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

% *Date of decision: 12<sup>th</sup> December, 2024*

+ CS(COMM) 203/2024 & I.A. 5417/2024, I.A. 36076/2024

WOW MOMO FOODS PRIVATE LIMITED

.....Plaintiff

Through: Mr. Ankur Sangal, Mr. Ankit Arvind  
and Mr. Shashwat Rakshit, Advocates  
Mob: 8874643389

versus

WOW CHINESE

.....Defendant

Through: None.

**CORAM:**

**HON'BLE MS. JUSTICE MINI PUSHKARNA**

**MINI PUSHKARNA, J (ORAL)**

1. The present suit has been filed for permanent injunction restraining the infringement of trademark, passing off, unfair trade practice, rendition of accounts, damages, etc.
2. The said suit has been filed against the defendant to restrain it from using the trade mark "WOW! CHINESE" or any other trade mark which is identical/deceptively similar to the plaintiff's trade mark "WOW! CHINESE", "WOW!", or any other "WOW!" formative marks.
3. Case as canvassed on behalf of the plaintiff, is as follows:
  - 3.1 Plaintiff, through its predecessors, coined and adopted the trade mark "WOW!"/ "WOW! MOMO" in the year 2008 in Kolkata. The plaintiff is engaged in the business of food services, dine-in, delivery, take away restaurants, etc. and currently has net worth of approximately INR 2500



Crores. The plaintiff is also the registered proprietor of 'WOW! MOMO'/'



and other 'WOW!' formative trademarks since the year 2010 with the use claim of 16<sup>th</sup> June, 2008.

3.2 The plaintiff while expanding its business under the "WOW!" series



of trademarks adopted the trademark "WOW! CHINESE"/ in the year 2018 and is also the registered proprietor of trademark "WOW!



CHINESE"/ for food and restaurant services. The details of the various registrations in favour of the plaintiff, as given in the plaint, are as follows:

| Trade Mark                                                                          | Reg. No. | Class | User Details | Date of Reg. | Status     |
|-------------------------------------------------------------------------------------|----------|-------|--------------|--------------|------------|
|  | 5412950  | 43    | 28-11-2018   | 18-04-2022   | Registered |
|  | 5412949  | 32    | 28/11/2018   | 18/04/2022   | Registered |



|                                                                                     |         |    |            |            |            |
|-------------------------------------------------------------------------------------|---------|----|------------|------------|------------|
|    | 5321648 | 30 | 28-11-2018 | 09-02-2022 | Registered |
|    | 2014802 | 30 | 16-06-2008 | 27-08-2010 | Registered |
|    | 2014803 | 43 | 16-06-2008 | 27-08-2010 | Registered |
|    | 2831210 | 30 | 16-06-2008 | 22-10-2014 | Registered |
|    | 2831211 | 35 | 16-06-2008 | 22-10-2014 | Registered |
|    | 2831212 | 43 | 16-06-2008 | 22-10-2014 | Registered |
| WOW<br>DIMSUNS                                                                      | 3301059 | 35 | 16-06-2008 | 04-07-2016 | Registered |
| WOW<br>DIMSUNS                                                                      | 3301060 | 43 | 16-06-2008 | 04-07-2016 | Registered |
| WOW<br>DIMSUNS                                                                      | 3301061 | 30 | 16-06-2008 | 04-07-2016 | Registered |
|  | 4665744 | 29 | 16-06-2008 | 21-09-2020 | Registered |
| WOW<br>MOMO                                                                         | 4665747 | 29 | 16-06-2008 | 21-09-2020 | Registered |
|  | 4665746 | 32 | 13/09/2015 | 21/09/2020 | Registered |
|  | 5291474 | 35 | 16-06-2009 | 19-01-2022 | Registered |
|  | 5291475 | 43 | 16-06-2009 | 19-01-2022 | Registered |



