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

+ **CS(OS) 882/2011**

% **Judgment dated 30th April, 2014**

RAFFLES INTERNATIONAL LTD.	 Plaintiffs
Through : Mr.Manav, Adv.	
versus	
MR. RAMANA	 Defendants
Through : None.	

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S. SISTANI, J. (Oral)

1. Plaintiff has filed the present suit for permanent injunction restraining passing off, for damages and accounts of profit.
2. Summons in the suit and notice in the application under order XXXIX Rules 1 and 2 were issued on 08.04.2011. Counsel for defendants no. 1 to 3 entered appearance on 12.05.2011 and the court was informed that defendant no. 2 had expired a few months back. Counsel for the defendants also sought time to file written statement. On 04.08.2011, on request of counsel for the defendants, by way of last opportunity, further time was granted to the defendants to file written statement. However, from the next date of hearing, i.e. 30.08.2011 neither counsel for the defendants appeared nor any written statement was filed by the defendants. Vide order dated 19.01.2012, fresh steps were taken to serve the defendants. On 10.02.2012, summons were directed to be served by way of affixation. As per order dated 30.03.2012, defendant no. 3 had refused to accept summons. Defendant no. 1 was served by means of publication in

the newspaper “Hindu” edition dated 23.08.12. On 15.10.2012, on request of counsel for the plaintiff, defendant no. 2 was deleted from the array of parties as he had already expired. Since despite service on multiple occasions, defendants no.1 and 3 failed to appear and file their written statement, they were proceeded *ex parte* vide order dated 15.10.12. *Ex parte* evidence of plaintiff was taken to be complete on 21.02.2014.

3. Plaintiff has filed affidavit by way of evidence of Mrs. Geeta Suresh, PW-1, Constituted Attorney of the plaintiff.
4. PW-1 has deposed that the plaintiff’s flagship property, the Raffles Hotel Singapore, was established in the year 1887 in Singapore and that the plaintiff and its affiliates own and/or manage hotels, resorts, properties and spas operating under the RAFFLES HOTELS & RESORTS, RAFFLES and AMRITA brands. It is further deposed that plaintiff is ultimately owned by Fairmont Raffles Hotels International, a leading global hotel company with over 85 hotels worldwide in operation under the Raffles, Fairmont and Swissotel trademarks, including the historical Raffles Hotels in Singapore as the flagship hotel for the Raffles brand.
5. It is next deposed by Ms.Geeta Suresh that the plaintiff, namely, Raffles International Limited is one of the largest luxury management companies in the world, with over 98 hotels worldwide in operation under the Raffles, Fairmont and Swissotel trademarks. She has further deposed that the RAFFLE’s mark/name spans across the globe from the exotic destinations to vibrant cities with 7 hotels and resort properties in existence and 14 properties under development all over the world. The plaintiff also offers luxury residence for private ownership under the RAFFLES RESIDENCE trademark. It is further deposed that rated as among the best in the world, multiple award winning RAFFLES hotels, resorts and residences are often

described as one of a kind and recognized as landmarks wherever they are located. Printout from the website showing a list of private residence that are currently under development in Indonesia, Macau, the Philippines, and Seychelles has been marked as **Exhibit PW1/2**.

6. PW-1 has also deposed that since its launch in 1887, the Raffles Hotels Singapore has become well known, not only in Singapore, but also worldwide. Among the distinguished guests that have visited or stayed at the Raffles Hotel Singapore include the renowned authors Joseph Conrad, and Rudyard Kipling, playwright, novelist and actor Noel Coward, actress Ava Gardner and Elizabeth Taylor, Queen Elizabeth II and Prince Phillip, as well as, the Duke of Edinburg. Printout from the website outlining the historical timeline of the Raffles Hotels Singapore from 1887 to 2008 has been marked as **Exhibit PW1/3**.
7. It is next deposed by PW-1 that in 1987, the Raffles Hotel Singapore was designated as a National Monument by the Singapore government. Printout evidencing historical timeline of the Raffles Hotel has been marked as **Exhibit PW1/4**.
8. PW-1 has further deposed that as a part of hotel and hospitality services provided by the plaintiff, the plaintiff's Raffles Hotel Singapore also hosts meetings and events for corporate and social functions within the hotels premises. In particular, the Raffles Hotel Singapore has a meeting concierge service whereby a dedicated meeting coordinator assists in planning meetings and events for corporate clients.
9. PW-1 has next deposed that amongst the prestigious meetings, events and concerts held at Raffles Hotels Singapore, is the Raffles Wine, Food and Arts Experience which is staged annually at Raffles Hotel Singapore since 1995 and which sees the gathering of internationally acclaimed chefs,

vintners and special guests from all around the world, all at one event for five consecutive days, the Raffles' Annual Gala Christmas Tree Dinner and Auction which has been held annually at Raffles Hotels Singapore for 17 years. Printout from the website evidencing these functions has been filed and marked as **Exhibit PW1/5**.

