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

+ **CS(COMM) 815/2023, I.As. 22458/2023, 22459/2023, 22460/2023
& 22461/2023**

MAKEMYTRIP INDIA PRIVATE LIMITED Plaintiff

Through: Mr. J. Sai Deepak, Mr. Mohit Goel,
Mr. Sidhant Goel, Abhishek
Kotnala, Advs. (M. 9716746496)

versus

DIALMYTRIP TECH PRIVATE LIMITED Defendant

Through: None.

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

% **21.11.2023**

1. This hearing has been done through hybrid mode.

I.A. 22460/2023 (for exemption)

2. This is an application filed by the Plaintiff seeking exemption from filing certified/translated copies of documents with proper margins, etc. Original documents shall be produced/filed at the time of Admission/Denial, if sought, strictly as per the provisions of the Commercial Courts Act, 2015 and the DHC (Original Side) Rules, 2018.

3. Exemption is allowed, subject to all just exceptions. Accordingly, the application is disposed of.

I.A.22459/2023 (for additional documents)

4. This is an application filed by the Plaintiff seeking leave to file additional documents under the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 (hereinafter, 'Commercial Courts Act'). The Plaintiff, if it wishes to file additional documents at a later stage, shall do so strictly as per the provisions of the



Commercial Courts Act and the DHC (Original Side) Rules, 2018.

5. The application is disposed of.

I.A.22461/2023 (for court fee)

6. This is an application for extension of time for filing of court fees. The court fee is stated to have been deposited with the stock holding corporation. Let the stamp be deposited within a week. Application is disposed of.

CS(COMM) 815/2023

7. Let the plaint be registered as a suit.

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

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

10. Liberty is given to the Plaintiff to file the replication(s) within 15 days of the receipt of the written statement(s). Along with the replication(s), 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(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.

11. List before the Joint Registrar for marking of exhibits on 11th January, 2024. It is made clear that any party unjustifiably denying documents would be liable to be burdened with costs.

12. List before Court on 22nd March, 2024.



I.A.22458/2023 (u/O XXXIX Rules 1 & 2 CPC)

13. Issue notice.

14. The present suit has been filed by the Plaintiff- MakeMyTrip (India) Pvt. Ltd., the operator of the MakeMyTrip portal and platform seeking an injunction against the Defendant- Dialmytrip Tech Pvt. Ltd. from using the name/mark 'Dialmytrip', and the domain names 'www.dialmytrip.com' & 'www.dmtgroup.in'.

15. The case of the Plaintiff is that it was incorporated in the year 2000 and is one of the largest airline ticket booking platforms and travel platforms in India, as well as Internationally. It has presence in a large number of foreign countries including the United States of America, the United Arab Emirates, Mauritius, European Union, Australia and the United Kingdom. The company was incorporated on 13th April, 2000 under the trade name 'Travel by Web Private Limited' but it changed its name on 2nd August, 2000, to trade name 'Makemytrip.com Pvt. Ltd.' Thereafter on 28th June, 2002 a subsequent change was made by the Plaintiff's mark/name *i.e.*, MakeMyTrip (India) Pvt. Ltd.

16. It is stated that the Plaintiff is a pioneer of the Indian online travel industry and operates through its one-stop travel website MakeMyTrip platform. The Plaintiff also provides a diverse range of tour packages, airline tickets, hotel bookings and other services with its modern IT infrastructure and dedicated customer support.

17. The Plaintiff is stated to have expanded its products and services over the years through its website with the domain name www.makemytrip.com which is also accessible through application based mobile platforms *etc.*, The Plaintiff also offers booking of rail tickets, bus tickets, car hire,



domestic and international holiday packages, travel insurance, visa assistance, foreign exchange *etc.*

18. The domain name www.makemytrip.com was registered on 8th May, 2000 and since then the Plaintiff has registered a series of marks with the core being ‘MakeMyTrip’ and ‘My’ device. The various logos used by the Plaintiff are set out below:





These marks are collectively referred to as the ‘MakeMyTrip Marks’. The wordmark MakeMyTrip has been registered since the year 2011 and the Plaintiff now has a series of registrations in several classes *i.e.*, 9, 16, 35, 38, 39, 41, 42 and 43 for MakeMyTrip series of marks. The said marks are also stated to be registered in various foreign countries.

19. The gross bookings of the Plaintiff are stated to be over 3000 crores in the financial year 2018-2019 and the net sales turnover is also over Rs.1.69 lakh crores. The advertising and promotional expenditure of the Plaintiff is to the tune of Rs. 25 lakhs for the year 2021-2022. The Plaintiff also claims to have engaged celebrities such as Ranveer Singh, Alia Bhatt *etc.* to endorse its business activities under the MakeMyTripMarks. The Plaintiff



also launched the ‘MYSAFETY’ campaign which creates awareness and knowledge about safety measures being taken in hotels, cabs as also amongst travel partners. The Plaintiff’s website with the domain name ‘www.makemytrip.com’ has more than Rs. 26 crore hits and more than 2 crore bookings for the year 2023.

