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

*Date of Decision: 19<sup>th</sup> December, 2023*

+ **CS(COMM) 135/2023, I.A. 14938/2023 & 15282/2023**

**WINZO GAMES PRIVATE LIMITED** ..... Plaintiff

Through: Mr. Abhishek Malhotra and Ms.  
Sanya Sehgal, Advs. (M.  
9582770243)

versus

**BAJAAR LLC AND ORS** ..... Defendants

Through: Ms. Riddima Sharma, Ms. Malvika  
Aggarwal, Advs. for D-5 (M.  
9205970611)  
Ms. Mamta Rani Jha, Mr. Rohan  
Ahuja, Ms. Shruttima Ehersa, Mr.  
Vatsalya Vishal, Ms. Amishi Sodani,  
Mr. Rahul Choudahry, Advs. for D-6  
(M. 9693237825)

**CORAM:**

**JUSTICE PRATHIBA M. SINGH**

**Prathiba M. Singh, J. (Oral)**

1. This hearing has been done through hybrid mode.

**I.A. 14938/2023 (for delay)**

2. This is an application for condonation of delay of 89 days in filing written statement. For the reasons stated in the application, the delay is condoned. Written statement is taken on record. Application is disposed of.



**CS(COMM) 135/2023 & I.A. 15282/2023**

3. The present suit has been filed by the Plaintiff - Winzo Games Private Limited seeking a permanent injunction restraining Defendant Nos.1, 2 and 4 from infringing the Plaintiff's registered marks WinZO/WinZO Games/WINZO.

4. The Plaintiff is a digital gaming and technology company founded in 2016, with its registered office in New Delhi. It operates a popular online skill-based gaming platform under the registered trade mark and brand name 'WinZO/WINZO'. Launched in February 2017, as per the Plaintiff, the platform has garnered over 100 million users, particularly in tier-2 cities and rural India. It claims to be the largest social gaming app in India in terms of the variety of games, languages and format of games formats offered. The Plaintiff claims to have active users, who spend an average of 55 minutes per day on the platform, along with 3.5 billion microtransactions and over 1 billion monthly gameplays.

5. As per the plaint, the mark 'WinZO/WINZO' was conceived and adopted by the Plaintiff in 2017. It is an innovative and distinctive combination of the words 'Win' and 'ZO' (signifying speed and energy), and it represents the essence of the games available on the platform. The Plaintiff's claims that goods and services under the said marks have gained immense popularity, goodwill, and reputation.

6. The Plaintiff claims to have registered several marks, some of which



were initially in the name of a former director, but have since been assigned to the Plaintiff through an assignment deed dated 5<sup>th</sup> April, 2019. The Plaintiff has shown a steady increase in annual revenue from 2016-17 to 2021-22, indicating the growing popularity of its services under the trade marks. For the financial year 2021-22, the annual revenue was more than Rs. 233 crores.

7. Further, extensive marketing and advertising efforts have been made to promote the Plaintiff's goods and services bearing Plaintiff's 'WINZO' marks. The said marks have been endorsed by celebrities like cricketer Akash Chopra, actor Sanjay Mishra, Kritika Kamra, Krushna, Nikhil Chinappa, and Indian cricketer M.S. Dhoni. Collaborations include a nationwide TV commercial with actor Ranveer Singh for the movie '83'. For the year 2021-22, the Plaintiff claims to have expended more than Rs. 198 crores on advertisement expenditure.

8. It is further averred that the Plaintiff was also a sponsor and participant at the Indian Game Developers Conference in November 2022. The significant investment in promotional and marketing activities is evident from the annual advertisement expenditure, which has consistently increased over the years.

9. The Plaintiff claims common law and statutory rights in respect of the its marks. It claims to have applied for various marks, including marks 'WinZO' and 'WinZO Games', and other 'WINZO' formatives/variant



marks in respect of mobile applications, online gaming, services relating to business administrations telecommunications services and design and development of hardware and software services falling under classes 9,35, 38, 41 & 42. The details of the Plaintiff's 'WINZO' marks are extracted below:

Sl. No	Trade Mark	Application/ Registration No.	Class	Status
i.	WINZO (Word)	3567402	41	Registered
ii.	WINZO GAMES (Word)	3567404	41	Registered
iii.	WINZO GAMES (Word)	3567403	42	Registered
iv.	WINZO (Word)	3567401	42	Registered

10. The present suit was filed by the Plaintiff against [www.winzos.com](http://www.winzos.com) (*hereinafter, 'impugned domain name'*), operated by the Defendant No.1 - M/s Bazaar LLC, a Houston based US company. The said domain name was being used for an identical platform for playing games, trivia and shopping.

