



\$~37

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

+ **CS(COMM) 310/2024**
ROARK CAPITAL MANAGEMENT LLC Plaintiff

Through: Mr. Akhil Sibal, Senior Advocate
with Mr. Sourabh Rath, Ms. Asavari
Jain, Mr. Adityaraj Patodia and Ms.
Gauri Pasricha, Advocates.

versus

REGISTRANT OF ROARKS.IN & ORS. Defendants

Through: Mr. Mrinal Ojha, Mr. Debarshi Dutta
and Ms. Tanya Chaudhry, Advocates
for D-3.
Ms. Jyotsna Bhuchar, Advocate for
Union of India.
Ms. Nidhi Raman, CGSC with Mr.
Zubin Singh, Advocate for D-5 & 6.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

% **ORDER**
16.04.2024

I.A. 8450/2024(seeking exemption from giving advance notice to Defendant No. 5 & 6)

1. Issue notice. Ms. Nidhi Raman, CGSC, accepts notice on behalf of Defendants No. 5 and 6. Reply, if any, be filed within 4 weeks from today.
2. Re-notify on 17th September, 2024.

I.A. 8451/2024(seeking exemption from giving advance notice to Defendants)



3. The Plaintiff alleges that Defendant No. 1 and 2 are perpetrating fraud on the public by creating a false association with the Plaintiff, resulting in grave financial losses to the public. Considering the nature of controversy involved in the present suit as well as the peculiar facts and circumstances of the case, exemption from effecting advance service on Defendant Nos. 1, 2, 4 and 7 is allowed.

4. Application is disposed of.

I.A. 8452/2024(seeking exemption from pre-litigation mediation)

5. As the present suit contemplates urgent interim relief, in light of the judgment of Supreme Court in **Yamini Manohar v. T.K.D. Krithi**,¹ exemption from attempting pre-institution mediation is granted.

6. Disposed of.

I.A. 8453/2024(seeking leave to file additional documents)

7. This is an application seeking leave to file additional documents under the Commercial Courts Act, 2015.

8. Applicant, if it wishes to file additional documents at a later stage, shall do so strictly as per the provisions of the said Act.

9. Disposed of.

I.A. 8454/2024(seeking exemption)

10. Exemption is granted, subject to all just exceptions.

11. Plaintiff shall file legible and clearer copies of exempted documents, compliant with practice rules, before the next date of hearing.

12. Disposed of.

I.A. 8455/2024(seeking leave to file lengthy list of dates and events)

¹ 2023 SCC OnLine SC 1382.



13. This is an application seeking leave to file lengthy list of dates and events. For the grounds and reasons stated in the application, the same is allowed.

14. Disposed of.

CS(COMM) 310/2024

15. Let the plaint be registered as a suit.

16. Issue summons. Counsel mentioned in appearance above accept notice on behalf of Defendants No. 3, 5 and 6. They confirm the receipt of suit paperbook and waive their right of formal service of summons. Written statement shall be filed within thirty days commencing from today.

17. Upon filing of process fee, issue summons to the remaining Defendants by all permissible modes. Summons shall state that the written statement(s) shall be filed by the Defendants within 30 days from the date of receipt of summons. Along with the written statement(s), the Defendants shall also file affidavit(s) of admission/denial of the documents of the Plaintiff, without which the written statement(s) shall not be taken on record.

18. Liberty is given to the Plaintiff to file replication(s) within 15 days of the receipt of the written statement(s). Along with the replication(s), if any, filed by the Plaintiff, affidavit(s) of admission/denial of documents of the Defendants, be filed by the Plaintiff, without which the replication(s) shall not be taken on record. If any of the parties wish to seek inspection of any documents, the same shall be sought and given within the timelines.

19. List before the Joint Registrar for marking of exhibits on 16th July, 2024. It is made clear that any party unjustifiably denying documents would be liable to be burdened with costs.

20. List before Court for framing of issues thereafter.



I.A. 8449/2024(u/O XXXIX Rules 1 and 2 of CPC)

21. Mr. Akhil Sibal, Senior Advocate, representing the Plaintiff, submits as follows:

21.1 The Plaintiff has filed the instant suit seeking *inter-alia* permanent injunction restraining Defendant Nos.1, 2 and 8 from using websites or domain name which bear the Plaintiff's tradename "Roark Capital",

trademark "ROARK" or logo "", on ground of passing off and copyright infringement.

