



2024:DHC:10131



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

% ***Date of Decision: 13th December, 2024***

+ **CS(COMM) 408/2023**

MARRIOTT WORLDWIDE CORPORATIONPlaintiff

Through: Ms Vaishali Mittal and Ms Gitanjali
Sharma, Advocates.

versus

HOTEL MARRIOT PRIME & ANR.Defendants

Through: Mr Sahil Ahuja, Mr Kuldeep, Mr
Anubhav Tyagi, Mr Karan Ahuja, Mr
Amish Aggarwala and Ms Alka Nupur
Singh, Advocates for defendant no. 2.

CORAM:
HON'BLE MR. JUSTICE AMIT BANSAL

AMIT BANSAL, J. (ORAL)

CS(COMM) 408/2023 and I.A. 5465/2024 (seeking summary judgment)

1. The present suit has been filed seeking relief of permanent injunction restraining the defendants from infringing the plaintiff's trademark, passing off and other ancillary reliefs.

PLEADINGS IN THE PLAINT

2. The plaintiff, 'Marriott Worldwide Corporation' is a group company of the 'Marriott Group' which dates back to the year 1957. The plaintiff has consistently been using the mark MARRIOTT as its corporate name and trademark which also forms a part of many of its sub-brands including



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MARRIOTT, COURTYARD BY MARRIOTT, JW MARRIOTT, FAIRFIELD BY MARRIOTT, GRAND RESIDENCES BY MARRIOTT, MARRIOTT EXECUTIVE APARTMENTS, DELTA HOTELS BY MARRIOTT, PROTEA HOTELS BY MARRIOTT, APARTMENTS BY MARRIOTT BONVOY.

3. In India, the plaintiff is operating at least 126 hotels under various brands since 1999. The plaintiff opened its first hotel under the MARRIOTT brand in India in Goa in 1999 and has since consistently been expanding worldwide and in India. Globally and as of 2022, the plaintiff has earned over USD 4.1 Billion in gross revenue. In India, the plaintiff has reported over 1 billion USD revenue solely from Marriott's India portfolio as of 2023.

4. The plaintiff has also acquired numerous registrations in India for the MARRIOTT and MARRIOTT formative marks, detailed at Annexure - A to this order. Additionally, the plaintiff's earliest registration for the mark MARRIOTT (label) bears registration no. 1251263 with user detail of 1999 in class 43 and 36, detailed at Pdf page 183 of documents filed with the plaint.

5. The plaintiff has acquired numerous awards and reputation towards its brands including its flagship mark MARRIOTT across the years in support of which the plaintiff has filed various documents available at Pdf page 762, 787-796, 896 among others. The plaintiff also operates a worldwide rewards program for its customers under the mark MARRIOTT BONVOY which has over 9 Lakh members from India as of 2023. All such members received promotional materials from the plaintiff under the MARRIOTT mark. Reliance is placed on paragraph 25 of the plaint.



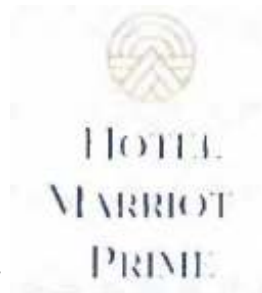
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6. Additionally, the plaintiff's mark MARRIOTT has been declared well-known by the International Trademarks Association (INTA). Reliance is placed on document at Pdf page 1183-1184.

7. The plaintiff has been diligent in enforcing and protecting its rights towards its marks including the MARRIOTT marks since inception. Reliance is placed on the documents at Pdf page 1169-1170, Pdf page 1171-1182 and Pdf page 1186. The said orders/decisions notably recognize the well-known nature of the MARRIOTT marks.

8. In 2023, the plaintiff came across a hotel based in Mumbai, India under the trade name HOTEL PRIME MARRIOT. Enquiries revealed that the defendant no.1 was operating the hotel under the trade name and marks



HOTEL PRIME MARRIOT/

9. The WHOIS records disclosed that the said website was registered *via* GoDaddy.com, LLC on 7th May, 2022 in the name of defendant No. 2 (Hospitality Minds Private Limited). The physical hoardings of defendant No.1/hotel prominently display the name 'HOTEL MARRIOTT PRIME', with the exact spelling of 'MARRIOTT' as used by the plaintiff in its brand. A photograph depicting this signage has been included in the Plaint as evidence:



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10. Reservations/ bookings for the defendant no.1's hotel can be made online *via* third-party portals/ websites such as www.makemytrip.com and www.booking.com. Therefore, the use of identical infringing marks in relation to identical goods and services, specifically in the field of hospitality, and the promotion of these marks through common third-party platforms such as travel and reservation websites, clearly violates the statutory rights vested in the plaintiff's 'MARRIOTT' trademarks. This unauthorized use by the defendants undermines the distinctiveness and reputation of the plaintiff's brand.

