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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
 + **CS(COMM) 457/2021, I.A. 12131/2021 & I.A. 2934/2022**
WARNER BROS ENTERTAINMENT INC Plaintiff
 Through: Ms. J. Sharanya, Adv.

versus

MR ISHANT KASHIWAL TRADING
AS THE HOGWARTS KAFE & ORS Defendants
 Through: Ms. Pratibha Bhadoria, Adv.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

ORDER (ORAL)

02.08.2023

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1. Both sides submit that the dispute between the parties stands settled with the intervention of the Delhi High Court Mediation and Conciliation Centre.
2. Settlement agreement dated 27 July 2023 is on record.
3. The terms of settlement read thus:

“a) The Second Party recognizes and acknowledges the First Party's rights in the Well-Known Earlier Mark HOGWARTS (hereinafter referred to as the "Earlier Well-Known Trade Mark"), a key element and part of THE WIZARDING WORLD Properties, as mentioned under Paragraph Nos. 13, 19, 22 and 23 of the Plaint, and undertake to never challenge First Party's statutory and proprietary rights directly or indirectly at any time in future in India and/or worldwide.

b) The Second Party has changed the name of their restaurant



to Café Bro and are using a different logo, the photo of which is annexed with this Settlement Agreement as **ANNEXURE-C**. The Second Party undertakes to use the said amended logo or any other logo which is not identical or deceptively similar to, or does not contain the Earlier Well-Known Trade Mark or THE WIZARDING WORLD Properties of the First Party.

c) The Second Party undertake that they shall never use the



Impugned Mark i.e. /THE HOGWARTS KAFE, or any other mark which is deceptively and confusing similar to the First Party's Earlier Well-Known Trade Mark or THE WIZARDING WORLD Properties either as a trade mark or part of a trade mark, trade name or part of a trade name, electronic-mail or part of an electronic-mail, domain name or part of a domain name, or in any manner whatsoever, in relation to any goods or services, which would amount to infringement of THE WIZARDING WORLD Properties of the First Party.

d) The Second Party confirms that they have destroyed all promotional materials, advertising materials, catalogues, menu cards, props, merchandise, artwork, representations, stationery and any other material whatsoever bearing the Impugned Mark i.e.,



/ THE HOGWARTS KAFE, or any other mark/name which contains a mark/name identical or deceptively and confusingly similar to THE WIZARDING WORLD Properties of the First Party.

e) That it has been noted that the Second Party's restaurant listings bearing references of the Impugned Mark i.e.



/ THE HOGWARTS KAFE have been listed on several third party / intermediary websites and the First Party as well as the Second Party have written to the third-party websites to remove or update the advertisements, photographs bearing the



Impugned Mark i.e. / THE HOGWARTS KAFE or references of consisting of the First Party's THE WIZARDING WORLD Properties, pursuant to which the name of the Second Party's restaurant listing/s has been amended from THE



HOGWARTS KAFE to CAFÉ BRO *vide* the settlement negotiation conducted in the mediation process, which has been effectuated on some third-party websites, including but not limited to www.justdial.com, www.facebook.com, www.tripoto.com, <https://vymaps.com>, www.top-rated.online, <https://wrytin.com>, <https://lbb.in>, <https://so.city/delhi>, <https://www.zomato.com>, www.whatshot.in, <https://nicelocal.in>, www.eazydiner.com, <https://themealdeals.com>, <https://travelsceretsmag.com>, www.newindianexpress.com, <https://bharatbz.com>, <https://curlytales.com>, <https://www.mastersindia.co>, www.knocksense.com, <https://theoceannewspoint.wordpress.com>, <https://moovitapp.com>, www.youtube.com. However, on the date of signing of the present Settlement Agreement, there are certain third party websites displaying the references of the Impugned



Mark i.e. / THE HOGWARTS KAFE and photographs bearing references of THE WIZARDING WORLD Properties used by the Second Party, on their portals, on which neither the First Party nor the Second Party have any control. *Vide* order dated July 27, 2022, the Hon'ble Court directed the third-party websites / intermediary websites to remove the references of



the Impugned Mark i.e. / THE HOGWARTS KAFE and photographs bearing references of THE WIZARDING WORLD Properties used by the Second Party, within thirty-six (36) hours, in terms of Rule 3(1)(d) of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, from the date of receipt of the takedown notice received from the First Party / Second Party. The First Party as well as the Second Party have already sent such takedown notices to third party websites, along with the order dated 27th July, 2022, so that the infringing materials are completely removed from the internet.

