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

Date of Decision: 1st December, 2023

+ **CS(COMM) 912/2022, CCP(O) 29/2023 & I.A. 15523/2023**

BANYAN TREE HOLDINGS LIMITED

..... Plaintiff

Through: Mr. Pravin Anand, Mr. Shantanu
Sahay & Ms. Imon Roy, Advocates.

versus

M/S ANGSAANA THAI SPA & ORS.

..... Defendants

Through: None.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUDGMENT

1. This hearing has been done through hybrid mode.

I.A. 15523/2023 (u/O. XIII-A & O. VIII Rule 10 CPC)

2. The Plaintiff - Banyan Tree Holdings Limited has filed the present suit seeking protection of its mark and name 'ANGSAANA' used in respect of hospitality services as also spa, etc.

3. The Plaintiff, founded in 1994, is a part of the Banyan Tree Group, and is engaged in the hospitality industry under multiple brands. The Plaintiff's business includes hotels investments, residences and extended stay for hotel and laguna residences. The Plaintiff also operates hotel management services, club management services and fund management services, spa and gallery operations, design and other services. As of the current date, the Plaintiff states that it has a global footprint of 140 hotels and resorts under design and construction, in addition to the 63 operating hotels in 18 countries as of December 2022. The properties are said to offer luxurious, stylish rooms and suites for customers.



4. The present suit relates to the ‘ANGSANA’ mark, an award-winning luxury brand for destination spas and specialty hotels. The Plaintiff claims to have first adopted the arbitrary ‘ANGSANA’ mark, in the year 2000 in Indonesia and Australia, and in the year 2001 in India by launching its resort and spas and is the first user of the Angsana formative marks. The ‘ANGSANA’ resorts and spas are popularized and promoted through the Plaintiff’s websites, www.angsana.com and www.angsanaresidences.com, registered on 3rd January, 1993 and 21st January, 2011 respectively.
5. In India, the Plaintiff asserts that its first Angsana Oasis Spa & Resort in Bangalore, Karnataka opened in 2001, and it was listed on various well-known travel platforms such as TripAdvisor. MakeMytrip, Booking.com, Agoda.com, Goibibo, Yatra.com, Trivago, etc. The brand is stated to have been launched with the opening of ‘Angsana Bintan, Indonesia’ and ‘Angsana Great Barrier Reef’ in Australia in 2000.
6. The detailed introduction of the Plaintiff company and the ‘ANGSANA’ brand in the plaint reveals that the Plaintiff’s spas under the said brand operate in various countries, including India, China, Maldives, Thailand, Sri Lanka, Singapore, Mexico, Vietnam, Malaysia and several other such countries.
7. The sales of the Plaintiff’s group company are stated to be more than 220 million dollars in 2021. The Plaintiff’s submission is that it has garnered impressive sales and revenues, which is *inter alia* by the virtue of extensive promotional activities all over the world. Plaintiff’s revenue from hotel residences of the Plaintiff Group in 2021 and 2020 was S\$22.3 million and S\$58.7 million respectively, mainly comprising of Angsana Beach Front



Residences, Phuket.

8. It is further averred that Plaintiff's Angsana Oasis Spa & Resort has also won various awards, including the prestigious 32nd Condé Nast Traveler Readers' Choice Awards. It also claims to have substantial social media presence worldwide, including Delhi and India, social media presence on Facebook (45,000+ Followers), Instagram (23,000+ Followers), Youtube, Twitter, Pintrest, Weibo and WeChat.

