



\$~88

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

+ CS(COMM) 303/2024, I.A. 8133/2024,

DOMINOS IP HOLDER LLC & ANR. Plaintiffs

Through: Mr. Shantanu Anand, Mr. Imon Roy
& Mr. Pratyush Acharya, Advocates.

versus

MS DOMINO PIZZA & ORS. Defendants

Through: None.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER
09.04.2024

%

I.A. 8135/2024 (*Seeking exemption from advance service of the Defendants*)

1. The Plaintiffs alleges that Defendants No. 1 to 8 are perpetrating fraud on the general public by creating a false association with the Plaintiffs, resulting in grave financial losses to the Plaintiffs. Considering the nature of controversy involved in the present suit, as well as the peculiar facts and circumstances of the case, exemption from effecting advance service on Defendants No. 1 to 8 is allowed.

2. Application is disposed of.

I.A. 8134/2024 (*Seeking Leave to the file additional documents*)

3. This is an application seeking leave to file additional documents under the Commercial Courts Act, 2015.



4. If Plaintiffs wish to file additional documents at a later stage, they shall do so strictly as per the provisions of the said Act.
5. Accordingly, the application stands disposed of.

I.A. 8136/2024 (Seeking exemption)

6. Exemption is granted, subject to all just exceptions.
7. The Plaintiffs shall file legible and clearer copies of exempted documents, compliant with practice rules, before the next date of hearing.
8. Accordingly, the application stands disposed of.

I.A. 8133/2024 (Seeking Discovery)

9. Issue notice, upon filing of process fee, by all permissible modes, returnable on the next date of hearing. Reply, if any, be filed within four weeks from date of service. Rejoinder thereto, if any, be filed within a period of two weeks thereafter.
10. Re-notify on 11th September, 2024.

CS(COMM) 303/2024

11. Let the plaint be registered as a suit.
12. Upon filing of process fee, issue summons to the Defendants by all permissible modes. Summons shall state that the written statement(s) shall be filed by the Defendants within 30 days from the date of receipt of summons. Along with the written statement(s), the Defendants shall also file affidavit(s) of admission/denial of the documents of the Plaintiffs, without which the written statement(s) shall not be taken on record.



13. Liberty is given to the Plaintiffs to file replication(s) within 15 days of the receipt of the written statement(s). Along with the replication(s), if any, filed by the Plaintiffs, affidavit(s) of admission/denial of documents of the Defendants, be filed by the Plaintiffs, 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.

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

15. List before Court for framing of issues thereafter.

I.A. 8132/2024(under Order XXXIX Rule 1 & 2 of CPC)

16. Mr. Pravin Anand, counsel for Plaintiffs, has presented the following facts and contentions:

16.1. The present suit is filed seeking, *inter alia*, permanent injunction restraining infringement of Plaintiffs' trademarks "Domino's Pizza",

“” and “”, as well as passing off, etc.

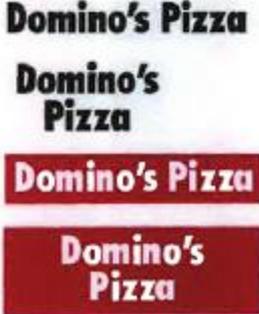
16.2. Plaintiff No. 1- Domino's IP Holder LLC, belonging to the Domino's pizza group of companies, owns and manages certain intellectual property under the ultimate ownership of Domino's Pizza, LLC. Plaintiff No. 2- Jubilant FoodWorks Limited has exclusive rights to operate Domino's franchises in India, 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.



16.3. 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’ promotional expenses and global retail sales, details whereof are delineated at Paragraphs No. 11 and 13 of the plaint respectively.

16.4. 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. 9/ Zomato and Defendant No. 10/ 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

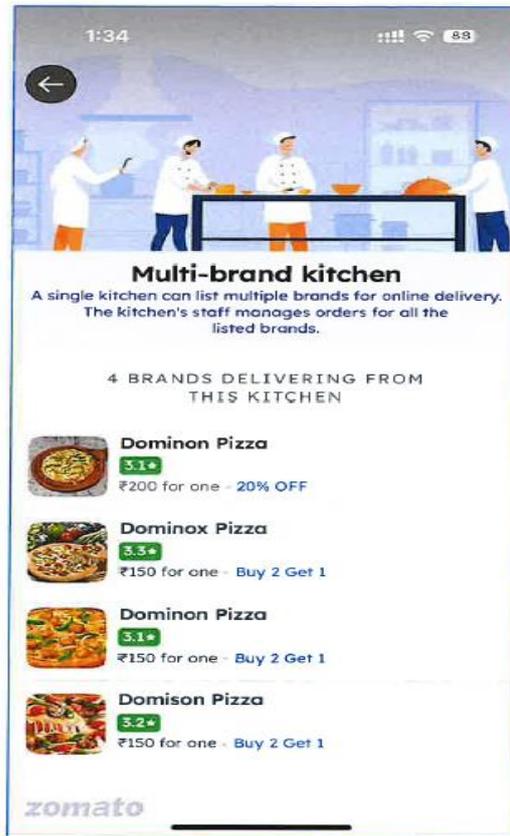
16.5. Accordingly, Plaintiffs have the exclusive right to use as well as restrain the use of the aforementioned trademarks, including “Domino’s” and “Domino’s Pizza”, in relation to its business. To this effect, Plaintiffs have been vigilant in safeguarding their intellectual property rights, having obtained injunction orders in their favour on several occasions, details