11. In October 2022, the Plaintiff discovered that Defendant No. 1 was infringing \their marks by offering an application called 'WINZOS!' on Apple's App Store and an associated website, <https://www.winzos.com>. The



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Defendant's services were very similar to those offered by the Plaintiff under the trade marks 'WinZO,' 'WINGO GAMES,' and 'WINZO.' Further investigation by the Plaintiff revealed that the infringing application was easily accessible in India through Apple App Store, and Google Play Store on laptops and tablets/iPads, but not on mobile phones.

12. Ld. Counsel for the Plaintiff submits that Defendant Nos.1, 2 and 4 are connected and Defendant No.4 is the founder of Defendant No.1. Further investigation by the Plaintiff revealed Defendant No. 1 had an agreement with another entity, Defendant No. 2-Leamy Inc, and the websites of both Defendants were interconnected.

13. As per the plaint, the infringing application was easily accessible in India through the Defendants' website, Apple App Store, and Google Play Store on laptops and tablets/iPads, but not on mobile phones. Thereafter, the Plaintiff's representatives sent a Cease-and-Desist notice to Defendant No. 1 on 17<sup>th</sup> October, 2022, pointing out the infringing apps and websites, and demanding the removal of the infringing application from Google Play Store and Apple Store. Defendant No. 1 responded, claiming they were not using the application or website in a jurisdiction relevant to the Plaintiff and were unaware of the Plaintiff's presence Hence, ld. Counsel submits that when notice was issued to Defendant No.1 as also to Defendant No.2 it was replied by Defendant No.4 - Mr. Surojit Niyogi merely claiming that [www.winzos.com](http://www.winzos.com) app is not operated in India and that the terms of the said app make it clear that it applies only to



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the US. Ld. Counsel submits that in view of this stand, Defendant Nos.1, 2 and 4, ought to be taken as served.

14. Defendant No. 3 is an entity named '*Namecheap Inc*', which appears to be an ICANN-accredited domain name registrar providing domain name registration based in Arizona, United States of America. Plaintiff, states that per the information available on record, the website-<https://www.winzos.com/> of Defendant No. 1 and Defendant No. 2 stands registered in the name of Defendant No.3.

15. On 7th August, 2023, the Court perused the emails and the LinkedIn profile of Mr. Surojit Niyogi, who uses email addresses [prakash@bajaar.com](mailto:prakash@bajaar.com) and [roj@winzos.on.crisp.email](mailto:roj@winzos.on.crisp.email). Since none had appeared for the said Defendant who had registered the [www.winzos.com](http://www.winzos.com) app and the domain name, the Defendant nos. 1, 2 and 4 were proceeded *ex parte*. All the remaining parties are incidental, who are obligated to carry out the directions passed by the Court.

16. An application under Order XXXIX Rule 2A CPC being ***I.A. 15282/2023*** was filed by the Plaintiff thereafter. Notice in the said application was issued on 16th August, 2023, however, there was no appearance.

17. As per the allegations made in the contempt, the said domain name is still being used, despite the injunction order dated 10<sup>th</sup> March, 2023 passed by this Court.



18. In view of the above position, there is a serious possibility of the said domain name being misused, considering that the Plaintiff operates a gaming app under the said marks. The mark WINZO being a registered trade mark of the Plaintiff and the Plaintiff being a globally renowned gaming platform, misuse of the name would be impermissible. The Defendants are clearly based out of India and are taking shelter under the technological tools to stay away from the Court, while continuing to operate the platform. Thus, in order to ensure that the order of injunction already granted is fully given effect to, final orders deserve to be passed.

19. In the opinion of this Court, since the contesting Defendant Nos. 1, 2 and 4 have not placed any defense on record, and considering Plaintiff in the marks WinZO/ WinZO Games/ WINZO, no further evidence would be required in this matter. Furthermore, under Order VIII Rule 10 CPC, the Court is empowered to pronounce judgment where any party, from whom a written statement is required under Rule 1 or Rule 9, fails to present the same within the time permitted or fixed by the Court. In such cases, the Court is empowered to pronounce judgment against the party or make an order in relation to the suit as it deems appropriate.

20. In *Disney Enterprises Inc. v. Balraj Muttneja [CS (OS) 3466/2012 decided on 20th February, 2014]*, this Court observed that no *ex-parte* evidence would be required where the Defendants are *ex parte* and the material before the Court is sufficient to allow the claim of the Plaintiff. The time of the



Court ought not be wasted in directing *ex-parte* evidence to be recorded, which mostly is nothing but a repetition of the contents of the plaint. The same has been reiterated by the Court in *S. Oliver Bernd Freier GMBH & CO. KG v. Jaikara Apparels and Ors.* [210 (2014) DLT 381], as also, in *United Coffee House v. Raghav Kalra and Ors.* [2013 (55) PTC 414 (Del)].

