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

+ **CS(COMM) 299/2024 & I.A. 7979/2024**

FRHI HOTELS & RESORTS S.A R.L.

.....Plaintiff

Through: Ms. Anuradha Salhotra, Mr. Sumit
Wadhwa, Ms. Vanshika Arora,
Advocates
(M:9899783837,9811068018)
Email:litigation@rahulchoudhry.com

versus

VISHWARATNA HOTEL PVT LTD

.....Defendant

Through: Mr. Ankur Khandelwal, Ms. Sanya
Panjwani, Mr. Sharad Agnihotri,
Advocates (M:9810956604)

CORAM:

HON'BLE MS. JUSTICE MINI PUSHKARNA

ORDER

27.08.2024

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1. The present suit has been filed for permanent injunction restraining the defendant from using the trademark 'OCTAVE FAIRMONT SUITES' ("impugned mark"). The present suit has been filed on the ground that the impugned mark infringes plaintiff's rights in the registered trademark 'FAIRMONT' in relation to identical services, i.e., operating a hotel.
2. When the matter was listed for hearing on 16th August, 2024, this Court had recorded as follows:

"1. Mr. Ankur Khandelwal, learned counsel appearing for the defendant submits that Vishwaratna Hotel Private Limited is neither the owner, nor operates the Hotel situated in Bengaluru, by the name of 'Octave Fairmont Suites'.



2. He further submits that the name of hotel 'Octave Fairmont Suites' in Bengaluru, has now been changed to 'Octave Fairway Suites'.
3. Learned counsel appearing for the plaintiff submits that the plaintiff has no objection if the hotel at Bengaluru is run by the name of 'Octave Fairway Suites' and that the plaintiff is willing to give up cost and damages and that the suit can be decreed in favour of the plaintiff.
4. Learned counsel appearing for the defendant submits that he shall take instructions in this regard.
5. In view of the submissions made by learned counsel appearing for the defendant, it is directed that the defendant shall endeavour to provide the correct particulars of the entity, which is running the hotel at Bengaluru, for the purposes of decreeing the suit, since it is the submission of learned counsel for the defendant that no decree can be passed against Vishwaratna Hotel Private Limited on account of the said entity not operating the 'Octave Fairway Suites' in Bengaluru.
6. Learned counsel appearing for the plaintiff is also directed to find out the correct particulars of the entity which was earlier running the hotel by the name of 'Octave Fairmont Suites', which has now been changed to 'Octave Fairway Suites'.
7. This Court shall proceed to decree the suit in favour of the plaintiff, since the grievance of the plaintiff already stands satisfied, after substitution of the correct entity as defendant, which is running the hotel 'Octave Fairway Suites', in Bengaluru.
8. At request, re-notify on 27th August, 2024.
9. Interim order to continue."

3. Today, Mr. Ankur Khandelwal, learned counsel for the defendant submits that the entity, which was earlier operating the hotel by the name of 'OCTAVE FAIRMONT SUITES' is as follows:

Aiosell Technologies Private Limited
14 Surjapur Road, Bengaluru East
Karnataka 560035

4. He further submits that he has been authorized to appear on behalf of the said entity. In this regard, he has handed over authorization letter dated



26th August, 2024 from Aiosell Technologies Private Limited, which is taken on record.

5. Accordingly, with the consent of the parties, Aiosell Technologies Private Limited, is impleaded as defendant no.2.

6. Let amended memo of parties be filed by the plaintiff, within a period of one week from today.

7. Mr. Ankur Khandelwal, who is now appearing for both the defendants, is also directed to file his Vakalatnama on behalf of defendant no.2 within one week from today.

8. Learned counsel for the defendant submits that defendant no.2 has already changed the name of the hotel from 'OCTAVE FAIRMONT SUITES' to 'OCTAVE FAIRWAY SUITES'.

9. Learned counsel for the plaintiff submits that in view of defendant no.2 already changing the name of the hotel to 'OCTAVE FAIRWAY SUITES', the plaintiff has no objection to defendant no.2 running the hotel with the new name, i.e., 'OCTAVE FAIRWAY SUITES'.

10. Learned counsel for the plaintiff submits that in view of the statement made by learned counsel for defendant no.2, she does not press for costs.

11. Accordingly, defendant no.2 is permanently enjoined from using the name 'OCTAVE FAIRMONT SUITES' or use of the mark 'FAIRMONT', in any manner, during the course of its business.

12. In view of the permanent injunction having been issued against defendant no.2, it is directed that defendant no.1 shall remove any reference to 'FAIRMONT' from its website. Further, the defendant no.1 shall also not use the trade name 'FAIRMONT' in any manner whatsoever, for its business purposes.



13. Accordingly the present suit is decreed against defendant no.2 in terms of Para 57 (i), (ii), (vi) of the plaint.

14. In view of the decree having been passed in favour of the plaintiff, it is directed that defendants shall also write to various third party entities, i.e., www.tripadvisor.in, www.makemytrip.com, www.goibibo.com and www.booking.com for correcting the listing of the defendant to show the correct name of the defendants as 'OCTAVE FAIRWAY SUITES'.

15. In case the plaintiff finds that any of the third party websites have not corrected the name of the defendants, and show the name of the defendants as in the infringing manner, the plaintiff is at liberty to bring the same to the notice of the defendants, who shall take appropriate steps, in this regard.

16. Let decree sheet be drawn up.

17. In view of the fact that the present suit is at a nascent stage and is being disposed of within four months of filing of the suit, the Registry is directed to issue a certificate for refund of full court fees to the plaintiff, through plaintiff's counsel, Mr. Rahul Chaudhry.

18. The suit is accordingly disposed of, along with pending application.

19. The next date of hearing of 26th September, 2024, before the Joint Registrar (Judicial) is cancelled.

MINI PUSHKARNA, J

AUGUST 27, 2024

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