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

\+ CS(COMM) 441/2017

IMPRESARIO ENTERTAINMENT
& HOSPITALITY PVT. LTD ..... Plaintiff
Through: Mr. C.M. Lall, Senior Advocate with Ms. Shibha Sachdev, Ms. Nikita Lakhkera and Mr. Prabhat Kalia, Advocates.

versus

M/S. URBAN MASALA LLP ..... Defendant
Through: None.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

O R D E R

% 10.07.2017

I.A. 7447/2017 in CS(COMM) 441/2017

Keeping in view the averments in the application, plaintiff is exempted from filing the original/certified/fair typed copies of the documents at this stage.

Needless to say, this order is without prejudice to the rights and contentions of the parties.

Accordingly, present application stands disposed of.

I.A. 7448/2017 in CS(COMM) 441/2017

Keeping in view the averments in the application, the plaintiff is permitted to deposit the Court fees within one week.

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Accordingly, the application stands disposed of.

CS(COMM) 441/2017

Let the plaint be registered as suit.

Issue summons in the suit to the defendant by all modes including dasti, returnable for 07th September, 2017 before the Joint Registrar for completion of service and pleadings.

The summons to the defendant shall indicate that a written statement to the plaint shall be positively filed within four weeks of the receipt of the summons. Liberty is given to the plaintiff to file a replication within two weeks of the receipt of the advance copy of the written statement.

The parties shall file all original documents in support of their respective claims along with their respective pleadings. In case parties are placing reliance on a document which is not in their power and possession, its detail and source shall be mentioned in the list of reliance which shall be also filed with the pleadings.

Admission/denial of documents shall be filed on affidavit by the parties within two weeks of the completion of the pleadings. The affidavit shall include the list of the documents of the other party. The deponent shall indicate its position with regard to the documents against the particulars of each document.

List the matter before Court on 01st November, 2017.

I.A. 7446/2017 in CS(COMM) 441/2017

Issue notice to the defendant by all modes including dasti, returnable for 07th September, 2017 before the Joint Registrar.

It is pertinent to mention that present suit has been filed for permanent and mandatory injunction, passing off, delivery up and damages against the

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defendant.

In the plaint it is stated that the plaintiff is the proprietor of the trade mark SOCIAL which was adopted by the plaintiff in 2012. The plaintiff's mark is registered in Classes 42, 43, 33, 9, 30, 32, and 25 under the Trade Marks Act, 1999. The plaintiff is engaged in providing restaurant services including but not limited to conducting and managing restaurant and coffee shops. It is further stated that plaintiff is also a registered proprietor of certain beverage trade marks under Class 33 which relate to the unique style of serving the beverages. The plaintiff at present is managing and operating 17 cafes/restaurants under the mark SOCIAL coined with the name of the area of the city in which the Cafe is located, i.e., Hauz Khas SOCIAL, Church Street SOCIAL, Defence Colony Social, Odeon SOCIAL.

It is further stated that the plaintiff's SOCIAL Cafes/restaurants have received various awards for excellence in the hospitality industry. It is also stated that the mark SOCIAL also form a part of plaintiff's website www.socialofflife.com and are advertising its SOCIAL cafes/restaurants on its website being www.impresario.in.

It is the plaintiff's case that in financial year 2015-2016 the annual revenue generated by the plaintiff from its business under the mark SOCIAL was Rs.91,21,33,254/- and incurred expenses of Rs. 117,08,195/- towards promotional and advertisement.

Learned senior counsel for the plaintiff states that in May 2017, it came to plaintiff's knowledge that defendant is engaged in the similar trade and business as that of the plaintiff, i.e., multi cuisine restaurant under the trade mark SOCIAL DISTRICT in Hyderabad. The defendant has spelt the word Social in some places as SOCIIAL.

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He further states that defendant has not only copied registered mark of the plaintiff but has also copied the entire model of the plaintiff's restaurant inasmuch as they have copied the names of selected items from the plaintiff's menu. He also states that the defendant is advertising its restaurant SOCIAL DISTRICT on various social networking sites such as Facebook, Zomato, Dineout, Yatra.com etc.

Learned senior counsel for the plaintiff states that the reviews and ratings posted by the general public with respect to defendant's outlet are substandard and are adversely affecting the goodwill of plaintiff's high quality restaurants. He further states that one of the reviews posted on Zomato website clearly indicates that defendant's SOCIAL DISTRICT restaurant is being mistaken as one of the outlets of plaintiff's SOCIAL restaurants.

He further states that plaintiff sent a cease and desist notice dated 7th May, 2016 to which the defendant replied vide letter dated 1st June, 2016 stating that the word SOCIAL is generic and no one can claim exclusive right over the same. He further states that defendant has also applied for registration of the mark SOCIAL DISTRICT in Class 43 and the same is pending.

He further states that plaintiff's is the prior adopter and user of the trade mark SOCIAL and its variant and use of plaintiff's trade mark SOCIAL for identical trade and services by the defendant constitutes infringement as well as passing off.

Keeping in view the aforesaid, this Court is of the opinion that a *prima facie* case of infringement and passing off is made out in favour of the plaintiff and balance of convenience is also in its favour. Further,

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irreparable harm or injury would be caused to the plaintiff if an interim injunction order is not passed.

Further this Court is prima facie of the opinion that the word 'Social' is arbitrary and fanciful with regard to restaurants. For instance, Arrow is a generic word with regard to bows and arrows but is arbitrary and fanciful with regard to shoes and shirts.

Consequently, till further orders, this Court restrains the defendant, its partners, principals, directors, officers, employees, agents, distributors, suppliers, affiliates, subsidiaries, franchisees, licencees, representatives, group companies and assignees from manufacturing, selling, marketing, advertising, and/or offering its services and/or in any other manner using and/or allowing or permitting third parties to manufacture, market, advertise or use SOCIAL, SOCIIAL.

Let the provisions of Order 39 Rule 3 CPC be complied within a week.

Order dasti under the signature of Court Master.

MANMOHAN, J

JULY 10, 2017
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