9. The Plaintiff's marks are registered both as a device and logo mark, as well as a word mark, since the year 2000 in Classes 41, 42 and 43. Plaintiff has secured several international trade mark registrations for 'ANGSANA' marks. The details of the Plaintiff's international trade mark registrations are set out below:

1.	ANGSANA		National Trademark Registration Registered (January 10, 2009) Number 181702	Nice class: 38 Owner: BANYAN TREE HOLDINGS LIMITED (Singapore) Designation: Costa Rica
2.	ANGSANA		National Trademark Registration Registered (January 10, 2009) Number 181795	Nice class: 42 Owner: BANYAN TREE HOLDINGS LIMITED (Singapore) Designation: Costa Rica
3.	ANGSANA		National Trademark Registration Registered (September 29, 2003) Number 851785	Nice class: 35, 41, 42 Owner: Banyan Tree Holdings Limited (Singapore) Designation: Australia
4.	ANGSANA		National Trademark Registration Registered (May 7, 2015) Number 1891385	Nice class: 38 Owner: Banyan Tree Holdings Limited (Singapore) Designation: Australia
5.	ANGSANA		National Trademark Registration Registered (November 10, 2001) Number 825886	Nice class: 41 Owner: BANYAN TREE HOLDINGS LIMITED (Singapore) Designation: New Zealand
6.	ANGSANA		National Trademark Registration Registered (August 14, 2018) Number THA1048501	Nice class: 35, 43 Owner: Banyan Tree Holdings Limited (Singapore) Designation: Canada
7.	ANGSANA		Regional Trademark Registration Registered (September 15, 2001) Number 003482511	Nice class: 35, 41, 42 Owner: Banyan Tree Holdings Limited (Singapore) Designation: European Union
8.	ANGSANA		National Trademark Registration Registered (March 18, 2000) Number 00022828	Nice class: 43 Owner: Banyan Tree Holdings Limited (Singapore) Designation: Malaysia

10. In India, the 'ANGSANA' mark has been registered since 2000 in



class 24, 16, 25, 21. The Plaintiff has trademark registrations for 'ANGSANA' logo mark *inter alia* for 'health spa services' under class 41 since 2003. The Plaintiff's registrations for the mark for 'ANGSANA' in India are set out at paragraph 20 of the plaint. The same are set out below as well:

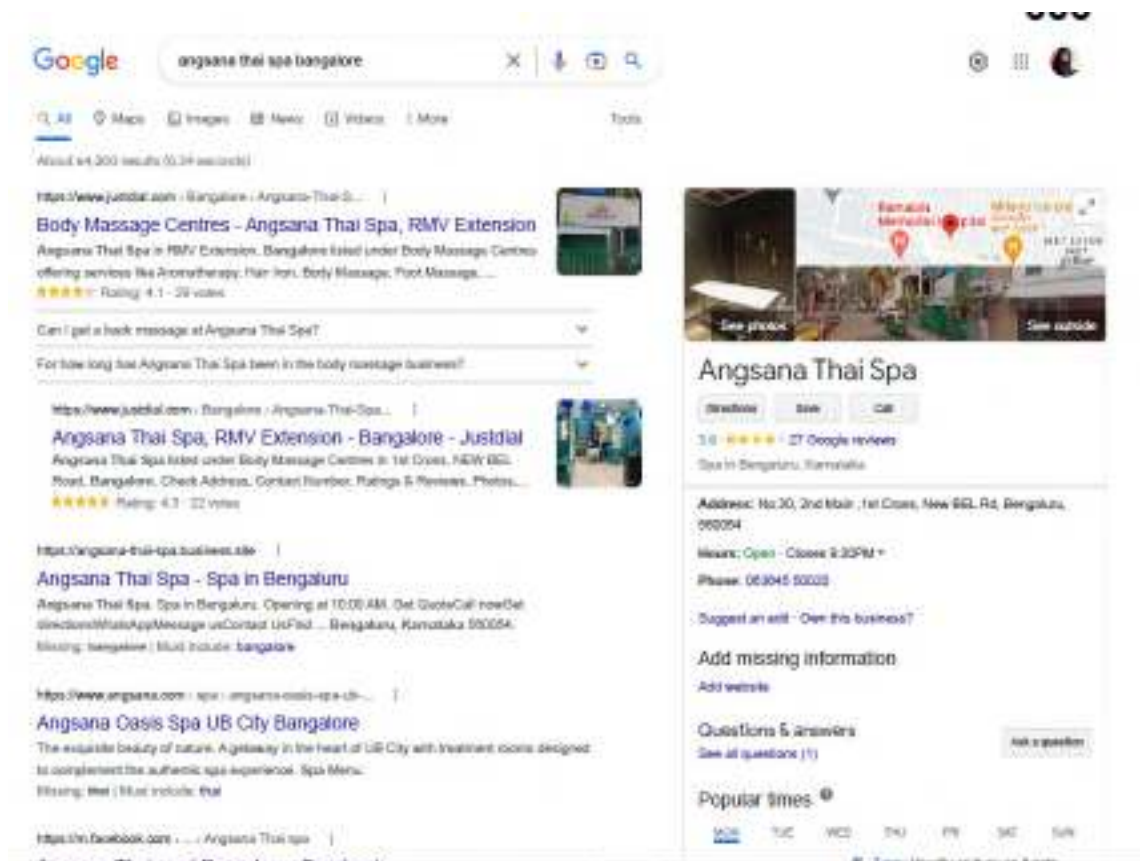
Sl. No.	Mark	Applicati on No. /Status	Date of Application	Class
1.		965828 / Registered	23/10/2000	24
2.	ANGSANA	965829 / Registered	23/10/2000	16
3.	ANGSANA	965830 / Registered	23/10/2000	25
4.		1254024 / Registered	08/12/2003	99 Indic ates Multi class Appli caltio n

