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

+ CS(COMM) 87/2017

BURGER KING CORPORATION Plaintiff

Through: Ms. Prakirti Sharma, Advocate.

Versus

MR. ASHRAF & ANR Defendants

Through: None.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

% **09.08.2018**

1. As per the order of Joint Registrar of this Court dated 04.05.2018 the defendants have been served. Despite service no written statement has been filed.

2. The present suit has been filed seeking a decree for permanent injunction to restrain the Defendants, their proprietors, partners, etc. from using the trade mark/name KING BURGER or any mark deceptively similar to the Plaintiffs BURGER KING trade mark/name, in any manner whatsoever. The other connected reliefs have also been sought.

3. It has been stated in the plaint, that the plaintiff was founded in 1954 and has been operating in the style of BURGER KING since then. The trade mark of the plaintiff is also registered in over 122 countries, including India, where the plaintiff is the registered

proprietor of the BURGER KING trade mark since 1979, details of which is stated in the plaint.

4. The total sales of the plaintiff generated by Burger King has been stated in para 16 of the plaint, advertising expenditure also has been stated in the said paragraph.

5. It is further pleaded that in February 2016, the Plaintiff was surprised to learn of the existence of a fast food restaurant in Mysore operating under the style of KING BURGER which is engaged in the sale of fast food items including burgers. Further, investigation revealed that the restaurant KING BURGER is the same entity whom the Plaintiff had corresponded with in 2012. It is also stated that the signage used by the Defendants is virtually identical to the signage of the Plaintiffs BURGER KING restaurants.

6. It has been pleaded that a prudent and reasonable person would be misled into believing that the Defendants' services and goods originate from the Plaintiff, although, the defendants has no authorised relation/nexus with the plaintiff. It is pleaded that the adoption of the impugned trademark by the defendant is clearly motivated to encash the plaintiff's enormous goodwill and position. Hence, it is pleaded that adoption of the impugned mark KING BURGER by the defendant amounts to infringement of plaintiff's registered trademark.

7. The defendants have not filed any written statement. In my opinion, this is a fit case for passing of the decree under Order VIII Rule 10 CPC. A decree is passed in favour of the plaintiff and against the defendant in terms of prayer para 39(a) (b) of the plaint. Plaintiff

will also be entitled to actual costs based on an affidavit to be filed stating the actual cost incurred and its break-up.

8. The suit stands disposed of accordingly.

JAYANT NATH, J

AUGUST 09, 2018/p'ma