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

+ CS(OS) 1919/2010

% Judgment dated 10.04.2012

M/S INVITATION BANQUET Plaintiff
Through Mr. Shailen Bhatia and Ms. Jubli
Momalia, Adv.

versus

M/SJOLLY INVITATION BANQUET Defendant
Through Nemo

CORAM:
HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J (ORAL)

1. The present suit has been filed by the plaintiff against the defendant, restraining infringement of trademark, passing off of trademark, infringement of copyrights, damages, delivery up. etc.
2. In this case, despite service of summons / notice the defendant did not enter appearance, on 19.01.2011 the defendant was proceeded *ex parte* and plaintiff was directed to file *ex parte* evidence by way of affidavits.
3. Plaintiff has filed the affidavit by way of evidence of Sh.Subhash Kakkar (PW-1), who is a partner of the plaintiff firm. The affidavit of the Sh.Subhash Kakkar is exhibited as Ex.PW-1/A. PW-1 has deposed that the plaintiff firm M/s.INVITATION BANQUET is a registered partnership firm having office at B-52, G.T. KARNAL ROAD, DELHI; and the plaintiff also has an office at 6, Bhama Shah Road, Near Nanak Pao Gurudwara, Delhi, having following partners:

- (i) Sh. Kewal Kishan Kakkar
- (ii) Sh. Subhash Kakkar
- (iii) Smt. Urmil Kakkar
- (iv) Sh. Davindar Kakkar

4. Copy of the partnership deed dated 28.08.1990 of the plaintiff firm has been filed and is exhibited as Ex.PW-1/1. This witness has deposed that the plaintiff firm is an old established firm engaged in the business of providing food and drinks and organizing functions, ceremonies, etc.; and the partners of the plaintiff are in this business of outdoor catering since 1987 and a restaurant was opened under the name "Invitation" in Ashok Vihar, Delhi. The firm M/S INVITATION BANQUET was established in the year 1990; and the plaintiff firm is duly registered under the Sales Tax and Excise authorities. Copies of the Sales Tax Registration Certificate and Certificate of Registration under Excise authority are exhibited as Ex.PW-1/2 and Ex.PW-1/3 respectively. The Plaintiff firm has also obtained a Certificate of registration in respect of an eating house which is mandatory under section 112 of the Delhi Police Act, 1978. A copy of the latest renewed Certificate of registration of an eating house is exhibited as Ex.PW-1/4.
5. PW-1 has further deposed that the plaintiff firm simultaneously adopted the trade-mark "INVITATION" for the aforementioned services; and for the first time, the plaintiff invented, designed and adopted an artistic label in the form of a bird carrying the envelope over the written word Invitation. It is deposed by this witness that the devise is original and qualifies to be an artistic work; and the Menu Cards of the restaurant under the name "Invitation" of the plaintiff firm depicting such artistic

work are exhibited as Ex.PW-1/5.

6. Sh.Subhash Kakkar has further deposed that on 17.05.2006, the plaintiff applied for registration of the service mark “Invitation” (label) for the services of providing of Food and Drinks; and the application was numbered as 1454631 in class 42. This witness has also deposed that after the due formalities, the application was advertised in Journal No.1399 and the Registrar of Trade Marks was pleased to grant registration to the Plaintiff; and the aforesaid registration is valid and subsisting in favour of the plaintiff. Copies of the Registration Certificate and the trade mark Journal No.1399 are exhibited as Ex.PW-1/6 and Ex.PW-1/7 respectively.
7. Sh.Subhash Kakkar has also deposed that the plaintiff is the first and prior adopter of the artistic work titled as Invitation Banquet and the same is protected under the provisions of the Copyright Act 1957 under No. A-67312 / 2004. Copy of the extracts from the Register of Copyright is exhibited as Ex.PW-1/8.
8. Sh.Subhash Kakkar has next deposed that plaintiff is one of the leading Banquet Restaurants in Delhi and is known for its food and drink and organising of functions, marriages and ceremonies etc. Plaintiff’s Banquet hall at B-52, G.T. Karnal Road, Delhi is a chosen spot by the Citizens of Delhi for performing weddings, engagements, other related ceremonies such as ladies sangeet, birthdays etc.; plaintiff firm arranges for all festivities, food, pandal decoration, flower decoration, stage decoration etc.; and the trade mark /service mark “Invitation” is synonymous with quality services, good arrangement, hygienic conditions, tasty food, sophisticated décor, friendly staff with alert security and supervisory staff, resulting in hassle free organizing of the functions. PW-1 has also deposed that the trade mark / service mark Invitation is synonymous with

