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

+ **CS(COMM) 461/2024**

DOMINOS IP HOLDER LLC & ANR. Plaintiffs

Through: Mr. Pravin Anand, Mr. Shantanu Anand, Mr. Imon Roy and Ms. Vareesha Irfan, Advocates

versus

M/S DOMIND PIZZA & ORS. Defendants

Through: None.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

% **28.05.2024**

I.A. 30747/2024 (seeking exemption from advance service of the Defendants)

1. 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 Defendants No. 1 to 7 is allowed.

2. Application is disposed of.

I.A. 30749/2024 (seeking exemption from conducting pre-litigation mediation)

3. 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.

4. Disposed of.

¹ 2023 SCC OnLine SC 1382.



I.A.30746/2024 (seeking leave to the file additional documents)

5. This is an application seeking leave to file additional documents under the Commercial Courts Act, 2015.
6. If Plaintiffs wish to file additional documents at a later stage, they shall do so strictly as per the provisions of the said Act.
7. Accordingly, the application stands disposed of.

I.A. 30748/2024 (seeking exemption from filing originals, certified copies, clearer copies, translated copies, left side margins, electronic documents etc.)

8. Exemption is granted, subject to all just exceptions.
9. The Plaintiffs shall file legible and clearer copies of exempted documents, compliant with practice rules, before the next date of hearing.
10. Disposed of.

I.A. 30745/2024 (seeking discovery)

11. Upon filing of process fee, issue notice, by all permissible modes, returnable on the next date of hearing. Reply, if any, be filed within four weeks from the date of service. Rejoinder thereto, if any, be filed within a period of two weeks thereafter.
12. Re-notify on 29th October, 2024.

CS(COMM) 461/2024

13. Let the plaint be registered as a suit.
14. Upon filing of process fee, issue summons to the 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 Plaintiffs, without which the written statement(s) shall not be taken on record.

15. Liberty is given to the Plaintiffs 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 Plaintiffs, affidavit(s) of admission/denial of documents of the Defendants, be filed by the Plaintiffs, 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.

16. List before the Joint Registrar for marking of exhibits 29th August, 2024. It is made clear that any party unjustifiably denying documents would be liable to be burdened with costs.

17. List before Court for framing of issues thereafter.

I.A. 30744/2024(under Order XXXIX Rule 1 & 2 of CPC)

18. Mr. Pravin Anand, counsel for Plaintiffs, has presented the following facts and contentions for grant of *ex-parte* ad-interim injunction against Defendants No. 1 to 7:

18.1. Plaintiff No. 1 – Domino’s IP Holder LLC, a subsidiary of Domino’s Pizza LLC, is entrusted with the ownership and management of certain intellectual property of Domino’s Pizza LLC, which includes the trademark “DOMINO’S PIZZA” and its formative variants. Under a Master Franchise Agreement, Plaintiff No. 2 – Jubilant FoodWorks Limited, has been exclusively authorized to operate Domino’s franchisees in India.

18.2. The trademark “DOMINO’S PIZZA” has been derived from the name of a pizza store “DOMINICK’S PIZZA” owned by Plaintiffs’ predecessors. In 1965, the name “DOMINICK’S PIZZA” was changed to “DOMINO’S



PIZZA.” Over time, the Plaintiffs also adopted variants of the

“DOMINO’S” trademark, such as “,” “,”

“,” which have been in use for over five decades.²

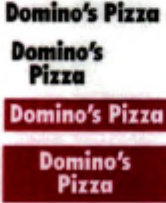
18.3. The Plaintiffs’ operations in India under the Domino’s trademarks commenced in 1996 and the same rapidly gained prominence within the country. This is evident from the significant expenditure incurred by Plaintiffs towards promotion of their goods under the Domino’s trademarks as well as their annual revenues, details whereof are set out in paragraphs No. 12 and 14 of the plaint, respectively. They also have an online presence through social media platforms as well as their website “www.dominos.co.in.” Additionally, Plaintiff No. 2 has entered into arrangements with food delivery applications, such as Zomato [Defendant No. 8] and Swiggy [Defendant No. 9].

18.4. The Plaintiffs’ adoption of the Domino’s trademarks is arbitrary as it has no meaning or significance in relation to pizza or fast-food restaurants, and thus, it is distinctive and exclusively associated with the Plaintiffs and their goods. The Plaintiffs have also acquired statutory rights in the Domino’s trademarks, particulars of the registrations are set out below:

² Collectively, “Domino’s trademarks.”