|                                                                                     |         |    |                        |            |            |
|-------------------------------------------------------------------------------------|---------|----|------------------------|------------|------------|
|    | 5412947 | 32 | 16/06/2008             | 18/04/2022 | Registered |
|    | 5412948 | 43 | 16/06/2008             | 18/04/2022 | Registered |
|    | 5510349 | 29 | 12-04-2021             | 29-06-2022 | Registered |
|    | 5510350 | 30 | 12-04-2021             | 29-06-2022 | Registered |
| WOW<br>MOMO<br>INSTANT                                                              | 5510352 | 29 | 12-04-2021             | 29-06-2022 | Registered |
| WOW<br>MOMO<br>INSTANT                                                              | 5510353 | 30 | 12-04-2021             | 29-06-2022 | Registered |
|   | 5667535 | 9  | Proposed<br>to be used | 02/11/2022 | Registered |
|  | 5667537 | 39 | Proposed<br>to be used | 02/11/2022 | Registered |

3.3 The plaintiff has goodwill and reputation for its “WOW!” formative trademarks and achieved sales of over 407 Crores for the period 2022-23 and has spent around 11 Crores on brand promotion.

3.4 The rights of the plaintiff in the “WOW!” formative marks are also recognised by this Court by way of several orders.

3.5 The defendant has dishonestly adopted the trademark “WOW! CHINESE”, which is identical to the plaintiff’s registered trademark





3.6 The plaintiff became aware of the defendant's outlets under the impugned trademark "WOW! CHINESE", in December, 2023.

3.7 Thereafter, the plaintiff sent a cease and desist letter to the defendant on 12<sup>th</sup> December, 2023. Since the defendant did not respond to the said cease and desist letter of the plaintiff, the plaintiff sent a follow up letter dated 22<sup>nd</sup> January, 2024 to the defendant.

3.8 Accordingly, the present suit has been filed.

4. When the matter was listed before this Court on 7<sup>th</sup> March, 2024, this Court passed an *ex-parte ad interim* injunction against the defendant in the following manner:

"xxx xxx xxx"

*11. Accordingly, till the next date of hearing, an ex parte ad interim injunction is passed against defendant and accordingly, the defendant and all others acting for and on their behalf are restrained from using, advertising, directly or indirectly dealing in any goods or services under defendant's trademark "WOW! CHINESE"/*

**Wow! Chinese**

*/ "WOW" or any other trade mark which is identical/deceptively similar to plaintiff's registered trademark*



"WOW! CHINESE"/

/ "WOW! CHINA"



/ "WOW!"

xxx xxx xxx"

5. In the order dated 13<sup>th</sup> May, 2024, it is recorded that defendant has refused the summons and thus, deemed to be served. The order dated 13<sup>th</sup> May, 2024, reads as under:



*“The office noting shows that the defendant has refused the summons sent by speed post and thus deemed to be served. It is yet to file the written statement. That be filed as per law, whereafter the replication be also filed in accordance with law.*

*Once their pleadings are completed, the parties shall then file the photocopies of their admitted-documents, if not already filed and the joint schedule of the documents.*

*List the matter for admission-denial and marking of exhibits on 08.07.2024.*

**IA No. 5417/2024 (u/o 39 Rules 1 & 2 r/w Section 151 CPC)**

*The defendant is yet to file the reply.”*

6. Subsequently, the order dated 8<sup>th</sup> July, 2024, also recorded that the defendant had refused the summons by speed post on two different addresses on 22<sup>nd</sup> April, 2024 and 23<sup>rd</sup> April, 2024. The order dated 8<sup>th</sup> July, 2024, reads as under:

“xxx xxx xxx

*The defendant had earlier refused the summons via speed-post on 22.04.2024 & 23.04.2024 at its two different addresses. The 120 days period to file the written statement is however yet to lapse. The written statement shall be filed as per law, whereafter the replication shall be filed in accordance with law.*

xxx xxx xxx”

7. Despite service, none has appeared for the defendant. Further, no written statement has been filed by the defendant within the statutory period.

