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

+ **CS(COMM) 44/2022 & I.A. 5079/2023**

SIX CONTINENTS HOTELS INC Plaintiff

Through: Ms. J. Sharanya, Adv.

versus

AP LEISURE PRIVATE LIMITED & ANR. Defendants

Through: Mr. Ashish Jindal, D-1 & 2 in person

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT(O R A L)

% **15.03.2023**

CS(COMM) 44/2022 & I.A. 5079/2023 (under Order XXIII Rule 3 read with Section 151 of the CPC)

1. The dispute between the parties in the present case stands settled. The terms and conditions of settlement have been set out in para 3 of the present application and are reproduced thus:

“A. The Defendants acknowledge that the Plaintiff is the exclusive owner and proprietor of the earlier well-known trade mark HOLIDAY INN and HOLIDAY INN formatives (*hereinafter collectively referred to as “Earlier Well-Known Trade Mark(s)” and/or “Well-Known Trade Mark HOLIDAY INN”*). The Defendants further acknowledge that all rights in law, equity or otherwise, in the Plaintiff’s Earlier Well – Known Trade Marks, vest exclusively with the Plaintiff alone, and further, the Defendants undertake to this Hon’ble Court never to challenge the same anywhere in the world, including in India, for any goods/services and/or on any ground(s), whatsoever;

B. The Defendants, in addition to the above, also acknowledge the fame and reputation of the Plaintiff’s Well – Known Trade Mark HOLIDAY INN, in India and internationally, and undertake to this Hon’ble Court never to challenge these rights, at any time in the

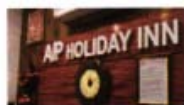
future, anywhere in the world, including in India, for any goods/services and/or on any ground(s) whatsoever;

C. The Defendants undertake to this Hon'ble Court that they shall refrain from using the Impugned Mark AP HOLIDAY INN,



, (hereinafter singularly and collectively referred to as the "*Impugned Mark*") and/or any other mark which is deceptively and/or confusingly similar to or encompasses the Plaintiff's Well - Known Trade Mark HOLIDAY INN, either as a trade mark or part of a trade mark, trade name, or part of a trade name, corporate name, email, domain name or part of a domain name or in any other manner or part thereof, in any other manner whatsoever;

D. The Defendants undertake to this Hon'ble Court that they ceased use of the Impugned Mark AP HOLIDAY INN,



, and have changed the name of their hotel from "AP HOLIDAY INN" to "AP HOLIDAYS"/"AP HOLIDAY"

E. The Defendants undertake to this Hon'ble Court that they have recalled / removed all the marketing, promotional and advertising materials, business literature, catalogues, stationery, toiletries from their hotel premises and any other material whatsoever bearing the Impugned Mark AP HOLIDAY INN,



and/or any other mark which is deceptively and confusingly similar or which encompasses the Plaintiff's Well- Known Trade Mark HOLIDAY INN, and Defendants further agree to destroy such material within 30 (thirty) days from the date of signing the Present Application (hereinafter referred to as the "*Present Application*");

F. The Defendants undertake to this Hon'ble Court that they have removed all references and use of the Impugned Mark AP HOLIDAY



INN, and/or any other mark encompassing the Well - Known Trade Mark HOLIDAY INN

from the Defendant's website at the Impugned Domain www.apholidayinn.com (hereinafter referred to as the "*Impugned Domain Name*"), and confirm that they do not own or operate any other website or domain name containing / forming the Impugned Mark AP HOLIDAY INN or the Well- Known Trade Mark HOLIDAY INN as a part, and the Impugned Domain Name is no longer registered in the name of the Defendants;

G. The Defendants agree and undertake to cease use of the Impugned Domain Name. The Defendants shall cooperate with the Plaintiff to obtain an order seeking a direction to the Domain Name Registrar (being Public Domain Registry Limited, doing business as, PUBLICDOMAINREGISTRY.COM, which is a wholly owned subsidiary of The Endurance International Group, Inc.) from the Hon'ble Court to transfer the Impugned Domain Name to the Plaintiff within 7 (seven) days from the date of passing the consent order. Further the Defendants agree and undertake not to register and/or use any other domain name(s) which consists of or contains the Well - Known Trade Mark HOLIDAY INN, in future;