21.2 The Plaintiff, Roark Capital Management LLC, founded in 2001, is a Limited Liability Company registered in Atlanta, USA, operating as a private equity firm under the name 'Roark capital' ('Plaintiff's tradename') with about USD 37 billion in assets under management.

21.3 The Plaintiff focuses on investments in consumer and business service companies, with a specialization in franchise and franchise-like business models. Specifically, Plaintiff has investments in well-known brands such as Inspire Brands (the owner of Arby's, Dunkin, Buffalo Wild Wings and others), FOCUS Brands (the owner of Auntie Anne's, Cinnabon and others), CKE Restaurants (the owner of Carl's Jr. and others), Self Esteem Brands (the owner of Anytime Fitness, Orangetheory Fitness and others), and Service Master Brand (the owner of Restore and others). Several of these brands have franchisee locations in India, including Anytime Fitness, Orangetheory Fitness and Dunkin. That apart, the Plaintiff has also featured in various articles and media reports published in India. Therefore, Plaintiff enjoys a reputable standing within the industry globally including India.

21.4. The Plaintiff has been granted registration for the mark "ROARK



CAPITAL GROUP” and has applied for registration of other variants of the ‘Roark’ mark in the United States of America. The Plaintiff has also applied for registration of its trademarks in India, however, the same are currently pending. Although the marks are unregistered in India, Plaintiff’s marks,

especially its logo “” (‘Plaintiff’s logo’), enjoy trans-border recognition (including India) and are solely associated with the Plaintiff.

21.5. That apart, the Plaintiff maintains a website hosted on <https://www.roarkcapital.com/> (‘Original website’) which has been operated continuously and uninterruptedly since the year 2002. The Original website also displays the Plaintiff’s logo which has been in use since August 2002. The contents of the Original website including the contents of the various webpages accessible from the homepage, and the Plaintiff’s logo featured on the Original Website, are the Plaintiff’s original works. Thus, the Plaintiff holds sole and exclusive copyright in the contents on the Original Website, as well as its logo.

21.6. It is pertinent to mention at this stage that the Plaintiff does not provide any trading operations or platforms or brokerage services for individuals desiring to buy or sell financial instruments or assets, neither within nor outside India.

21.7 Defendant No. 1 and 2 are the registrant of the domain names – “roarks.in” and “roark.in” (collectively referred as ‘Fake domain names’). Defendant No.1 has created various websites - <https://www.roarks.in;> web.roarks.in and <https://h5.roarks.in> (‘Fake websites’) on its domain name.

21.8 These Fake websites are fraudulent and unauthorized rogue



websites/domain names which are dishonestly and illegally using the Plaintiff's name, original copyrighted works, contents of the original websites and its trademarks and logo to fraudulently misrepresent that they are associated with the Plaintiff. That apart, these Fake websites direct the user to download an app in order to use the purported 'trading platform' to engage in trading of financial assets ("Fake App"). The Fake App not only misuses the name of the Plaintiff, but also, *inter alia*, informs the user to reach out with their queries to an email address by the name of support@roark.in (based on the Fake domain name). Furthermore, the Fake domain name registered by Defendant No. 2 -roark.in is being misused in registering fake email addresses such as support@roark.in and greivances@roark.in, further misusing the name and goodwill of 'Roark' to mislead the general public into believing that the said email addresses are associated with the Plaintiff. Thus, apart from copyright infringement, the Defendant Nos.1 and 2 are also impersonating/passing-off themselves as Plaintiff and misleading the general public through these Fake websites and Fake domain names, which incorporate the Plaintiff's trademark 'Roark' in its entirety.

21.9. Defendant No. 3 is a domain name registrar engaged in the business of providing domain name registration. The domain name of Defendant No. 1, i.e., "roarks.in" (including the fake websites) is registered with Defendant No. 3. Similarly, Defendant No.4 is the domain name registrar of Defendant No.2's domain name- "roark.in". Furthermore, Defendant No 3 and 4 have refrained from disclosing the identities of Defendant Nos. 3 and 4 under the garb of maintaining privacy.

