

* **HIGH COURT OF DELHI : NEW DELHI**

+ **CS(OS) No.702/2006**

% Judgment decided on: 08.11.2011

Hilton International Co. Plaintiff

Through: Mr. Saif Khan, Adv. with
Ms. Aparajita Asthana, Adv.

Versus

Mohd. Iqbal Qureshi & Anr. Defendants

Through: Defendants are *ex-parte*.

Coram:

HON'BLE MR. JUSTICE MANMOHAN SINGH

1. Whether the Reporters of local papers may
be allowed to see the judgment?
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported
in the Digest? Yes

MANMOHAN SINGH, J. (Oral)

1. The plaintiff has filed the present suit seeking permanent injunction restraining the infringement of trade mark, passing off, damages and delivery up.
2. The plaintiff, Hilton International is a company incorporated under the laws of State of Delaware, United States of America having its

principal office at Maple Court, Central Park, Reeds Crescent, Watford, Herts, WD24 4QQ, England.

3. The defendant No.1 is stated to be the proprietor of defendant No.2 namely Hilton, situated outside Chandapole Gate, Khetri House Road, Jaipur which is a business hotel.

4. The plaintiff is a well known hotel operator and on its own and also through its subsidiaries affiliates and licenses, carries on business of providing services in the field of hotels.

5. It is averred in the plaint that the plaintiff is the proprietor of the trade mark and trade name HILTON and the said name is also a part of the plaintiff's corporate name/trading style. The plaintiff has operates hotels in 72 countries and has spent a substantial amount of money for developing, advertising and promoting its hotels and related services in those countries.

6. It is also stated that by virtue of long use and publicity the name Hilton has acquired substantial goodwill which is a valuable asset of the plaintiff. The plaintiff is the registered proprietor of the trade marks worldwide for the word HILTON, the Hilton 'H' device or registrations in which the word Hilton is a dominant feature.

7. The classes of service mark registration include travel

arrangements, travel and tour information and travel and tour ticket reservation services (Class 39); hotels, casinos, gambling, gaming and betting services; nightclub services; health and leisure club services; provisions of sports; leisure and recreational facilities, arranging and conducting functions, conferences, conventions, exhibitions, seminar etc. (Class 4) and accommodation, hotels, motels, bars, cafes etc. (Class 42).

8. The plaintiff has registered HILTON as a trademark in class 16 and wherever possible as a service mark in the relevant classes in almost every country outside U.S.A. In India the plaintiff owns two registered trademarks the details of which are give in para 6 of the plaint and the plaintiff has also applied for registration of HILTON as a service mark in class 41 and 43 (previously international class 42) under the Trademarks act,1999 (hereinafter referred to as the Act)

9. Further, it is stated that in India the plaintiff has tied up with EIH operator of the well known chain of hotels Oberoi and this joint venture is co-branded as Trident HILTON. The Trident HILTON hotels have come up in various cities like Mumbai, Jaipur, Agra, Bhubaneswar, Chennai, Cochin, Udaipur and Gurgaon.

10. As per the plaintiff, the word HILTON was adopted the

plaintiff in relation to hotel services four decades ago and has been in continuous use since then.

11. In the month of February 2006, one of the representatives of the plaintiff came across the defendants hotel named “Hotel HILTON” on the website www.hotelassociationjaipur.com/HotelHilton/index.htm. Thereafter, the plaintiff investigated the activities of the defendants and obtained samples of the defendants business card, invoices and photographs of the defendant’s premises and filed the instant suit for injunction on 26.04.2006.

12. The defendants filed their written statement wherein it is stated that the defendant No.1 has changed the name of his hotel since March 2006 and therefore the present suit has become infructuous. As per the defendant No.1 the name of his hotel has been changed to hotel CHANDAPOLE PALACE. Thereafter, the parties made attempts to reach a compromise but the same failed as the defendant No.1 stopped contacting his counsel.

13. During the pendency of the proceedings, the impugned trademarks of the plaintiff were assigned to HLT International IP LLC, a limited company incorporated under the laws of State of Delaware having its principal office at 9336 Civic Center Drive, Beverly Hills,

California 90210, U.S.A.

14. Vide order dated 24.10.2008 the defendants were proceeded ex-parte.

15. The plaintiff adduced the *ex-parte* evidence by way of affidavit of Ex. PW-1, Col. J.K. Sharma (Retd.) which is exhibited as Ex. PW-1/A. In the said affidavit, he has proved the following documents:

- (i) Ex. PW-1/1 which is the power of Attorney dated 01.10.2003 authorizing him to swear the affidavit on behalf of the plaintiff.
- (ii) Ex. PW-1/2, The Hilton India Directory listing the plaintiff's properties in India.
- (iii) Ex. PW-1/3, the certified copy of the certificate of the trade mark bearing registration number 495832B.
- (iv) Ex. PW-1/4, the certified copy of the order dated 24.10.2008.
- (v) Ex. PW-1/5, 6 and 7 are the samples of defendant's business card, invoices and photographs of the defendant's premises respectively.
- (vi) Ex. PW-1/8, the affidavit of the defendants stating that they have changed the name of the Hotel to HOTEL CHANDAPOLE PALACE.
- (vii) Ex. PW-1/9, the compromise application signed by the parties but could not be foiled as the defendant had not signed and notarized the supporting affidavit of the said application.
- (viii) Ex. PW-1/10 the telephone directory indicating the name of the U & I center in New Delhi.

16. The affidavit filed in *ex-parte* evidence has gone unrebutted as no cross-examination of PW-1 was conducted by the defendants. Therefore the evidence of the plaintiff has to be taken as correct. Under these circumstances, the plaintiff is entitled to the decree for permanent injunction. The suit of the plaintiff is decreed in terms of prayers (i), (ii), (iv) & (vi) of para 22 of the plaint. As far as prayer (iii) of para 22 of the plaint is concerned, the plaintiff has not been able to prove the damages. Therefore, the same is rejected. All pending applications also stand disposed of.

MANMOHAN SINGH, J.

NOVEMBER 08, 2011