H. The Defendants agree and undertake to delete the e-mail IDs apholidayinn03@gmail.com and apholidayinnrohini@gmail.com and not to use the said email IDs or any other e-mail ID which consists of or contain the Well - Known Trade Mark HOLIDAY INN in any manner whatsoever. In case the Defendants are unable to delete the e-mail IDs apholidayinn03@gmail.com and apholidayinnrohini@gmail.com, they shall transfer the Login ID and Password to the Plaintiff at the time of signing of the Present Application;

I. The Defendants agree and undertake to withdraw the application for the Impugned Mark  bearing Application No.5121819 in class 43 within 15 days of signing the Present Application and to inform the Plaintiff of the same, which has been already been opposed by the Plaintiff herein. Further the Defendants confirm that there are no other trade mark applications filed either by the Defendants or on their behalf which consists of or contain the Well - Known Trade Mark HOLIDAY INN in any manner whatsoever and no filings will be made by them in future for any mark consisting of or containing Well - Known Trade Mark HOLIDAY INN in any manner, in future;

J. The Defendants agree and undertake to remove all references and uses of the Impugned Mark AP HOLIDAY INN,



and/or any other mark which is deceptively and confusing similar or encompasses the Plaintiffs Well - Known Trade Mark HOLIDAY INN from all third-party websites as well as social media websites including, but not limited to, Facebook and Instagram;

K. The Defendants have written to remove all references of the

Impugned Mark AP HOLIDAY INN, 



from all third-party third party booking or trading websites / intermediary websites. However, on the date of the Present Application, there are certain third party websites displaying the references of the Impugned Mark AP HOLIDAY INN,



on their portals, on which neither the Plaintiff nor the Defendants have any control. *Vide* order dated September 13, 2022, the Hon'ble Court directed the third-party booking or trading websites / intermediary websites to remove the references of the Impugned Mark within 3 (three) working days from the date of receipt of the takedown notice received from the Plaintiff / Defendants. The Defendants undertake to send e-mails / takedown notices to all the third party websites, wherein the references of the

Impugned Mark AP HOLIDAY INN, 



are still available, along with a copy of the order dated September 13, 2022, so that the infringing materials are completely removed from the internet;

L. The Defendants agree and undertake that they shall not use the Impugned Mark AP HOLIDAY INN in any manner, including in applications to Government Authorities for license renewals / tax / bank accounts or for any purpose whatsoever;

M. The Defendants agree and undertake to take necessary steps to move appropriate applications in all the government departments to

remove "HOLIDAY INN" or the Impugned Mark AP HOLIDAY INN from its official records 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 and Third Party, or any other government or non-government authority, where the Defendants have registered under the Impugned Mark AP HOLIDYA INN, 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 non-government bodies, shall be shared with the Plaintiff's counsel, within 15 (fifteen) days of receipt of the original / scanned document;

N. The Defendants undertake to suffer a decree of permanent and mandatory injunction in terms of the settlement above;

O. In view of the above undertakings by the Defendants, the Plaintiff have agreed to forgo their claim for damages and litigation costs in the present suit."

2. Ms. J. Sharanya on behalf of the plaintiff and Mr. Ashish Jindal, Defendant 2 who also represents Defendant 1 as its Director are present in Court. Ms. J. Sharanya undertakes on behalf of her client and Mr. Jindal undertakes on behalf of Defendants 1 to 2 to remain bound by the terms of the aforesaid settlement.

3. As such, nothing survives for adjudication in the suit.

4. The suit stands decreed in terms of the aforesaid settlement at which the parties have amicably arrived.

5. Let a decree sheet be drawn up accordingly.

6. The plaintiff shall be entitled to refund of Court fees, if any,

deposited by it. As the plaintiff is abroad, refund of Court fees would be made to M/s Lall and Sethi, learned Counsel for the plaintiff.

C.HARI SHANKAR, J

MARCH 15, 2023

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