20. In the present suit, the grievance of the Plaintiff is that the Defendant is using the mark and name ‘Dialmytrip’ in respect of financial and other services but the Defendant has recently expanded its services to tours and travel as well. A comparative chart of the Plaintiff’s and Defendant’s mark and domain name has been set out below:

MakeMyTrip Marks	Infringing Marks
<p>Word Mark MAKE MY TRIP</p>	<p>Word Mark DIALMYTRIP</p>
<p>Composite Logos:</p> 	<p>Composite Logos:</p> 



MakeMyTrip Domain Name www..makemytrip.com	Infringing Domain Names www.dialmytrip.com www.dmtgroup.in
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21. The Plaintiff is aggrieved by the use of the impugned name, mark and domain name dialmytrip by the Defendant. The Defendant is a company engaged in similar business as that of the Plaintiff providing travel related services including selling and booking tickets, hotel reservations as also arranging trips both in India and Internationally. The Defendant is operating through its website with the domain name 'www.dialmytrip.com' and 'www.dmtgroup.in'. The Plaintiff avers that it became aware of the Defendant's business and use of the mark in May, 2023 during its regular check on trade mark registry website. The submission of Mr. Sai Deepak, Id. Counsel for the Plaintiff is that the mark MakeMyTrip has already been protected against misuse, by use of marks such as 'PickMyTrip' vide order dated 31st October, 2018 in *CS (COMM) 1210/2018* titled *MakeMy Trip (India) Pvt. Ltd. v. Priyadarshini Air Wings Pvt. Ltd.*, and 'MyTripBazaar' vide judgment dated 27th February, 2020 in *CS (COMM) 430/2019* titled *MakeMyTrip (India) Pvt. Ltd. v. MTB Travel Planner Pvt. Ltd. and Anr. etc.*

22. He submits that, initially, the Defendant applied for the mark DMT (Your Business Buddy) as extracted below on 18th March, 2020 though the corporate name was Dialmytrip Tech Pvt. Ltd.:



E-Register - Main Page

(NOT FOR LEGAL USE)

As on Date : 02/11/2023

Status : Registered

[View Registration Certificate](#)

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TM Application No.	4475855
Class	39
Date of Application	18/03/2020
Appropriate Office	DELHI
State	UTTAR PRADESH
Country	India
Filing Mode	e-Filing
TM Applied For	DMT
TM Category	TRADE MARK
Trade Mark Type	DEVICE
User Detail	Proposed to be used
Certificate Detail	Certificate No. 2569078 Dated : 02/12/2020 Notified in Journal No : 1978
Valid upto/ Renewed upto	18/03/2030
Proprietor name	(1) DIALMYTRIP TECH PRIVATE LIMITED Body Incorporate
Proprietor Address	516, vishal chamber, sector-18, Noida, Gautam Budh Nagar-201301 Uttar Pradesh
Email Id	****s@npvcs.com
Agent name	VIKAS GAUTAM [32933]
Agent Address	B-65, SOAMI NAGAR NORTH, NEAR PANCHSHEEL PARK, NEW DELHI 110017.
Goods & Service Details	[CLASS : 39] pertains to transport; packaging and storage of goods; travel arrangement
Publication Details	Published in Journal No. : 1955-0 Dated : 06/07/2020




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23. The Defendant was issued a cease and desist notice dated 25th May, 2023.

24. However, after the cease and desist notice was issued, the Defendant applied for registration of full form *i.e.*, 'Dialmytrip' as a mark itself bearing number 6039656 in class 36 which is still pending . In the reply to the cease and desist notice dated 3rd July, 2023, the Defendant stated as under:

“2. Our Client is e-Service Provider who is mainly engaged in providing Banking, insurance, and investment allied services in pan India since 2015



through itself or through various business models, affiliates shops, POS, PSP and having substantial vital reputation in Indian niche market and also enjoying accreditation and membership from various giants' organization or government autonomous bodies like IRDA, UTI, BCFI, AMFI and so on for its services.

3. Further, as concern about Tour, Travel and Hotel services as carried by MakeMyTrip, we would like to mention here that our client is/was not substantially involved in this kind of akin business. It can also be said that in terms of turnover% contribution, Tour and travel services has contributed to preceding 12 months (April-March) near about 0.8% of total Turnover only which is less than 1 % of total turnover and in terms of amount, it is nearly about 7 lakhs only for 12 months which is negligible itself as comparison to MakeMyTrip per minute turnover specifically for tour and travel services. Therefore, it would be absolutely wrong to say that our Client is offering overlapping services and using Brand which impacted MakeMyTrip or craving goodwill of MakeMyTrip in niche market.

