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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(COMM) 778/2023, I.A. 21272/2023, I.A. 21273/2023, I.A. 21274/2023, I.A. 21275/2023, I.A. 21276/2023 & I.A. 21277/2023

WOW MOMO FOODS PRIVATE LIMITED Plaintiff
Through: Mr. Ankur Sangal, Mr. Ankit Arvind, Mr. Kiratraj Sadana, Mr. Raghu Vinayak Sinha and Ms. Nidhi Pathak, Advs.

versus


FRANCHISEBYTE Defendant
Through: None


CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

% **ORDER**
20.10.2023


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1. The plaintiff coined and adopted the trade mark  in 2008, from which date it is using the said mark. The plaintiff is also the registered proprietor of the following trade marks:

Trade Mark	Reg. No	Class	Description	User Details	Date of Reg.
	2014802	30	Spices Momo, Veg Momo, Non-Veg Momo, all kinds of Momo, Breakfast Cereals, Chinese noodles (uncooked), Chinese rice noodles (bifun uncooked), Chinese steamed dumplings(shumai,	16-06-2008	27-08-2010




			cooked), Chinese stuffed dumplings (gyoza cooked), Dried sugared cakes of rice flour (rakugan), Farinaceous Food pastes for human consumption, tapioca, sago, artificial coffee; flour and preparations made from cereals, bread, pastry, ices.		
	2831210	30	Spices momo, veg momo, non-veg memo, momo, Breakfast cereals, Chinese noodles (uncooked), Chinese rice noodles (bifun, uncooked), Chinese Steamed dumplings (shumai, cooked), Chinese Stuffed dumplings (gyoza, cooked), dried cooked-Rice, dried pasta, dried pieces of wheat gluten (fu. uncooked), dried sugared cakes of rice flour (rakugan), farinaceous food pastes for human Consumption, tapioca, sago, artificial coffee; flour And preparations made from cereals, bread,	16-06-2008	22-10-2014



			pastry, Ices.		
	3293676	30	Spices momo, veg momo, non-veg momo, all kinds of momo, breakfast cereals, Chinese noodles (uncooked), Chinese rice noodles (bifun, uncooked), Chinese steamed dumplings (shumai, cooked), Chinese stuffed dumplings (gyoza, cooked), dried cooked-rice, dried pasta, dried pieces of wheat gluten (fu. Uncooked), dried sugared cakes of rice flour (rakugan), farinaceous food pastes for human consumption, tapioca, sago, artificial coffee; flour and preparations made from cereals, bread, pastry, ices.	16-06-2008	25-06-2016
	2831211	35	franchise, Retail Outlet, Retail shop for Foodstuff, Advertising, Exhibitions.	16-06-2008	22-10-2014
	2831212	43	Services for providing food and drink; Temporary Accommodation, Café restaurants,	16-06-2008	22-10-2014




			Momo shop, Catering for the provision of food and beverages, Catering in fast - food cafeterias, Catering of food and Drinks, Coffee shops, Coffee-house and snacks-bar, Momo bar & services, Fast food and non-stop Restaurant services, Fast-food restaurants, Fast-food Restaurants and snack bars.		
	4665744	29	Foods prepared from meat, fish, poultry products; meat extracts; preserved, dried and cooked fruits and vegetables; jellies, jams, fruit sauces; eggs, cheese; pickles, desserts, edible oils and fats. Non-vegetarian food items, meat, fish, poultry, meat extracts, preserved and dried and cooked vegetables and fruits, and fruit items, milk and other dairy products, fruit juices, frozen; cabbage rolls stuffed with meat, shish kebabs; chicken burger patties; fish burger	16-06-2008	21-09-2020



			patties; soya burger patties; tofu burger patties; vegetable burger patties; veggie burger patties prepared meals consisting primarily of kebab, vegetable salads, fruit salads, fruit desserts, desserts made from milk products, grilled vegetables, grilled chicken.		
WOW MOMO	4665747	29	Foods prepared from meat, fish, poultry products; meat extracts; preserved, dried and cooked fruits and vegetables; jellies, jams, fruit sauces; eggs, cheese; pickles, desserts, edible oils and fats. Non-vegetarian food items, meat, fish, poultry, meat extracts, preserved and dried and cooked vegetables and fruits, and fruit items, milk and other dairy products, fruit juices, frozen; cabbage rolls stuffed with meat, shish kebabs; chicken burger patties; fish burger patties; soya burger patties; tofu burger patties; vegetable burger	16-06-2008	21-09-2020



			patties; veggie burger patties prepared meals consisting primarily of kebab, vegetable salads, fruit salads, fruit desserts, desserts made from milk products, grilled vegetables, grilled chicken.		
	2014803	43	Services for providing food and drink; temporary accommodation, Café restaurants, momo shop, Catering for the provision of food and beverages, Catering in fast - food cafeterias, Catering of food and drinks, Coffee shops, Coffee-house and snacks-bar momo bar & services. Fast food and nonstop restaurant services. Fastfood restaurants, Fast-food restaurants and snack bars.	16-06-2008	27-08-2010

2. The rights in the “WOW MOMO” mark were transferred by WOW Foods Pvt. Ltd. to the plaintiff *vide* Business Transfer Agreement dated 31 March 2015. The plaintiff has also registered the domain name www.wowmomo.com on 28 July 2023. The website www.wowmomo.com contains details about the plaintiff’s business.

