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

+ **CS(COMM) 119/2022**

**IMPRESARIO ENTERTAINMENT AND HOSPITALITY
PVT. LTD. Plaintiff**

Through: Ms. Shikha Sachdev, Adv.

versus

**M/S. ORANGEBELLY FOOD AND BEVERAGES PVT.
LTD. & ANR. Defendants**

Through: Ms. Khyati Dhupar, Adv.

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

ORDER (O R A L)

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28.04.2023


**I.A.8270/2023 (under Order XXIII Rule 3 of the CPC) in
CS(COMM) 119/2022**

1. The dispute between the parties stands settled and the present joint application under Order XXIII Rule 3 of the Code of Civil Procedure, 1908 (CPC) has been filed by the parties. The terms of settlement read thus:

“A. The Defendant acknowledges that the Plaintiff is the prior adopter and the proprietor of the trade mark 'SOCIAL' and all its variants, as have been mentioned in paragraphs 9, 12, 14 & 42 of the plaint;

B. The Defendant acknowledges the fame and reputation of the aforesaid trade marks in India and undertakes never to challenge the rights of the Plaintiff with respect to the above trade marks at any time, in any proceedings in courts of law or otherwise, anywhere in the world, including India.

C. The Defendant further undertakes to this Hon'ble Court that the Defendants, their directors, partners, employees and assigns (a reference to assigns will hereinafter include any associated and/or group company of the Defendants) will with immediate effect do as under:

- i) refrain from using the trade mark 'SOCIAL' and/or any other trade mark deceptively similar to the Plaintiffs trade mark 'SOCIAL' either as, a trade mark or part of a trade mark, a trade name and/or corporate name or in any other manner whatsoever so as not to infringe the Plaintiffs trade mark and/or pass off its goods or business as and for the goods or business of the Plaintiff for all times to come;
- ii) the Defendant its directors, employees and assigns shall discontinue the use of the trade mark 'SOCIAL' within four weeks from March 31, 2023 and undertake never to use the same and/or any other deceptively similar trade mark for all times to come;
- iii) the Defendant shall withdraw the trade mark application for the trade mark "SOCIAL KULTURE" bearing number 5196543, which is pending before the Trade Marks Registry with immediate effect. Further the  trade mark application for bearing number 4197702 in class 43 of the Defendant has been refused and the same shall not be revived;
- iv) never apply for the registration of the trade mark 'SOCIAL' and/or any other trade mark deceptively similar to the trade mark 'SOCIAL' and/or any trade mark in which the word 'SOCIAL' is forming a part, for all times to come either in India or anywhere else in the world;
- v) never oppose any application filed by the Plaintiff for the trade mark 'SOCIAL' and/or any other trade mark in which the word 'SOCIAL' is forming a part and/or its variants in India or anywhere else in the world;
- vi) shall not open any other outlet in India or anywhere in the world using the trade mark 'SOCIAL KULTURE' and/or any other trade mark in which the word "SOCIAL" and/or any other trade mark deceptively similar thereto, is forming a part and/or using any other indicia to show that it is in any manner connected and/or affiliated with the Plaintiff;
- vii) discontinue advertising the offending trade mark

and/or any other trade mark deceptively similar to the trade mark 'SOCIAL' at Zomato, Facebook, Instagram and Google location link, and/or any other website that it may have advertised the said trade mark within four weeks from March 31, 2023, and shall never advertise the aforesaid trade mark for all times to come on the world wide web;

viii) discontinue the domain name <https://socialkulture.in/> to the Plaintiff at its own cost within four weeks from March 31, 2023:

ix) not adopt any domain name in which the Plaintiff's trade mark 'SOCIAL' or any other deceptively similar trade mark is a part:

D. The Defendant shall suffer a decree in accordance with prayer A of the plaint;

E. The Defendants further state on solemn oath before this Hon'ble Court as under:

i) that they shall remove the display of the offending trade mark and/or any other trade mark deceptively similar to the trade mark 'SOCIAL' on various social media websites including, Facebook, Instagram and shall never advertise the aforesaid trade mark and/or any other deceptively similar mark thereto, for all times to come on the world wide web within four weeks from March 31, 2023;

ii) that they have not applied for nor has any pending application for the trade mark 'SOCIAL KULTURE', and/or 'SOCIAL' nor have any registered trade mark 'SOCIAL KULTURE' and/or any other deceptively similar trade mark other than the one mentioned in clause 3 (C)(iii) above;

iii) that they shall not in any manner be using and/or selling any product and/or service with the trade mark 'SOCIAL' and/or any other trade mark in which 'SOCIAL' is forming a part and/or any other trade mark deceptively similar to the trade mark 'SOCIAL' anywhere in the world and undertakes never to do so for all times to come.”

2. Parties are represented by Ms. Shikha Sachdev and Ms. Khyati Dhupar, learned Counsel who undertake on behalf of their respective clients to remain bound by the terms of settlement. The Court has

perused the terms of settlement. They are in order and in accordance with law.

3. As such, nothing survives for adjudication in the present suit. The suit stands decreed in terms of the aforesaid terms of settlement, by which the parties shall remain bound.

4. Let a decree sheet be drawn up accordingly.

5. The plaintiff shall be entitled to refund of the court fees, if any, deposited by it.

6. The next date of 25th July 2023 fixed in the suit shall stand cancelled.

C.HARI SHANKAR, J

APRIL 28, 2023/kr

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