10. PW-1 has further gone on to depose that as a part of its food and beverage services under the hospitality arm, Raffles Hotel Singapore also has an institution, RAFFLES CULINARY ACADEMY which offers a variety of cooking and speciality classes to gourmets, food hobbyists and amateur chefs. It is next deposed that classes are conducted at the Raffles Hotel Arcade by a team of award-winning culinary professionals and the most sought – after visiting chefs from around the world. Apart from hands-on cooking classes and cooking events, the RAFFLES CULINARY ACADEMY also has a private dining room which is available to guests for private and corporate events. Printout from the website evidencing the same has been filed and marked as **Exhibit PW1/6**.
11. PW-1 has also deposed that the plaintiff's affiliate, Raffles Hotels & Resorts, is also involved in the educational sector. In March 2008, Raffles Hotels & Resorts in collaboration with Republic Polytechnic established the Raffles School of Hospitality at Republic Polytechnic which is a significant milestone in education history as for the first time in Singapore, a Singapore polytechnic has collaborated with an international award winning hotel chain. Printout from the website evidencing the same has been marked as **Exhibit PW1/7**. Print out of the press release at the time of the launch of the Republic Polytechnic has been filed and marked as **Exhibit PW1/8**. Plaintiff has further deposed that following statements in

the Republic Polytechnic's press release establishes the great reputation enjoyed by them:

“Collaboration with premier hospitality brand brings poly hospitality education and training to a new level”.

“With the adoption of the Raffles brand, which is synonymous with excellence in hospitality business, RSH@RP will be a premier hospitality school that produces graduates who are not only academically endowed but also proficient in the service skill-sets and mindsets required by leading organizations in the hospitality industry.”

12. PW-1 has further stated that from the above statements it is evident that the brand RAFFLES is a premier hospitality brand and is synonymous with excellence in the hospitality business. PW-1 has further deposed that plaintiff and its affiliates have invested a lot of time, effort and money in the promotion and marketing of the RAFFLES trade mark and the RAFFLES family of trade marks in Singapore and worldwide. One of the forms of promotion and publicity is the plaintiff's corporate website at www.raffles.com which is available and accessible to the public all over the world. The website has, inter alia, an online media room which contains numerous press releases showing use of the RAFFLES trade mark and RAFFLES family of marks available at ([http://www.raffles.com/ENRA/LeftFooterNavigation/Media Room/press release](http://www.raffles.com/ENRA/LeftFooterNavigation/MediaRoom/pressrelease)). The plaintiff also has a newsletter titled “Rafflesworld” which is readily available online at <http://rafflesworld.raffles.com> and copies of the same are also widely circulated to the plaintiff's clientele all over the world. Articles published in Rafflesworld and various magazines have been collectively marked as **Exhibit PW1/9**. PW-1 has also deposed that the plaintiff frequently advertises its services under the RAFFLES trade mark and the RAFFLES

family of trade marks in various newspapers, magazines and printed publications and that the mark/name RAFFLES is inextricably associated with the plaintiff and the same connotes and denotes only the plaintiff.

13. PW-1 has also deposed that the plaintiff's premium and luxury-class hotels and resorts have secured numerous international awards and accolades, including Conde Nast World's "Best places to stay" and Travel & Leisure "World's best awards". The plaintiff's flagship property, the Raffles Hotel Singapore, was named "Best Boutique Hotel in Asia" in 2009 by readers of Business Travel Asia Pacific and Raffles Hotel Singapore was also selected as one of the top 500 Hotels of the world by Travel+Leisure in 2009. Raffles Hotel Singapore was also ranked 3rd among the best Overseas Hotel by Luxury Travels Gold List awards 2009. Raffles Hotel Singapore also features in the Conde Nast Traveler's 2009 Gold List. PW-1 has further deposed that plaintiff has grown to become renowned and amongst the largest luxury hotel management companies in the world. A printout from the website showing a list of some of the awards and accolades received by the plaintiff and its affiliates and also the awards won by the plaintiff reported in magazine has been marked as **Exhibit PW1/10**.
14. PW-1 has also deposed that the hotel and resort properties owned and/or managed by the plaintiff and its affiliates under the RAFFLES trade mark all over the world include:
 - a. Raffles Hotels in Singapore;
 - b. Raffles Grand Hotel d'Angkor, in Siem Reap, Cambodia;
 - c. Raffles Hotel Le Royal, in Phnom Penh, Cambodia;
 - d. Raffles Beijing Hotel in China;

- e. Raffles Dubai in the United Arab Emirates;
- f. Raffles L'Ermitage Beverly Hills in the U.S.; and
- g. Raffles Resort Canouan Island in The Grenadines.

