

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

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Date of decision: 23rd May, 2013

**+ CS(OS) 1544/2012, I.As. No.10146/2012 (u/O 39 R-1 & 2 CPC),
21156/2012 (of D-2 u/O 7 R-11 CPC), 21157/2012 (of D-2 u/O 8
R-1CPC), 21158/2012 (of D-1 u/O 7 R-11 CPC) & 21159/2012 (of
D-1u/O 8 R-1 CPC)**

UNITED COFFEE HOUSE

..... Plaintiff

Through: Mr. Sushant Singh, Ms. Geetika
Kapur, Mr. P.C. Arya and Mr. P.
Gowtham Advocates.

Versus

RAGHAV KALRA & ANR

..... Defendants

Through: Mr. T. Singhdev and Mr. Sudeep
Chatterjee, Advocates.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J

1. The counsel for the defendants seeks discharge. He states that he has given notice of the same to the defendants.
2. None appears for the defendants.
3. The defendants are ordered to be proceeded against *ex-parte*.
4. The plaintiff has instituted this suit for permanent injunction restraining the two defendants Mr. Raghav Kalra and Mr. Sunil Kalra from directly or indirectly dealing in goods and services more specifically

restaurant services, eateries, hospitality services etc. under the Trademark UNITED COFFEE HOUSE or any other Trademark deceptively similar thereto, which may cause passing off by the defendants of their such services as those of the plaintiff and for ancillary reliefs, pleading:-

- (i). that the Trademark and corporate name UNITED COFFEE HOUSE had made its beginning in the year 1942 when a partnership concern in the said name was established and commenced carrying on business in the heart of the city of New Delhi at Connaught Place;
- (ii). that the said business continued to be run smoothly in partnership from 1942 till 1990s;
- (iii). that in the year 1992 the defendant no.1 Mr. Raghav Kalra, then still a minor was admitted to the benefits of the said partnership firm with a share of 5%; the defendant no.2 Mr. Sunil Kalra then had a 15% share in the said firm;
- (iv). that the defendant no.1 in the year 2003 ceased to be a partner in the plaintiff firm and the share of the defendant no.2 Mr. Sunil Kalra was increased to 20%;
- (v). that in the year 2010 the defendant no.2 Mr. Sunil Kalra also retired from the plaintiff partnership firm and only Mr. Akash Kalra and Mrs. Divya Kalra continued as the partners of the plaintiff firm;

- (vi). that it was a term of consolidated Deed of Reconstitution and Retirement of the partnership firm that the continuing/new partners Mr. Akash Kalra and Mrs. Divya Kalra will continue the business of partnership under the name and style of UNITED COFFEE HOUSE;
- (vii). that the rights, title and interest of the defendant no.2 Mr. Sunil Kalra or of the defendant no.1 Mr. Raghav Kalra stood completely settled in view of relinquishing their share and accepting their respective share in the partnership;
- (viii). that the name UNITED COFFEE HOUSE enjoys impeccable goodwill and reputation in the market;
- (ix). the Trademark and/or corporate name UNITED COFFEE HOUSE belongs to the plaintiff partnership firm of which Mr. Akash Kalra and Mrs. Divya Kalra are today the only partners;
- (x). that the plaintiff firm has also adopted a distinctive logo and have also applied for registration of the Trademark UNITED COFFEE HOUSE and of the logo and which applications are pending registration;
- (xi). that the plaintiff in February, 2012 learnt that the defendants had applied for registration of the Trademark UNITED COFFEE HOUSE with an identical logo as that of the plaintiff and were intending to part with the same for consideration;

(xii). that the plaintiff immediately applied for cancellation of the said Trademark before the Intellectual Property Appellate Board (IPAB);

and simultaneously filed the present suit.

5. Summons of the suit and notice of the application for interim relief were issued and vide *ex parte ad interim* order dated 25th May, 2012, which remains in force, the defendants were restrained from manufacturing, marketing and offering for sale, directly or indirectly dealing in goods and services more specifically restaurant services, eateries, hospitality services etc. under the Trademark UNITED COFFEE HOUSE or any other Trademark deceptively similar to the said Trademark or from selling, assigning or parting with or alienating the registered Trademark UNITED COFFEE HOUSE to any third party.

6. Though the defendants entered appearance in the suit as far back as on 7th August, 2012 but have not filed any written statement till date and now as aforesaid have been proceeded against *ex parte*.

7. I have in judgment dated 30th January, 2013 in CS(OS) No.559/2010 titled ***Indian Performing Rights Society Vs. Gauhati Town Club*** MANU/DE/0582/2013 held that in suits of the present nature no purpose is served by mechanically calling upon the plaintiff to lead *ex parte* evidence. The matter has thus been examined to see whether the plaintiff is entitled to a decree forthwith.

8. The counsel for the plaintiff has contended that the defendants in the Indemnity Bond executed at the time of retirement from the plaintiff firm had unequivocally stated that they shall have no right, title or interest in the partnership firm and had settled all their claims and dues from the firm and nothing was due from them to the firm and had for consideration received relinquished all their rights in the firm including in the name of the business i.e. UNITED COFFEE HOUSE in favour of the continuing/new partners. It is further contended that if the defendants or anybody else by acquiring the registered Trademark UNITED COFFEE HOUSE from the defendants, opens a firm with identical Trademark and name UNITED COFFEE HOUSE for restaurant business, then the same will certainly give an impression that the said business is associated/affiliated to/licensed by or otherwise connected with the plaintiff. It is contended that the outgoing partners cannot be permitted to so, after receiving consideration, compete with the firm by adopting the same Trademark/name.

9. The plaintiff has filed before this Court the Deed of Reconstitution and Retirement dated 31st March, 2010 and the Indemnity Bond executed by the defendant no.2 Mr. Sunil Kalra besides various other documents in support of its case.

10. On the basis of the averments made in the plaint, and there being no rebuttal thereof by the defendants, I am satisfied that the plaintiff has become entitled to the relief sought of injunction. The defendants having not contested the suit, the counsel for the plaintiff does not press for the relief of delivery and damages.

11. A decree is accordingly passed in favour of the plaintiff and against the defendants in terms of prayer paragraphs (a) and (b) of the plaint, leaving the parties to bear their own costs.
12. Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J

MAY 23, 2013

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