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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(COMM) 357/2024, I.A. 9839/2024, I.A. 9840/2024, I.A. 9841/2024, I.A. 9842/2024, I.A. 9843/2024 & I.A. 9844/2024

DOMINOS IP HOLDER LLC & ANR. Plaintiffs

Through: Mr. Pravin Anand, Mr. Shantanu Sahay, Ms. Imon Roy, Ms. Vareesha Irfan and Mr. Pratyush Acharya, Advs.

versus

M/S DOMINIC PIZZA & ORS. Defendants

Through:

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

ORDER
02.05.2024

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I.A. 9841/2024 (Seeking leave to file additional documents)

1. The present application has been filed on behalf of the plaintiffs under Order 11 Rule 1(4) of the Code of Civil Procedure, 1908 as applicable to commercial suits under the Commercial Courts Act, 2015 seeking to place on record additional documents.
2. The plaintiffs, if it wishes to file additional documents at a later stage, shall do so strictly as per the provisions of the Commercial Courts Act, 2015 and the Delhi High Court (Original Side) Rules, 2018.
3. Accordingly, the present application is disposed of.

I.A. 9842/2024 (Exemption from advance service to the defendants)



1. Since there is an urgency in the matter and the same is being heard today, plaintiffs are exempted from serving advance notice on the defendants herein.
2. For the reasons stated in the application, the same is allowed and disposed of.

I.A. 9843/2024 (Exemption from filing original/certified/clearer copies etc.)

1. Exemption is granted, subject to all just exceptions.
2. Applicant shall file legible, clear, and original copies of the documents on which the applicant may seek to place reliance before the next date of hearing.
3. Accordingly, the present application is disposed of.

I.A. 9844/2024 (Exemption from instituting pre-litigation mediation)

1. Having regard to the facts of the present case and in light of the judgement of Division Bench of this Court in ***Chandra Kishore Chaurasia v. R.A. Perfumery Works Private Ltd.***, FAO (COMM) 128/2021, exemption from attempting pre institution mediation is allowed.
2. Accordingly, the application stands disposed of.

I.A. 9840/2024 (Application under Order XI Rule 1 (6) CPC)

1. This application has been filed seeking directions to defendant nos.14 and 15 to disclose on affidavit details mentioned in paragraph 6 (a) – (h) of the said application.
2. Issue notice.
3. Reply be filed within six weeks with copies to the opposing side, who



may file a rejoinder thereto, if so desired, before the next date of hearing.

CS(COMM) 357/2024


1. Let the plaint be registered as a suit.
2. Upon filing of process fee, issue summons to the defendants by all permissible modes. Summons shall state that the written statements be filed by the defendants within 30 days from the date of receipt of summons. Along with the written statements, the defendants shall also file affidavits of admission/denial of the documents of the plaintiffs, without which the written statement shall not be taken on record. Liberty is given to the plaintiffs to file a replication within 30 days of the receipt of the written statements. Along with the replication, if any, filed by the plaintiffs, affidavits of admission/denial of documents filed by the defendants, be filed by the plaintiff, without which the replications 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.
3. List before the Joint Registrar for marking of exhibits on 05th August, 2024.
4. It is made clear that any party unjustifiably denying documents would be liable to be burdened with costs.

I.A. 9839/2024 (Application under Order XXXIX Rules 1 and 2, CPC)

1. This application has been filed as part of the accompanying suit seeking permanent injunction restraining the defendants from using the marks “*Dominic Pizza*”, “*Dominek’s Pizza*”, “*Dominek Pizza*”, “*Domics Pizza*”, “*Dominick Pizza*”, “*Domnick Pizza*”, “*Dominic’s Pizza*”, “*Dominics*



Pizza”, “*Dominic’s Pizza*”, “*Dominik Pizza*”, “*Domnik Pizza*” [‘*impugned marks*’] or any other mark which is identical or deceptively similar to the

plaintiffs’ registered trademarks “*Domino’s Pizza*”,  and

 **Domino’s** [‘*plaintiffs’ trademarks*’]





2. Plaintiff No.1 - Domino’s IP Holder LLC, belonging to the Domino’s pizza group of companies, owns and manages certain intellectual property under the ultimate ownership of Domino’s Pizza, LLC. Plaintiff No. 2 - Jubilant Food Works Limited has exclusive rights to operate Domino’s franchises in India, operating as a single economic entity with Plaintiff No. 1 for the purpose of protecting intellectual property rights and business under the same in India.

