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O.A. No.1105, 1106 and 1107 of 2023

O.A. Nos.1105, 1106 and 1107 of 2023

and

A. No.6812 of 2023

in

C.S. (COMM. DIV.) No.324 of 2023

ABDUL QUDDHOSE, J.

The suit has been filed for infringement and passing off. The suit has also been filed for infringement of copyright. Pending the suit, these applications have been filed. The first plaintiff is the registered Proprietor of the Trademark “**LITTLE EINSTEINS**”. The second plaintiff is the licensee under the first plaintiff. Earlier the plaintiffs have appointed the first defendant as its Franchisee. The plaintiffs are providing educational services. They have obtained registration of their trademark “**LITTLE EINSTEINS**” under class 41 for the services of, “Academics (education), Arranging and Conducting of workshops (training), Books (publication of) Club Services (Entertainment or Education), Education Information, Educational Services, Nursery Schools, Schools (Nursery), Teaching, Tuition, Electronic Publications (not downloadable), Publication of Books, Publication of Electronic Books and Journals On-line, Publication of Texts (other than publicity texts), All of the foregoing services and related publications, books, journals and texts aimed, directed and provided exclusively to children up



to age ten”.

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2. Earlier, the plaintiffs appointed the first defendant as its Franchisee under a Franchisee Agreement. According to the plaintiffs in view of the breach of contract committed by the first defendant, the plaintiffs terminated the Franchisee Agreement. However, according to the plaintiffs, despite the termination, the defendants have adopted a deceptively similar trademark “LEARNING EINSTEINS”. According to the plaintiffs apart from adopting a deceptively similar trademark, the defendants have also copied the colour scheme and get up of the plaintiffs logo “**LITTLE EINSTEINS**”. The plaintiffs have also disclosed in the plaint the advertisement costs incurred by them for promoting their products under the trademark “**LITTLE EINSTEINS**” and they have also disclosed their sales turnover. As seen from the said disclosure, the plaintiffs have created a reputation in the market.

3. The plaintiffs have also filed documents along with the plaint and they include the trademark registration certificate obtained from the Trademark Registry in respect of the trademark “**LITTLE EINSTEINS**”. They have also filed documents in support of their



O.A. No.1105, 1106 and 1107 of 2023

credentials in the market. They have also filed documents to prove that the first defendant was earlier their Franchisee and subsequently, the Franchisee Agreement was terminated by the plaintiffs. They have also issued cease and desist notice to the defendants prior to the institution of the suit. A public notice of termination of the Franchisee Agreement with the first defendant has also been issued on 02.04.2023 by the plaintiffs. According to the plaintiffs despite cautioning the defendants not to use a deceptively similar trademark and not to copy the colour scheme and get up of the plaintiffs trademark / logo, the defendants are continuing to use a deceptively similar trademark “LEARNING EINSTEINS” and have also blatantly copied the colour scheme and get up of the plaintiffs trademark / logo. It is also stated in the plaint as well as in the affidavit filed in support of these applications that the study materials of the plaintiffs, which were earlier available with the first defendant when they were their Franchisee are continued to be illegally used by the defendants despite the termination of the contract. The image comparison of the plaintiffs trademark and the defendants trademark has also been filed as document along with the plaint, which on a prima facie consideration will prove that the defendants trademark “LEARNING EINSTEINS” is deceptively similar to that of the plaintiffs registered trade mark



“LITTLE EINSTEINS”. The respondents / defendants word mark

“LEARNING EINSTEINS” is phonetically identical to that of the

applicants / plaintiffs registered trademark **“LITTLE EINSTEINS”**.

The pictorial comparison of the plaintiffs' registered logo and the

defendants logo is reproduced hereunder :



4. As seen from the above the following is noticed by this Court :

a) The phonetics between the plaintiffs **“LITTLE EINSTEINS”** and the defendants **“LEARNING EINSTEINS”** are highly similar.

b) The style of writing L and E in Capital letters to denote **“LITTLE EINSTEINS”** has been blatantly adopted by the defendants.

c) The colour combination of using yellow colour for the letter 'L' and the red colour for the letter 'E' in the plaintiffs trademark has been adopted by inverting the colours in the



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O.A. No.1105, 1106 and 1107 of 2023

defendants infringing trademark.

d) The colour combination of yellow, red, green and blue in the Defendants infringing trade are blatant copy of the plaintiffs prior registered trademark **“LITTLE EINSTEINS”**.

5. The defendants are also in the same line of business as that of the plaintiffs. Therefore, the general public will get confused, if the defendants are allowed to use the word mark **“LEARNING EINSTEINS”** which is deceptively similar to the plaintiffs' registered trademark **“LITTLE EINSTEINS”**. The colour scheme and get up of the defendants trademark is also deceptively similar to that of the plaintiffs trademark / logo. The artistic work involved in the plaintiffs trademark has also been adopted by the defendants by using identical and similar artistic works with identical colour scheme and colour combinations, font, style, get-up, which amounts to infringement of copyright.

6. As seen from the plaint averments as well as the averments contained in the affidavit filed in support of these applications, the defendants are carrying on the business in the same premises, same



O.A. No.1105, 1106 and 1107 of 2023

address as they were carrying on the Franchisee business.

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7. After giving due consideration to the aforementioned factors, this Court is of the considered view that a prima facie case has been made out by the plaintiffs for grant of interim injunction as prayed for in these applications. The balance of convenience and irreparable hardship has also been established by the plaintiffs. Earlier, this Court had ordered notice to the respondents in these applications on 21.12.2023. On the next date of hearing i.e., on 18.01.2024, an Affidavit of service was filed by the learned counsel for the plaintiffs enclosing the delivery report. Despite service of notice on the respondents/ defendants which is also recorded by this Court in its order dated 18.01.2024, the respondents / defendants have chosen not to enter appearance in these applications. From 18.01.2024, the matter was adjourned to this date and this Court directed the Registry to print the name of the respondents. As directed by this Court, the Registry has printed the name of the respondents in the cause list today. Despite the same, no one has entered appearance on behalf of the respondents / defendants. Hence, the respondents/ defendants are set exparte by this Court



O.A. No.1105, 1106 and 1107 of 2023

8. Since the plaintiffs have made out a prima facie case and balance of convenience as well as irreparable hardship has been established by them, this Court is allowing these applications as prayed for by the plaintiffs and the injunction sought for in O.A. Nos.1105 to 1107 of 2023 are granted. Accordingly O.A. Nos.1105 to 1107 of 2023 are allowed as prayed for. No costs.

9. Fresh summons to the defendants in the main suit, returnable by 14.02.2024. Private summons are also permitted.

10. Post the matter on **14.02.2024**.

23.01.2024

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