such good quality service offered by the plaintiff. The plaintiff has done substantial quantum of business under the trade mark/trade name / service mark Invitation which is evident from the turnover of the plaintiff firm reproduced herein below:

YEAR WISE DETAILS OF SALES FIGURES

<u>YEAR</u>	<u>TURNOVER</u>	<u>(IN</u>
		<u>RUPEES)</u>
1999-2000	70,19,431/-	
2000-2001	86,02,919/-	
2001-2002	92,21,150/-	
2002-2003	99,61,425/-	
2003-2004	1,17,54,715/-	
2005-2006	1,53,79,550/-	
2006-2007	1,39,68,889/-	
2007-2008	1,10,50,623/-	
2008-2009	1,17,68,070/-	
2009-2010	1,07,32,485/-	

9. PW-1 has also deposed that these figures suggest that the plaintiff’s services are being accepted in the market and the gradual increase in turnover has been the result of hard work, dedication and maintenance of high standard and quality of the services. Various invoices of the plaintiff under the mark Invitation are collectively exhibited as Ex.PW-1/9.
10. PW-1 has also deposed that the trade-mark “Invitation” is omnipresent on stationery, plates, tissue papers, various crockeries, welcome signs strategically placed at various places; and hence the trade mark/service mark INVITATION of the plaintiff is highly popular and has carved a niche for itself. PW-1 has also deposed that the families from Punjab, Uttar Pradesh, Himachal Pradesh and Haryana regularly come to Invitation Banquet to hold their own ceremonies as well as to attend

functions, marriage ceremonies of relatives and friends. The advertisements of the plaintiff firm are collectively exhibited as Ex.PW-1/10.

11. PW-1 has also deposed that the plaintiff has banquets at G.T. Karnal Road Industrial Area and Kirti Nagar, Delhi as well as a Restaurant at Ashok Vihar, Delhi under the name INVITATION. Plaintiff has the following halls in the premises at G.T Road with the name Invitation Banquet:
 - a) Hall no. 1 having capacity of 350 persons and is called Invitation ceremonial.
 - b) Hall no. 2 having capacity of 250 persons.
12. It is deposed by PW-1 that the banquet Hall at Kirti Nagar has 3 halls having capacity of 700 each. The photographs of the plaintiff's Banquet Halls are collectively exhibited as Ex.PW-1/11. The plaintiff has established itself as the market leader. Plaintiff has by its endeavour built a handsome reputation and goodwill for the trade mark/ Service mark "Invitation". The Plaintiff has attained an unrivalled reputation and goodwill for its trade mark/Service mark 'Invitation'. The trade mark/Service mark 'Invitation' is associated exclusively with the services of the plaintiff. Thus, on account of continuous and extensive use of the trade mark 'Invitation' in relation to food and drink services by the plaintiff, the trade mark/Service mark 'Invitation' denotes and connotes the services provided by the plaintiff and of none else. The public as also the traders associate the trade mark / service mark 'Invitation' exclusively with the services of the plaintiff. Similarly, the trade mark 'Invitation' has come to be exclusively associated with the plaintiff firm. It is further deposed by this witness that many years of perseverance, hard work, honesty, sustained good quality, fair pricing etc... has led to the creation of an enviable reputation for the trade mark 'Invitation'; and the people

have come to believe that any service produced by the plaintiff under the service mark 'Invitation' would be of excellent quality and material.