The Plaintiff, thus, claims both statutory and common law rights in the mark 'ANGSANA'.

11. The Plaintiff is aggrieved by the use of the mark and name 'M/s. *Angsana Thai Spa*' by the Defendant No. 1- Mr. Venkatesh, who is the sole proprietor of the spa. The same is located in RMV Extension, Near Ramaiah



Hospital, Bangalore, Karnataka. The Defendant No.2 - Mr. Umesh Kumar also registered a domain name being '*www.angsanathaispabangalore.com*', which according to the Plaintiff violates its rights in the mark 'ANGSANA'. Defendant No. 3-FastDomain Inc. is the domain name registrar for the domain name '*angsanathaispabangalore.com*' The WHOIS details of the domain has been filed with the Plaintiff's documents. The details of the domain name would show that the same was registered on 10th October, 2020. The screenshots of the search of the said website on Google are set out below:



Screenshots of the Defendantss website:



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12/20/22, 3:07 PM

Anjana Thai Spa - Services - Thai-Spa-Bangalore

663



+918394550000
info@angana-thai-spa-bangalore.com

HOMEABOUT USSERVICESGALLERYBLOGCONTACT US



Candle Massage

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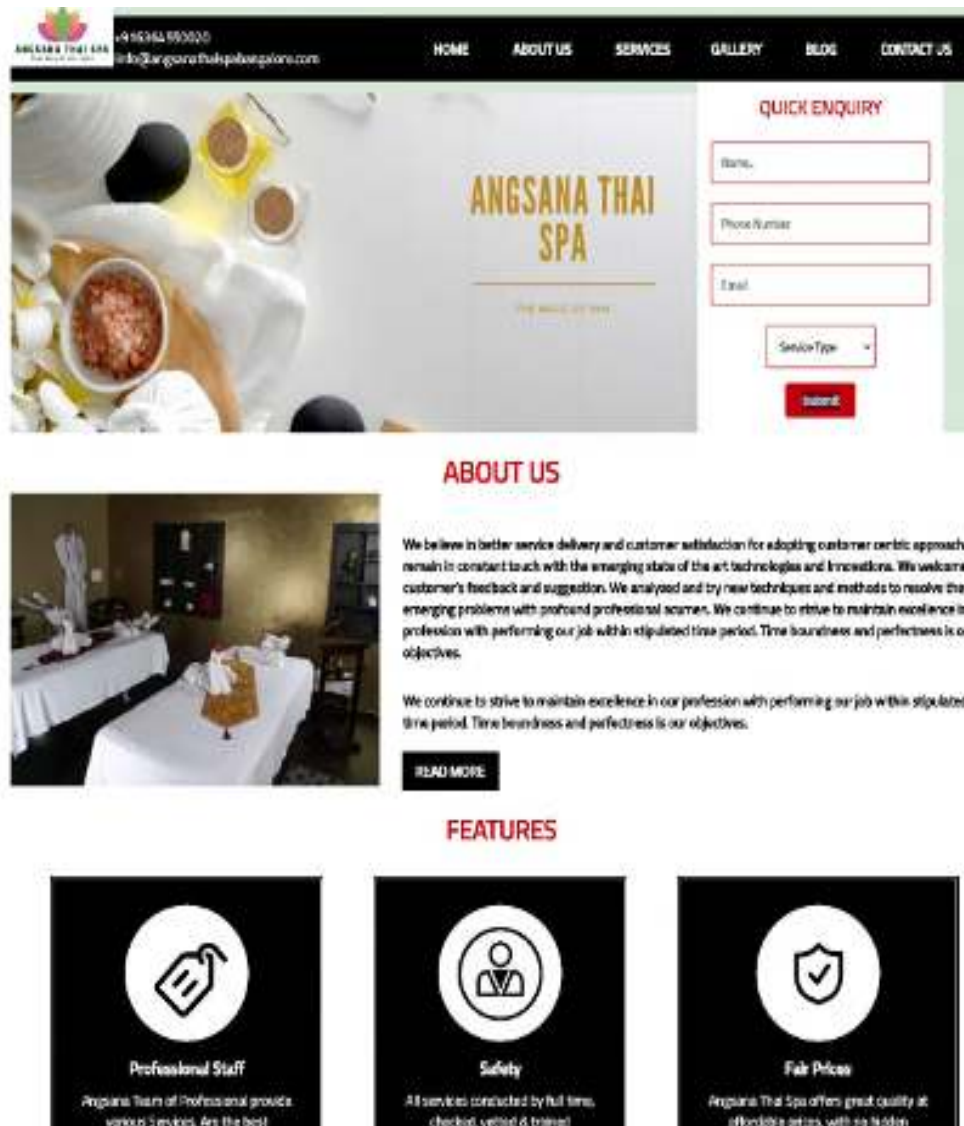
Hot Stone Therapy

Read More



Forehead Massage

Read More



The visiting card of the Defendant No. 1 is set out below:



12. The Plaintiff filed the present suit seeking an injunction restraining the Defendants from using an identical mark and logo, albeit, in a different colour combination. The Plaintiff's mark 'ANGSANA' is an arbitrary mark, in respect of spas and hotel services.

13. This Court, vide order dated 23rd December, 2022 granted an *ex-parte ad interim* injunction in the following terms:

"27. Clearly, the manner in which the mark is being used by the defendants, the purchasing public is bound to assume some sort of association or connection between the services of the defendants with that of the plaintiff, thereby leading to confusion as to the source of origin of the defendants services under plaintiff s ANGSAANA mark and resulting in passing off of the said services as those of the plaintiff s.

28. A prima facie case has been made out on behalf of the plaintiff. Balance of convenience is in favour of the plaintiff and against the defendants. Irreparable harm and injury would be caused not only to the plaintiff but also to the public at large if an ex parte ad interim injunction as prayed is not granted in favour of the plaintiff.

29. Consequently, till the next date of hearing, the following directions are passed:



(i) *The defendants no. 1 and 2, its proprietors, partners, directors, officers, servants, agents, franchisers and all others acting for and on its behalf from advertising, selling, offering for sale, marketing etc. any service, product, packaging, visiting cards and advertising material, labels, stationery, articles, website or any other documentation using, depicting, displaying in any manner whatsoever, the marks*



ANGSANA THAI SPA, or any other mark which is identical or deceptively similar to the plaintiff's registered trademarks as detailed in paragraph 19 of the application in any manner whatsoever.