21. The Defendants having chosen to stay away from the proceedings in this case, cannot be allowed to enjoy a premium for their dishonesty. In *M/s Inter Ikea Systems BV v. Imtiaz Ahamed & Anr* [Judgment dated 9th September, 2016, CS (OS) 3295/2014], this Court observed as follows:

**“21. The court is mindful of the fact that in such a situation where the defendant chooses to stay away from the court proceedings, he should not be permitted to enjoy the benefits of such an evasion. Any view to the contrary would result in a situation where a compliant defendant who appears in court pursuant to summons being issued, participates in the proceedings and submits his account books, etc., for assessment of damages, would end up on a worse footing, vis-a-vis a defendant who chooses to conveniently stay away after being served with the summons in the suit. That was certainly not the intention of the Statute. Section 135 (1) of the Trademarks Act, 1999 provides that relief that may be granted in any suit for infringement of or for passing off includes injunction and at the option of the plaintiff, either damages or an account of profits. The plaintiffs in the present case have opted for claiming damages and have established beyond doubt that they have suffered damages on account of the conduct of the**





*defendants which are a result of infringement of their trademark and copyright...”*

22. Accordingly, Defendant Nos. 1, 2 and 4 are permanently enjoined from using the marks ‘WinZO’/ ‘WinZO Games’/ ‘WINZO’ or any other name deceptively similar to the Plaintiff’s ‘WINZO’ marks as provided at paragraph 9 above in either offline or online media, including as part of domain names, websites, apps or any other digital platforms.

23. It is directed that M/s Namecheap Inc., the Domain Name Registrar of the impugned domain name, shall transfer the domain name [www.winzos.com](http://www.winzos.com) to the Plaintiff. For the said purpose, a copy of this order shall be communicated by the Plaintiff to the Registrar who shall give effect to the same within 72 hours.

24. Ld. Counsel appearing for Defendant No. 6- Google LLC submits that the Defendant’s app [www.winzos.com](http://www.winzos.com), has already been removed from the Apple Store and the Google Play Store. It shall be ensured that the said infringing domain names of the Defendant Nos. 1, 2 and 4 are not made available for download or reinstalled on the said stores.

25. Mr. Malhotra, ld. Counsel points out that despite the removal of the Defendants’ app from the Google Play Store, it is now available on the Google Chrome Webstore as an extension. The copy of the said document displaying the Chrome extension ‘Winzos! Shopping Contests’ has been handed over to ld. Counsel for the Google. The screen shot is extracted hereinbelow:



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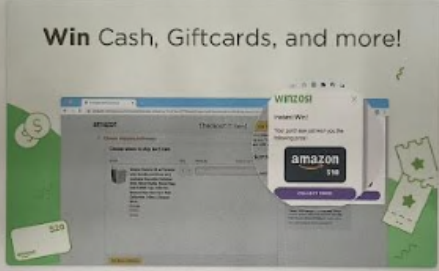
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# W! Winzos! Shopping Contests

winzos.com

Extension Shopping 15 Users

**Win Cash, Giftcards, and more!**



**Overview**

Win cash, gift cards and more when you shop at online stores like Amazon, Target, and others!

Earn entries to online contests for a chance to win cash, gift cards and other prizes when you shop at online stores like Amazon, Target, and others!

Step 1. Install Winzos and sign up FREE!  
Step 2. Shop at your favorite stores



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Compatible with other shopping extensions like Honey, Capital One Shopping, Rakuten and others!

0 out of 5 ☆☆☆☆☆  
No ratings • Google doesn't verify reviews. [Learn more about results and reviews.](#)

### Details

Version 13.1	Size 1.03MiB	Developer Raj Niyoz Enovis Inc 2712 Cascade Falls Dr Austin, TX 78738-8348 US	Trader This developer has identified itself as a trader per the definition from the European Union.
Updated June 20, 2023	Languages English (United States)	Website Email	

[Report a concern](#)

### Privacy

Winzo! Shopping Contexts has disclosed the following information regarding the collection and usage of your data. More detailed information can be found in the developer's [privacy policy](#).

Winzo! Shopping Contexts collects the following:

- Personally identifiable information
- Financial and payment information
- Website content

[See details](#)

This developer declares that your data is

- Not being sold to third parties, outside of the approved use cases.
- Not being used or transferred for purposes that are unrelated to the item's core functionality.
- Not being used or transferred to determine creditworthiness or for lending purposes.

chrome web store Discover Extensions Themes

For help with questions, suggestions, or problems, visit the developer's [support site](#)

### Related

- Earn & Trade: Shop and Earn Cash Back!**  
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26. An email shall be sent by Id. Counsel for the Plaintiff to Id. Counsel for the Defendant Google LLC, giving the exact links, to ensure that the said



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[www.winzos.com](http://www.winzos.com) extension on Google Chrome Webstore is also deactivated within 72 hours. If any further links are found on any online platforms, the Plaintiff is free to contact the said platforms and ensure removal of the same.

27. The suit is decreed in the above terms. No further reliefs are sought. All pending applications are disposed of.

**PRATHIBA M. SINGH**  
**JUDGE**

**DECEMBER 19, 2023**

*dj/dn*