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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(COMM) 253/2024, I.A. 6781/2024, I.A. 6782/2024, I.A. 6783/2024, I.A. 6784/2024 & I.A. 6785/2024

WOW MOMO FOODS PRIVATE LIMITED Plaintiff
Through: Mr. Ankur Sangal, Mr. Ankit Arvind
and Mr. Shashwat Rakshit, Advs.
versus

WOW PUNJABI Defendant
Through:

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

ORDER
22.03.2024

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I.A. 6782/2024 (Exemption from undergoing pre-institution 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. 6783/2024 (Seeking leave to file additional documents)

1. The present application has been filed on behalf of the plaintiff under Order 11 Rule 1(4) of the Code of Civil Procedure, 1908 (“CPC”) as applicable to commercial suits under the Commercial Courts Act, 2015 seeking to place on record additional documents.
2. 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, 2015 and the Delhi High Court (Original Side) Rules, 2018.

3. Accordingly, the present application is disposed of.

I.A. 6784/2024 (Seeking enlargement of time for filing court fees)

1. This application has been filed by the plaintiff seeking enlargement of time for filing court fees.

2. Counsel for plaintiff undertakes to file court fees within a period of two weeks.

3. Accordingly, the application is disposed of.

I.A. 6785/2024 (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.

CS(COMM) 253/2024

1. Let the plaint be registered as a suit.

2. Upon filing of process fee, issue summons to the defendant by all permissible modes. Summons shall state that the written statement be filed by the defendant within 30 days from the date of receipt of summons. Along with the written statement, the defendant shall also file affidavit of admission/denial of the documents of the plaintiff, without which the written statement shall not be taken on record. Liberty is given to the plaintiff to file



a replication within 30 days of the receipt of the written statement. Along with the replication, if any, filed by the plaintiff, affidavit of admission/denial of documents filed by 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.

3. List before the Joint Registrar for marking of exhibits on 28th May, 2024.

4. It is made clear that any party unjustifiably denying documents would be liable to be burdened with costs.

I.A. 6781/2024 (Application under Order XXXIX Rule 1 and 2 CPC)

1. This application has been filed as part of the suit seeking permanent injunction restraining infringement of trademark, passing off, unfair trade practice, rendition of accounts, damages against the defendant.

2. It is claimed by plaintiff that they are the registered proprietor of the





trademarks “WOW”/ “WOW! MOMO”/ (“**plaintiff’s trademark**”). Plaintiff claims to have coined and adopted the trademark “WOW!”/ “WOW! MOMO” in the year 2008 for providing products & services in the food industry. Plaintiff now has over 600 outlets across 30 plus cities and a brand valuation of about INR1,225 crores in the year 2021 and has grown more than 60% in the year 2022. Plaintiff’s house mark is “WOW!”, which forms the essential and significant feature of all the trade marks of plaintiff.

3. Some of plaintiff’s “WOW!” series of marks are reproduced as under:



4. Plaintiff has tabulated a list of registrations in their favour, the same is reproduced as under:

Trade Mark	Reg. No.	Class	User Details	Date of Reg.	Status
	5412950	43	28-11-2018	18-04-2022	Registered
	5412949	32	28/11/2018	18/04/2022	Registered



	5321648	30	28-11-2018	09-02-2022	Registered
	2014802	30	16-06-2008	27-08-2010	Registered
	2014803	43	16-06-2008	27-08-2010	Registered
	2831210	30	16-06-2008	22-10-2014	Registered
	2831211	35	16-06-2008	22-10-2014	Registered
	2831212	43	16-06-2008	22-10-2014	Registered
WOW DIMSOMS	3301059	35	16-06-2008	04-07-2016	Registered
WOW DIMSOMS	3301060	43	16-06-2008	04-07-2016	Registered
WOW DIMSOMS	3301061	30	16-06-2008	04-07-2016	Registered
	4665744	29	16-06-2008	21-09-2020	Registered
WOW MOMO	4665747	29	16-06-2008	21-09-2020	Registered
	4665746	32	13/09/2015	21/09/2020	Registered
	5291474	35	16-06-2009	19-01-2022	Registered
	5291475	43	16-06-2009	19-01-2022	Registered