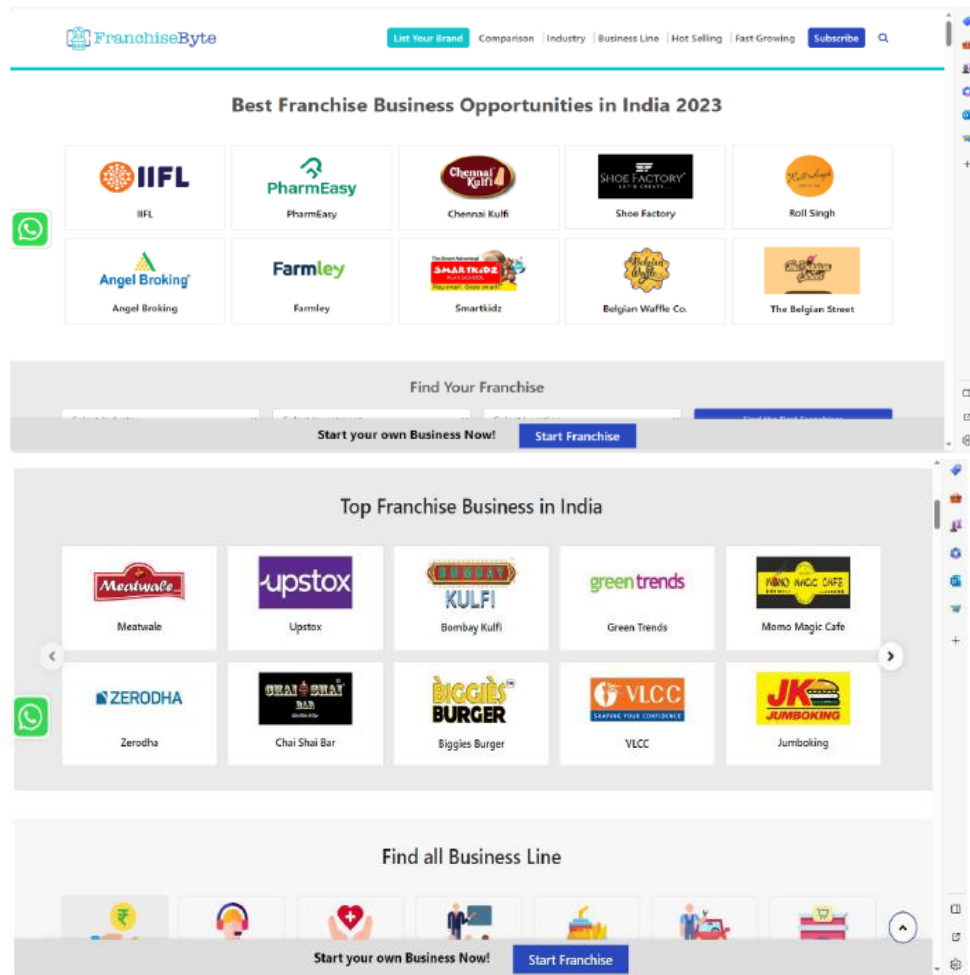


3. The plaintiff has also provided, in the plaint, the figures of its annual sales which, during the year 2022-23 itself, is in the region of ₹ 220 crores. The plaint also asserts that the plaintiff has expended over ₹ 7.25 crores in advertisement and promotional expenses to promote its brand in the year 2022-2023. Para 22 of the plaint also provides various awards and encomiums which the plaintiff has earned over a period of time to vouchsafe its reputation.

4. The plaintiff is aggrieved by the defendant holding itself out as an agency which can provide franchises for the plaintiff. The plaintiff has referred to a video clip available at <https://www.youtube.com/watch?v=hRsogzUfpJw&t> on which representatives of the defendant profess to offer franchises for the plaintiff's business and further states that, in order to become a franchisee of the plaintiff, any interested person could click the link in the description of the video and provide his details, whereafter the plaintiff's representative would get in touch with him.

5. The link, when clicked, takes the viewer to another website of the defendant, which contains details of alleged franchises of the plaintiff.

6. The plaint further avers that the defendant operates a website www.franchisebyte.com whereon the defendant provides franchises for various Indian start-ups, including the plaintiff.



