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

+ CS(COMM) 249/2022

HT MEDIA LIMITED & ANR.

..... Plaintiffs

Through: Mr. Saikrishna Rajagopal, Mr. Sidharth Chopra, Mr. Nitin Sharma, Mr. Vivek Ayyagari and Mr. Angad Makkar, Advocates

versus

DIPALI SANTOSH RAO & ORS

..... Defendants

Through: None

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

% **19.04.2022**

I.A. 6015/2022(exemption from advance service)

1. Since there is an urgency in the matter and the matter is being heard today, Plaintiffs are exempted from serving Defendants No.13 and 14 with advance notice.

2. For the reasons stated in the application, the same is allowed and disposed of.

I.A. 6018/2022 (Exemption)

3. Allowed, subject to all just exceptions.

4. Application stands disposed of.

I.A. 6016/2022(additional documents)

5. Present application has been preferred on behalf of the Plaintiffs seeking leave to file additional documents, under Order 11 Rule 1(4) of Commercial Courts, Commercial Appellate Courts, Commercial Divisions and Commercial Appellate Divisions Act, 2015 read with Section 151 CPC.

6. Plaintiffs, if they wish to file additional documents at a later stage, shall do so strictly as per the provisions of the Commercial Courts Act, 2015.

7. Application is allowed and disposed of.

I.A. 6017/2022(exemption from filing Court Fees)

8. For the reasons stated in the application, Plaintiffs are permitted to file requisite Court Fees within two weeks from today.

9. Application is allowed and disposed of.

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10. Let plaint be registered as a suit.

11. Upon filing of process fee, issue summons to the Defendants, through all permissible modes, returnable on 28.07.2022. Summons shall state that the written statement shall be filed by the Defendants within 30 days from the receipt of summons. Along with the written statement, Defendants shall also file an affidavit of admission/denial of the documents of the Plaintiffs.

12. Replication be filed by the Plaintiffs within 15 days of the receipt of the written statement. Along with the replication, an affidavit of admission/denial of documents filed by the Defendants, shall be filed by the Plaintiffs. 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 the Joint Registrar on 28.07.2022.

14. List before the Court on 25.08.2022.

I.A. 6014/2022(under Order 39 Rules 1 and 2 CPC)

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

16. Issue notice to the Defendants through all prescribed modes, returnable on 25.08.2022.

17. It is averred that Plaintiff No.1 is a public limited company incorporated under the Companies Act, 1956. Plaintiff No. 2 is a subsidiary of Plaintiff No. 1 and is also engaged in the business of print media with its

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Hindi leading publication ‘**हिन्दुस्तान**’. Plaintiffs No. 1 and 2 belong to the same group of Companies, i.e., the ‘Hindustan Times’ Group.

18. It is averred that Plaintiff No. 1 is engaged in the business of print media, radio, internet etc. and is one of the foremost media houses in India. Plaintiff No. 1 enjoys a leadership position in the English newspaper market in India. At present, ‘HINDUSTAN TIMES’ emerges as a natural choice for around 8 million readers who turn to it for news, information, analysis and entertainment.

19. It is further averred that apart from print circulation, there are online editions of the newspapers as available on ‘www.livehindustan.com’ and ‘www.hindustantimes.com’. The websites contain news articles and other infotainment content and are updated round the clock with latest and breaking news. The websites www.hindustantimes.com and www.livehindustan.com are the leaders in the online news space, reaching more than 42 million unique users and 46 million users respectively in February 2020. Both these websites are operated by HT Digital Streams Ltd., an affiliate/fellow subsidiary company of the Plaintiffs.

20. It is further averred that Plaintiffs offer their news-related services in Marathi as well, through the domain name, marathi.hindustantimes.com.

The said domain caters specifically to the sect of the Plaintiffs' customer-base, well-versed in Marathi, which is established from the fact that articles on the said domain are published only in Marathi.

21. It is further averred that Plaintiff No. 1's flagship publication under the trademark 'HINDUSTAN TIMES' is being published since 1924 and the said mark was also the corporate name/trading style of Plaintiff No.1's predecessor 'The Hindustan Times Limited', incorporated in 1924. Plaintiff

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No.2's also traces its origin to 1930's and both newspapers have, for almost a century, established their newspapers with editorial excellence and innovation. In 2003, 'The Hindustan Times Limited' transferred its media business to Plaintiff No.1 and all intellectual property rights along with goodwill in the trademarks including in the mark

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were assigned to Plaintiff No.1, who in turn vide assignment deed dated 31.03.2016 assigned the 'HINDUSTAN'

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trademark(s) and logo as well as including the logos and copyright to Plaintiff No.2.

22. It is averred that Plaintiff No.1 is the prior adopter and user of the

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trademark and logo ' and the same has been continuously and uninterruptedly used by Plaintiff No. 1 since the year 1931. It is submitted that the reputation, goodwill and fame of the Hindi

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newspaper ‘हिन्दुस्तान’ is evident from the massive success of the newspaper itself. It is further averred that Plaintiff No. 1 adopted a unique colour combination, unusual font, get up and layout in respect of the

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trademark logo ‘हिन्दुस्तान’ in the year 2006, thereby making it a highly distinctive logo. The device mark bears registrations in various classes, which are valid and subsisting. The artistic work in the device/logo is an ‘original artistic work’ within the meaning of Section 2(c) of the Copyright Act, 1957 and is found on all promotional material, including the Hindi Newspaper.