4. Furthermore, our client has its own registered brand name "DMT" which is abbreviate word of Dial My Trip under class 39 vide application 4475855 for tour and travel arrangements, therefore, our Client has exclusive right to commercial exploit the word of "DMT" in public either through e-commerce platform or any other manner, consequently, registered brand name (DMT) is reflected in public domain by Company through its website on conspicuous place, therefore, it is vehemently denied to say that we are using MakeMyTrip name over website."

25. The submission is that the use of 'Dialmytrip' in respect of any services would constitute infringement, passing off and dilution of the Plaintiff's mark 'MakeMyTrip'.

26. The Court has considered the matter. A perusal of the record would



show that the Defendant has two marks one is 'DMT' and the other is 'Dialmytrip'. 'Dialmytrip' is also a significant part of the corporate name. However, insofar as the financial business is concerned, the Defendant appears to have been conducting the banking, insurance and investment related services since the year 2015 and the travel and tour business is recent as per the reply to the legal notice. The Plaintiff prays for a complete injunction against use of the name/mark 'Dialmytrip' for any product services as also the corporate name.

27. In the opinion of this court, the marks Makemytrip and Dialmytrip are confusingly similar with each other. Especially considering the manner in which online business relating to travel is conducted, the Defendant's business and name is likely to be perceived as an extension of the Plaintiff's well known business or as an affiliate/connected business. Such confusion is also likely to lead to dilution of the Plaintiff's mark and name as also brand equity.

28. In *Laxmikant V. Patel v. Chetanbhai Shah & Ors.*, *MANU/SC/0763/2001*, the Supreme Court categorically observed that in cases where passing off is made out, the Court ought to grant an immediate *ex-parte* injunction and also appoint Local Commissioners to ensure that the infringing products are not permitted to be sold. The relevant extract of the order is set out below:

“14. [.....Once a case of passing off is made out the practice is generally to grant a prompt ex-parte injunction followed by appointment of local Commissioner, if necessary....]”

17. We are conscious of the law that this Court would not ordinarily interfere with the exercise of discretion in the matter of grant of temporary injunction by the High



*Court and the Trial Court and substitute its own discretion therefore except where the discretion has been shown to have been exercised arbitrarily or capriciously or perversely or where the order of the Court under scrutiny ignores the settled principles of law regulating grant or refusal of interlocutory injunction. An appeal against exercise of discretion is said to be an appeal on principle. Appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion [(see Wander Ltd. v. Ant ox India P. Ltd. MANU/SC/0595/1990 and N.R. Dongre v. Whirlpool Corporation and Anr.: MANU/SC/1223/1996 : (1996)5SCC714 . However, the present one is a case falling within the well accepted exceptions. **Neither the Trial Court nor the High Court have kept in view and applied their mind to the relevant settled principles of law governing the grant or refusal of interlocutory injunction in trade mark and trade name disputes. A refusal to grant an injunction in spite of the availability of facts, which are prima facie established by overwhelming evidence and material available on record justifying the grant thereof, occasion a failure of justice and such injury to the plaintiff as would not be capable of being undone at a latter stage.** The discretion exercised by the Trial Court and the High Court against the plaintiff, is neither reasonable nor judicious. The grant of interlocutory injunction to the plaintiff could not have been refused, therefore, it becomes obligatory on the part of this Court to interfere.”*

29. Thus, in terms of the judgment extracted above as also the decision in ***Laxmikant Patel (supra)*** it is clear that in cases relating to trade mark



violations and passing off, if the evidence establishes a *prima facie* case, even at the *ex-parte* stage, injunction ought to be granted.

30. At this stage, *prima facie*, this Court is inclined to restrain the Defendant from using the mark 'Dialmytrip' in respect of tour, travel, hospitality and all other services. Balance of convenience in the present case lies in favour of the Plaintiff considering that it is a well-known company in the travel business who has built its goodwill and reputation throughout the years, if an injunction is not granted in the present case it will lead to irreparable loss to the Plaintiff. Insofar as the financial, banking, insurance and other services and use of the corporate name is concerned, the same shall be considered on a later date after the Defendant has entered appearance in the matter.

31. Accordingly, the Defendant is restrained from using the using the mark/name 'Dialmytrip' in respect of tour, travel, hospitality and all other services. The Defendant has two domain names www.dialmytrip.com and www.dmtgroup.in. The first domain name shall not be used in respect of tour, travel, hospitality, hotels cabs or any other travel related services. The Defendant is, however, free to use the second domain name www.dmtgroup.in in respect of such services.

32. Compliance of order XXXIX Rule 3 CPC, 1908 be done within a week.

33. List on the dates fixed above.

PRATHIBA M. SINGH, J.

NOVEMBER 21, 2023

dj/ks