7. The use of the plaintiff's registered trade mark "WOW MOMO" on the said website, alleges the plaintiff, constitutes infringement of the plaintiff's registered trade mark. The website also dupes and mislead persons into believing that the plaintiff is providing franchises through the defendant. The general public is thus being defrauded by the defendant.

8. It is in these circumstances that the plaintiff has approached this Court by means of the present suit, seeking a decree of permanent injunction, restraining the defendants as well as all others acting on its behalf from directly or indirectly using, offer or publishing any video



with the trade mark 'WOW! MOMO' or any other mark which is similar to the plaintiff's registered trademarks, apart from attendant reliefs, including direction to take down the aforementioned posts on YouTube as well as on its website www.franchisebyte.com.

9. Let the plaint be registered as a suit.
10. Issue summons in the suit.
11. Written statement, accompanied by affidavit of admission and denial of the documents filed by the plaintiff be filed within 30 days with advance copy to learned Counsel for the plaintiff who may file replication thereto, accompanied by affidavit of admission and denial of the documents filed by the defendant within 30 days thereof.
12. List before the learned Joint Registrar (Judicial) for completion of the pleadings, admission and denial of documents and marking of exhibits on 22 December 2023, whereafter the matter would be placed before the Court for case management hearing and further proceedings.

I.A. 21272/2023 (under Order XXXIX Rules 1 and 2 of the CPC)

13. This is an application filed by the plaintiff under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure 1908(CPC) seeking interlocutory injunctive reliefs.

14. Inasmuch as the assertions in the plaint indicated that a is
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calculated fraud being perpetrated by the defendant, by luring persons into applying for becoming franchisees of the plaintiff, where no such franchises actually extended by the plaintiff and, in the process, is also infringing the plaintiff's registered trade mark by making unauthorised use thereof, a case for grant of interlocutory injunction is made out.

15. In a case such as this, if injunction is not granted *ex parte*, it would result in the defendant continuing to defraud the public at the expense of the plaintiff. As such, the balance of convenience is also in favour of grant of *ex parte* injunction. Failure to grant *ex parte* injunction would also result in irreparable prejudice to the plaintiff.

16. As such, issue notice, returnable before the Court on 6 February 2024.

17. Reply, if any, be filed within four weeks with advance copy to learned Counsel for the plaintiff who may file rejoinder thereto, if any, within four weeks thereof.

18. For the aforesaid reasons, till the next date of hearing, the following interim directions are passed:

- (i) The defendant as well as all others acting on its behalf shall stand restrained from directly or indirectly using, advertising or publishing any video reflecting the trade mark



WOW! MOMO , or any other mark which is identical or deceptively similar to the plaintiff's registered trade



mark, for any purpose whatsoever.

(ii) The defendant is directed, forthwith, to take down all videos relating to the plaintiff or making any reference to the



plaintiff's registered trade mark 'WOW! MOMO' from its YouTube channel available at <https://www.youtube.com/watch?v=hRsogzUfpJw&t>.

(iii) The defendant is further directed to take down all contents relating to plaintiff, and all references to the plaintiff or



to its mark 'WOW! MOMO' on its website www.franchisebyte.com.

(iv) The defendant is further directed, in its reply, to disclose all persons to whom, by the above method, it has granted purported franchises of the plaintiff, as well as the amounts that it has earned from such activities.

19. Compliance with Order XXXIX Rule 3 of the CPC be effected within a period of one week.

I.A. 21273/2023 (Section 12A of the Commercial Courts Act, 2015)

20. In view of the judgment of the Division Bench of this Court in *Chandra Kishore Chaurasia v. R.A. Perfumery Works Pvt Ltd*¹,

¹ 2022 SCC OnLine Del 3529
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exemption is granted from the requirement of pre-institution mediation under Section 12A of the Commercial Courts Act, 2015.

21. The application stands allowed accordingly.

I.A. 21274/2023 Order XI Rule 1(4) of the CPC

22. This application seeks permission to file additional documents. The plaintiffs are permitted to place additional documents on record in accordance with Order XI Rule 1(4) of the Code of Civil Procedure, 1908 (CPC) as amended by the Commercial Courts Act within four weeks from today.

23. The application stands disposed of accordingly.

I.A. 21275/2023 (Enlargement of time for filing c/fee)

24. Subject to the plaintiff's filing deficient court fees within a period of two weeks from today, exemption is granted as prayed for.

25. The application stands disposed of.

I.A. 21276/2023/2023 (Exemption)

26. Subject to the plaintiff filing legible copies of any illegible documents on which it may seek to place reliance within 30 days from today, exemption is granted for the present.

27. The application is disposed of.



I.A. 21277/2023 (Seeking permission to file a compact disc and a pen drive)

28. By this application, the plaintiff seeks to place on record a pen drive containing certain video clips.

29. It is permitted to do so.

30. The application stands allowed accordingly.

C. HARI SHANKAR, J.

OCTOBER 20, 2023

dsm

Click here to check corrigendum, if any