3. Plaintiffs are the first and prior adopter of the mark “Domino’s” since the year 1965, and now conduct operations in more than 90 countries, with over 20,500 stores. The Plaintiffs’ initial adoption of the said mark 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. Consequently, on account of their extensive and continuous use, the Plaintiffs’ trademarks have acquired immense goodwill and reputation, as demonstrated by the Plaintiffs’ revenue and promotional expenses, details whereof are delineated at Paragraph Nos. 13 and 15 of the plaint, respectively.

4. Plaintiff No. 2 runs 1,928 Domino’s Pizza outlets in over 407 cities in India, which is the Plaintiffs’ biggest market outside of the United States of America. Plaintiffs have a considerable online presence in India, accepting



online orders through their website at the domain name www.dominos.co.in, which has been operational since the year 2007. Further, Plaintiff No. 2 has enlisted their various outlets on online food-ordering platforms such as Defendant No. 14, Zomato and Defendant No. 15, Swiggy. Moreover, Plaintiffs have acquired statutory rights in their trademarks under the Trade Marks Act, 1999 [*‘Act’*]. Details of such relevant trademark registrations are set out as follows:

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

5. Accordingly, Plaintiffs have the exclusive right to use as well as restrain the use of the aforementioned trademarks, including “*Domino's*” and



“Domino’s Pizza”, in relation to its business. To this effect, Plaintiffs have been vigilant in safeguarding their intellectual property rights, having obtained injunction orders in their favour on several occasions, details whereof have been set out at Paragraph No. 24 of the plaint.

6. Plaintiffs are aggrieved by defendant nos.1-13’s unauthorised adoption of identical/deceptively similar tradenames, marks, and names in the form of impugned marks, which are as follows:

“Dominic Pizza”, “Dominek’s Pizza”, “Dominek Pizza”, “Domics Pizza”, “Dominick Pizza”, “Domnick Pizza”, “Dominic’s Pizza”, “Dominics Pizza”, “Dominic’s Pizza”, “Dominik Pizza”, “Domnik Pizza”

7. The impugned marks have been used to operate brand outlets selling similar products like pizzas etc. on online delivery platforms such as defendant nos.14, Zomato and defendant no.15, Swiggy.

8. Mr. Pravin Anand, counsel for plaintiffs points that the defendants had taken an unfair advantage of the search results which are returned upon typing the first string of letters of the plaintiffs’ tradename and mark ‘DOM’, ‘DOMI’, ‘DOMIN’, and ‘DOMINO’, all of which led to suggestions of the defendants’ outlets enlisted on the platforms of defendant nos. 14 and 15.

9. Evidence of various instances of customers’ confusion has also been pointed out where customers have complained about the products which have supplied by the defendant nos.1-13, which were orders on the belief that these outlets were operated by the plaintiffs.

10. The defendants are operating under the said names:

Party	Name
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Defendant no.1	<i>M/s. Dominic Pizza</i>
Defendant no.2	<i>M/s. Dominic Pizza</i>
Defendant no.3	<i>M/s. Dominik Pizza</i>
Defendant no.4	<i>M/s. Dominics Pizza</i>
Defendant no.5	<i>M/s. Dominic's Pizza</i>
Defendant no.6	<i>M/s. Dominick Pizza</i>
Defendant no.7	<i>M/s. Dominick Pizza</i>
Defendant no.8	<i>M/s. Domnik Pizza</i>
Defendant no.9	<i>M/s. Dominek Pizza Center</i>
Defendant no.10	<i>M/s. Dominick Wala</i>
Defendant no.11	<i>M/s. Dominic Pizza</i>
Defendant no.12	<i>M/s. Domics Pizza & Café</i>
Defendant no.13	<i>M/s. Domnik Pizza</i>

11. In view of the above facts and circumstances, this Court is satisfied that the plaintiffs have made out a *prima facie* case for grant of an *ex-parte ad interim* injunction till the next date of hearing. Balance of convenience lies in favour of plaintiffs, and they are likely to suffer irreparable harm in case the injunction, as prayed for, is not granted.