whereof have been set out at Paragraph No. 21 of the plaint.

16.6. Plaintiffs are aggrieved by the Defendant No. 1 to 8's unauthorized adoption of identical/ deceptively similar trade names and marks being "Domino", "Domino's", "Dominon", "Dominox", "Domison", "Dominoz" and "Domain's" [***Impugned Marks***]. The Impugned Marks are being used to operate imitator brand outlets on online delivery platforms such as Zomato and Swiggy. Defendants take unfair advantage of the search results returned upon typing the first string of letters of the Plaintiffs' trade name and mark, i.e., 'DOM', 'DOMI', 'DOMIN', and 'DOMINO', all of which lead to suggestions of the said Defendants' outlets enlisted with Zomato and Swiggy.

16.7. The *mala fide* intent behind Defendants' adoption of such deceptively similar marks becomes evident from the nature of goods and services being rendered by them. In order to avoid detection, they are operating their physical outlets under different trade names, such as 'Pizza Express' and 'Open Sky Cafe'. Furthermore, Defendants No. 1 to 8 are either operated by the same proprietors or share identical FSSAI Numbers, indicating a unified business operation. Additionally, some of these entities are registered under the "MULTI BRAND KITCHEN" feature offered by Zomato – a platform feature which permits various brand names to function from a single cloud kitchen location. For illustrative purposes, a screenshot from the Zomato mobile application demonstrating this arrangement is included below:



16.8. Over 500 customers from the National Capital Region (NCR) have reported to Zomato and Swiggy that they were confused by the listings of Defendants No. 1 to 8. These customers have expressed that they were misled into believing these outlets were operated by the Plaintiffs, resulting in unintended orders. Additionally, it is alleged that the pizzas provided by these Defendants are of extremely low quality and are delivered in unbranded, generic boxes which do not bear any brand/logo, further compounding the confusion and damaging and diluting the Plaintiffs' brand identity.

16.9. Thus, the activities of Defendants No. 1 to 8 amount to infringement of the Plaintiffs' registered trademarks, as well as passing off their goods as



those of the Plaintiffs, resulting in dilution of Plaintiffs’ trademarks and tarnishment of the Plaintiffs’ goodwill and reputation. Accordingly, the Plaintiffs have instituted this lawsuit to safeguard their statutory rights and prevent further misuse of their intellectual property.

17. The Court has considered the aforementioned facts and contentions. For the sake of steady reference, a side-by-side comparison of the competing marks is set out hereunder:

S.N o.	Plaintiffs' Registered Trade Marks (For Pizza and other food items/ related services)	Defendant No. 1-8's Trade Names/ Marks
1.	     Registered Trade Mark no. 463304, 572312, 1238053, 1238054, 2145011	Defendant No. 1 - DOMINO PIZZA Defendant No. 2- DOMINON PIZZA Defendant No. 3- DOMINON PIZZA Defendant No. 4- DOMINOX PIZZA Defendant No. 5- DOMISON PIZZA Defendant No. 6- DOMINOZ PIZZA Defendant No. 7- DOMAIN'S PIZZA Defendant No. 8- DOMINO'S PIZZA

18. The aforementioned comparison makes it evident that Defendants No. 1 to 8 have utilized marks that are *prima facie* identical or deceptively similar to



the Plaintiffs' registered Domino's trademarks. The Impugned Marks not only replicate all the distinctive elements of the Plaintiffs' registered trademarks but are also phonetically, visually, and structurally akin to them. Moreover, these marks are presented in a manner identical to the Plaintiffs' brand/ trademark "Domino's" on the online platforms managed by Defendants No. 9 (Zomato) and 10 (Swiggy). The similarity extends to the use of these marks for identical goods and services—specifically, pizzas and their online delivery—highlighting a systematic effort by Defendants No. 1 to 8 to mislead the public into believing that there is an affiliation or origin connection with the Plaintiffs. Moreover, considering the fact that these Impugned Marks are associated with food products, which are widely marketed and consumed across diverse demographic segments, the potential for misrepresentation carries significant consumer impact. Therefore, the Court must apply a more stringent standard in evaluating the probable effects of such misrepresentation on public perception and the integrity of the Plaintiffs' brand identity.