15. PW-1 has further deposed that in addition to the already existing hotels, RAFFLES hotels and resorts which are in the pipeline include:

- a) Paris in France;
- b) Sanya and Tianjin in China;
- c) Bali and Jakarta in Indonesia;
- d) Macau;
- e) Makati in the Philippines;
- f) Da Nang in Vietnam;
- g) Praslin in Seychelles;
- h) Marrakech and Taghazout in Morocco;
- i) Moscow in Russia;
- j) San Cristobal in Mexico; and
- k) Olympia in Greece.

Printout from the website showing the worldwide locations of the plaintiff's hotels and resorts in operation under the RAFFLES mark, as well as, hotels and resorts that are under development has been filed and marked as **Exhibit PW1/11**.

16. PW-1 has next deposed that RAFFLES mark is also used by the plaintiff and its related companies in the sporting arena. The RAFFLES HOTELS & RESORTS CUP, often referred to as the RAFFLES CUP, is a prestigious horse-racing event in Singapore since 2000. Each of the races

is named after a Raffles Hotel and resort and is broadcasted live via cable television. It has further been deposed that some of the statements made about Raffles Hotel by third parties, hence illustrating that the Raffles Hotel is well known and widely recognized in Singapore are as follows:

“Not just any hotel, mind you – but the world-famous Raffles Hotel, a Singapore icon and part of the Raffles Hotel & Resort Group...”

The New Paper on 27 October 2007.

“We are delighted to renew our partnership with Raffles Hotels & Resorts. Like the legendary Raffles brand...”

Yu Pang Fey, President and Chief Executive of Singapore Turf Club.

17. PW-1 has also deposed that by virtue of the long and extensive use and publicity of the plaintiff’s RAFFLES mark and RAFFLES family of marks, in Singapore and worldwide, the plaintiff has acquired substantial goodwill and reputation both locally and globally. The use of the mark/name RAFFLES and variations thereof in respect of hotels, resorts, residences, hospitality services and educational services is firmly embedded in the minds of travellers worldwide as being exclusively associated with the plaintiff and its affiliates and their quality service and excellence, and with no other.
18. It is also deposed by PW-1 that apart from its enormous goodwill and reputation, the Raffles mark is also registered by the plaintiff in many countries of the world including Australia, Brunei, Cambodia, China, Ecuador, Honk Kong, Indonesia, Japan, Korea, Macau, Malaysia, Mexico, Morocco, New Zealand, Peru, Philippines, Russia, Sabah, Sarawak, Singapore, Switzerland, Thailand, United Arab Emirates, United States of

America, United Kingdom and Vietnam. Copies of the global registrations of the Raffles mark in the name of the plaintiff are collectively marked as **Exhibit PW1/12**.

19. PW-1 has next deposed that the plaintiff has also secured legal protection for its Raffles mark via Community Trade Marks at the office for Harmonization in the International Market, which, ensures legal protection across numerous countries, in particular as a registered Community Trade Mark and in this regard, protection is secured under numerous countries including the European Union [that comprises of registrations held valid in all the members of the European Union], USA, Australia, India, Egypt, Hong Kong, Malaysia, Mexico, Philippines, Singapore, Turkey and Vietnam. Copy of Community Trade Mark Registration Certificate is marked as **Exhibit PW1/13**.
20. It is also deposed by PW-1 that in order to secure protection for its reputed Raffles mark in India, the plaintiff has filed applications for registration of its mark/name RAFFLES. Copy of the Trademark application of the plaintiff pertaining to the mark RAFFLES pending before the Trade Mark Registry has been marked as **Exhibit PW1/14**.
21. PW-1 has further deposed that the Raffles mark/name is an internationally famous mark/name and has acquired an extensive and valuable reputation and goodwill as a mark/name owned by the plaintiff.
22. She further goes on to state that plaintiff has also spent huge amounts on advertisements and the advertisement expenditure incurred by the plaintiff for the Raffles mark/name for the period 2004 to 2009 has been stated in the plaint and the same is true and correct. PW-1 has next deposed that the plaintiff's hotels under the well known Raffles mark/name also generate revenue running into millions of rupees. The annual financial statements of

the plaintiff for the period 2008 – 2009 have been marked as **Exhibit PW1/15**.

