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

Date of Decision: 28th April, 2023.

+ CS(COMM) 507/2022, I.A. 11684/2022 (O-XXXIX R-1 & 2 of CPC)

THE INDIAN HOTELS COMPANY LIMITED Plaintiff
Through: Mr.Pravin Anand, Mr.Achuthan
Sreekumar, Mr.Rohil Bansal and
Ms.Apoorva Prasad R., Advocates.
versus

VIVANTA HOSPITALITY PRIVATE LIMITED Defendant
Through: None

CORAM:
HON'BLE MR. JUSTICE AMIT BANSAL

JUDGMENT

AMIT BANSAL, J. (Oral)

1. The present suit has been filed seeking the relief of permanent injunction restraining the defendant from infringing the trademark of the plaintiff, passing off and other ancillary relief.

BRIEF FACTS

2. Briefly the case set up by the plaintiff in the plaint is as under:

2.1. The plaintiff, the Indian Hotels Company Limited incorporated on 1st April, 1902 is a part of TATA Group of Companies and offers hospitality services. The plaintiff has a portfolio of 196 hotels including 40 under development globally across 4 continents, 12 countries. The plaintiff opened its first hotel in Mumbai in 1903.

2.2. The plaintiff first coined and adopted the mark VIVANTA for its hotels and other services in the year 2008. The plaintiff has a website at www.vivantahotels.com dedicated to its hotels under the brand name VIVANTA. The plaintiff has 35 VIVANTA hotels across 33 destinations.

2.3. The plaintiff is the registered proprietor of the trademark “VIVANTA” (word/device) in Class 42 and 43, details of which are given in paragraph 14 of the plaint. The earliest registration granted in favour of the plaintiff with respect to the mark “VIVANTA” dates back to the year 2008.

2.4. The plaintiff has given its annual turnover in respect of services rendered under the “VIVANTA” trademark from the financial year 2021-22. The turnover of the plaintiff in the year 2021-22 was Rs.668 crores, whereas the turnover in the financial year 2017-18 was around Rs.896 crores. The plaintiff has also provided the advertising and promotional expenses incurred by plaintiff in respect of the services rendered under the “VIVANTA” trademark. In the financial year 2017-18, the plaintiff spent around Rs.243 crores towards advertisement and promotional expenses.

2.5. It is the plaintiff’s case that owing to its long, continuous and consistent usage of the trademark “VIVANTA” since its inception in 2008 and the promotional and advertisement expenses incurred, the trademark “VIVANTA” has acquired secondary significance. It has further acquired the status of a ‘well known trademark’ in terms of Section 2(1)(zg) of the Trade Marks Act, 1999.

2.6. The defendant, Vivanta Hospitality Private Limited offers its services in the hospitality sector and also provides tailor-made and customized holiday packages for its customers.

2.7. On 21st March, 2022, the plaintiff received an email from Mr.Brajesh

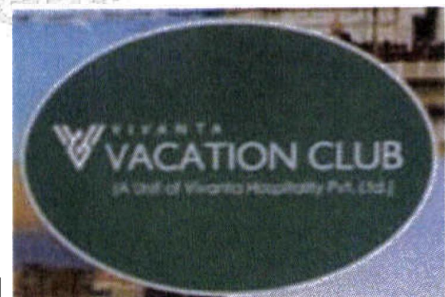
Sharma, informing them of the infringing activities of the defendant.

2.8. Upon an investigation carried out by the plaintiff's investigator, it came to light that the defendant was initially incorporated on 5th July, 2010 as "R M Y BUILDERS & DEVELOPERS PRIVATE LIMITED" and later on 22nd February, 2021 changed its name to "VIVANTA HOSPITALITY PRIVATE LIMITED". The domain name, www.vivantahospitality.com was registered by the defendant on 16th February, 2021. It was further revealed that there are more than 100 consumer complaints made by customers, who were under the impression that the defendant is associated with the plaintiff and were cheated by the defendant. Screenshots of a recent complaint dated 22nd June, 2022 have been given in paragraph 30 of the plaint.

2.9. On 23rd July, 2022, the plaintiff received another email by a customer informing the plaintiff that the defendant is claiming to be associated with the plaintiff and using the name "VIVANTA VACATION CLUB" on its websites, bills and promotional material in the following manner,



and



2.10. The defendant has listed various properties belonging to the plaintiff on their website, screenshots of which have been given in paragraph 35 of the plaint.

