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

+ CS(COMM) 303/2022

**BURGER KING CORPORATION** ..... Plaintiff

Through: Mr. Aditya Gupta and Mr. Mukul K.,  
Advocates

versus

**SWAPNIL PATIL & ORS.** ..... Defendants

Through: Mr. Harish Vaidyanathan Shankar,  
CGSC with Ms. S. Bushra Kazim, Mr. Srish  
Kumar Mishra and Mr. Sagar Mehlawat,  
Advocates for D-7 and 8  
Mr. Sarfaraz Khan, Advocate for D-12

**CORAM:  
HON'BLE MS. JUSTICE JYOTI SINGH**

**ORDER**

% **10.05.2022**

**I.A. 7303/2022 (Exemption)**

1. Subject to the Plaintiff filing translated copies, clearer copies and documents with proper margins, which it may seek to place reliance on, within four weeks from today, exemption is granted.
2. Application is allowed and disposed of.

**I.A. 7304/2022 (Additional Documents)**

3. Present application has been preferred on behalf of the Plaintiff seeking leave to file additional documents under Order 11 Rule 1(4) CPC.
4. 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.
5. Application is allowed and disposed of.

**I.A. 7305/2022 (Exemption from advance notice to Defendant No. 7 and 8)**

6. Since Mr. Harish Vaidyanathan Shankar, learned Central Government Standing Counsel has entered appearance on behalf of Defendants No.7 and 8, present application has become infructuous.

7. Application is disposed of accordingly.

**I.A. 7306/2022 (Exemption from serving advance copy of the suit paperbook to Defendants No. 1-3 and 15)**

8. Allowed subject to all just exceptions.

9. Application stands disposed of.

**I.A. 7307/2022 (Exemption from e-filing unredacted copies of documents containing privileged information and seeking permission for filing redacted versions thereof)**

10. Issue notice to the Defendants.

11. Mr. Harish Vaidyanathan Shankar, learned Central Government Standing Counsel accepts notice on behalf of Defendants No.7 and 8 and Mr. Sarfaraz Khan, Advocate accepts notice on behalf of Defendant No.12.

12. Reply be filed within a period of four weeks from today. Rejoinder, if any, be filed within two weeks thereafter.

13. On steps being taken by the Plaintiff, notice be issued to the remaining Defendants, through all permissible modes, returnable on 26.09.2022.

**CS(COMM) 303/2022**

14. Let plaint be registered as a suit.

15. Issue summons.

16. Mr. Harish Vaidyanathan Shankar, learned Central Government Standing Counsel accepts notice on behalf of Defendants No.7 and 8 and Mr. Sarfaraz Khan, Advocate accepts notice on behalf of Defendant No.12.

17. Written statements be filed by Defendants No.7, 8 and 12 within 30 days from today along with affidavit of admission/denial of the documents of the Plaintiff.

18. Replication thereto be filed by the Plaintiff within 15 days of the receipt of the written statement along with an affidavit of admission/denial of the documents filed by Defendants No.7, 8 and 12.

19. Upon requisite steps being taken by the Plaintiff, summons be issued to the remaining Defendants, through all permissible modes, returnable on 29.07.2022 before the learned Joint Registrar.

20. Summons shall state that written statements be filed by the remaining Defendants within 30 days from the date of receipt of summons. Along with the written statements, Defendants shall also file an affidavit of admission/denial of documents of the Plaintiff.

21. Replication be filed by the Plaintiff within 15 days of the receipt of the written statements. Along with the replication, an affidavit of admission/denial of documents filed by the Defendants shall be filed by the Plaintiff.

22. If any of the parties wish to seek inspection of any documents, the same shall be sought and given within the timelines.

23. List before the Court on 26.09.2022.

**I.A. 7302/2022 (under Order 39 Rules 1 and 2 CPC, by Plaintiff)**

24. Present application has been preferred by the Plaintiff under Order 39 Rules 1 and 2 read with Section 151 of the Code of Civil Procedure 1908 for grant of *ex parte ad-interim* injunction.

25. Issue notice to the Defendants.

26. Mr. Harish Vaidyanathan Shankar, learned Central Government

Standing Counsel accepts notice on behalf of Defendants No.7 and 8 and Mr. Sarfaraz Khan, Advocate accepts notice on behalf of Defendant No.12.