13. Sh.Subhash Kakkar has further deposed that the defendant is M/S.JOLLY INVITATION BANQUET having office at Galaxie Mall, Site – V Link Road, Near Bikaner Wala Sweets, Sahibabad; and that the exact status of the said defendant is not known. It has also been deposed by PW-1 that in the month of June 2010, the plaintiff's attention was drawn to the trade name M/S.JOLLY INVITATION BANQUET being used by the defendant. The plaintiff has come to know that the defendant is offering outdoor catering services in Sahibabad, Ghaziabad and areas of Eastern Delhi under the service mark Invitation. The defendant has copied the entire trade mark/service mark 'Invitation' of the plaintiff; thus, the defendant is violating statutory and common law rights of the plaintiff in respect of trade mark/service mark 'Invitation'. The coloured photographs showing the alleged use of the trade mark / service mark 'Invitation' by the defendant are exhibited as Ex.PW-1/12.
14. Sh.Subhash Kakkar has further deposed that the plaintiff on coming to know of the above factum immediately through its counsel sent a legal notice dated 18.06.2010 to the defendant.
15. A copy of the notice dated 18.06.2010 has been exhibited as Ex.PW-1/13. The aforesaid notice was returned unserved. An envelope showing the above notice that remained unserved has been exhibited as Ex.PW-1/14.
16. Sh.Subhash Kakkar has further deposed that the plaintiff got a fresh notice dated 17.07.2010 issued by the counsel and the postal records show that the same has been received by the defendant. It has also been deposed by PW-1 that the defendant has not given any reply to the said notice and has deliberately chosen to ignore the notice. Copy of the notice dated 17.07.2010 is exhibited as Ex.PW-1/15. Copies of the postal receipt of

the legal notice dated 17.07.2010 and of the postal record showing delivery of legal notice dated 17.07.2010 are exhibited as Ex.PW-1/16 and Ex.PW-1/17 respectively.

17. Sh.Subhash Kakkar has further deposed that the use of the trade mark/service mark Invitation by the defendant is bound to cause confusion and deception amongst the public and in the course of trade as a result of which, the public will be misled into thinking that the defendant's services bearing the word "Invitation" originate from the same source i.e. the plaintiff. The trade mark/service mark "Invitation" of the defendant is identical to the well known trade mark of the plaintiff; and the defendant had no reason whatsoever to adopt the trade mark/service mark "Invitation" of the plaintiff. The defendant seeks to gain the maximum mileage possible of its misrepresentations of being somehow connected with the plaintiff; and the use of the trade mark/service mark "Invitation" on identical services available in the identical trade channel is bound to cause immense confusion and deception. It has also been deposed that the triple identity test of identical services, identical trademarks/ service mark and identical trade channel are fully satisfied in the present case and that the defendant has deliberately sought to adopt the trade mark/service mark "Invitation" with the sole objective of seeking illegal profits by passing off its inferior services as the services of the plaintiff. It has further been deposed that the services of the parties are identical and therefore, the plaintiff has no other option but to file the present suit and seek an injunction against the defendant restraining it from illegally using the trade-mark / service mark "Invitation".