23. Ms.Suresh has further deposed that the reputation and goodwill of the Raffles mark/name is not limited to the shores of any one country and has flowed into India as well. There is also a large expatriate population of Indians in Singapore through whom the Raffles mark/name is well known to the people in India. Further, a lot of Indians also travel to Singapore as tourists. The details of the number of Indians travelling to Singapore, according to Tourism Board for the period 2007 – 2010 have been marked as **Exhibit PW1/16**. She has also deposed that due to advertisements in magazines and other forms of media reaching India, the reputation and goodwill of the Raffles mark has also spilled over into India.
24. It has further been deposed that Dubai Shopping Festival organized by the Dubai Government every year, attracts a large number of Indians to the Gulf Emirate to shop and enjoy their holidays with their families and friends and are thus exposed to the plaintiff's well known and famous Raffles Hotel in Dubai.
25. It has also been deposed by PW-1 that plaintiff has been vigilant in seeking recognition and protection of their statutory and proprietary rights in the Raffles mark. The favorable decisions obtained by the plaintiff recognising the fact that plaintiff's Raffles mark is considered as a famous mark are marked as **Exhibit PW1/18**.
26. PW-1 has next deposed that defendant 1 and 2, as partners, are running a hotel under the name and style of Defendant no.3 namely Raffles Residency in Hyderabad. She has also deposed that the Defendants have without the plaintiff's consent, used the RAFFLES name/mark that too in relation to an identical business; i.e., hotel industry. The defendants are

displaying the word RAFFLES and RAFFLES RESIDENCY prominently and mischievously outside their hotel as well as on their stationary and documents such as business cards, brochures, envelopes etc. The aforesaid wrongful act of the Defendants in using an identical name in respect of an identical business constitutes violation of the plaintiff's common law rights.

27. PW-1 has also deposed that the plaintiff first learnt about the Defendants' business in the month of October 2009 wherein the Defendants were using the mark/name RAFFLES in respect of Hotel business. The plaintiff immediately issued a Cease & Desist Legal notice dated 23rd October 2009 upon the Defendants thereby directing them to restrain their illegitimate use of the Raffles mark as the said mark/name RAFFLES is exclusively associated with the plaintiffs. An office copy of the cease and desist notice dated 23rd October, 2009, addressed to the Defendants has been marked as **Exhibit PW1/19**. She also deposed that as the defendant failed to comply with the requisitions elucidated in the cease and desist notice dated 23rd October 2009, a further reminder notice was sent to the Defendants on 30th November, 2009, asking them to comply with requisitions of the notice dated 23rd of October 2009. Office copy of the reminder notice dated 30th November, 2009, has been marked as **Exhibit PW1/20**. Thereafter, the plaintiff has on numerous occasions telephonically contacted the Defendants' representatives asking them to cease use of the Raffles name and also comply with the requisitions as stated in the cease and desist notice dated 23rd October, 2009. However despite the plaintiff's repeated follow-ups subsequent to the legal notice and reminders thereof the Defendants has continued their illegal activities under the mark/name RAFFLES. It is evident that the Defendants were undoubtedly aware of

the plaintiff's Raffles mark which is being used by the plaintiff for decades all across the world in an identical business. The *malafide* conduct of the Defendants are further excerpted from the fact that despite being put on notice by the plaintiff of its rights and violation thereof by the Defendants the Defendants have chosen to ignore the rights of the plaintiff and continued their illegal activities at its own peril thereby causing irreparable hardships and loss to the plaintiff.

28. It is further deposed by PW-1 that the activities of the Defendants are deliberate as the Defendants cannot claim to be unaware of the plaintiff's Raffles trade mark, which is a well-known and renowned trade mark throughout the world. The adoption of the word RAFFLES by the defendants is *malafide* and the same cannot be a matter of coincidence. And the same has been done with sole motive of encashing upon the goodwill and reputation of the plaintiff. It is deposed by PW-1 that the Defendants have in fact maliciously appropriated a trade mark / trade name identical to that of the plaintiff in respect of identical business so as to capitalize on the goodwill, reputation and ready-acceptance of the plaintiff's Raffles mark/name and to obtain illegal pecuniary and other advantages from its use.
29. PW-1 has further deposed that the Defendants are not only wrongfully using an identical name/mark Raffles in the same line of business but they are also operating a website www.rafflesresidency.com in respect of their hotel business. A printout of the Defendant's website www.rafflesresidency.com has been marked as **Exhibit PW1/21**. The very use of the said website by the Defendants wherein the word RAFFLES is a prominent part amounts to gross violation of the plaintiff's intellectual property rights. The Defendant's use of the website