11. Aggrieved by the aforesaid, the plaintiff instituted this suit against the defendants.

PROCEEDINGS IN THE PRESENT SUIT

12. Summons were issued in the present suit *vide* order dated 1st June 2023. Further, this Court had granted an *ex-parte ad-interim* injunction restraining



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the defendants from using the mark 'MARRIOTT'/'MARRIOT PRIME' as also the infringing websites and domain names in the following terms:

*“21. On careful consideration of the submissions made by Ms. Mittal, the Court finds that the Defendants have prima facie acted dishonestly and with a mala fide intent by adopting the infringing marks. They are using these marks unlawfully and without authorization to deceive customers into believing that their hotel is affiliated with the Marriott Group. The Defendants are fully aware of the Plaintiff's reputation and goodwill associated with the Marriott trademarks and have deliberately chosen to adopt marks that are identical or deceptively similar to Plaintiff's Marriott trademarks in order to benefit from the Plaintiff's reputation. This use of the infringing marks amounts to misrepresentation to consumers and creates a false association with the Marriott group. In light of the fore-going, Plaintiff's have made out a prima facie case of infringement. Balance of convenience also lies in favour of Plaintiff and in case an ex-parte ad-interim order of injunction is not granted, irreparable loss would be caused to Plaintiff. **Accordingly, till the next date of hearing, Defendants and any one acting on their behalf are restrained from using the infringing marks (given above) and/ or any other mark/ logo which is identical or deceptively similar to Plaintiff's Marriott trademarks. Defendants are also restrained from using the domain name 'www.hotelmarrriotprime.in', and the email address 'hotelmarrriottprime@gmail.com'.**”*

13. Pursuant to the aforesaid order, defendant no.2 appeared in the suit and filed their written statement.

13.1 Counsel appearing on behalf of the defendant no.2 submitted that they are a marketing/advertising agency acting under the instructions of defendant



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no.1. It is submitted that since the aforesaid order was passed, they stopped rendering services to the defendant no.1 including the take down and locking of the website “www.marriotprime.in”, confirming the *ad-interim ex-parte* injunction passed on 1st June, 2023.

14. Counsel appearing on behalf of the plaintiff submits that the use of identical infringing marks in relation to identical goods and services, specifically in the field of hospitality, and the promotion of these marks through common third-party platforms such as travel and reservation websites, clearly violates the statutory rights vested in the plaintiff’s MARRIOTT trademarks. This unauthorized use by the defendants undermines the distinctiveness and reputation of the plaintiff’s brand.

15. Despite notice being issued the defendant no.1 failed to appear and was proceeded against *ex-parte vide* order dated 6th November 2023. Further, the interim order dated 1st June 2023 was made absolute during the pendency of the present suit.

16. In view of the above, the counsel for the plaintiff has filed the present application under Order XIII-A of the Code of Civil Procedure, 1908 for passing of a summary judgment.

ANALYSIS AND FINDING

17. I have heard the counsel for the parties and examined the material on record.

18. At the outset, the defendant no. 2, who appears in person, submits that he would have no objection if a decree for permanent injunction in terms of prayer clauses 54(i) and (iii) is passed in favour of the plaintiff. He further



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submits that he is willing to pay a sum of Rs. 75,000/- to the plaintiff towards damages and legal costs.

18.1 The aforesaid proposal is acceptable to counsel for the plaintiff.

18.2 Accordingly, the present suit is decreed in favour of the plaintiff and against defendant no.2 in terms of prayer clauses 54(i) and (iii).

18.3 The aforesaid amount of Rs. 75,000 shall be paid by the defendant no.2 to the plaintiff within four (4) weeks, failing which it shall carry interest @ 9% per annum.

19. As regards defendant No.1, none has appeared despite notice being issued. Further, no communication on behalf of the defendant no.1 has been placed on record in respect of the allegations of the plaintiff in this suit.