(ii) Defendant no. 3 is directed to lock, block, suspend the domain name angsanathaispabangalore.com during the pendency of the suit and inform the plaintiff when the aforesaid domain names are set to expire."

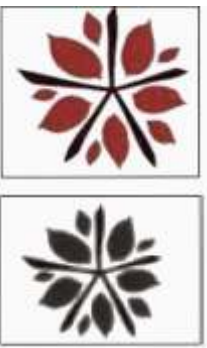
14. After the grant of injunction, the Defendants have been repeatedly issued notice, and on 2nd May, 2023, the Court records that both the Defendant Nos.1 and 2 are deemed to be served. Vide the said order, the Court also confirmed the injunction order till the final adjudication of the present suit. Thereafter, on 18th August 2023, due to the non-appearance of the Defendants in present suit, the Court proceeded against the Defendants ex-parte in terms of Order IX Rule 6(a) CPC.

15. Today, the Plaintiff has filed an application under Order XIII-A CPC seeking summary judgment.

16. The comparison of the Plaintiff's and the Defendants' marks is set out



below:

	Plaintiff's Trademark	Defendants' marks
Word mark	ANGSANA	ANGSANA THAI SPA
Labels		
Element		

17. A perusal of the above leaves no manner of doubt that the Defendants are using an identical mark/name 'ANGSANA' for identical goods/services. Spa services have a requirement for high quality, best hygiene and safety/security of the customers. If unauthorized use of the Plaintiff's mark 'ANGSANA' and the name of the Plaintiff is permitted to be used in this manner, the same would result in severe erosion of the Plaintiff's goodwill,



apart from being violative of the Plaintiff's statutory and common law rights in the mark 'ANGSANA'.

18. In the present case, the mark/name and services being identical, the class of customers being identical, this is a case of triple identity. The test of 'triple identity' has been laid down in *Ahmed Oomerbhoy v. Gautam Tank* (2007 SCC OnLine Del 1685), where this Court observed as follows:

*"25. The mark used by the defendants is similar, the goods are the same and the area of trade is also common. If these three factors are same or quite similar, then the second manufacturer should not be allowed to sell its product under the same name. This principle which is also termed as triple identity principle has been invoked in a number of cases. A Single Judge of this Court in *Lal Sons Machines v. Sachar E & M Stores* 1986 Raj LR 165 had held that in case of triple identity where the mark used by defendant is the same, the goods are the same and also the trade area it is the duty of the Court to protect the registered trademark. Another Single Judge of Calcutta High Court in *Kalyani Breweries Ltd v. Khoday Brewing and Distilleries Industries Ltd.* had invoked the triple identity rule. It was explained that where after marks were identified, the goods were identified and the areas over which the goods are going to be sold are identified, a second manufacturer can not be allowed to sell its product under the same trade name. Comparison of two marks, prima facie, show that the essential features of the trademark of the plaintiffs have been adopted by the defendant nos. 1 & 2. In these circumstances the minor differences in the getup, packaging and other writings on the goods or on the packets in*



which the goods are sold by the defendants indicating clearly the different trade origin different from the registered proprietor of the mark of the plaintiff would not be very material. The added matter, prima facie, will not be sufficient to avoid any confusion or deception. The alleged superior quality of goods of the defendants also does not entitle the defendants to any such rights as has been claimed by the defendants.