12. Accordingly, till the next date of hearing, an *ex-parte ad interim* injunction is granted in favour of plaintiffs and against defendants, in the following terms:

- a) Defendant nos.14 and 15 shall delist and takedown the links connected to defendant Nos.1-13, which are as under:



Sl. No.	Defendants	URL
1.	Dominic Pizza (Defendant No. 1)	SWIGGY https://www.swiggy.com/menu/37134?source=sharing
2.	M/s. Dominic Pizza (Defendant No. 2)	SWIGGY https://www.swiggy.com/menu/32361?source=sharing
3.	M/s. Dominik Pizza (Defendant No. 3)	ZOMATO https://zomato.onelink.me/xqzv/4wdpb20z
4.	M/s. Dominics Pizza (Defendant No. 4)	ZOMATO https://zomato.onelink.me/xqzv/ty4cgum9
5.	M/s. Dominic's Pizza (Defendant No. 5)	ZOMATO https://zomato.onelink.me/xqzv/42hy0rzw
6.	M/s. Dominick Pizza (Defendant No. 6)	ZOMATO https://zomato.onelink.me/xqzv/gt9if6a7 https://zomato.onelink.me/xqzv/ovb7br6t
7.	M/s. Dominick Pizza (Defendant No. 7)	ZOMATO https://zomato.onelink.me/xqzv/mozcmsml
8.	M/s. Domnik Pizza (Defendant No. 8)	SWIGGY https://www.swiggy.com/restaurants/domnik-pizza-sector-9-old-gurgaon-zone-6-gurgaon-89993
9.	M/s. Dominek Pizza center (Defendant No. 9)	ZOMATO https://zomato.onelink.me/xqzv/541htn21 SWIGGY https://www.swiggy.com/menu/615817?source=sharing



10.	M/s. Dominick Wala (Defendant No. 10)	ZOMATO https://link.zomato.com/xqzv/rshare?id=70028431c03b98ff SWIGGY https://www.swiggy.com/menu/820001?source=sharing
11.	M/s. Dominic Pizza (Defendant No. 11)	ZOMATO https://zomato.onelink.me/xqzv/sh1085eb
12.	M/s. Domics Pizza & Café (Defendant No. 12)	ZOMATO https://zomato.onelink.me/xqzv/rmzojrf6
13.	M/s. Domnik Pizza (Defendant No. 13)	SWIGGY https://www.swiggy.com/menu/493126?source=sharing

- b) The same shall be taken down within a period of one week. Defendant Nos.14 and 15 may notify defendant nos.1-13, if need be, apprising them of directions passed by this Court.
- c) Defendant Nos.1-13 and anybody acting for and on their behalf are restrained from using the impugned marks “*Dominic Pizza*”, “*Dominek’s Pizza*”, “*Dominek Pizza*”, “*Domics Pizza*”, “*Dominick Pizza*”, “*Domnick Pizza*”, “*Dominic’s Pizza*”, “*Dominics Pizza*”, “*Dominic’s Pizza*”, “*Dominik Pizza*”, “*Domnik Pizza*” and/or any other identical or deceptively similar mark in any manner whatsoever to the plaintiffs’ marks. Considering that the said outlets may be still operating, the said injunction will come into force from 01st June, 2024. These directions are given in order to allow the defendant Nos.1-13 to change their tradenames and trademarks as soon as possible but not later than 01st June, 2024.



13. On steps being taken by plaintiffs, issue notice to defendants through all permissible modes including speed post, courier and email. Affidavit of service, along with proof thereof, be placed on record before the next date of hearing.
14. Reply be filed within eight weeks with advance copy to counsel for plaintiff, who may file rejoinder thereto, if so desired, before the next date of hearing.
15. Compliance of Order XXXIX Rule 3 of CPC be effected within one week.
16. Compliance affidavit will be filed by defendant Nos.14 and 15 in respect of the takedown within a period of four weeks from today with copies to the opposing side.
17. List on 17th September, 2024.
18. Order be uploaded on the website of this Court.

ANISH DAYAL, J

MAY 2, 2024/MK/sc