20. Since the defendant no.1 has failed to take any requisite steps to contest the present suit, despite having suffered an *ad interim* injunction order, it is evident that the defendant no.1 has no defence to put forth on merits.

21. The plaint has been duly verified and is also supported by the affidavit of the plaintiff. In view of the fact that no written statement has been filed on behalf of the defendant no.1, all the averments made in the plaint have to be taken as admitted. Further, since no affidavit of admission/denial has been filed on behalf of the defendant no.1 in respect of the documents filed with the plaint, in terms of Rule 3 of the Delhi High Court (Original Side) Rules 2018, the same are deemed to have been admitted.

22. In ***Su-Kam Power Systems Ltd. v. Kunwer Sachdev***, 2019 SCC OnLine Del 10764, 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



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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. *Rule 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.”*

23. The aforesaid principles are fully applicable in the facts and circumstances of the present case. As elaborated above, the defendants have no real prospect of successfully defending the claims in the present suit. Further, taking into account that the defendants have not set up any defence, there is no compelling reason for the recording of oral evidence.



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24. Therefore, in my view, this is a fit case where a summary judgment in terms of Order XIII-A of the CPC can be passed in favour of the plaintiff and against the defendant no.1.

25. Therefore, I am of the opinion that no purpose would be served by directing the plaintiff to lead *ex parte* evidence by filing an affidavit of examination in chief and the plaintiff is entitled to a summary judgment.

26. From the averments made in the plaint and the evidence on record, the plaintiff has been able to prove that they are the registered proprietors of the trademarks “MARRIOTT”.

27. The comparison of the marks used by the defendant no.1 and plaintiff is set out below:

Plaintiff's marks	Defendants' marks
MARRIOTT	MARRIOT PRIME
MARRIOTT	MARRIOTT PRIME
	
	

28. The above comparison makes it evident that the impugned mark of the defendant no.1 is a slavish imitation of the plaintiff's mark.

29. Based on the discussion above, a clear case of infringement of trademarks is made out. The defendant no.1 has taken unfair advantage of the reputation and goodwill of the plaintiff's trademark and have also deceived the unwary consumers of their association with the plaintiff by dishonestly adopting the plaintiff's registered marks without any plausible explanation.



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Therefore, the plaintiff has established a case of passing off as well.

WELL KNOWN TRADEMARK

30. Prayer clause 54 (ii) in the suit seeks declaration that the plaintiff's mark "MARRIOTT" is a 'well-known trademark' within the meaning of Section 2(1)(zg)¹ of the Trade Marks Act, 1999.

31. Section 11(6) of the Trade Marks Act, 1999 sets out factors which are to be considered while determining whether a mark is a well-known mark. For ease of convenience the same is extracted below:

"Section 11 –

...

(6) The Registrar shall, while determining whether a trade mark is a well-known trade mark, take into account any fact which he considers relevant for determining a trade mark as a well-known trade mark including--

(i) the knowledge or recognition of that trade mark in the relevant section of the public including knowledge in India obtained as a result of promotion of the trade mark;

(ii) the duration, extent and geographical area of any use of that trade mark;

(iii) the duration, extent and geographical area of any promotion of the trade mark, including advertising or publicity and presentation, at fairs or exhibition of the goods or services to which the trade mark applies;

¹ Section 2 - Definitions and interpretation.

(1) In this Act, unless the context otherwise requires,—

...

(zg) well known trade mark, in relation to any goods or services, means a mark which has become so to the substantial segment of the public which uses such goods or receives such services that the use of such mark in relation to other goods or services would be likely to be taken as indicating a connection in the course of trade or rendering of services between those goods or services and a person using the mark in relation to the first-mentioned goods or services.



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(iv) the duration and geographical area of any registration of or any application for registration of that trade mark under this Act to the extent that they reflect the use or recognition of the trade mark;

(v) the record of successful enforcement of the rights in that trade mark, in particular the extent to which the trade mark has been recognised as a well-known trade mark by any court or Registrar under that record.”

32. Section 11(6) of the Trade Marks Act, 1999 provides the factor that the registrar has to consider while deciding whether a trade mark is known or recognised in the relevant section of the public for the purposes of sub-section (6). For ease of convenience the same is set out below:

“Section 11 –

...

(7) The Registrar shall, while determining as to whether a trade mark is known or recognised in a relevant section of the public for the purposes of sub-section (6), take into account--

(i) the number of actual or potential consumers of the goods or services;

(ii) the number of persons involved in the channels of distribution of the goods or services;

(iii) the business circles dealing with the goods or services, to which that trade mark applies.”

