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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(COMM) 321/2022 & I.As. 7580-84/2022**

KERZNER INTERNATIONAL LIMITED Plaintiff

Through: Mr. Chander M. Lall, Sr. Adv. along
with Ms. Nancy Roy, Mr. Raghav
Malik, Ms. Prakriti Varshney, Ms.
Annanya Chugh, Advocates
(M:9899257363) (9711288594)

versus

VIKAS AGGARWAL & ORS. Defendant

Through: None.

CORAM:
JUSTICE PRATHIBA M. SINGH

ORDER
% **13.05.2022**

1. This hearing has been done through hybrid mode.

I.A. 7582/2022 (for exemption)

2. Allowed, subject to all just exceptions. *I.A. 7582/2022* is disposed of.

I.A. 7583/2022 (u/S 12A)

3. This is an application seeking exemption from instituting pre-litigation mediation. In view of the orders passed in *CS (COMM) 132/2022* titled *Upgrad Education v. Intellipaat Software*, the application is allowed.

4. *I.A. 7583/2022* is disposed of.

I.A. 7581/2022 (for Additional documents)

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

6. *I.A. 7581/2022* is disposed of.

I.A. 7584/2022 (for directions)

7. This is an application seeking directions to allow the counsels for the Plaintiff to apply for the court fees and extension of time to file the same. The e-Court fee is directed to be issued through the counsel. Let the court fee be deposited within two weeks.

8. *I.A. 7584/2022* is disposed of.

CS(COMM) 321/2022

9. Let the plaint be registered as a suit.

10. Issue summons to the Defendants through all modes upon filing of Process Fee.

11. The summons to the Defendants shall indicate that a written statement to the plaint shall be positively filed within 30 days from date of receipt of summons. Along with the written statement, the Defendants shall also file an affidavit of admission/denial of the documents of the Plaintiff, without which the written statement shall not be taken on record.

12. Liberty is given to the Plaintiff to file a replication within 15 days of the receipt of the written statement. Along with the replication, if any, filed by the Plaintiff, an affidavit of admission/denial of documents of the Defendants, 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.

13. List before Court on 25th July, 2022.

I.A. 7580/2022 (u/O XXXIX Rules 1 & 2 CPC)

14. The Plaintiff- Kerzner International Limited has filed the present suit seeking protection of its trademark 'ATLANTIS' used in respect of entertainment services, hotels, resorts and other connected services. It is the

case of the Plaintiff that it is one of the world's renowned and leading global service provider engaged in management, development and operation of destination resorts, properties, luxury resort hotels, etc. It manages more than 15 hotels in approximately 10 countries. The Plaintiff adopted the mark 'ATLANTIS' in 1994. The Plaintiff company was incorporated in the Commonwealth of the Bahamas in 2002.

15. The first flagship property of the Plaintiff under the trademark 'ATLANTIS' is stated to be the Paradise Island mega-resort complex in the Bahamas. Thereafter a water themed resort- ATLANTIS, The Palm, Dubai was opened in 2008 which is located at the crescent of the man-made Palm Jumeirah in Dubai. It also claims to have 'ATLANTIS' resort in Sanya, China which is a resort rising from the South China Sea. It is the case of the Plaintiff that its resorts are unique, ocean-themed destinations offering a wide variety of entertainment experiences. The Plaintiff owns and operates the website www.atlantis.com for providing information about the 'ATLANTIS' properties around the world which is stated to be registered in the name of the Plaintiff since 1993.

16. The mark 'ATLANTIS' has been applied for registration in India and internationally. In India, the Plaintiff owns various registrations in Classes 35, 36,39, and 41. The Plaintiff also has registration in Class- 42 under trade mark number 1416284 *qua* the following services:

*“PROVIDING TEMPORARY ACCOMMODATION;
PROVIDING HOTEL ACCOMMODATION, HOTEL
SERVICES, RESORT HOTEL SERVICES ;
ARRANGEMENT OF ACCOMMODATION IN
RESORTS; PROVIDING CONVENTION
FACILITIES AND SERVICES; TRAVEL AGENCY*

SERVICES, ACCOMMODATION BOOKINGS AND MAKING RESERVATIONS AND BOOKINGS FOR DINING; PROVIDING RESTAURANT AND BAR SERVICES.”