www.rafflesresidency.com if permitted to be continued, would enhance the chances of confusion and deception among the trade and public as any person accessing the said website shall in all probabilities associate and link the Defendant's hotel and business under the name Raffles Residency as having affiliation and association with the famous and well known Raffles Hotel of the plaintiff thereby causing misrepresentation in the eyes of public at large and in turn also leading to dilution of the RAFFLES mark/name of the plaintiff. The defendants have not restricted their website www.rafflesresidency.com to a mere informative website alone but are also soliciting and working for gain through the said website. The Defendants' website www.rafflesresidency.com is an interactive website whereby the Defendants are making online booking of rooms in their hotel. PW-1 has further deposed that plaintiff had instructed her to book a room in the Defendants' hotel for one day on 24th of March, 2011, through the Defendant's website www.rafflesresidency.com. The relevant document showing booking of the room from the website www.rafflesresidency.com of the defendant has been marked as **Exhibit PW1/22**. She has further deposed that the defendant's interactive website www.rafflesresidency.com evidences the fact that they are soliciting, carrying on business and working for gain all over the India including Delhi. The defendants have every intention to further expand their already existing business in Delhi and if the activities of the Defendants under the name/mark RAFFLES are not put to halt, the threat apprehended by the plaintiff of the Defendants further expanding their already existing business in Delhi would materialize. PW-1 has next deposed that the booking at the hotel of the defendant is not only restricted to its website www.rafflesresidency.com but the same can also be done from other links

wherein the said id facility is available. The Defendants' Raffles residency is also found on the links namely: <http://hotels.makemytrip.com/makemytrip/hotel>.

30. PW-1 has also deposed that the Defendants have deliberately and maliciously adopted the word RAFFLES as part of their name and websites. The very adoption of an identical word to the plaintiff's well-known Raffles mark/name is only with intention to pass-off their own services as those either directly originating from the plaintiff or at least consisting of some commercial or operational connection to the plaintiff such as licensing, an agency and so on. The Defendants have also misrepresented themselves and/or the potential services to be offered under the Raffles Residency as being some way connected with the plaintiff in order to deceive the general public at large who have placed so much faith in the plaintiff's Raffles Hotels that they are highly likely to be deceived by the services provided by the Defendants under the name 'Raffles Residency' in expectation that the Defendants have either a direct trade connection to the plaintiff or at least have an authorisation or a commercial connection to the plaintiff.
31. PW-1 has also deposed that the defendants have malafidely and wrongfully adopted and used the plaintiff's Raffles mark/name with a view to trade unfairly upon the plaintiff's long established reputation and goodwill. It is next deposed that the adoption and use of an identical "Raffles" mark/name by the Defendants in respect of the same services is prima facie fraudulent, dishonest and is bound to deceive and cause confusion amongst the public at large and further injure the long established reputation and goodwill of the plaintiff which spreads all across the world. It has further been deposed that plaintiff is the prior

adopter of the mark RAFFLES and has the exclusive right to its use and also prevent any unauthorized use of the same.

32. PW-1 has further deposed that the said adoption of the word Raffles as part of name/mark by the defendants will undoubtedly injure the plaintiff who will as a result of such use suffer irreparable damage to its reputation as it cannot by any stretch of imagination have any control over the quality of service being provided by the Defendants under the banner Raffles Residency. The result of such use will erode the goodwill and reputation that the plaintiff has painstakingly built for the mark/name RAFFLES for the last so many decades.
33. It is next deposed by PW-1 that in addition to the reputation, goodwill, consumer recognition and patronage acquired by the plaintiff's trade mark worldwide through the above mentioned use, the recognition and patronage for the Raffles mark has also 'spilled over' to India on account of various other factors and circumstances, inclusive of but not limited to, inter alia, the following:-

- a) That there are large communities of Indians living in Singapore, America, Europe, United Kingdom, Middle East and South East Asian countries who are indeed well aware of the high reputation of the Raffles mark and as such these communities are a part and parcel of the society of such countries and most of them are the citizens of such countries who have experienced staying at the Raffles Hotels & Resorts and have therefore contributed to the plaintiff's expansion of its brand RAFFLES to India.