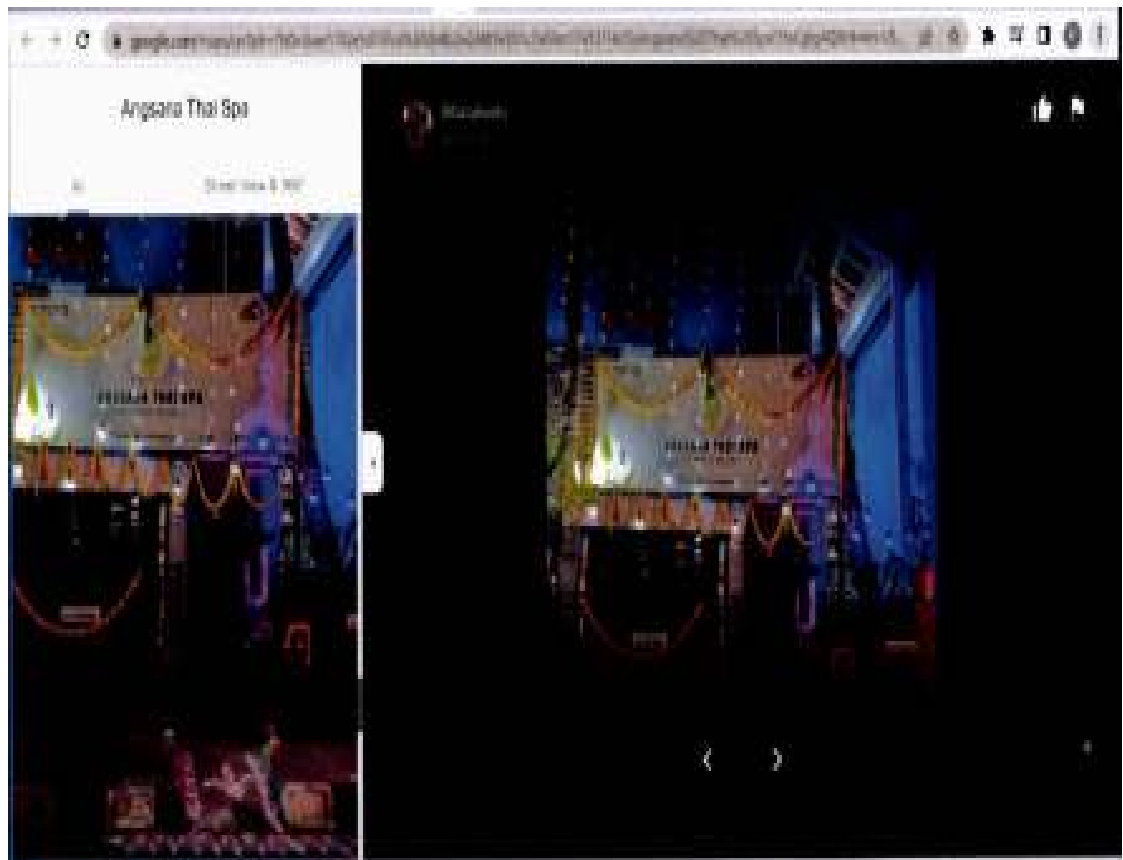
[....]

The defendants can not claim any rights, prima facie as they had given an undertaking contending categorically that they will withdraw their application for registration of the name 'Super Postman', if the plaintiffs will raise any objection or opposition in future against the applied trade mark of the defendants. [...]"

19. The Defendants have not put in their appearance, nor have they filed any written statement under Order VIII Rule 1 CPC. They were served several months ago. Therefore, in terms of Order VIII Rule 10 CPC, this Court proceeds to pronounce judgment against the Defendants.
20. The following photographs of the Defendants' investigator affidavit dated 2nd May 2023 on record show that the name 'Angsana Thai Spa' is being used prominently at the premises of the Defendants.



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Angsana Thai Spa, No.30, 2nd Main, 1st Cross, NEW BEL Road, RMV Extens...

1 of 20





21. Under such circumstances, the Plaintiff has been forced to approach the Court seeking an injunction and protection of its mark.