33. Ms Vaishali Mittal, counsel appearing on behalf of the plaintiff has drawn the attention of this Court to the following data with regard to the five factors enumerated in the aforesaid clauses, from the documents filed along



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with the suit, as being relevant for deciding whether a mark is eligible for being declared as a well-known mark, thus:

I. Re: Factor 1 – Section 11(6)(i):

- INTA list of well-known marks [*Pdf page 1184*]
- Awards/recognition in India [*Pdf page 787, 790, 793, 796, 896, 898, 919 and 954*].
- Recent awards/recognitions in India (2022-2024) by Conde Nast [*Additional Documents vide index dated 10.12.2024 at pages 2, 24, 34*].
- Articles about Marriott in India [*Pdf page 968, 972, 976, 980, 982, 993, 996, 1007*].
- Articles about growth/expansion in India and recognition from Prime Minister of India [*Additional Documents vide index dated 10.12.2024 at pages 41, 58 and 63*]
- Marriott's first tech accelerator being opened in India - Articles about growth in India and recognition from Prime Minister of India [*Additional Documents vide index dated 10.12.2024 at pages 81 and 93*].
- Marriott hotels in India since 1999 [*Pdf page 1126*].

II. Re: Factor 2 – Section 11(6)(ii):

- Article about global growth of Marriott [*Pdf page 758*].
- List of international registrations for MARRIOTT [*Pdf page 331-352*]
- Marriott hotels in India since 1999 [*Pdf page 1126*].



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III. Re: Factor 3 – Section 11(6)(iii):

- Marriott News Center- List of awards [*Pdf page 762*].
- Articles showing goodwill and reputation of MARRIOTT [*Pdf page 968 onwards*].
- Articles about growth in India and recognition from Prime Minister of India [*Additional Documents vide index dated 10.12.2024 at pages 41, 58 and 63*].

IV. Re: Factor 4 – Section 11(6)(iv):

- Trade Marks registration India [*Pdf page 135-330*].
- See registration no. 1251263 with user detail of 1999 in class 43 and 36 for MARRIOTT (label) [*Pdf page 188*].
- Foreign registrations [*Pdf page 331-352*].
- Domain name registrations [*Pdf page 353-371*].

V. Re: Factor 5 – Section 11(6)(v):

- Copies of orders by Delhi High Court [*Pdf page 1169-1170*].
- Abandoned trademark applications of identical/deceptively similar marks [*Pdf page 1171-1182*].
- Domain name complaint-marriott.com [*Pdf page 1186*].

34. I have gone through the material placed on record by the plaintiff. On the strength of the averments made in the plaint and the volume and nature of documents placed on record, I am of the view that the plaintiff has established well beyond doubt that its mark “MARRIOTT” has acquired a well-known status in terms of Section 2(1)(zg). The long duration for which the said mark



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has been in use of the plaintiff, the wide geographical area of use, the knowledge of the mark “MARRIOTT” to the general public and its goodwill and reputation due to the extensive promotion, publicity and extensive revenue generated by the plaintiff, in India as well as other countries, the mark “MARRIOTT” has achieved the status of a well-known mark. Accordingly, plaintiff fulfils all criteria set out in Sections 11(6) and 11(7) of the Trade Marks Act, 1999 for declaring the mark “MARRIOTT” as a well-known mark in respect of the hotel, lodging and hospitality sector.

RELIEFS

35. In view of the foregoing analysis, a decree of permanent injunction in terms of prayer clauses 52 (i), (ii) and (iii) of the plaint is passed in favour of the plaintiff and against the defendant no.1.

36. Insofar as the reliefs of damages and costs sought in prayer clauses 52(vi) and (vii) are concerned, reference may be made to the judgment in ***Hindustan Lever Ltd. v. Satish Kumar***, 2012 SCC OnLine Del 1378. The relevant observations are set out below:

“23. One of the reasons for granting relief of punitive damages is that despite of service of summons/notice, the defendant had chosen not to appear before the court. It shows that the defendant is aware of the illegal activities otherwise, he ought to have attended the proceedings and give justification for the said illegal acts. Since, the defendant has maintained silence, therefore, the guilt of the defendant speaks for itself and the court, under these circumstances, feels that in order to avoid future infringement, relief of punitive damages is to be granted in favour of the plaintiff.”