18. Sh.Subhash Kakkar has further deposed that the plaintiff has Banquets at G.T Karnal Road and at Kirti Nagar; and that the use of the trade mark / service mark Invitation at premises in Sahibabad by the Defendant would create an impression that the plaintiff has given a franchise in the NCR region to the defendant. The plaintiff has an exclusive right to use the word Invitation for providing service of food and drink; and the defendant is violating the statutory / common law rights of the plaintiff. It has also been deposed that the adoption of the trade mark / service mark “Invitation” by the defendant is with a dishonest motive to create mischief and deceive the purchasing public thereby, seeking to create an impression that its premises are somehow connected with the plaintiff’s services. The defendant’s use of the trade mark/service mark “Invitation” amounts to passing off of the plaintiff’s trade mark/service mark “Invitation” and violation of common law rights vested in the plaintiff, which is in violation of the statutory rights of the plaintiff in the trade mark/service mark “Invitation”.
19. Sh.Subhash Kakkar has further deposed that the defendant has sought to illegally encash upon the reputation of the plaintiff for the trade mark/service mark “Invitation” by wrongly and illegally seeking to misappropriate the benefits of the good name, quality and wide advertisement of the Plaintiff for its products under the trade mark “Invitation”. The public would seek outdoor catering from the defendant under an impression that the defendant belongs to the chain of Banquets promoted by the plaintiff; and the defendant is seeking to piggy ride on the reputation of the plaintiff. The public would suffer due to such activities of the defendant, as inferior and unsatisfactory services would be provided by the defendant and guests at such a function would be under an impression that it is the plaintiff who has provided such inferior

service and the damages sought to be caused to the plaintiff would be colossal and difficult to quantify.

20. Sh.Subhash Kakkar has further deposed that the defendant's selection and use of the trade mark/service mark "Invitation" is not honest from its inception; and the defendant's use of the trade-mark 'Invitation' amounts to passing off of the services of the defendant as the services of the plaintiff. The defendant is violating the common law rights of the plaintiff and is dishonest in adoption of the trade mark/service mark "Invitation". The defendant is deliberately and with an ulterior motive using the word "Invitation". PW-1 has also deposed that the defendant is deliberately making false representations to show that the services of the defendant are the services of the plaintiff, however, the defendant has been aware of the reputation, quality and massive goodwill of the trade mark 'Invitation' of the plaintiff. It has also been deposed by this witness that the defendant cannot state that it had no knowledge / information of the adoption / extensive user of the trade mark "Invitation" by the plaintiff. Similarly, the defendant is infringing the copyright of the plaintiff, whereas the defendant has no locus standi in regard to the word INVITATION. The idea of use of the word INVITATION to the defendant has come from the plaintiff as the plaintiff is using the same for last 20 years.
21. Sh.Subhash Kakkar has next deposed that the adoption of such identical trade mark / service mark by the defendant is with a motive to deceive the purchasing public; and the defendant is seeking to create an impression that its services are somehow connected with the plaintiff. The defendant has no reason to adopt the trade mark/service mark "Invitation" and that the defendant is also violating the common law rights of the plaintiff. It is

also deposed that the plaintiff, due to its prior adoption coupled with extensive use, has an exclusive right to use the trade mark 'Invitation'. PW-1 has also deposed that the equity vests exclusively with the plaintiff and that the possibility of loss caused by damage to the plaintiff's business is immense and the inferior services of the defendant can destroy the valuable goodwill and reputation of the plaintiff.

22. Sh.Subhash Kakkar has further deposed that since there has been no interim injunction against the defendants in these proceedings, the plaintiff has already suffered, and continuing to suffer, irreparable and incalculable loss and damage to its business, goodwill and reputation; and that due to the intangible nature of the property, the exact monetary extent of the damage and injury is not capable of being ascertained. It is further deposed that the plaintiff has no knowledge about the extent and quantum of the sales of the impugned trade mark by the defendants; that this is a fact within defendants' personal knowledge; and that every sale by the defendant results in tarnishing the plaintiff's reputation as a quality service provider. The plaintiff has developed an exclusive goodwill for the trade-mark Invitation and hence the plaintiff suffered damages to the tune of Rs.21 lakhs and hence a decree of Rs.21 lakhs may be passed against the defendant and in favour of the plaintiff. The defendant has directed the business of the plaintiff towards the defendant and hence is liable to pay damages.
23. I have heard counsel for the plaintiff and perused the plaint, application and accompanying documents. The evidence led by the plaintiff remains unrebutted. The plaintiff has been able to establish that it is an old firm established in the year 1990, duly registered under the Sales Tax and Excise authorities of which copies of the respective certificates have been