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	5412947	32	16/06/2008	18/04/2022	Registered
	5412948	43	16/06/2008	18/04/2022	Registered
	5510349	29	12-04-2021	29-06-2022	Registered
	5510350	30	12-04-2021	29-06-2022	Registered
WOW MOMO INSTANT	5510352	29	12-04-2021	29-06-2022	Registered
WOW MOMO INSTANT	5510353	30	12-04-2021	29-06-2022	Registered
	5667535	9	Proposed to be used	02/11/2022	Registered
	5667537	39	Proposed to be used	02/11/2022	Registered

5. Plaintiff registered the domain name/ website 'www.wowmomo.com' in its favour since July 2013.
6. The sales turnover claimed by plaintiff is as under:



Year	Sales Turnover in INR (Crores)
2008-09	0.104
2009-10	0.575
2010-11	1.491
2011-12	2.854
2012-13	5.546
2013-14	10.362
2014-15	19.101
2015-16	31.001
2016-17	49.468
2017-18	74.557
2018-19	117.853
2019-20	163.228
2020-21	105.321
2021-22	215.192
2022-23	407.263

7. Advertisement and promotional figures claimed by plaintiff are as under:

Year	Advertisement and Promotional Figures (In Crores)
2008-09	0.0058
2009-10	0.0106
2010-11	0.0062
2011-12	0.0285
2012-13	0.0735
2013-14	0.0188
2014-15	0.1012
2015-16	0.5815
2016-17	0.6774
2017-18	1.0069
2018-19	0.954
2019-20	1.4517
2020-21	4.8809
2021-22	4.5210
2022-23	11.6887

8. The grievance is against the defendant who is running a





restaurant/outlet under the trademark “WOW”/ “WOW PUNJABI”/



. This came to the knowledge of the plaintiff in December, 2023. According to the plaintiff, defendant has adopted the essential and dominant feature of the plaintiff’s trademark “WOW”, and the trade dress adopted is also identical with a yellow background, font style and the letter “O” filled with red colour.

9. A cease-and-desist notice was issued on 12th December, 2023 asking the defendant to restrain themselves from using the trademark “WOW”/ “WOW PUNJABI”, or any other trademark deceptively similar to the plaintiff’s trademark. A follow up legal notice was sent on 23rd January, 2024. However, defendant has not replied to the said legal notice and hence the present suit has been filed. The comparison between the plaintiff and the defendant’s trademarks, as provided by the plaintiff, is as under:


	PLAINTIFF	DEFENDANT
Trade Marks	<p>WOW!</p> <p>WOW! MOMO</p> 	<p>WOW PUNJABI</p> 
Point of similarity	<ul style="list-style-type: none"> • WOW! being the essential dominant feature. • Yellow Background. 	<ul style="list-style-type: none"> • WOW! being the essential dominant feature. • Yellow Background.


10. In view of the above, this Court is satisfied that plaintiff has 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 plaintiff and plaintiff is likely to suffer irreparable harm in case the injunction, as prayed for, is not



granted.

11. Accordingly, till the next date of hearing, an *ex parte ad interim* injunction is passed against defendant and accordingly, the defendant, and all others acting for and, on their behalf, are restrained from using, advertising, directly or indirectly dealing in any goods or services under defendant's

trademark "WOW"/ "WOW PUNJABI"/  or any other trademark which is identical or deceptively similar to plaintiff's

registered trademark "WOW"/ "WOW!MOMO"/ .

12. Issue notice, returnable before the Court on 25th July, 2024. Affidavit of service, along with proof thereof, be placed on record before the next date of hearing.

13. Reply be filed within four weeks with advance copy to counsel for plaintiff, who may file rejoinder thereto, if any, before the next date of hearing.

14. Compliance of Order XXXIX Rule 3, CPC be effected within one week.

15. Order be uploaded on the website of this Court.

ANISH DAYAL, J

MARCH 22, 2024/MK/rj