Application No.	Trademark	Application date	Class	Status
463304	DOMINO'S	19/11/1986	30	Registered
572312		30/04/1992	30	Registered

1238053		18/09/2003	42	Registered
1238054		18/09/2003	39	Registered
2145011		16/05/2011	29, 30, 39 & 43	Registered

18.5. Defendants No. 1 to 7 are entities who offer similar food products under deceptively similar trademarks/ trade names “DOMIN'D PIZZA,” “DOMI'D' PIZZA,” “DOMI'D PIZZA,” “DOM'D PIZZA,” “DOMIND'S PIZZA,” and “DOMZZ PIZZA” on the food-delivery platforms of Defendants No. 8 and 9 – Zomato and Swiggy.³ The Defendants are taking unfair advantage of the Plaintiffs' reputation as their listings are prompted to the consumers as soon as they type the first string of letters of the Plaintiffs'

³ “impugned marks.”



Domino's trademarks, i.e., 'DOM', 'DOMI', and 'DOMIN' on the search bars of Zomato and Swiggy. For illustration, reference is made to the following screenshot of search results from Zomato:

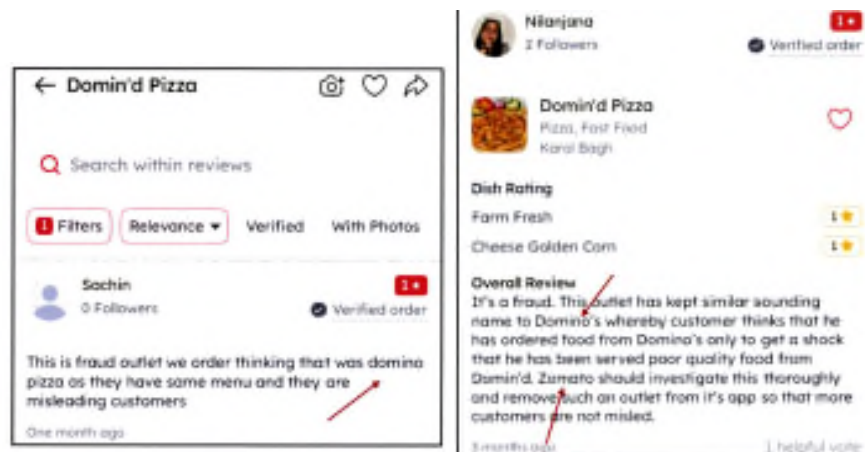


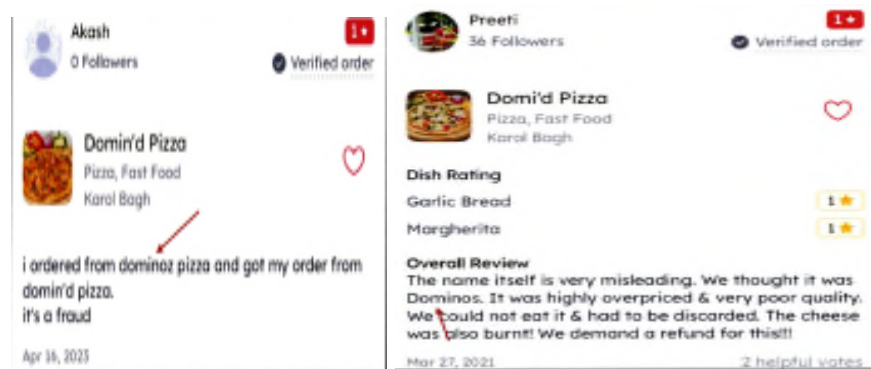
18.6. As per Plaintiff's analysis, Defendants No. 1 to 7 are either operated by the same proprietors or have been enlisted together on Zomato's feature of 'multi brand kitchen' that permits various brand names to function from a single cloud kitchen location. These entities operate from common kitchens located in Karol Bagh, Inderlok and Tis Hazari regions of Delhi. Further, the same FSSAI number of Defendants No. 2 to 4 is displayed on Zomato and Swiggy. There is also commonality in the addresses and surnames of



proprietors of Defendants No. 1 to 4, which indicates that Defendants No. 1 to 4 are run by the same or related persons. Similarly, Defendants No. 5 and 6 are operated from the same address. Defendant No. 7, who is the owner of the mark “DOMZ PIZZA,” (identical to Defendant No. 6’s mark), uses the FSSAI number of Defendant No. 6 on its listings. These facts further demonstrate that Defendants No. 5 to 7 are related entities.