19. In light of the above *prima facie* findings, it is evident that the actions of Defendants No. 1 to 8 constitute a clear infringement of the Plaintiffs' statutory rights under Section 29 of the Act. Consequently, the Plaintiffs are justifiably entitled to seek an injunction to restrain these Defendants from continuing such infringing activities. Additionally, the actions of Defendants No. 1 to 8 also constitutes, *prima facie*, an act of passing off, strengthening the Plaintiffs' case for immediate *ad-iterim ex-parte* injunction to prevent further damage to their brand and consumer trust. In case injunction is not granted, the Plaintiffs stand to suffer irreparable harm, as the continued use of the Impugned Marks by Defendants No. 1 to 8 would further damage the



reputation of their brand and market presence. Additionally, the balance of convenience decidedly favours the Plaintiffs. Thus, it is both just and equitable to grant the injunction sought by the Plaintiffs to prevent ongoing and irreparable injury.

20. Accordingly, till the next date of hearing, the following directions are issued:

20.1. Defendants No. 1 to 8, and anybody acting on their behalf, are restrained from advertising, selling, offering for sale, and marketing any products, packaging, menu cards and advertising material, labels, stationery articles, website or any other documentation using, depicting and/or displaying the Impugned Marks “Domino”, “Domino’s”, “Dominon”, “Dominox”, “Dominoz”, “Domison”, “Domain’s” and/or any other identical or deceptively similar mark in any manner whatsoever, so as to cause confusion or deception leading to passing off of the said Defendants’ products and services as those of the Plaintiffs, and/or amounting to infringement of the Plaintiffs’ Domino’s trademarks (as depicted above in Paragraph 16.4), specifically as registered under trademark applications No. – 463304, 572312, 1238053, 1238054, 2145011, 2145001.

20.2. Defendants No. 1 to 8, and anybody acting on their behalf, are restrained from dealing in the Impugned Marks “Domino”, “Domino’s”, “Dominon”, “Dominox”, “Dominoz”, “Domison”, “Domain’s” and/or any other identical or deceptively similar mark to the Plaintiff’s registered Domino’s Trademarks (as depicted above in Paragraph 16.4) in any manner whatsoever, so as to cause dilution or tarnishment of the Plaintiff’s trademark and packaging;

20.3. Defendants No. 9 and 10 are directed to de-list, takedown and



suspend from their mobile applications, websites and/or any other platforms, the impugned listings as delineated hereunder:

Sl. No.	Defendant Particulars	URL/ Links on Zomato and Swiggy
1.	Defendant No. 1 M/s. Domino Pizza	Zomato https://zomato.onelink.me/xqzv/n4jaayk6 Swiggy https://www.swiggy.com/menu/836479?source=sharing
2.	Defendant No. 2 M/s. Dominon Pizza	Zomato https://zomato.onelink.me/xqzv/25bh7518
3.	Defendant No. 3 M/s. Dominon Pizza	Zomato https://zomato.onelink.me/xqzv/07nmhi70
4.	Defendant No. 4 M/s. Dominox Pizza	Zomato https://zomato.onelink.me/xqzv/udjhf2di
5.	Defendant No. 5 M/s. Domison Pizza	Zomato https://zomato.onelink.me/xqzv/69ftzsqx
6.	Defendant No. 6 M/s. Dominoz Pizza	Zomato https://zomato.onelink.me/xqzv/vb3ml3tn
7.	Defendant No. 7 M/s. Domain's Pizza	Zomato https://www.zomato.com/ncr/domains-pizza-laxmi-nagar-new-del Swiggy https://www.swiggy.com/menu/711191?source=sharing
8.	Defendant No. 8 M/s. Domino's Pizza	Zomato https://link.zomato.com/xqzv/rshare?id=69756358c03b98f

21. Issue notice, upon payment of process fee, by all permissible modes, returnable on the next date of hearing.
22. Reply, if any, be filed within four weeks from date of service. Rejoinder thereto, if any, be filed within two weeks thereafter.
23. Compliance of Order XXXIX Rule 3 of the Code of Civil Procedure,



1908 be done within one week from today.

24. List before the Court on 11th September, 2024.

SANJEEV NARULA, J

APRIL 9, 2024

da