- b) Similarly, there is a great flow of tourists, as well as, business professionals, students, government and semi-government officials who are travelling between India and foreign countries, as well as, foreign nationals who must have seen the Raffles hotels & resorts in Singapore, USA, Europe, UK, or other countries or must have at least been aware of the Raffles mark as one of the most popular trade marks in the world.
- c) That the plaintiff's Raffles mark has also acquired an excellent reputation and goodwill all across the world on account of the long use, high quality of the plaintiff's services and extensive advertising in international print and audio-visual media. The said reputation and goodwill exists, as well as, extends to India on account of information in media and also on account of stays at Raffles Hotels & Resorts by Indians on tour or residing in foreign countries.

34. PW-1 has also deposed that the distinctive and unique character of the plaintiff's Raffles trade mark/trade name is the life and blood of the business of the plaintiff. When an ordinary person mentions the Raffles mark in Hotel industry, an ordinary mind with imperfect recollection shall undoubtedly associate the services provided under the said mark as those being emanating from the plaintiff's Raffles chain of hotels which has its existence throughout the world.

35. It is next deposed that defendants have engaged in passing off their services bearing the RAFFLES mark/name as that of the plaintiff thereby encashing on the latter's goodwill and causing economic loss to them.

36. PW-1 has further deposed that the plaintiff had coined the mark/name RAFFLES in respect of Hospitality business decades ago and the Defendants cannot provide a plausible explanation for adopting an identical name which has been coined and invented by the plaintiff in respect of identical services.
37. PW-1 has further deposed that in view of the facts that the plaintiff's RAFFLES trade mark/name has a high degree of inherent distinctiveness; has been used extensively over a long period of time spanning a wide geographical area; has been given tremendous publicity and attained immense popularity; it is well recognized by members of the trade and public, therefore, the plaintiff is entitled to protection against its misappropriation for goods or services.
38. I have heard counsel for the plaintiff and perused the record. The affidavit by way of evidence which has been filed and also the documents which have been placed on record, remain unrebutted. Printout from website showing the worldwide locations of the plaintiff's hotels and resorts in operation under the mark "RAFFLES" has been exhibited as Ex. PW-1/11. Copies of global registrations of the "Raffles" mark in the name of the plaintiff are marked as Ex. PW-1.12 (colly). Copy of Community Trade Mark Registration certificate of the plaintiff is marked as Ex. PW-1/13. Copy of the trademark registration application of the plaintiff, pending in India is marked as Ex. PW-1/14. Printout evidencing the historical timeline including designation of the Raffles Hotel, Singapore in 1987 as a national monument by the Singapore Government has been exhibited as Ex. PW-1/4. Printout from the website evidencing prestigious functions and events organized by the plaintiff's hotels in Singapore, which are staged annually ever since 1995 and which see the gathering of internationally acclaimed

chefs, vintners and special guests from all over the world, thus proving the enormous goodwill and reputation enjoyed by the plaintiff in Singapore, has been exhibited as Ex. PW-1/5. Printout from the website evidencing the activities conducted by RAFFLES CULINARY ACADEMY, an institution under the Raffles Hotel, Singapore which attracts award-winning culinary professionals and the most sought after visiting chefs from around the world, and thus, evidencing the large scale popularity of the plaintiff's hotels under the mark "Raffles" is exhibited as Ex. PW-1/6. Various press releases evidencing the large scale popularity, goodwill and reputation enjoyed by the plaintiff in the hospitality industry under the trade name/mark "RAFFLES" have been exhibited as Ex. PW-1/8. Printouts proving the extensive use of the domain name www.affles.com and the availability of widely read newsletter of plaintiff called "Rafflesworld" which is circulated to the plaintiff's clientele all over the world are exhibited as Ex. PW-1/9 (Colly). A printout from the website showing the various awards and accolades received by the plaintiff is exhibited as Ex. PW-1/10. Favourable decisions obtained by the plaintiff wherein plaintiff's mark "Raffles" has been considered to be a famous mark are exhibited as Ex. PW-1/18.

39. On the basis of the above mentioned documents, the plaintiff has been able to establish beyond any shadow of doubt that the said mark of the plaintiff i.e. "RAFFLES" has been put in use by the plaintiff in the hospitality industry, since as far back as in 1887 in Singapore when the plaintiff established its flagship property the "Raffles Hotel, Singapore". Plaintiff has also established that since its launch in the year 1887 in Singapore, over a period of time, the plaintiff's chain of hotels and resorts has become well known not only in Singapore, but in numerous countries across the

