Plaintiff's trademarks apart from violation of common law rights by passing off the goods.

28. It is further contended that the Plaintiff, upon acquiring knowledge of the Defendant, conducted an internet investigation including on restaurant search and discovery guide 'ZOMATO' to ascertain more about the Defendant. Reviews and ratings posted by the general public with respect to the restaurant of the Defendant, i.e. SOCIAL 75 on Zomato, Facebook and Google, revealed that the services offered by the Defendant at its restaurant are substandard, and this adversely affects the goodwill generated by Plaintiff's high-quality restaurants.

29. It is also pointed out that Plaintiff's attorneys *vide* their notice dated 25.02.2019 called upon the said Defendant requesting it *inter-alia* to cease and desist from using the offending trade mark 'SOCIAL', followed by another notice in November 2021. No response was, however, received from the Defendant.

30. 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 *ex parte ad-interim* injunction, as the impugned trademark is deceptively similar to the registered trademark of the Plaintiff. 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.

31. Accordingly, till the next date of hearing, Defendant, its partners, principals, directors, officers, employees, agents, distributors, suppliers, etc. and all others acting on its behalf, are restrained from selling, 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

trademark 'SOCIAL' and/or any other trademark or name identical and/or deceptively similar to Plaintiff's trademark 'SOCIAL' and its variants either as, a trademark or part of a trademark, a trade name or corporate name or as a part of a domain name, or in any other manner whatsoever, so as to infringe the registered trademarks of the Plaintiff and/or any part thereof or amounting to passing off the goods of the Defendant as those of the Plaintiff.

32. Defendant, its partners, principals, directors, officers, employees, agents, distributors, suppliers, etc. and all others acting on its behalf, are directed to remove all references of the impugned trademark from third party websites, where the Defendant's goods and/or services are sold, offered for sale, promoted and/or advertised under the impugned trademark 'SOCIAL' and/or any other trademark deceptively similar to the Plaintiff's trademarks.

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

JYOTI SINGH, J

AUGUST 31, 2022/shivam