17. The case of the Plaintiff is that it came across the Defendants' application bearing no. 4694972 in the trademark journal wherein the Defendants sought to register the trademark 'ATLANTIS PARK BALLROOM' under class 43 in respect of services for providing food and drink, and temporary accommodation. The said application was filed on 9th October, 2020 with user claim since December, 2017. The Plaintiff also relies upon the fact that the Defendants are using the mark 'ATLANTIS PARK BALLROOM' for the banquet hall which is run by it at GT Karnal Road Industrial Area, New Delhi-110033. Accordingly, a legal notice was addressed on behalf of the Plaintiff on 9th March, 2021 calling upon the Defendants to give up the use of the mark 'ATLANTIS PARK BALLROOM'. The Defendants replied on 25th March, 2021 claiming that the Defendants' mark is distinctive and that the services provided by the Defendants are completely different from the services of the Plaintiff as also their trade channels are also unrelated. The defendant also took the stand that the Plaintiff does not enjoy any reputation in India as the mark is being used in the Bahamas. A further notice was addressed by the Plaintiff on 8th April, 2021, however, the same did not evince any positive reply from the Defendants.

18. Mr. Chander M. Lall, Id. Senior Counsel, appearing for the Plaintiff submits that though the Plaintiff does not have any resort in India, there is sufficient use and reputation in India of the said mark owing to the presence on the internet as also due to the fact that several Indians regularly travel and

stay in the Plaintiff's 'ATLANTIS' properties abroad.

19. Heard Id. Senior Counsel for the Plaintiff and perused the record. A perusal of the plaint shows that the mark of the Plaintiff is registered in several Classes and specific revenue figures have been given in respect of revenues earned from bookings made from India. The revenue figures show that thousands of bookings are made from India every year with the Plaintiff. In the year 2019, 27,892 bookings were made and the total revenue for that year attributable to India was 16 million dollars. The Plaintiff's mark 'ATLANTIS', owing to the unique nature of the resorts which are run by it, have *prima facie*, gained enormous global reputation, especially in the Indian subcontinent. The mark is also promoted on various social media platforms and the Plaintiff has won various awards as one of the top most travelled destinations in the world.

20. The Defendants are using the mark 'ATLANTIS PARK BALLROOM'. The mark applied for registration by the Defendants is as under:



21. The application of the Defendants is objected to under section 11 of the Trade Marks Act, 1999. Moreover, the Defendants are using the said mark in respect of a banquet hall and the services offered are entertainment,

conventions and other bookings made for social events. The services of the Defendants and the Plaintiff are clearly overlapping and are cognate/allied services. The mark 'ATLANTIS' is the prominent feature of the Defendants' mark and name. It is settled law that it is not improper to identify elements and features of marks that are more or less important for the purpose of analysis in cases of composite marks. In *M/s South India Beverages Pvt. Ltd. v. General Mills Marketing Inc. (2015) 61 PTC 231* it has been held that the prominent feature is to be given more attention as customers are more likely to remember and rely on them for the purpose of identification. Furthermore, almost every convention centre or hotel has a ballroom so the use of the word 'Ballroom' along with the mark 'ATLANTIS' does not in any manner distinguish it from the Plaintiff's mark. Thus, the present is the case of use of an identical mark for identical services.

22. The Plaintiff has made out a *prima facie* case for grant of an injunction. The balance of convenience lies in the favour of the Plaintiff and if relief is not granted at this stage, irreparable loss would be caused to the Plaintiff. However, considering the fact that the Defendants may have made various bookings of the banquet hall for third parties, this Court is of the opinion that the Defendants are only to be restrained partially at this stage.

23. Accordingly, the Defendants are restrained from making any fresh bookings in its banquet which is run under the name 'ATLANTIS PARK BALLROOM' till the next date of hearing. This would however not impede the Defendants from providing services in respect of bookings already made by it.

24. The Defendants shall ensure that they file a list of bookings already

made within a period of 2 weeks after the service of the present order.

25. Compliance of Order XXXIX Rule 3 CPC be made within one week.

26. Reply to the application be filed within 4 weeks from service of the present order along with the paper book.

27. List the application before Court on 25th July, 2022 for hearing.

PRATHIBA M. SINGH, J.

MAY 13, 2022/aman/Sk