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37. It is an admitted position that the defendant no.1 has been unauthorisedly using the mark 'MARRIOTT' at least since May 2023, which is evident from their website registration and third-party listings on online ticketing platforms.

38. The above actions of the defendant no.1 clearly proves its *malafide* and evidences the fact that the infringement being carried out by the defendant no.1 is deliberate and intentional. Taking a holistic view, the actions of the defendant no.1 are clearly aimed at capitalizing on the plaintiff's goodwill and reputation.

39. In light of the foregoing analysis, this Court concludes that the conduct of defendant no.1 not only warrants but also necessitates the imposition of both costs and aggravated damages. Thus, in addition to the decree passed above, taking into account the entire facts and circumstances presented in this case, this Court also awards damages amounting to INR 5,00,000/- in favour of the plaintiff and against the defendant no.1.

40. For the purposes of calculation of actual costs, the plaintiff shall file its bill of costs in terms of Rule 5 of Chapter XXIII of the Delhi High Court (Original Side) Rules, 2018 within four (4) weeks. For this purpose, the representatives of the plaintiff shall appear before the taxation officer on 22nd January, 2025, who shall determine the actual costs incurred by the plaintiff in the present litigation.

41. As noted above, the present suit has already been decreed in favour of the plaintiff and against defendant no. 2 in terms of prayer clauses 54(i) and



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(iii) along with costs of Rs. 75,000 payable within four weeks from today.

42. In terms of prayer clause 54 (ii), a decree of declaration is also passed declaring that the plaintiff's mark "MARRIOTT" is a 'well-known trademark' within the meaning of Section 2(1)(zg) of the Trade Marks Act, 1999.

43. Let the decree sheet be drawn up.

44. All pending applications stand disposed of.

AMIT BANSAL, J

DECEMBER 13, 2024

Corrected and uploaded on: 04th January, 2025

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**ANNEXURE - A**

S. No.	Trade Mark	App. No.	Class	Date of Registration / Application	Status
1.		587290	30.	23.12.1992	Registered
2.		586505	16	09.12.1992	Registered
3.		586506	25	09.12.1992	Registered
4.		587289	32	23.12.1992	Registered
5.		587288	33	23.12.1992	Registered
6.		587285	29	29.01.1999	Registered
7.		1237813	99 (42, 36)	17.09.2003	Registered
8.		1251263	43	24.11.2003	Registered
9.	MARRIOTT	1251264	43	24.11.2003	Registered



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10.	 JW MARRIOTT	1570272	43	20.06.2007	Registered
11.	 Residence Inn Marriott with device	1748326	43	27.10.2008	Registered
12.	 FAIRFIELD INN & SUITES marriott	1909029	43	14.01.2010	Registered
13.	 FAIRFIELD Marriott	2040976	43	20.10.2010	Registered
14.	MARRIOTT REWARDS	2071935	43	21.12.2010	Registered
15.	AC HOTELS BY MARRIOTT	2242858	43	01.12.2011	Registered
16.		2242859	43	01.12.2011	Registered
17.	CLUB MARRIOTT	2387660	43	30.08.2012	Registered



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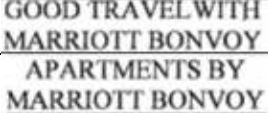


18.		2555946	43	27.06.2013	Registered
19.		2706698	43	26.03.2014	Registered



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20.		2794195	43	20.08.2014	Registered
21.	MARRIOTT MARQUIS	2941537	43	14.04.2015	Registered
22.	 RESIDENCE INN MARRIOTT	3365751	43	16.09.2016	Registered
23.		3608437	43	08.08.2017	Registered
24.		3712980	43	27.12.2017	Registered
25.	MARRIOTT BONVOY	3982219	99 (35, 36, 43)	24.10.2018	Registered
26.		4029627	99 (35, 36, 43)	17.12.2018	Registered
27.		5113747	99 (36, 43)	01.09.2021	Registered
28.		5206490	43	12.11.2021	Registered
29.		5329467	99 (35, 36, 43)	15.02.2022	Registered



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30.	ALL-INCLUSIVE BY MARRIOTT BONVOY	5344631	99 (39, 41, 43, 44, 45)	25.02.2022	Registered
31.	ALL-INCLUSIVE By MARRIOTT BONVOY	5344632	99 (39, 41, 43, 44, 45)	25.02.2022	Registered