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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
INTERIM APPLICATION (L) NO.30262 OF 2023
IN
COM IPR SUIT (L) NO.30195 OF 2023

Trent Limited

...Applicant /
Plaintiff

Versus

Zudiofranchise.net and Ors.

...Defendants

Mr. Amey Nargolkar with Smriti Yadav and Parveen Anand i/b.
Khaitan and Co. for the Applicant / Plaintiff.

CORAM : R.I. CHAGLA J.
DATE : 2ND NOVEMBER, 2023.

ORDER :

1. Mr. Nargolkar learned Counsel appearing for the applicant/Plaintiff seeks to move without notice for the reasons set out in paragraph 39 of the plaint and paragraph 4 of the interim application. Those reasons are sufficient having regard to the material on record and a prima facie case of the Plaintiff having been made out for infringement of trade mark, copyright and passing off. I am satisfied that the purpose of an injunction and order reliefs will be defeated by any delay in giving notice. The Plaint contains disclosures

sufficient to sustain an ex-parte application.

2. Mr. Nargolkar has tendered draft amendments to bring on record one more incident of fraud that took place after the filing of the present suit. The draft amendments are allowed and be carried out forthwith. Re-verification to be dispensed with.

3. The Plaintiff has filed the Present Suit against Defendant Nos. 1 to 4 and 9, who the Plaintiff has defined as the 'said Defendants' for infringement of the Plaintiff's registered trade mark ZUDIO, infringement of copyright in the original artistic work of ZUDIO and for passing off the said Defendant's services and business as for those of the Plaintiff. The Plaintiff has also added Defendant Nos. 5 to 8 and 10 seeking limited relief in terms of disclosure. Since there is a pending Petition for leave under Clause XIV of Letters Patent, Mr. Nargolkar restricts his application to the reliefs in infringement.

4. The Plaintiff, Trent Limited, is one of the most reputed and oldest industrial houses of Tata Group, comprising over 100 companies operating in information systems and communications, engineering, materials, services, energy, consumer products and

chemicals since the year 1952.

5. According to the Plaintiff, it was established as Lakme Limited in the year 1952. The name of the Plaintiff was changed to Trent Limited in the year 1998 after a series of acquisitions and amalgamations. The Plaintiff claims to have commenced its retail operations in the year 1998 and is presently engaged in the business of operating some of Nations's largest or fastest growing retail store chains.

6. It is further stated that the Plaintiff is the registered proprietor of various trademarks and is also the owner of copyright in many artistic works. The present proceedings are initiated on behalf of the Plaintiff asserting its proprietary rights concerning the mark and artistic work of ZUDIO. It is asserted that the said Defendants have used impugned mark and impugned artwork in respect of its services of offering Plaintiff's franchise and as a part of their domain name. The said Defendants have also used the Plaintiff's corporate name, registered under the Trade Marks Act, 1999 which is violating the rights of the Plaintiff in its registered marks and original artistic work in which the Plaintiff claims subsisting copyright.

7. The Plaintiff claims that the trademark ZUDIO, which the Plaintiff has defined as the 'said Trade Mark', was conceived and adopted by the Plaintiff in the year 2015 and the same is in continuous use since then. The Plaintiff has also claimed that it has represented its said Trade Mark in a unique label bearing a distinct font of writing. According to the Plaintiff, it has acquired valuable common law rights in the said Trade Mark. The Plaintiff also has various registrations for the said Trade Mark and label mark of ZUDIO. Plaintiff's trade mark registration details are mentioned in paragraph 8 of the Plaint and the copies of registration certificates are appended at Exhibit C to the Plaint. The Plaintiff has also placed on record that it has created and represented its said Trade Mark in a unique label with a distinct font of writing, which the Plaintiff has defined as the 'said Artistic Work/ Trade Dress' and a copy of which is appended at Exhibit D to the Plaint. Copy of the document issued by the author of the said Artistic Work is appended at Exhibit D-1 to the Plaint. The Plaintiff claims subsisting copyright in the said Artistic Work.