22. The Plaintiff has placed reliance on the following judgments to support its prayer for summary judgment under Order XIII-A CPC:

- *Aktiebolaget Volvo v. Volvo White Paints Industries* [MANU/DE/0593/2023] [2023 (94) PTC 267(Del)].
- *Deere and Company v. Jitender Kumar Gaur* [MANU/DE/4774/2022] (296 (2023) DLT 73).
- *Ebay Inc. v. Mohd. Waseem T/AS Shopibay* [MANU/DE/5498/2022] 2022/DHC /004918
- *Su-Kam Power Systems Ltd v. Kunwer Sachdev* (2019 SCC OnLine Del 10764)

23. In *Su-Kam Power Systems Ltd. (supra)*, this Court has observed as under:

"90. To reiterate, the intent behind incorporating the summary judgment procedure in the Commercial Court Act, 2015 is to ensure disposal of commercial disputes in a time-bound manner. In fact, the applicability of Order XIII A, CPC to commercial disputes, demonstrates that the trial is no longer the default procedure/norm.

91 . R u l e 3 of Order XIII A, CPC, as applicable to commercial disputes, empowers the Court to grant a summary judgement against the defendant where the Court considers that the defendant has no real prospects of successfully defending the claim and there is no other compelling reason why the claim should not be disposed of before recording of oral evidence. The



*expression "real" directs the Court to examine whether there is a "realistic" as opposed to "fanciful" prospects of success. This Court is of the view that the expression "no genuine issue requiring a trial" in Ontario Rules of Civil Procedure and "no other compelling reason.....for trial" in Commercial Courts Act can be read mutatis mutandis. **Consequently, Order XIII A, CPC would be attracted if the Court, while hearing such an application, can make the necessary finding of fact, apply the law to the facts and the same is a proportionate, more expeditious and less expensive means of achieving a fair and just result.***

92. Accordingly, unlike ordinary suits, Courts need not hold trial in commercial suits, even if there are disputed questions of fact as held by the Canadian Supreme Court in Robert Hryniak (supra), in the event, the Court comes to the conclusion that the defendant lacks a real prospect of successfully defending the claim."

24. In *Ebay Inc. (supra)*, considering the fact that the Defendants had neither filed their written statements, nor entered appearance in the suit, the Court passed a summary judgment for the Plaintiff in terms of Order XIII-A CPC, read with Rule 27 of the Delhi High Court Intellectual Property Division Rules, 2022.

25. Following the decision in *Disney Enterprises Inc. v. Balraj Muttreja [CS (OS) 3466/2012 decided on 20th February, 2014]*, this Court in *Deere and Company (supra)* observed no *ex parte* evidence would be required where the Defendants are *ex parte* and the material before the Court is sufficient to allow the claim of the Plaintiff. The time of the Court ought not be wasted in directing *ex parte* evidence to be recorded, which mostly is nothing but a repetition of the contents of the plaint.



26. The Defendants having chosen to stay away from the proceedings in this case, cannot be allowed to enjoy a premium for their dishonesty. In *M/s Inter Ikea Systems BV v. Imtiaz Ahamed & Anr* [Judgment dated 9th September, 2016, CS (OS) 3295/2014], this Court observed as follows:

“21. The court is mindful of the fact that in such a situation where the defendant chooses to stay away from the court proceedings, he should not be permitted to enjoy the benefits of such an evasion. Any view to the contrary would result in a situation where a compliant defendant who appears in court pursuant to summons being issued, participates in the proceedings and submits his account books, etc., for assessment of damages, would end up on a worse footing, vis-a-vis a defendant who chooses to conveniently stay away after being served with the summons in the suit. That was certainly not the intention of the Statute. Section 135 (1) of the Trademarks Act, 1999 provides that relief that may be granted in any suit for infringement of or for passing off includes injunction and at the option of the plaintiff, either damages or an account of profits. The plaintiffs in the present case have opted for claiming damages and have established beyond doubt that they have suffered damages on account of the conduct of the defendants which are a result of infringement of their trademark and copyright...”