27. Reply be filed within a period of four weeks from today. Rejoinder, if any, be filed within two weeks thereafter.

28. On steps being taken by the Plaintiff, notice be issued to the remaining Defendants, through all permissible modes, returnable on 26.09.2022.

29. It is averred that Plaintiff was founded in the year 1954 when it commenced business with one restaurant in Miami, Florida trading under the name of BURGER KING. Plaintiff is currently the second largest quick service restaurant hamburger Company in the world, managing and operating a worldwide chain of over 18,000 quick service restaurants serving more than 11 million customers daily in approximately 100 countries and U.S. territories worldwide. Nearly all the Plaintiff's BURGER KING restaurants are owned and operated by independent franchisees. Over 30,300 people are employed by Plaintiff or its franchisees.

30. It is pleaded that Plaintiff's trademark/name BURGER KING has been extensively used in relation to Plaintiff's restaurants and restaurant services since 1954, in conjunction with a distinctive logo which has



evolved the years, with the latest logo being . Plaintiff's trade mark BURGER KING is a coined mark, being an arbitrary combination of two unconnected words. It is averred that apart from being Plaintiff's trade mark and service mark, BURGER KING is also an integral and conspicuous

part of its trading style. Plaintiff, its business, goods and services are readily recognized merely by reference to 'BURGER KING' as well as its abbreviation, i.e. the trade mark 'BK'. Detailed list of the trademarks of Plaintiff which are valid and subsisting, are mentioned in para 12 of the plaint.

31. It is averred that since the launch of its first restaurant in India in the year 2014, Plaintiff has opened many more BURGER KING restaurants across India including in Gurgaon, Noida, Mumbai, etc. Plaintiff presently operates over 250 BURGER KING restaurants in India.

32. It is pleaded that internet users all over the world, including in India, have access to the Plaintiff's website [www.burgerking.com](http://www.burgerking.com), domain name which was registered as early as on 14.11.1994. Additionally, people from all over the world including in India access Plaintiff's website [www.bk.com](http://www.bk.com), domain name, which was registered on 10.07.1998, as well as its India specific delivery website [www.bkdelivery.in](http://www.bkdelivery.in) (registered in 2015) and have become acquainted with Plaintiff's business and services, under the trademark and trading style BURGER KING, which has further contributed to the goodwill and reputation of the Plaintiff's brand. In addition to the aforementioned websites, Plaintiff also has dedicated websites for different regions including in India, where the Plaintiff has launched an India specific website [www.burgerking.in](http://www.burgerking.in). Plaintiff also obtained registration for the domain name [www.burgerkingindia.in](http://www.burgerkingindia.in) on 21.05.2014. Plaintiff holds at least 1040 domain name registrations in its name. Plaintiff's BK trademark is also extensively and prominently featured on its website [www.burgerking.in](http://www.burgerking.in).

33. It is stated in the plaint that sales revenue of the Plaintiff's BURGER KING restaurants across the world was USD 23,050 million in the year

2021. Details of worldwide gross system sales are mentioned in para 21 of the plaint while the expenses incurred on advertisements and promotions by the Plaintiff are mentioned in para 22 of the plaint.

34. It is pleaded that Plaintiff's BURGER KING brand has acquired excellent reputation and goodwill internationally as well as in India. The consuming public and members of the trade in India identify, recognize and exclusively associate the well-known trademarks BK, BURGER KING and the logos with the Plaintiff, especially in the field of restaurant services. Plaintiff's trademarks, having priority in adoption coupled with long and continuous use and extensive popularity, are entrenched in the minds of the public including the Indian population.

35. It is stated in the plaint that in or around March, 2021, Plaintiff through its Indian Franchisee was informed about the existence of the website [www.burgerkingfranchises.in](http://www.burgerkingfranchises.in) and the fact that Defendant No. 2 was duping unsuspecting members of the public into believing that he was a representative of Burger King India Limited. Defendant No.2 was also offering the opportunity to operate a café/lounge/restaurant of BURGER KING. It is averred that Defendants No. 1-3 are engaged in registering misleading domain names incorporating the Plaintiff's BURGER KING trademarks and operating fake websites, thereupon inviting the general public to apply for BURGER KING franchise opportunities. Defendants No. 1-3 are approaching members of the general public as employees of the Plaintiff's Indian Franchisee and fraudulently duping people of hundreds of thousands of rupees by claiming to offer them BURGER KING franchises.

