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

+ **CS(COMM) 715/2023, I.A. 19763/2023 & I.A. 22665/2023**

MS SK EDUCATIONS PVT LTD Plaintiff
Through: Mr. Rajshekhar Rao, Sr. Adv.
with Ms. Aarzo Aneja, Mr. Udian Sharma,
Ms. Vanshita Gupta, Ms. Meherunissa
Jaitley and Mr. Dushyant Kaul, Advs.

versus

SRIPATI BHUSHAN SRICHANDAN & ANR. Defendants
Through: None

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

ORDER

% **17.11.2023**

I.A. 19763/2023 [under Order XXXIX Rules 1 and 2 of the CPC]

1. The plaintiff alleges infringement, by the defendants, of the plaintiff's registered trademarks as well as passing off, by the defendants, of the services provided by it as the services of the plaintiff.

2. The plaintiff has, since 2004, been providing play school services through a chain of approximately 1,000 play schools located

in almost all states of India under the mark




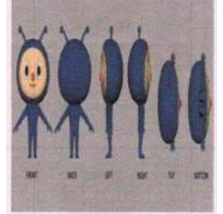
3. Registration for the word mark "BACHPAN" was first obtained by the plaintiff in class 16 in 2003 and in class 41 in 2008. Apart from the registration of the aforesaid word mark BACHPAN, the




plaintiff is also the holder of the following device mark registrations:

S. No.	Trademark No.	Class	Particulars	Registered on
1.	1201003	16	BACHPAN	23.05.2003
2.	1250366	41		18.11.2003
3.	1640000	41	BACHPAN	10.01.2018
4.	164001	16		10.01.2018
5.	2071574	20		21.12.2010
6.	4068765	9		28.01.2019
7.	4068766	16		28.01.2019
8.	4068767	35		28.01.2019
9.	4068768	41		28.01.2019
10.	4068769	42		28.01.2019



11.	4465780	18		06.03.2020
12.	5385161	99		26.03.2022

4. The plaintiff is also the holder of copyright in respect of the following marks:

S. No.	Registration No.	Work	Title of the Word	Registered on
1.	A-131878/2019	Artistic		15.11.2019
2.	L-69916/2017	Literary/ Dramatic	1 st SCHOOL OF YOUR CHILD BACHPAN A PLAY SCHOOL.	07.11.2017
3.	A-99221/2013	Artistic		05.04.2013

5. The plaintiff avers that, by dint of continuous use, the aforesaid marks have garnered renown and repute, and have become source identifiers of the plaintiff. Use of the said marks has resulted in earnings, to the plaintiff, in the year 2022-23 alone, of ₹ 70,57,77,461/-. The plaintiff also claims to have expended considerable amounts towards advertising and promotion of the aforesaid marks, with the amount so expended in 2022-23 alone being ₹ 3,16,27,999/-.

6. The plaintiff had entered into a Franchisee Agreement with



Defendant 1, whereby the defendants were permitted to run play schools using the aforesaid mark of the plaintiff. The franchise was, however, subject to payment of license fees. The Franchisee Agreement expired on 31 January 2021 by efflux of time and, as there was default on the part of Defendant 1 in paying the license fees, the Franchisee Agreement was not renewed. The defendants, thereby, lost all right to use the plaintiff's registered trademarks.

7. The plaintiff's grievance is that, even after expiry of the Franchisee Agreement, the defendants continue to use the plaintiff's registered trademarks and, thereby, to pass themselves off as franchisees off the plaintiff.

8. Predicated on these assertions, the plaintiff has instituted the present suit against the defendants, seeking a decree of permanent injunction, restraining the defendants and all others acting on their behalf, from using the marks registered in favour of the plaintiff or any other deceptively similar mark for running play schools or providing any other allied or cognate service.

9. Summons in the present suit were issued by this Court on 9 October 2023. Alongside the said summons, this Court also issued notice in the present application, returnable on 10 November 2023. The documents filed on record indicate that service of the papers relating to this case has been effected on the defendants by speed post at least on 26 October 2023.

10. There has been no appearance on behalf of the defendants on 10



November 2023, when this matter was last listed. Today, too, though the matter was passed over once and has been called out a second time, there is no appearance on behalf of the defendants at either call.

11. No written statement, by way of response to the suit, and no reply, to the present application, has been filed.

12. In the circumstances, I have heard Ms. Aarzo Aneja, learned Counsel for the plaintiff and have perused the documents on record.

13. The recital of facts as noted hereinabove, coupled with the assertions in the plaint and the documents filed in support thereof make out a *prima facie* case both of infringement, by the defendants, of the registered trademarks of the plaintiff as well as an attempt to pass off the services provided by the defendants as those of the plaintiff despite the defendants having lost all right to do so consequent on the expiry of the Franchisee Agreement between the plaintiff and Defendant 1 on 31 January 2021 and its non-renewal thereafter.

14. The use, by the defendants, of the plaintiff's mark, for running play schools, holding itself out to be a franchisee of the plaintiff, clearly results in likelihood of confusion and association, as envisaged by Section 29(2)(c) read with Section 29(3) of the Trade Marks Act, 1999.

15. In such a case, para 14 of judgment of the Supreme Court in



*Laxmikant V. Patel v. Chetanbhai Shah*¹ and in para 5 of *Midas Hygiene Industries P. Ltd. v. Sudhir Bhatia*² obligate the Court to ensure that continued infringement and passing off is discontinued by passing injunctive orders in that regard.

16. As such, pending disposal of the present suit, the defendants, as well as all others acting on their behalf, shall stand restrained from using the mark BACHPAN either as a word mark or as a logo which is identical or deceptively similar to any of the device marks registered in favour of the plaintiff, in the context of play school services or any other services which may be allied or cognate therewith.

17. The defendants shall also ensure that reference to the mark BACHPAN, either as a word mark or as a device mark, is removed, forthwith, from all physical and virtual sites on which the mark may be reflected in association with the defendants.

18. The application stands allowed accordingly.

I.A. 22665/2023 [under Order XI Rule 1(4) of the CPC]

19. By this application, the plaintiff seeks permission to file additional documents.

20. The plaintiff is permitted to place additional documents on record in accordance with Order XI Rule 1(4) of the CPC as amended

¹ 2002 3 SCC 65

² (2004) 3 SCC 90

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by the Commercial Courts Act, 2015 within 30 days from today.

21. The application stands disposed of accordingly.

C.HARI SHANKAR, J

NOVEMBER 17, 2023/ar

Click here to check corrigendum, if any