18.7. The use of impugned marks by Defendants No. 1 to 7 is intended to mislead the consumers, who wish to purchase the Plaintiffs’ products. This is manifest from the consumer reviews posted on Zomato platform, who have expressed that they were misled into believing these outlets were operated by the Plaintiffs, resulting in unintended orders. These consumers have further stated that the Defendants’ food items are of sub-standard quality. Reliance is placed upon the screenshots of reviews for Defendants’ listings annexed with the suit, some of which are reproduced below:





18.8. Thus, given the actual consumer confusion caused, the activities of Defendants No. 1 to 7 amount to infringement of the Plaintiffs' registered Domino's trademarks as well as passing off their goods as those of the Plaintiffs.

19. The Court has considered the afore-noted submissions. A side-by-side comparison of the competing marks is as follows:



Plaintiffs' Trade Marks	Defendant No. 1-7's Trade Names/ Marks
    	Defendant No. 1 – DOMIN'D PIZZA Defendant No. 2- DOMI'D PIZZA Defendant No. 3- DOMI'D PIZZA Defendant No. 4- DOM'D PIZZA Defendant No. 5- DOMIND'S PIZZA Defendant No. 6- DOMZZ PIZZA Defendant No. 7- DOMZZ PIZZA

20. The comparison drawn above makes it evident that the marks utilized by Defendants No. 1 to 3 and 5 are *prima facie* deceptively similar to the Plaintiffs' registered Domino's trademarks. These marks are phonetically, visually, and structurally alike to the Plaintiffs' Domino's trademarks. The similarity between the Plaintiffs' and Defendants No. 1 to 3 and 5's marks extends to the use of these marks for identical goods and services, specifically, online delivery of pizzas, highlighting a calculated effort by Defendants No. 1 to 7 to mislead the public into believing that there is an association with the Plaintiffs. Considering the fact that the said marks are



associated with food products, which are widely marketed and consumed across diverse demographic segments, the potential for misrepresentation carries significant consumer impact. Therefore, the Court must apply a more stringent standard in evaluating the probable effects of such misrepresentation on public perception and the integrity of the Plaintiffs' brand identity. Thus, *prima facie*, the actions of Defendants No. 1 to 3 and 5 constitute infringement of the Plaintiffs' statutory rights under Section 29 of the Trademarks Act, 1999 as also passing off their products as that of the Plaintiffs.

21. In view of the above, the Court is satisfied that Plaintiffs have made out a case for grant of an *ex-parte* ad-interim injunction. In case injunction is not granted, the Plaintiffs stand to suffer irreparable harm, as the continued use of the impugned marks by Defendants No. 1 to 3 and 5 would further damage the reputation of their brand and market presence. The balance of convenience also favours the Plaintiffs.

22. Accordingly, till the next date of hearing, the following directions are issued:

22.1. Defendants No. 1 to 3 and 5, and anybody acting on their behalf, are restrained from advertising, selling, offering for sale, and marketing any products, packaging, menu cards and advertising material, labels, stationery articles, website or any other documentation or in any manner whatsoever, using, depicting and/or displaying the impugned marks "DOMIN'D PIZZA," "DOMI'D' PIZZA," "DOMI'D PIZZA," and "DOMIND'S PIZZA" and/or any other identical or deceptively similar so as to cause confusion or deception leading to passing off of the said Defendants' products and services as those of the Plaintiffs, and/or amounting to



infringement of the Plaintiffs' Domino's trademarks, specifically as registered under trademarks No. – 463304, 572312, 1238053, 1238054, 2145011, 2145001.

22.2. Defendants No. 8 and 9 are directed to de-list/ takedown/ suspend from their respective mobile applications, websites and/or any other platforms, the impugned listings as delineated hereunder:

<i>Defendants' description</i>	<i>URLs</i>
Defendant No. 1 – Domin'd Pizza	https://zomato.onelink.me/xqzv/nd0h6gl3 <i>and</i> https://www.swiggy.com/restaurants/domind-pizza-anand-parbat-karol-bagh-delhi-517359
Defendant No. 2 – M/s Domi'd Pizza	https://zomato.onelink.me/xqzv/pwieqag5 <i>and</i> https://www.swiggy.com/restaurants/domid-pizza-anand-parbat-karol-bagh-delhi-164163?source=sharing
Defendant No. 3 – M/s Domi'd Pizza	https://zomato.onelink.me/xqzv/vha5n9qs
Defendant No. 5 – M/s Domind's Pizza	https://zomato.onelink.me/xqzv/sllmg95b

23. Issue notice to the Defendants, upon filing of process fee, by all permissible modes, returnable on the next date of hearing.

24. Reply, if any, be filed within four weeks from date of service. Rejoinder thereto, if any, be filed within two weeks thereafter.

25. Compliance of Order XXXIX Rule 3 of the Code of Civil Procedure,



1908 be done within one week from today.

26. List before the Court on 29th October, 2024.

SANJEEV NARULA, J

MAY 28, 2024

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