globe wherein the plaintiff has also acquired registration of its trademark “Raffles”. The various press releases praising the excellent quality of services provided by the plaintiff under the said mark in the hotel industry further proves the goodwill and reputation enjoyed the plaintiff under the said mark. Furthermore, the fact that some of the most renowned chefs from world over have been gracing the events organized by the plaintiff on annual basis and the fact that the plaintiff boasts of clientele comprising some of the most renowned celebrities including actors, play writers, Queen Elizabeth II, Prince Phillip, the Duke of Edenburg etc. and also the fact that the plaintiff’s hotel under the said mark has been designated as a National Monument by the Singapore Government establish the fact that the plaintiff’s popularity, goodwill and reputation exists at a global level. Furthermore, the excellent services provided by the plaintiff under the said trade mark in the hospitality industry is evident from the numerous awards and accolades earned by the plaintiff and the annual turnover enjoyed by the plaintiff. Furthermore, plaintiff has also proved extensive and long standing use of the domain name www.raffles.com by the plaintiff in order to advertise and make the services of its hotels available to its customers world over, through the internet.

40. In view of the above, plaintiff has the exclusive right to use the trademark “RAFFLES” and domain name www.raffles.com with respect to its goods and services.
41. The Apex Court in the case of ***Laxmikant V Patel v. Chetanbhai Shah And Another*** reported at (2002) 3 SCC 65, has laid down the test of confusion/deception in order to prove the case of passing off. Relevant para of the aforesaid judgment reads as under:-

“10. A person may sell his goods or deliver his services such as in case of a profession under a trading name or style. With the lapse of time such business or services associated with a person acquire a reputation or goodwill which becomes a property which is protected by courts. A competitor initiating sale of goods or services in the same name or by imitating that name results in injury to the business of one who has the property in that name. The law does not permit any one to carry on his business in such a way as would persuade the customers or clients in believing that the goods or services belonging to someone else are his or are associated therewith. It does not matter whether the latter person does so fraudulently or otherwise. The reasons are two. Firstly, honesty and fair play are, and ought to be, the basic policies in the world of business. Secondly, when a person adopts or intends to adopt a name in connection with his business or services which already belongs to someone else it results in confusion and has propensity of diverting the customers and clients of someone else to himself and thereby resulting in injury.”

[Emphasis Supplied]

42. In the case of *Madhuban Holiday Inn v. Holiday Inn Inc.* reported at (2002) 100 DLT 306, grant of permanent injunction for infringement of trade mark and passing off was sought against the appellant company which was in the same business as the respondents i.e. hotel industry, thus, refraining them from using the words “*Holiday Inn*” as a part of their trademark/trade name as it was deceptively similar to the trade name under which the respondent company had been carrying on its business i.e. “*Hotel Inn Inc.*” Following observations were made by the court:

“50. The respondent company Holiday Inn Inc. is a registered company in the United States of America. The company has acquired immense global reputation. It has a large number of hotels in various parts of the world. The adoption of the words “Holiday Inn” by the

appellants from the very inception was based on the doctrine of bad faith. The appellants were fully aware of the considerable transborder reputation of the respondent and they wanted to derive pecuniary benefits from their reputation. The question that arises is that out of the millions of words of English language why did the appellants adopt only the words “Holiday Inn”. The answer has to be that the appellants deliberately adopted these words to ride on the immense global reputation of the respondent. The intention of the appellants becomes absolutely clear after seeing the computer print out of the appellants and respondents pages taken from the internet under the heading “Holiday Inn, Delhi”. These documents were placed before us by the respondent. Under the heading “Holiday Inn” in the internet information about the respondent's hotel world wide is given. Similarly the appellant, Kapoor Holiday Inn, also has a web site in the internet under the heading “Kapoor Holiday Inn” giving its tariff, location etc. and advertising itself as the “most distinguished address in New Delhi”. By giving all this description the appellants in fact wanted to ride on the reputation of the respondent and derive pecuniary benefit from it. As observed in *Simatul Chemical Industries Pvt. Ltd.* (supra), the test to be applied is the test of an average person with imperfect recollection. It would not be right to apply the test of a man of extraordinary memory who remembers the spelling of the name of each company or a person who jots down meticulously and methodically the names of companies in his diary and brings out his diary and contemplates whether he is dealing with one company or the other. The average persons likely to be deceived by or confused with the use of the words “Holiday Inn” by the appellants.

51. In our considered opinion, the adoption of the words “Holiday Inn” by the appellants is *ex facie* fraudulent and *mala fide* from the very inception. The words “Holiday Inn” have been adopted by the appellant to ride on the global reputation of the respondent. The appellant was actuated by bad faith and dishonest motive. In the facts and circumstances, the learned Single Judge was fully justified in the granting the injunction and decreeing the suits in order to protect the commercial goodwill and to ensure that the global business reputation of the respondent is not exploited by the appellants in a clandestine manner.”