27. Considering the above decisions, and facts of the present suit, the Court is convinced that the present is a fit case for grant of a decree of permanent injunction in favour of the Plaintiff against the Defendants in terms of Order XIII-A of the Code of Civil Procedure, 1908 as amended by Commercial Courts Act, 2015 read with Rule 27 of the Delhi High Court Intellectual Property Rights Division Rules, 2022. Further, since there is no



written statement(s) on behalf of Defendants, despite service, the Court is empowered to pass a judgement in terms of Order VIII Rule 10 of CPC.

28. Mr. Anand, Id. Counsel for the Plaintiff submits that Defendants have actually stopped use of the mark 'ANGSANA' after the injunction was passed, except in case of one listing on JustDial, the online references have also been removed.

29. Accordingly, a decree is passed in terms of paragraph 52 (a), (b) and (c) of the plaint in favour of the Plaintiff against the Defendants. The Defendants/Just Dial shall remove the 'Angsana Thai Spa' listing of the Defendants within a period of four weeks. If the same is not removed, the Plaintiff is free to inform Just Dial platform and along with the copy of today's order and seek removal of the same.

30. The present being a commercial suit, actual costs in terms of the Commercial Courts Act, 2015 and Delhi High Court (Original Side) Rules, 2018 read with Delhi High Court Intellectual Property Division Rules, 2022, would be liable to be awarded in favour of the Plaintiff, as the adoption of the mark 'ANGSANA' for spa and hotel services is not just illegal, but also dishonest, as an identical mark to that of the Plaintiff's mark has been adopted for identical services. The clear intention of the Defendants is to ride on the Plaintiff's reputation.

31. The Plaintiff has placed on record the bill of actual costs dated 21st September 2023 in terms of in terms of the Rule 5 of Chapter XXIII of the Delhi High Court (Original Side) Rules, 2018.

32. In terms of the judgment of the Supreme Court in *Uflex Ltd. v. Government of Tamil Nadu [Civil Appeal Nos.4862-4863 of 2021, decided*



on 17th September, 2021], actual costs are awarded in favour of the Plaintiff. The cost statement has been placed on record which would show that the total cost incurred is to the tune of Rs.12,82,580/-. The break-up of which is as under:

A. Official Fees / Court Fees:

Sl. No.	Particulars	Amount
1	Towards court fees paid in the matter	2427 USD
	US Dollars Two Thousand Four Hundred Twenty Seven Only	2427 USD
	INR Two Lakh One Thousand Rupees Only	2,01,000 INR

B. Expenses incurred

Sl. No.	Particulars	Amount
1	Miscellaneous expenses incurred towards notarization, notice, compliance, certified copies of the Orders, courier, telephone calls, purchase of stamp papers, colour screen shots, postage, faxes, stationery, follow up with clients and other miscellaneous expenses.	341 USD
	US Dollars Three Hundred Forty One Only	341 USD
	INR Twenty Eight Thousand Seventy Seven Rupees Only	28,077.01 INR

**C. Legal Fees Incurred:**

Sl. No.	Particulars	Amount
1	Towards drafting and filing of the suit as well as towards preparation and appearance of the counsels.	12,770 USD
	USD Twelve Thousand Seven Hundred Seventy Only	12,770 USD
	INR Ten Lakh Fifty Three Thousand Five Hundred Three Rupees Only	10,53,503.50 INR

TOTAL COSTS- A+B+C	
USD Fifteen Thousand, Five Hundred Thirty Eight Only	15,538 USD
INR Twelve Lakh Eighty Two Thousand Five Hundred Eighty Rupees And Fifty One Paisa Only	12,82,580.51 INR

33. The Defendant No.3- FastDomain Inc. shall transfer the domain name www.angsanathaispabangalore.com to the Plaintiff within a period of four weeks.

34. The suit is decreed in these terms. Decree sheet be drawn accordingly. All pending applications are disposed of.

PRATHIBA M. SINGH
JUDGE

DECEMBER 01, 2023

Rahul/dn