collectively exhibited as Ex.PW-1/2 & Ex.PW-1/3. Plaintiff has also established that they are engaged in the business of providing food and drinks and organizing functions, ceremonies, etc., and that the partners of the plaintiffs have been in the business of outdoor catering since 1987 and thereafter a restaurant was opened under the name “Invitation” in Ashok Vihar, Delhi. The plaintiff has placed on record, a copy of the latest Certificate of registration in respect of an eating house as mandated under section 112 of DP Act, 1978 (Ex.PW-1/4). The plaintiff has also placed on record, the menu cards of the restaurant under the name “Invitation”, in support of its claim of original artistic work in the label depicting a bird carrying the envelope over the written word “invitation”, which was invented, designed and adopted by the plaintiff (Ex.PW-1/5). Copies of the Registration Certificate and trademark journal no.1399 have also been duly filed and exhibited as Ex.PW-1/6 & Ex.PW-1/7, evidencing the fact that the aforesaid registration is valid and subsisting in favour of the plaintiff. The invoices of the plaintiff’s yearly sales figures from the year 1999 till 2010 have also been placed on record, collectively exhibited as Ex.Pw-1/9, which suggests as to how the high standard and quality of its services has led to the plaintiff’s high turnover and acceptance in the market. The plaintiff has further placed on record the advertisements, Ex.PW-1/10, professing the popularity of its trademark/service mark “invitation” at various places and also placed photographs of its Banquet Halls on record which have been collectively exhibited as Ex.Pw-1/11 in order to show the extent of its business activities which have attained unrivalled reputation and goodwill. The plaintiff has also placed on record, coloured photographs exhibited as Ex.PW-1/12, showing alleged use of the trademark/service mark ‘invitation’, to buttress the fact that the defendant has copied the entire aforementioned mark resulting in

violation of the plaintiff's statutory and common law rights in respect of the trademark/service mark "invitation". The plaintiff has also placed on record copies of notices that were sent to the defendant as also copies of the postal receipts affirming the fact that such notices were sent and also that the same were received but to which the defendant did not furnish any reply. This court is of the view that the plaintiff has proved beyond doubt that it has an exclusive right to use the word "invitation" due to its prior adoption coupled with extensive use and that its label with the aforementioned depictions is indeed an original artistic work, of which the defendant has deliberately sought to adopt, with the sole objective of seeking illegal profits by passing off its inferior services as the services of the plaintiff in order to misappropriate the benefits of the good name, quality and wide advertisement of the plaintiff for its product under the trademark "Invitation".

24. Counsel for the plaintiff also prays for damages @ Rs.21,00,000/- for use of trademark/service mark "invitation". The infringement of the trademark of the plaintiff is not in dispute. Counsel for the plaintiff in support of his case has drawn attention of this court to a number of judgments [M/s L.T. Overseas Ltd. v. M/s Guruji Trading Co. and Anr. [CS (OS) No. 2711/1999; and Relaxo Rubber Limited and Anr. v. Selection Footwear and Anr., 1999 (19) PTC 578. Counsel has also placed reliance on Time Incorporated v. Lokesh Srivastava and Anr., 2005 (30) PTC 3 (Del) where apart from compensatory damages of Rs.5 lakhs, punitive damages have also been awarded. Justice R.C. Chopra, has set out in Time Incorporated's case (supra) that punitive damages are founded on the philosophy of corrective justice.

25. In view of above, the suit is decreed in favour of the plaintiffs and against the defendant in terms of paragraphs 27 (a), (b), (c) and (d) of the plaint. Plaintiff would be entitled to damages to the tune of Rs.1.00 lakh. Decree-sheet be prepared accordingly.

G.S.SISTANI, J

APRIL 10, 2012
rs/ssn