23. It is averred that the trademark ‘HINDUSTAN TIMES’ is an arbitrary, unique combination/collocation of words in English and Hindi language, thereby making the aforesaid trademark a highly distinctive one. The name/trademark ‘HINDUSTAN TIMES’ signifies and connotes a publication belonging to the ‘Hindustan Times’ group and none else. Plaintiff No. 1 is also the registered proprietor of the trademark(s) ‘HINDUSTAN TIMES’, ‘HT’ and various other formative marks, in various classes for various goods and services. Details of the registrations of the marks are furnished in para 26 of the plaint. The Registrations are valid and subsisting. The trademark ‘HINDUSTAN TIMES’ has been continuously and uninterruptedly used since 1924.

24. It is averred that due to extensive use of the marks *inter alia*

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‘HINDUSTAN TIMES’ and the ‘हिन्दुस्तान’ logo, for nearly

a century, by the Plaintiffs and their group companies/subsidiaries, the same are exclusively associated with the news publications belonging to the 'Hindustan Times' Group. The readership of publication 'HINDUSTAN TIMES' spans across the length and breadth of India. The immense popularity and success of the publications is demonstrated by the huge revenue turnover which, for the financial year 2020-21, is INR 52,810 Lakhs for 'HINDUSTAN TIMES' publication and INR 36,790 Lakhs for

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publication. Plaintiffs have spent huge sums of money on advertisements and promotions, details of which have been given in para 31 of the plaint. Plaintiffs have been vigilant in safeguarding and protecting their intellectual property rights and have been successful in getting interim injunctions/decrees from various Courts against third parties.

25. It is averred that recently on 25th January 2022, Plaintiffs came across the impugned Domain Name/Website www.hindustantimesmarathi.com, which appears to be owned and operated by Defendant No.1, who is primarily and substantially engaged in publishing, hosting, communicating, etc. news, articles, stories, columns, etc. in Hindi and Marathi to Indian readers and viewers. The impugned domain name/website offers services identical to those of the Plaintiffs and the impugned mark

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as used on the webpage is in a manner and style, which is deceptively similar/nearly identical to that of the Plaintiffs' mark

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and is aimed to deceive and confuse the

consumers. A comparative chart between the two competing marks is as follows:-

Plaintiffs' Marks	Defendant No.1's Impugned Domain Name's Logo
	
hindustantimes.com marathi.hindustantimes.com	hindustantimesmarathi.com

26. It is pleaded that the Plaintiffs had issued a cease-and-desist letter to Defendants No. 1 and 2, however, Defendants have not responded to the same and are instead continuing to infringe the Plaintiffs' statutory and common law rights.

27. It is contended by learned counsel for the Plaintiffs that use of the mark 'HINDUSTAN TIMES' and a deceptively similar/virtually identical

mark/logo , without any authorization/license/consent from the Plaintiffs amounts to infringement as well as passing off and unfair competition. Being purportedly in the news aggregation business, Defendants No.1 and 2 cannot claim ignorance of the Plaintiffs' marks which are well-known with immense reputation and goodwill.

28. Having heard the learned counsel for the Plaintiffs, this Court is of the view that Plaintiffs have made out a *prima facie* case for grant of *ex parte ad-interim* injunction. Balance of convenience lies in favour of the Plaintiffs

and they are likely to suffer irreparable harm in case the injunction, as prayed for, is not granted.

29. Accordingly, Defendants No. 1 and 2, their owners, partners, proprietors, officers, servants, employees, and all others in the capacity of principal or agent acting for and on their behalf, or anyone claiming through, by or under them are restrained from, in any manner:-

(a) using directly or indirectly the name/mark 'HINDUSTAN TIMES'

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and the mark/logo ' ', or any other mark identical/deceptively similar to the Plaintiffs' trademark 'HINDUSTAN TIMES' and

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mark/logo ' ', amounting to infringement of the Plaintiffs' said marks, till the next date of hearing.

(b) using directly or indirectly Plaintiff No.2's original artistic work in

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the logo ' ', or any identical or substantial reproduction/colourable imitation thereof, amounting to copyright infringement, till the next date of hearing.

(c) using directly or indirectly the name/mark 'HINDUSTAN TIMES'

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and the mark/logo ' ', or any other mark identical/deceptively similar to the Plaintiffs' trademark 'HINDUSTAN TIMES'

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and mark/logo ' ', amounting to passing off or

unfair competition or dilution and tarnishment, till the next date of hearing.

30. Defendants No. 4 to 12, their Directors, partners, proprietors, officers, affiliates, servants, employees, and all others in capacity of principal or agent acting for and, on their behalf, or anyone claiming through, by or under them, are directed to block/suspend access to Defendant No.1's website, www.hindustantimesmarathi.com.

31. Defendants No. 13 and 14 are directed to issue a Notification calling upon the various internet and telecom service providers registered under them to block/suspend access to Defendant No.1's website, www.hindustantimesmarathi.com.

32. Plaintiffs shall comply with the provisions of Order 39 Rule 3 CPC within ten days from today.

JYOTI SINGH, J

APRIL 19, 2022

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