36. It is averred that Defendant No. 15 represents unknown entities/individuals/group of persons who are engaged in registering

misleading domain names incorporating the Plaintiff's BURGER KING trademarks and operating fake websites, thereupon inviting the general public to apply for BURGER KING franchise opportunities (Defendants No.1-3 and Defendant No.15 are hereinafter referred to as 'main Defendants'). It is submitted that the main Defendants operate in an extremely clandestine manner and have not provided their correct address on their website. In fact, the address provided on the website operated by Defendant Nos. 1-3 is that of Burger King India Limited (which is the former name of the Plaintiff's Indian Franchisee), which is clearly another attempt to mislead consumers into believing that their activities are authorized by the Plaintiff. Given the *modus operandi* of the said Defendants and since the documents circulated by them over email to various unsuspecting customers are nearly identical, it is clear that these Defendants are part of the same entity/organization or may even be the same person.

37. It is pleaded that in order to gain maximum traffic and establish a sense of security in its victims regarding the authenticity and genuineness of their website, main Defendants obtain registration of domain names which are a variation of words incorporating the Plaintiff's well known registered trademark 'BURGER KING' and the words franchise or franchises. Examples of such misleading domain names encountered by the Plaintiff are [www.burgerkingfranchises.co.in](http://www.burgerkingfranchises.co.in) and [www.burgerkingfranchises.in](http://www.burgerkingfranchises.in). Defendants operate multiple active fraudulent websites at any given point of time, upon investigation, two domain names, i.e., [www.burgerkingfranchises.in](http://www.burgerkingfranchises.in) and [www.burgerkingfranchises.co.in](http://www.burgerkingfranchises.co.in) were found to be active. Plaintiff apprehends that the main Defendants have now obtained registrations of new unknown domain name(s) and are continuing

their infringing and illegal activities through the same.

38. It is contended that in order to maintain its pretence of authenticity, the website prominently displays the Plaintiff's registered trademarks - BURGER KING, BK and the Crescent Design Logo. Main Defendants also used photographs of the Plaintiff's international restaurants in order to lure potential victims into applying for a franchisee on their website. It is stated that several photographs currently being used on the website [www.burgerkingfranchises.co.in](http://www.burgerkingfranchises.co.in) are the first results found, while conducting a Google image search using the keywords 'burger king restaurant'.

39. It is further averred that the main Defendants are misusing, without any authorization whatsoever, the Plaintiff's name, registered trademarks "BURGER KING", "BK" and Crescent Design Logo, thereby violating the Plaintiff's statutory and common law rights in the trademarks "BURGER KING", "BK" and Crescent Design Logo, amounting to infringement, passing off and dilution of Plaintiff's registered trademarks. Further, main Defendants are engaged in registering infringing domain names incorporating the trademark BURGER KING and operating fake websites on such domain name, inviting the general public to apply for BURGER KING franchise opportunities, collecting monies from them illegally and frequently, without any permission and authorisation from the Plaintiff and/or its affiliates. This, it is argued, is also detrimental not only to Plaintiff's goodwill and reputation but also to public interest.

40. Learned counsel for the Plaintiff relies upon an order dated 18.07.2017 passed in *HCL Technologies Ltd. & Anr. vs. Ajay Kumar & Ors.* in CS(COMM) 466/2017, order dated 17.08.2020 in *MCDONALDS Corporation and Anr. vs. National Internet Exchange of India and Ors.* in



CS(COMM) 324/2020 and order dated 14.07.2020 in **INDIAMART Intermesh Limited vs. Mr. Akash Verma and Ors.** in CS(COMM) 255/2020, where directions to freeze bank accounts and disclosure of particulars of Defendants were passed.

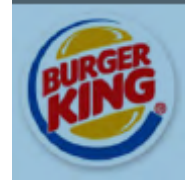
41. Having heard the learned counsel for the Plaintiff, this Court is of the view that Plaintiff have made out a prima facie case for grant of *ex parte ad-interim* injunction. Balance of convenience lies in favour of the Plaintiff and they are likely to suffer irreparable harm in case the injunction, as prayed for, is not granted.

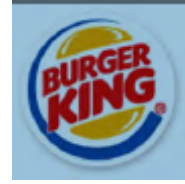
42. Accordingly, Defendants No. 1 to 3 and 15, their associated companies, subsidiaries, directors, wholesalers, distributors, partners or proprietors, as the case may be, their officers, servants and agents from advertising, directly or indirectly are restrained from offering any goods or services, using or registering corporate names, domain names or pages



bearing the Plaintiff's trademarks BURGER KING, BK and and/or any mark deceptively similar to the Plaintiff's trademarks and/or formative marks amounting to infringement of the Plaintiff's registered trademarks, till the next date of hearing.