[Emphasis Supplied]

43. The law with respect to application of legal norms to internet domain names has been discussed in the case of Satyam Infoway Ltd. v Siffynet Solutions (P) Ltd. Relevant paras are reproduced below:

“12. The original role of a domain name was no doubt to provide an address for computers on the internet. But the internet has developed from a mere means of communication to a mode of carrying on commercial activity. With the increase of commercial activity on the internet, a domain name is also used as a business identifier. Therefore, the domain name not only serves as an address for internet communication but also identifies the specific internet site.

16. The use of the same or similar domain name may lead to a diversion of users which could result from such users mistakenly accessing one domain name instead of another. This may occur in e-commerce with its rapid progress and instant (and theoretically limitless) accessibility to users and potential customers and particularly so in areas of specific overlap. Ordinary consumers/users seeking to locate the functions available under one domain name may be confused if they accidentally arrived at a different but similar website which offers no such services. Such users could well conclude that the first domain-name owner had misrepresented its goods or services through its promotional activities and the first domain-owner would thereby lose its customer. It is apparent, therefore, that a domain name may have all the characteristics of a trade mark and could found an action for passing off.”

[emphasis supplied]

44. Having regard to the evidence on record and applying the law laid down above, I am of the view that the impugned trademark of the defendants i.e. “Raffles/Raffles Residency” in the same line of business/identical business as the plaintiff’s i.e. hospitality business is wrongful, *malafide*, and dishonest and in complete violation of the common law rights of the plaintiff. It cannot be said that the defendants were not aware of the

existence of plaintiff's chain of hotels and resorts across the globe which enjoy immense reputation and goodwill under the trademark "Raffles" and that the use of the same mark by the defendants is a matter of mere coincidence. In my opinion, the act of the defendants is deliberate and with the sole motive of encashing upon the trans-border goodwill and reputation enjoyed by the plaintiff and to obtain illegal pecuniary and other advantages from the use of the impugned mark. Furthermore, use of domain name "www.rafflesresidency.com" by the defendants, which is deceptively similar to the domain name of the plaintiff www.raffles.com would undoubtedly enhance the chances of deception and confusion in the minds of traders and general public as any person accessing the said website shall in all probabilities associate and link the hotels run by defendants under the name "Raffles Residency" as having affiliation and association with the famous and well known "Raffles" Hotel of the plaintiff thereby causing misrepresentation in the public at large and in turn also leading to dilution of the Raffles mark of the plaintiff. In my considered view, the defendants are passing off their services as those of the plaintiff and/or misrepresenting themselves to be in commercial/operational connection to the plaintiff thus causing confusion among the general public with respect to the origin of services offered by the defendants.

45. The plaintiff has also claimed damages on account of unlawful use of the name/mark Raffles by the defendants.
46. In the case of 'M/s L.T. Overseas Ltd. v. M/s Guruji Trading Co. and Anr. [CS (OS) No. 2711/1999] decided on 07.09.2005 this court had granted Rs.3 lakhs damages to the plaintiff. In another case of Hindustan

Machines v. Royal Electrical Applies, 1999 PTC (19) 685, a sum of Rs.3 lakhs was awarded.

47. In the case of *Proctor & Gamble Co. v Joy Creators* reported at 2011 (45) PTC 541 (Del), following observations were made by the court with respect to grant of punitive damages:

“23. Also, the Court needs to take note of the fact that a lot of energy and resources are spent in litigating against those who infringe the trademark and copyright of others and try to encash upon the goodwill and reputation of other brands by passing off their goods and/or services as those of that well known brand. If punitive damages are not awarded in such cases, it would only encourage unscrupulous persons who actuated by dishonest intention, use the well-reputed trademark of another person, so as to encase on the goodwill and reputation which that mark enjoys in the market, with impunity, and then avoid payment of damages by remaining absent from the Court, thereby depriving the plaintiff an opportunity to establish actual profit earned by him from use of the infringing mark, which can be computed only on the basis of his account books. This would, therefore, amount to putting premium on dishonesty and give an unfair advantage to an unscrupulous infringer over those who have a bona fide defense to make and therefore come forward to contest the suit and place their case before the Court.”

48. For the reasons stated above, the plaintiff has made out a case for grant of decree as prayed in the plaint. Accordingly, the suit is decreed in favour of the plaintiff and against the defendants no. 1 and 3 with costs. Plaintiff is also entitled to damages to the tune of **Rs.2.00 Lacs**. Decree sheet be drawn up accordingly.

G.S.SISTANI, J.

APRIL 30, 2014 ‘msr-l’