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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CS(COMM) 770/2022 and I.A. 18149/2022, 18150/2022

BIJENDER SINGH KHOKHAR Plaintiff

Through: Mr. Manoj V. George, Mr. Vignesh Ram, Mr. Nasib Masih Bhawna, Mr. Utkarsh & Mr. Vastava Advocates. (M:9811404903) with Mr. Bijender Singh Khokhar, in person.

versus

OLA FOODS (PISCES ESERVICES PVT LTD)

& ANR. Defendants

Through: Mr. Sagar Chandra, Ms. Ishani Chandra, Ms. Shubhie Wahi & Ms. Sanya Kapoor, Advocates. (M:9810907412)

CORAM:
JUSTICE PRATHIBA M. SINGH

ORDER
% 09.11.2022

1. This hearing has been done through hybrid mode.

I.A. 18150/2022 (for exemption)

2. This is an application seeking exemption from filing certified/cleared/typed or translated copies of documents. Exemption is allowed, subject to all just exceptions. **I.A. 18150/2022** is disposed of.

CS (COMM) 770/2022

3. Let the plaint be registered as a suit.

4. Issue summons to the Defendant through all modes upon filing of Process Fee.

5. The summons to the Defendant shall indicate that a written statement



to the plaint shall be positively filed within 30 days from date of receipt of summons. Along with the written statement, the Defendant shall also file an affidavit of admission/denial of the documents of the Plaintiff, without which the written statement shall not be taken on record.

6. Liberty is given to the Plaintiff to file a replication within 15 days of the receipt of the written statement(s). Along with the replication, if any, filed by the Plaintiff, an affidavit of admission/denial of documents of the Defendant, be filed by the Plaintiff, without which the replication 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.

7. List before the Joint Registrar for marking of exhibits on 15th December, 2022. It is made clear that any party unjustifiably denying documents would be liable to be burdened with costs.

8. List before Court on 24th January, 2023.

I.A. 18149/2022 (u/O XXXIX Rules 1 & 2 CPC)

9. The present suit has been filed on behalf of the Plaintiff - Bijender Singh Khokhar seeking permanent injunction restraining the infringement of its registered trademark no. 3546089 and 3546090, as also reliefs for passing off, unfair competition etc. against Defendant No. 1 - Ola Foods (Pisces Eservices Pvt Ltd) and Defendant No. 2 - Ola (ANI Technologies Pvt. Ltd).

10. The case of the Plaintiff is that he is a retired Army personnel who started his food service business in order to provide healthy and nutritious food by providing breakfast meal alternative which provides more nutrition per calorie [a bowl of wholesome food]. The Plaintiff's mark - BOWLSOME was adopted in 2017 and has since then acquired goodwill and reputation. The said mark has also been registered bearing registration



no.3546089 and 3546090 in classes 29 and 43.

11. The grievance of the Plaintiff is that Defendant No.1 started selling its products under the mark BOWLSOME/  on its platforms - Ola Food during the pandemic. The comparison of the two marks is set out below:

Plaintiff's Original Product	Defendants Impugned Product
 BOWLSOME [Word mark] 	 "BOWLSOME" [Work Mark]  "BOWLSOME" [Work Mark]

12. It is submitted on behalf of the Plaintiff that the Defendants' use of the mark BOWLSOME completely violates the Plaintiff's registered mark and also results in passing off. Mr. George, Id. Counsel for the Plaintiff further submits that he had approached the Delhi High Court Mediation and Conciliation Centre for exploring pre-litigation mediation, however despite six sittings, the settlement did not fructify.

13. Mr. Sagar Chandra, Id. Counsel for the Defendants accepts notice and summons for the Defendants and submits on instructions, that the Defendants have stopped using the mark BOWLSOME.



14. In response, Mr. George, Id. Counsel for the Plaintiff after seeking instructions submits that even as of this morning the BOWLSOME mark and feature was being used on the Defendants' platform Ola Foods. Screenshots of the same are relied upon.

15. It is clear from the aforementioned submissions that the mark used by the Defendants is identical to the Plaintiff's registered mark. Moreover the services provided by both parties under the said mark are also identical. Considering this position, the statement of the Defendants that they have stopped the use of the mark BOWLSOME is taken on record.

16. The Defendants shall be bound by the said statement and shall ensure that they do not use the Plaintiff's registered mark BOWLSOME in any manner whatsoever for food services or any other cognate and allied goods or services.

17. Let the reply be filed within four weeks. Rejoinder, thereto, be filed within four weeks.

18. List before Court on 24th January, 2023.

PRATHIBA M. SINGH, J.

NOVEMBER 9, 2022

dj/kt