8. Noting the aforesaid, the defendant was proceeded *ex-parte* vide order dated 9<sup>th</sup> December, 2024, in the following manner:

“xxx xxx xxx

*1. Perusal of the order sheets show that the defendant was served on 22<sup>nd</sup> April, 2024 and 23<sup>rd</sup> April, 2024. However, despite service, there has been no appearance on behalf of the defendant. Further, written statement has not been filed by the defendant, despite lapse of statutory period.*



2. Accordingly, the defendant is proceeded ex-parte.

xxx xxx xxx”

9. Considering the documents and pleadings on record, it is manifest that the marks of the plaintiff and defendant are identical/deceptively similar.

10. The defendant has not filed any written statement, thus, there is no plausible defence raised on behalf of the defendant for adopting the impugned mark.

11. It is thus clear that the defendant has adopted the impugned trademark with the intention to unlawfully profit from and create unauthorised association with the plaintiff.

12. It is also to be noted that the goods and services of the parties relate to the food industry. Therefore, degree of care and caution is expected to be observed. Further, the adoption and use of the impugned trademark by the defendant would also lead to passing off.

13. A Coordinate Bench of this Court, while elucidating upon the scope of Order VIII Rule 10 of Code of Civil Procedure (“CPC”), 1908 in the case of *Christian Broadcasting Network, INC Versus CBN News Private Limited, 2018 SCC OnLine Del 11666*, has held as follows:

“xxx xxx xxx

13. The scope of Order 8 Rule 10 CPC in commercial suits particularly under the New Commercial Courts, Commercial Division and Commercial Appellate Division of the High Court Act, 2015 has being examined by this court in *Nirog Pharma Pvt. Ltd. v. Umesh Gupta*, (2016) 235 DLT 354. This court held as follows:

**“11. Order VIII Rule 10 has been inserted by the legislature to expedite the process of justice.** The courts can invoke its provisions to curb dilatory tactic, often resorted to by defendants, by not filing the written statement by pronouncing judgment against it. At the same time, the courts must be cautious and judge the contents of the plaint and documents on record as being



*of an unimpeachable character, not requiring any evidence to be led to prove its contents.*

.....

*28. The present suit is also a commercial suit within the definition of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 and it was the clear intention of the legislature that such cases should be decided expeditiously and should not be allowed to linger on. Accordingly, if the defendant fails to pursue his case or does so in a lackadaisical manner by not filing his written statement, the courts should invoke the provisions of Order VIII Rule 10 to decree such cases.”*  
xxx xxx xxx”

*(Emphasis Supplied)*

14. Considering the aforesaid, the plaintiff is entitled to decree in its favour. The plaintiff is also held entitled to costs. Merely because a defendant has not appeared and has not filed any written statement, would not deny a plaintiff of costs, in the absence of any evidence before the Court. The averments made in the plaint have not been disputed by the defendant. Thus, the case as set up by the plaintiff, is deemed to have been admitted.

15. The comparison of the infringing mark of the defendant with the mark of the plaintiff, clearly brings forth the deceptive similarity between the two marks. There cannot be any plausible explanation or justification by the defendant to have adopted a similar/identical mark, as that of the plaintiff. The conduct of the defendant also points to the guilt of the defendant. The defendant has chosen not to appear or file any written statement, as clearly, the defendant has no explanation for adopting an identical mark as that of the plaintiff. Thus, this Court is of the view that interest of justice shall be met, if the plaintiff is granted nominal cost of ₹ 2 Lacs.

16. In view of the submissions made before this Court, in exercise of the power under Order VIII Rule 10 CPC read with Rule 27 of the Intellectual



Property Division Rules, 2022, it is directed as follows:

- i. The suit is decreed in favour of the plaintiff and against the defendant in terms of prayers (a), (b) and (c) of the plaint.
  - ii. Cost of ₹ 2,00,000/- (Rupees Two Lac), shall be payable by the defendant to the plaintiff, within a period of six weeks, from today.
  - iii. Decree sheet be drawn up.
17. The present suit, along with the pending applications, stands disposed of.

**MINI PUSHKARNA, J**

**DECEMBER 12, 2024**

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