21.10. Additionally, individuals seemingly associated with Defendant Nos. 1 and 2 have placed deceptive advertisements on Instagram and Facebook



(platforms owned by Defendant No. 7) claiming to offer financial advice/tips from professionals working with the Plaintiff. These persons associated with Defendant Nos. 1 and 2 have also approached individual members of the general public in India *via* WhatsApp (platform owned by Defendant No.7), falsely claiming to be associated with the Plaintiff, and are misusing the name of the Plaintiff to solicit individuals to register an account with “Roark” via the Fake App available on the Fake Websites. It appears that once the individuals purportedly invest their monies through the Fake App, their access is subsequently blocked and they are not allowed to withdraw the said sums, resulting in them being duped of their money and the sums being siphoned off.

21.11 The Plaintiff became aware of these infringing activities when it began to receive inquiries to the address provided on its Original Website, from various individuals who had been approached in the manner above and /or had been duped of their hard earned monies by the individuals associated with Defendant Nos. 1 and 2. The Plaintiff has also come across media reports in India in connection with this ongoing fraud done in the Plaintiff’s name.

21.12. A side-by-side comparison of the content on the Original website and the Defendant Nos.1’s fake website is as follows:



Comparative Analysis	Plaintiff	Defendant Nos. 1 and 2
Website/Domain Name	https://www.roarkcapital.com/	https://www.roarks.in
Logo		 ROARK (As used in the Fake App)

Core Values Section	INTEGRITY We are open, honest, direct and trustworthy. We always deliver on our promises. COMMITMENT We are hard working with a high sense of urgency and low egos. COLLABORATION We are supportive, upbeat and energetic partners, good listeners and problem solvers. We are good partners in good times and great partners in bad times. IMPROVEMENT	INTEGRITY We are open, honest, direct, and trustworthy. We consistently deliver on our commitments. COMMITMENT We work with a sense of urgency and a humble attitude. COLLABORATION We are supportive, optimistic, energetic partners, good listeners, and problem solvers. We are good partners in prosperity and great partners in adversity. IMPROVEMENT
---------------------	---	---

\



	We continually seek to identify and implement better and best practices. We strive for continual improvement within our companies, our firm and ourselves. COMMUNICATION We seek and provide timely, effective and accurate communications. EXPECTATIONS We do not settle for “good enough.” ANALYTICAL We measure performance and make fact-based decisions. RECOGNITION We recognize and reward exceptional performance.	We continually seek to identify and implement better practices. We strive for ongoing improvement within our company, our industry, and ourselves. COMMUNICATION We seek and provide timely, effective, and accurate communication. EXPECTATIONS We work with a sense of urgency and a humble attitude. ANALYSIS We measure performance and make fact-based decisions. RECOGNITION We acknowledge and reward outstanding performance.
--	---	--





	ACCOUNTABLE We hold ourselves and our teams accountable for results.	ACCOUNTABILITY We demand accountability from ourselves and our teams for results.
	TRANSPARENCY We seek transparency with our management teams and our investors.	TRANSPARENCY We seek transparency with our management team and investors.
	RESPONSIBILITY We treat our investors' money as if it were our own.	RESPONSIBILITY We treat investors' money as if it were our own.
	TRUST We trust each other and seek partnerships with people who we trust and who trust us.	TRUST We trust each other and seek to build partnerships with those we trust and who trust us.

22. The court has considered the above noted contentions. The comparison chart extracted above reveals that Defendant No.1's Fake website- <https://www.roarks.in> nearly mirrors entire contents of the Plaintiff's Original Website. One can notice that some of the content from the Plaintiff's Original website – <https://www.roarkcapital.com/> posted in the 'core value section' has been copied verbatim. Furthermore, the marks



used on the Fake website and Fake app “” and “” are deceptively similar to the Plaintiff’s logo ” Thus, Defendant Nos.1’s fake website *prima facie* infringes upon the copyright of the Plaintiff.