8. The Plaintiff has appended copies of few advertisements and promotional material at Exhibit E to the Plaint. Copies of extracts

taken from the Plaintiff's website are appended at Exhibit F to the Plaintiff. The Plaintiff has also appended copies of screenshots taken from social media websites where the Plaintiff's goods and services are promoted. The Plaintiff has reproduced its sales and advertisement figures in para 12 in Plaintiff and a certified copy of the same is appended at Exhibit H to the Plaintiff. Further, the Plaintiff has appended copies of sales invoices/tax invoices etc. at Exhibit H-1 to the Plaintiff.

9. From the documents filed, I am convinced that the Plaintiff's trade mark/artistic work of ZUDIO is distinctive and has garnered enormous goodwill and reputation.

10. It is stated that in October 2023, the Plaintiff received a mail from one Mr. Abdul Kareem, who the Plaintiff has defined as the 'said victim', who had applied for Zudio Franchises for two location and had paid an amount of Rs, 2,65,500/- as consideration. The Plaintiff has appended copies of the correspondence as received from the said Victim at Exhibits I, J-1, J-2 and J-3 to the Plaintiff. The correspondences bear the trade mark and artwork of ZUDIO, which the Plaintiff has defined as the Impugned Trade Mark and Impugned Artwork/ Trade Dress and also the corporate name, registered

address and website of the Plaintiff. Upon making enquiries with the said Victim, the Plaintiff was informed that he clicked some link online and was directed to a page asking him to fill in his personal details. He then received an email offering Plaintiff's Franchisee. He was also contacted by Defendant Nos. 2 and 4 from the contact Nos. more particularly mentioned in paragraph 18 in the Plaint, to negotiate the terms of engagement for opening a Zudio Franchise Store. The said Victim realized he was duped after depositing the money in the account of the said Defendants.

11. The Plaintiff claims to have conducted initial investigation and came across the Defendant No. 1. The Defendant Nos. 2 to 4 have contacted the said victim and their names appear on the Truecaller mobile application alongwith the numbers used to contact the said Victim. Defendant No. 5 is the registrar of Defendant No. 1. Copy of the Whois extract evincing the same is appended at Exhibit K to the Plaint. The Truecaller mobile application reveals the Defendant No. 6 to be the service provider of the mobile numbers used to contact the victims. Copies of screenshots taken from the said mobile application are appended at Exhibit L to the Plaint. The Defendant No. 6 is registered with the Defendant No. 7. The Plaintiff submits

that Defendant Nos. 8 and 10 are the banks wherein the said Defendants have opened accounts in the name of the Plaintiff. According to the Plaintiff, despite exercise of due diligence, it has not been able to identify all such persons/entities acting in concert with the said Defendants. Hence, the unknown persons/entities have been named as Ashok Kumar, being an India counterpart of John Doe.


12. The Plaintiff states that the said Defendants have used the name and intellectual property rights of the Plaintiff to defraud the unsuspecting consumers and have willfully and fraudulently represented to the public that they are employees/associates of the public. The said Defendants have unlawfully lured the public with false offers of setting up a Zudio franchisee. The adoption of the Impugned Trade Mark and Impugned Artwork/ Trade Dress by the said Defendants is thus dishonest and in bad faith ab-initio and with full notice of Plaintiff's said Trade Mark and said Artistic Work/ Trade Dress.

13. In the aforementioned circumstances, I find that that a strong prima facie case has been made out by the Plaintiff for granting ex-parte ad-interim reliefs. The balance of convenience is also in favour of Plaintiff. In view of what is stated in paragraph 39 of

the Plaintiff and the foregoing discussion, I am satisfied that giving any notice to the said Defendants before passing the present order would defeat the very purpose of granting any ad-interim reliefs. In these circumstances, there shall be an ad-interim order in terms of prayer clauses (a), (b), (e), (f), (g) and (h) of the Interim Application which reads as:

“(a) pending the hearing and final disposal of the Suit, the said Defendants, directly or indirectly, by themselves, their concerns, partners, directors, servants, employees, agents, dealers, distributors and all persons claiming under them be restrained by a temporary order and injunction of this Hon'ble Court from using or causing to be used the Impugned Trade Mark/ Impugned Artwork/ Trade Dress or any other trade mark/ artwork/ trade dress identical with or similar to the Plaintiff's said Trade Mark and said Artistic Work/ Trade Dress in relation to their business or in any manner from offering services of franchisee or offering for sale, advertising or dealing in any goods or as a part of their domain name, websites, the Impugned Trade Mark/ Impugned Artwork/ Trade Dress or any other trade mark/ artwork/ trade dress identical or similar to the Plaintiff's said Trade Mark so as to infringe the Plaintiff's said Trade Mark/ said Artistic Work/ Trade Dress registered under numbers 3078069, 3078070, 3078071, 3078072, 3078073, 3078074, 3078075, 3078076, 3078077, 3078078, 3078079, 3078080 3126271, 3126272 and 4312696 including

the Plaintiff corporate name, trade name, trade mark 'Trent'/'Trent Limited' bearing registration numbers 2111489 and 2904042;

(b) pending the hearing and final disposal of the Suit, the said Defendants, directly or indirectly, by themselves, their concerns, partners, directors, servants, employees, agents, dealers, distributors and all persons claiming under them be restrained by a temporary order and injunction of this Hon'ble Court from infringing Plaintiff's copyright in the said Artistic Work/ Trade Dress and/or from reproducing and/or substantially reproducing and/or copying and/or publishing and/or displaying and/or using Plaintiff's said Artistic Work/ Trade Dress or any part thereof upon in relation to their business or in any manner from offering services of franchise or offering for sale, advertising or dealing in any goods, any art work/ trade dress identical or substantially similar to the said Artistic Work / Trade Dress of the Plaintiff, so as to infringe Plaintiff's copyright in the said Artistic Work/ Trade Dress viz: ;

(e) pending the hearing and final disposal of the suit, Defendant No. 5 be directed to disclose the details of the person/ entity who has registered the Impugned Domain Name including any KYC details, debit card/ credit card information, or any other information which may be available with the Defendant No. 5. Defendant No. 5 be further directed to suspend the Impugned Domain Name, thereby bringing down

the website;

(f) pending the hearing and final disposal of the suit, Defendant Nos. 6 and 7 be directed to disclose the details of the person/s who are the owners of the contact numbers 09146256230 and 07361829095 including any KYC details, debit card/ credit card information, or any other information which may be available with Defendant Nos. 6 and 7;

(g) pending the hearing and final disposal of the suit, that Defendant No. 8 and No. 10 be directed to disclose the details of the person/s who has opened the bank account No. 159234406478 and No. 7491000100011190 that has been opened in the name of the Plaintiff i.e. 'Trent Limited' including any KYC details, debit card/ credit card information, or any other information which may be available with Defendant Nos. 8 and 10 and freeze the bank account No. 159234406478 and No. 7491000100011190.

(h) that pending the hearing and final disposal of the Suit, the said Defendants, directly or indirectly, by themselves, their directors, servants, agents, franchisees, dealers, distributors and all other persons claiming under them be restrained by a temporary/interim order to transfer and/or to stop/cease the use of the Impugned Domain Name zudiofranchise.net or any other domain name similar thereto or comprising the Plaintiff's said Trade Mark;

15. This order is not to be uploaded until all the disclosures are made by the Defendant Nos. 5 to 8 and 10 and the Additional Special

Receiver has executed his commissions as above.

16. As regards Defendant Nos. 5 to 8 and 10, the Plaintiff will comply with the provisions of Order 39 Rule 3 within 3 days of the order being made available to the Plaintiff. As regards the said Defendants, once the details of the said Defendants are known to the Plaintiff and pursuant thereto, the Court Receiver and the Additional Special Receiver have executed their commissions in accordance with prayer clause (d), the Plaintiff will comply with the provisions of Order 39 Rule 3 within 14 days of the said commission.

17. Liberty to the Defendants to apply for a variation, modification or recall of this order after at least seven clear working days' notice to the Advocates for the Plaintiff.

18. The disclosures shall be made by the Defendant Nos. 5 to 8 and 10 by 8th December 2023 and the above Interim Application along with the Clause XIV Leave Petition will be listed on 15th December 2023.

19. This order will continue until 18th December 2023.

20. All concerned will act on production of a digitally signed copy of this order.

[R.I. CHAGLA J.]