43. Defendants Nos. 1 to 3 and 15, their associate companies, subsidiaries, directors, wholesalers, distributors, partners or proprietors, as the case may be, their officers, servants and agents are restrained from advertising, directly or indirectly offering any goods or services, using or registering corporate names, domain names or pages bearing the Plaintiff's



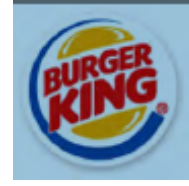
trademarks BURGER KING, BK and  and/or any mark deceptively similar to the Plaintiff's trademarks and/or formative marks so as to take unfair advantage of and/or cause detriment to the distinctive character and reputation of the Plaintiff's said trademarks including misrepresentation of its services as those of or associated with the Plaintiff and from doing any other thing as is likely to cause confusion or deception amounting to passing off of the Defendants' goods and business as that of the Plaintiff, till the next date of hearing.

44. Defendants Nos. 1 to 3 and 15, their associate companies, subsidiaries, directors, wholesalers, distributors, partners or proprietors, as the case may be, their officers, servants and agents are restrained from advertising, directly or indirectly offering any goods or services, using or registering corporate names, domain names or pages bearing the Plaintiff's



trademark BURGER KING, BK and  and/or formative marks so as to take unfair advantage of and/or cause detriment to the distinctive character and reputation of the Plaintiff's said trademarks including misrepresentation of its services as those of the Plaintiff and from doing any other thing as is likely to cause confusion or deception caused the Defendants' services and business leading to dilution or tarnishment of the



Plaintiff's trademarks BURGER KING, BK and , till the next date of hearing.

45. Defendants No. 9-12 are directed to freeze the bank accounts bearing numbers 18270100075935 (at Federal Bank, Defendant No. 10), bank account number 490910110007413 (at Bank of India, Defendant No. 9), 4019001700020815 (at Punjab National Bank, Defendant No. 11), 17910110045619 (at UCO Bank, Defendant No. 12).

46. Defendants No. 9-12 are directed to disclose on affidavit the identity of the account holder, KYC documents, identity related documents and bank statements from the date of opening of the accounts till date for the bank accounts bearing numbers 18270100075935 (at Federal Bank, Defendant No. 10), bank account number 490910110007413 (at Bank of India, Defendant No. 9), 4019001700020815 (at Punjab National Bank, Defendant No. 11), 17910110045619 (at UCO Bank, Defendant No. 12).

47. Defendant No. 6 is directed to disclose the WHOIS details with respect to the domain names [www.burgerkingfranchises.co.in](http://www.burgerkingfranchises.co.in) and [www.burgerkingfranchises.in](http://www.burgerkingfranchises.in) and block access to the aforesaid domain names.

48. Defendants No. 4 and 5 are directed to block access to and disable the domain names [www.burgerkingfranchises.co.in](http://www.burgerkingfranchises.co.in) and [www.burgerkingfranchises.in](http://www.burgerkingfranchises.in).

49. Defendants Nos. 4 and 5 are directed to disclose on affidavit the complete identity, i.e., names, address, phone numbers, e-mail IDs, billing and payment details of the registrants of the domain names

[www.burgerkingfranchises.co.in](http://www.burgerkingfranchises.co.in) and [www.burgerkingfranchises.in](http://www.burgerkingfranchises.in).

50. Defendants No. 7 and 8 are directed to issue Notifications to various Internet Service Providers/ licensees requiring such Internet Service Providers/ licensees to block access to the websites at [www.burgerkingfranchises.co.in](http://www.burgerkingfranchises.co.in) and [www.burgerkingfranchises.in](http://www.burgerkingfranchises.in).

51. Defendants No. 13 and 14 are directed to disclose on an affidavit the complete identity, i.e., names, address, phone numbers, e-mail IDs, billing and payment details, KYC documents, identity related documents of the subscribers of the phone numbers +91 7709155644 and 84365 87114 (Defendant No. 13) and +91 7291823890 and +91 9819100695 (Defendant No. 14).

52. Plaintiff shall comply with the provisions of Order 39 Rule 3 CPC within two weeks from today.

**JYOTI SINGH, J**

**MAY 10, 2022**

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