23. Defendant Nos.1 and 2’s Fake websites and Fake domain names are *ex-facie* deceptively similar to the domain name of the Plaintiff’s original website- <https://www.roarkcapital.com/>. Defendants 1 and 2, by utilizing Fake websites and Fake domain name involving the mark ‘Roark,’ are *prima facie* engaged in misleading and deceiving the public. They are not merely suggesting an association with the Plaintiff but are directly impersonating the Plaintiff themselves. Furthermore, the Fake Domain Name registered by Defendant No. 2 -roark.in is being misused in registering fake email addresses such as support@roark.in and greivances@roark.in. These acts of false impersonation are designed to mislead the public into believing that they are dealing with the Plaintiff, thereby potentially damaging the Plaintiff’s reputation and deceiving consumers about the true source of the services offered. The documentary evidence submitted clearly shows that the Fake websites were intentionally designed to mimic the Plaintiff’s genuine websites, creating a high likelihood of confusion and misleading of the public. Furthermore, the use of the Plaintiff’s logo on the Fake application accessible via these websites, along with the prominent display of the email address support@roark.in on the same application, underscores the deliberate attempts by Defendants 1 and 2 to impersonate the Plaintiff. The intent here seems to be to deceive the public into believing that they are



interacting with the Plaintiff, thereby facilitating fraud and damaging the Plaintiff's reputation. Therefore, a *prima facie* case of passing off has also been made out.

24. In view of the above, the Court finds that the Plaintiff has made out a *prima facie* case in his favour and in case *no ex-parte ad-interim* injunction is granted Plaintiff will suffer an irreparable loss; balance of convenience also lies in favour of the Plaintiff and against the Defendants.

Directions.

25. For the foregoing reasons, an *ad-interim ex-parte* injunction is granted in favour of the Plaintiff restraining Defendants No. 1, 2 and 8 from passing off as the Plaintiff through their Fake websites or Fake domain names, and from infringing the Plaintiff's copyright in relation to but not limited to the

content of the Plaintiff's Original Websites and Logo “”. Additionally, Defendants No. 1 and 2 and 8 are restrained from creating new websites that mirror the Plaintiff's Original website or incorporate the Plaintiff's mark 'Roark' in the domain name, in such a way that it amounts to passing off and/or copyright infringement.

26. Defendants No. 3 and 4 are directed to:

i) block/suspend access to the domain names “roarks.in” and “roark.in” and the sub-domain names “web.roarks.in” and <https://h5.roarks.in>. They shall, within four weeks from today, file in a sealed cover, the complete details concerning the registrants of the aforesaid domain names, including the name, contact details, payment details, and IP addresses, as are available with them. Such details shall also be provided to counsel for Plaintiffs, which shall be strictly used by them for the purpose of investigation and



identification of the perpetrators.

ii) If the Plaintiff comes across any other domain names or website registered with Defendant Nos .3 and 4, consisting of the mark ‘Roark’ or the Plaintiff’s logo, the same shall be identified, and screenshots and documents may be intimated to the concerned Domain name registrar (Defendant No. 3 or 4), who shall block/suspend the said domain names, in accordance with law. However, in case Defendant No. 3 and/or 4 come to the conclusion that the same does not incorporate the Plaintiff’s mark ‘Roark’ or a mark identical to Plaintiff’s logo, they shall inform the Plaintiff of the same, within a period of three days from the date of receipt of the request, whereafter Plaintiffs shall be free to take recourse to appropriate measures available under law.

27. Defendants No. 5 and 6 [Ministry of Electronics and Information Technology and Department of Telecommunications, Ministry of Communications and Information Technology, respectively] are directed to issue necessary directions to the telecom service providers and internet service providers to the block access to Fake websites hosted on the impugned domain names “roarks.in” and “roark.in.”

28. Defendant No. 7, Meta Platforms INC, is directed to:

- i) block Whatsapp accounts of the mobile numbers as mentioned in Document P1 annexed with the plaint, and delete the WhatsApp groups as mentioned in Document P2;
- ii) block deceptive posts and advertisements as mentioned in Document P3 annexed with the Plaint, which make unauthorized use of the Plaintiff’s name/mark “Roark”.

29. Issue Notice. Ms. Nidhi Raman, CGSC, accepts notice on behalf of



Defendant Nos. 5 and 6. Mr. Mrinal Ojha, advocate, accepts notice on behalf of Defendant No. 3. Reply, if any, be filed by them within 4 weeks from today.

30. Compliance of Order XXXIX Rule 3 of CPC be done with one week from today.

31. List before the Court on 17th September, 2024.

SANJEEV NARULA, J

APRIL 16, 2024

d.negi