f) The Second Party undertakes that they shall never revive the application bearing no. 4013130 in Class 43 which stands “*Opposed*” by the First Party, filed in the name of Mr. Ishant Kashiwal and Mr. Jatin Arora, *trading as*, The Hogwarts Kafe. Additionally, the Second Party confirms that no trade mark application(s)/copyright application(s) has been filed or secured with the appropriate Registries / Offices for the Impugned Mark



i.e. / THE HOGWARTS KAFE or any other



mark which contains a mark which is identical or deceptively and confusingly similar to the First Party's THE WIZARDING WORLD Properties, and undertake that they shall not use, or assert any right to use, or claim proprietorship, or apply to register, the



Impugned Mark i.e. / THE HOGWARTS KAFE or any other mark which is identical or deceptively and confusingly similar to the First Party's THE WIZARDING WORLD Properties, as described in the Plaintiff.

g) The Second Party has made a full and fair disclosure that they have not adopted / are using any company name/trade name which contains the First Party's THE WIZARDING WORLD Properties, in any manner whatsoever.

h) The Second Party has made a full and fair disclosure that they do not operate or own any website(s) /domain name(s) registered and/or operated by or on behalf of the Second Party which contains a mark/name identical or deceptively and confusingly similar to THE WIZARDING WORLD Properties of the First Party.

i) That the Second Party undertakes that they shall not use the



Impugned Mark i.e. / THE HOGWARTS KAFE or any other mark, which is identical or deceptively and confusingly similar to the First Party's THE WIZARDING WORLD Properties, in any manner, including in applications to Government Authorities for license renewals / tax / bank accounts or for any purpose whatsoever.

j) That the Second Party undertakes to take necessary steps to move appropriate applications in all the government departments to remove "THE HOGWARTS KAFE" from its corporate name / trade name / partnership firm name as necessary, before all statutory authorities including Delhi Government for registration of hotels under the SARAI Act, 1867; the Police Licensing Department of Delhi, and any other relevant authorities governed under Employees State Insurance Corporation Act, 1948, the Mahanagar Telephone Nigam Limited or other telecom entities providing broadband or telephone connection to the Second Party, or any other government or non-government authority, where the Second Party has been registered under the name "THE HOGWARTS KAFE", within one month of receipt of certified



copies of the order of the Hon'ble Court, and a copy of the said changes effectuated by the government or nongovernment bodies, shall be shared with the First Party's counsel, within fifteen (15) days of receipt of the original / scanned document.

k) The Second Party undertakes that they have shut down the Facebook pages <https://www.facebook.com/hogwartscafe934/>, <https://www.facebook.com/thehogwartskafe12> & <https://www.facebook.com/pages/The-Hogwarts-Kafe-the-Best-Cafe-In-AshokVihar/820491894972443> and changed the name of the Instagram account at <https://www.instagram.com/cafebro.in/to> Café Bro and removed all references of THE WIZARDING WORLD Properties of the First Party from their Instagram account, and made a full and fair disclosure that no other social media pages / accounts, are being operated by or on behalf of the Second Party, bearing and/or advertising the Impugned Mark i.e.



THE HOGWARTS KAFE or any other mark which contains a mark which is identical or deceptively and confusingly similar to THE WIZARDING WORLD Properties of the First Party.

l) In view of the above undertakings of the Second Party, the First Party agrees to forgo its claim of damages and litigation costs against the Second Party.

m) That it is understood to the Parties herein that by executing this Settlement Agreement the Parties hereto, state that they have no further claims or demands of any nature whatsoever against each other and all their disputes and differences have amicably been settled through the process of mediation. Both the Parties agree to remain bound in spirit and words with the terms and conditions as mentioned in the present Settlement Agreement.

n) The Parties agree that they shall be left with no claim of any nature against each other after the decree is drawn up on the said terms and the suit is disposed off accordingly.

o) That it is mutually agreed between the Parties that all Parties shall ensure the specific performance of each and every covenant qua the present Settlement Agreement and it is at the same time understood between the Parties that each and every covenant of the present Settlement Agreement is independent and dependent to each other simultaneously in the same breath.



p) The Parties hereto confirm and declare that they have voluntarily and of their own free will arrived at this Settlement Agreement in the presence of the Mediator.

q) Both Parties agree that they shall be bound by the aforesaid terms and conditions of this Settlement Agreement and any of the Parties shall not challenge this Settlement Agreement before any Court of Law / Tribunal / quasi-judicial body / Government Authority, as long as the terms and conditions of the present Settlement Agreement are complied with by the Parties, to the present suit.”

4. Parties are represented through learned Counsel who undertake on behalf of their respective clients to remain bound by the terms of settlement.

5. The Court has perused the terms of settlement and found them to be lawful and in order.

6. As such, nothing further survives to be adjudicated in the suit.

7. The suit stands decreed in terms of the settlement agreement dated 27 July 2023 by which the parties shall remain bound.

8. The plaintiff shall be entitled to refund of the Court fees, if any, deposited by it.

9. Let the decree sheet be drawn up accordingly.

C.HARI SHANKAR, J

AUGUST 2, 2023

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