2.11. The plaintiff is aggrieved by the dishonest and infringing use of its registered trademark “VIVANTA” (word/device) by the defendant. It is the plaintiff’s case that the services/packages provided by the defendant are bound to cause confusion in the minds of unwary consumers, who may associate the same with the plaintiff. The functioning and quality of services provided by the defendant as against the high quality services and standards of the plaintiff may dilute the goodwill and reputation of the plaintiff and the services offered by it under the trademark “VIVANTA” and cause incalculable harm and injury to the business, goodwill and reputation associated with the plaintiff’s registered marks.

2.12. Accordingly, the present suit has been filed.

PROCEEDINGS IN THE SUIT

3. This Court, vide order dated 27th July, 2022 granted an *ex parte* ad interim injunction in favour of the plaintiff under I.A.11684/2022, restraining the defendant from using the trademark “VIVANTA”. The relevant portion of the said order is as under:

“28. Having heard learned counsel for Plaintiff, this Court is of the view that Plaintiff has made out a prima facie case for grant of ex parte ad-interim injunction in respect of trademarks and logos aforementioned. Balance of convenience lies in favour of Plaintiff and it is likely to suffer irreparable harm in case the injunction, as prayed for, is not granted.

29. Accordingly, Defendant, its Directors, officers, servants and agents, etc. are restrained from using Plaintiffs well-known and registered trademarks VIVANTA,



and/or any other mark deceptively similar to Plaintiffs aforesaid trademarks and permutations/combinations thereof, in any form or manner, amounting to infringement and passing off, till the next date of hearing.

30. Defendant and the concerned Domain Registrar are directed to take down the website www.vivantahospitality.com, forthwith.”

4. Vide the aforesaid order, a Local Commissioner was also appointed by this Court. The Local Commissioner found a large stock of infringing material such as testimonial brochures, approval forms, gift sets, carry bags, stickers, envelopes, employment information sheets, letters of employment, membership cards, letter heads, survey forms, visiting cards, vouchers, coupons at the premises of the defendant, which was inventoried by her and seized and handed over on *supardari* to the defendant. The report of the Local Commissioner has been placed on record.

5. On 3rd March, 2023 counsel appearing for the defendant submitted that the corporate name of the defendant company has been changed and sought time to file the fresh incorporation certificate. As per the Certificate of Incorporation dated 5th September, 2022 filed by the defendant, the defendant has changed its name from “VIVANTA HOSPITALITY PRIVATE LIMITED” to “VVC HOSPITALITY PRIVATE LIMITED”.

6. Vide order dated 23rd March, 2023 passed by the Joint Registrar the right of the defendant to file written statement was closed.

7. Subsequently, the matter was placed before Court on 18th April, 2023, on which date the counsel for the plaintiff prayed for the suit to be decreed in terms of the prayers made in the plaint and pressed for damages and costs. Reliance in this regard has been placed on the judgment of a Co-ordinate Bench of this Court in *Indian Hotels Co. Ltd. v. Grand Vivanta Vacations (P) Ltd.*, (2022) 5 HCC (Del) 687, which is based on similar facts.

8. Counsel for the defendant submits that since the name of the company has been changed and the defendant is no longer in the said business the Court may not impose damages and costs.

ANALYSIS AND FINDINGS

9. I have heard the counsel for the parties and perused the record of the case.

10. At the outset, reference may be made to the judgment of a Division Bench of this Court in *Surya Food & Agro Ltd. v. Om Traders*, 2023 SCC OnLine Del 265, where this Court has observed that under Rule 3 of Chapter X-A of the Delhi High Court (Original Side) Rules, 2018, a Court can on its own decide the disputes by a summary judgment without a formal application being moved by any party.



11. The right of the defendant to file written statement was closed due to the expiry of maximum permissible period of 120 days. In terms of Rule 4 of Chapter VII of the Delhi High Court (Original Side) Rules, 2018, since the defendant has failed to file the affidavit of admission/denial of documents filed by the plaintiff, the documents filed by the plaintiff shall be deemed to be admitted.

12. From the averments made in the plaint and the documents filed

therewith, the plaintiff has been able to prove that it is the registered proprietor of the trademark “VIVANTA” (word/device) in Class 42 and 43 and has been using the said mark since 2008. Plaintiff has established statutory as well as common law rights on account of the long usage of the trademark “VIVANTA”. The plaintiff has also been able to show its immense goodwill and reputation in respect of the aforesaid mark.

