



\$~13

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(COMM) 717/2022, I.A. 16836/2022, I.A. 3793/2023
& I.A. 19803/2023.

VEERJI RESTAURANT PRIVATE LIMITED Plaintiff

Through: Mr. Nishant, Adv.

versus

ANKIT KUMAR & ORS. Defendants

Through:

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

% **ORDER**
09.04.2024

1. Court notice was issued on 11th January, 2024 by this Court to Mr. Shekhar Aggarwal, Advocate, who had earlier appeared for all the defendants.
2. Mr. Aggarwal, Advocate, appears today and states that he wishes to be discharged from the matter as he has not received any instructions from the defendants.
3. Accordingly, Mr. Shekhar Aggarwal, Advocate, stands discharged from the matter.
4. No one has been appearing on behalf of the defendants for the past few dates. Accordingly, the defendants are proceeded *ex parte*.
5. The *ex parte ad interim* injunction granted by this Court on 19th October, 2022, in para 21 thereof, is made absolute and is extracted below:



21. In these circumstances, the use of an identical mark and logo for identical services is bound to create confusion and deception in the minds of the public and consumers. Thus, this Court is of the opinion that the Plaintiff has made out a prima facie case for grant of interim injunction and that the balance of convenience lies in its favour. Moreover, irreparable injury would be caused to the Plaintiff if the interim injunction is not granted. However, considering the fact that the trademark applications of the Defendant No.1 bearing no. bearing no. 5132255 and 5132256 dated 15th September, 2021 were filed prior to the date of the franchise agreement i.e. 18th October, 2021, limited interim injunction is granted at this stage in the following terms:

- (i). The Defendant shall not open any further outlets including restaurants and hotels under the name/logo VEER JI MALAI CHAAP WALE or any other confusingly similar name to the Plaintiff's name and logo till the next date of hearing.
- (ii). The Defendants are also stated to be entering into franchise agreements with third parties. No further franchise agreements shall be entered into by Defendant Nos. 1-3 to any third party without permission of this Court.
- (iii). In so far as online listings are concerned, since the defendants are using the name VEER JI MALAI CHAAP WALE which is identical to the Plaintiff's name and registered trademarks, the Defendants shall ensure that the online listings on platforms such as *Zomato* and *Swiggy* are removed by 15th November, 2022.



6. The facts and circumstances in which the said suit was filed, and the applications moved, have been narrated by the Court in the order dated 19th October, 2022, in para 14-20, which the Court has perused and notes them as the plaintiff's position in the matter.

7. Plaintiff uses the domain name www.veerjimalaichaapwale.com and has registered trademarks in different classes as tabulated below:

Trademark	App. No	Class	Status	Description
VEERE DI MALAI CHAAP	4371117	43	Registered	Services for providing food and drink; temporary accommodation including hotels, restaurants, guest house, banquet halls, bars, self-services restaurants
	4022688	43	Registered	and catering services All type of food and beverage services.
	4694575	32	Registered	Beers; Nonalcoholic beverages; Mineral and aerated waters; Fruit beverages and fruit juices; Syrups and other non-alcoholic preparations for making beverages
	4661276	29	Registered	Meat, fish, poultry and game, meat extracts, preserved, dried and cooked fruits and vegetables including soya beans (preserved for food), soya milk and soya patties
	4694573	31	Registered	Soya Beans Fresh, Fresh fruits and Vegetables



8. Defendant No.1 entered into a franchise agreement with the plaintiff on 18th October, 2021. However, the agreement has terminated on 13th August, 2022 and defendant No.1 filed a trademark application subsequently. The competing logos of the plaintiff and the defendants are as under:



9. Accordingly, decree is passed in terms of para 36 (a) and (b).

10. Decree sheet be drawn accordingly in terms of paras 36 (a) and (b) of the plaint and para 21(i), (ii) and (iii) of 19th October, 2022, as noted above.

11. Paras 36(a) and (b) of the plaint are extracted below for reference:

“a. A decree for permanent injunction restraining the Defendants, their proprietor or partners as the case may be, servants, agents, affiliates, associates, stockiest, distributors, etc from trading, wholesaling, supplying, marketing, selling in any manner including physical or online sale or through e commerce portals, any services under the impugned mark Veerji Malai Chaap Wale or any other mark which are identical or deceptively similar to the Plaintiffs trade mark Veerji Malai Chaap wale amounting to infringement of the plaintiffs registered trademarks as mentioned above in plaint.

b. A Decree for Permanent Injunction Restraining the defendants, their proprietor or partners as the case may



be, servants, agents, affiliates, associates, stockiest, distributors etc. from trading, supplying, marketing, selling in any manner including physical or online sale or through e commerce portals, any goods or services under the impugned mark Veerji Malai Chaap wale or any other mark which are identical or deceptively similar to the plaintiffs trade mark Veerji Malai Chaap wale amounting to passing off the defendants goods as the plaintiffs goods, unfair competition and dilution.”

12. In view of the fact that there has been non-compliance of the orders of this Court as alleged by the plaintiff; and despite noted by this Court on 01st November, 2023, that the directors of the defendants have not appeared despite being summoned; the plaintiff shall be entitled to costs in this regard, which are granted in favour of the plaintiff in the amount of Rs.5 Lacs.

13. Accordingly, decree sheet be drawn up with the aforesaid directions.

14. Suit is disposed of in these terms. Pending applications, if any, also stand disposed of as infructuous.

15. Order be uploaded on the website of this Court.

ANISH DAYAL, J

APRIL 9, 2024/MK/rj