13. The Report of the Local Commissioner shows that that the defendant is engaged in the business similar to the plaintiff, under the trade name identical/deceptively similar to that of the plaintiff. The inventory prepared by the Local Commissioner shows that a large stock of infringing material was found at the premises of the defendant. Photographs have been filed along with the Report showing that the defendant is using the name “VIVANTA VACATION CLUB” in its ordinary course of business prominently.

14. At this stage, it may be relevant to make a comparative analysis of the marks of the plaintiff and the defendant, which is as under:

Plaintiff's Marks	Defendant's Marks
	

15. A comparison of the above marks shows that the defendant is using identical mark “VIVANTA” of the plaintiff by adding the expression “VACATION CLUB” as a suffix, which amounts to infringement of the plaintiff’s trademark as well as passing off.

16. The defendant has used the trademark ‘VIVANTA’ in its trade name i.e., “VIVANTA VACATION CLUB”, which is identical to the plaintiffs’ name, with an intent to springboard its business by drawing association with

the plaintiff and its trademark, to ride on the goodwill and reputation of the mark of the plaintiff. The acts of the defendant amount to infringement of the trademark of the plaintiff and passing off the services of the defendant as that of the plaintiff. Number of consumers were duped by the defendant under the pretext of its association with the plaintiff. The defendant has not only taken unfair advantage of the reputation and goodwill of the plaintiff's mark but also deceived unwary consumers of their association with the plaintiffs. Such acts of the defendant would also lead to dilution and tarnishment of the plaintiff's mark.

17. The domain name of the defendant is also deceptively similar to that of the plaintiff and is likely to deceive the public of its association with the plaintiff. In *Anugya Gupta v. Ajay Kumar and Anr.*, 2022 SCC OnLine Del 1922, this Court applying the principles of the trade mark law has held that the right of a proprietor in a domain name is entitled to equal protection. The user traffic may be diverted due to the use of the same or similar domain name, which could result in a user mistakenly accessing one domain name instead of the one intended. A domain name may therefore, have all the characteristics of a trademark and could result in an act of passing off. Similarly, the use of "VIVANTA VACATION CLUB" as a part of their trade name is also likely to deceive unwary consumers of their association with the plaintiffs.

18. The defendant company at the time of registration was using a completely different name and was engaged in a totally unrelated business activity. The adoption of the infringing mark by the defendant in relation to a business identical to that of the plaintiff clearly depicts the intentional *malafides* of the defendant.

19. In view of the observations made above and undisputed factual position, it appears that the defendant does not have any real prospect of successfully defending the claims in the present suit.

20. I am of the opinion that no purpose would be served by directing the plaintiff to lead *ex parte* evidence by filing an affidavit of examination in chief and in terms of Rule 27 of the Delhi High Court Intellectual Property Rights Division Rules, 2022 (in short, 'IPD Rules'), a summary judgment decreeing the suit in favour of the plaintiff deserves to be passed.

RELIEF

21. The various registrations and the long usage of the trademark "VIVANTA" by the plaintiff, as also the goodwill vesting in the "VIVANTA" trademark, entitles the plaintiff for grant of permanent injunction and decree in terms of the plaint.

22. Accordingly, the present suit is decreed in terms of the prayer clauses (i), (ii) and (iii).

23. With regard to prayer clause (iv), the domain name/website www.vivantahospitality.com shall stand transferred in favour of the plaintiff within one week. The concerned Domain Name Registrar shall give effect to the orders immediately upon the request from the defendant.

24. Insofar as delivery up for the purpose of destruction, as sought in prayer clause (v) is concerned, all the seized goods bearing the mark "VIVANTA" in the premises of the defendant shall be destroyed by the defendant in the presence of the plaintiff's representative.

25. Considering the fact that the plaintiff has deposited the Court fee and has also incurred expenses in executing the commission costs of

Rs.6,00,000/- is imposed on the defendant, which shall be paid by 31st May, 2023. In view thereof, counsel for the plaintiff does not press for relief of rendition of accounts, damages and other remaining reliefs sought in the plaint.

26. Let the decree sheet be drawn up.

27. All pending applications, if any, are disposed of.

APRIL 28, 2023

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AMIT BANSAL, J.

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