

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INTERIM APPLICATION NO. 190 OF 2025
WITH
LEAVE PETITION (LODGING) NO. 3592 OF 2025
IN
COMMERCIAL IP SUIT NO. 247 OF 2024**

Lords Inn Hotels & Developers

Private Limited

... Applicant/Plaintiff

vs.

Vikas Seth,

Trading as Lords Residency, Manali ... Respondent/Defendant

Mr. Rashmin Khandekar a/w. Mr. Darpan Bhatia, Mr. Anand Mohan, Mr. Rishabh Dhanuka, Ms. Anisha Didwania and Ms. Mahima Shah, i/b. Agarwal & Dhanuka Legal for applicant/plaintiff.

Mr. Sanjeev Sahay (through video-conferencing) a/w. Mr. Archit Rajput and Mr. Pravin Singh, i/b. Pravin Singh for respondent/defendant.

CORAM : MANISH PITALE, J.

DATE : 05th MARCH, 2025

P.C. :

. By this application, the applicant/plaintiff is seeking interim reliefs, while asserting proprietary rights in its registered trade marks using the word “LORDS”. The plaintiff is relying upon its registered trade marks, details of which are given in paragraph No.7 of the plaint, the first such registration having been granted in favour of the plaintiff on 02.05.2008 in Class 42, pertaining to hotel and allied services. The plaintiff is aggrieved by the act of defendant in using the impugned trade marks “LORDS RESIDENCY/ ”. It is the case of the plaintiff that the defendant has infringed upon the registered trade marks of the plaintiff and also indulged in passing off its services as those of the plaintiff. The pleadings were completed in the present application and it was taken up for hearing.

2. Since the defendant has been served, the leave petition is also taken up for consideration. Having perused the contents of the same, this Court is convinced that sufficient grounds are made out for granting leave under Clause XIV of the Letters Patent, so as to combine the action of infringement with that of passing off.

3. Accordingly, Leave Petition is allowed and disposed of.

4. Mr. Khandekar, learned counsel appearing for the plaintiff referred to the pleadings on record and he particularly placed emphasis on the pleading that the plaintiff has more than 40 hotels in India, Nepal and United States, using the registered trade marks, consisting of the word “LORDS” as a leading and essential feature. It is submitted that the plaintiff adopted the mark “LORDS” in respect of its hotel and allied services in the year 2006. In the year 2007, the plaintiff was incorporated and it started using the word “LORDS” as part of its corporate name/trade name. It was claimed that “LORDS” is a completely arbitrary mark used for hotel and allied services by the plaintiff as far back as from the year 2006 and that by using the same in a continuous commercial manner, the plaintiff has garnered substantial goodwill and distinctiveness in respect of the said mark.

5. Reliance was placed on certificates of registration issued by the Registrar of Trade Marks in respect of 9 registered trade marks of the plaintiff, including device marks and word marks, registered in Classes 42 and 43, starting from 02.05.2008 upto 14.03.2019. Reference was also made to the turnover figures and also the amount spent towards publicity and sales promotion expenses, to claim that sufficient goodwill has been generated over a period of time and

further reliance was placed on certain awards and accreditations said to have been given to the plaintiff for its services. The plaintiff got its domain name i.e. www.lordshotels.com registered on 13.12.2006. On this basis, the learned counsel for the plaintiff stated that the plaintiff was clearly entitled to assert its proprietary rights in the said registered trade marks.

6. It was submitted that in or about May 2023, when the plaintiff was exploring opportunities for extending its services to Manali in Himachal Pradesh, that it first time came across the presence of hotel and allied services being provided by the defendant, using the impugned marks “LORDS RESIDENCY/ ”. It was found that the defendant was available on the travel service websites like www.makemytrip.com, www.booking.com, www.traveladvisor.in, etc. and in this backdrop, on 10.05.2023, the plaintiff addressed a cease and desist notice to the defendant. On 25.05.2023, the defendant responded through an advocate, denying the assertions made by the plaintiff. On 11.08.2023, the plaintiff responded to the same and provided details of its trade mark registrations, reiterating its demand to the defendant to cease and desist from using the impugned trade marks in respect of its hotel.

7. But, further enquiries conducted by the plaintiff online did not reveal details as to the first date of use of the impugned trade marks by the defendant or as to when its hotel was constructed and business was initiated. The plaintiff filed the present proceeding on the basis that the impugned trade marks are identical/deceptively similar to the registered trade marks of the plaintiff and since the services being provided are identical, there is every likelihood of confusion in the minds of consumers, particularly when the

defendant's presence is noted in travel service websites referred to hereinabove.

8. The learned counsel for the plaintiff submitted that in the reply affidavit, the defendant has taken various defences, including prior use of the impugned trade marks; the word "LORDS" being *publici juris*; the word being used in common parlance; that there are other entities engaged in the same business using the word "LORDS" and an objection with regard to jurisdiction of this Court was also raised.

9. On the aspect of prior use, it was submitted by the learned counsel for the plaintiff that the pleadings in the reply affidavit and the documents filed in that context, fall miserably short of supporting the claim of the defendant that he or his predecessor have been using the impugned trade marks since the years 1972 or 1977. It was submitted that the said documents pertain to certain proceedings before Government authorities. But, there is nothing to show how the persons or entities in respect of whom such proceedings were undertaken, are, in any manner, connected with the defendant. In absence of any such connection being established, on the basis of cogent material, the defendant cannot claim user since 1972 or 1977.

10. In this regard, reliance was placed on a recent order dated 17.02.2025 passed by this Court in Interim Application No.1598 of 2023 in Commercial IP Suit No.45 of 2023 in the case of *Yogi Ayurvedic Products Pvt. Ltd. vs. Vaishali Industries*. Reliance was also placed on the judgment of the Madras High Court in the case of *T. G. Balaji Chettiar vs. Hindustan Lever Ltd. Bombay (AIR 1967 Mad 148)*, wherein it was held that the discrepant versions as to when the

use of impugned trade marks was commenced, cannot be the basis to claim prior user. By placing reliance on the judgment of this Court in the case of *Kamat Hotels (India) Ltd. vs. Royal Orchid Hotels Ltd. and another* [2011 (4) Mh.L.J. 71], it was contended that the use of a trade mark must be continuous commercial use in relation to the goods and services. Use which appears to be stray/isolated/disjointed cannot establish adoption of a mark to exclusively claim prior user.

11. It was further submitted on behalf of the plaintiff that the defendant cannot claim that the word “LORDS” is *publici juris*, simply for the reason that it is an arbitrary mark used by the plaintiff in respect of its hotel and allied services, at least from the year 2006. It was submitted that the word “LORDS” does not, in any manner, describe the nature of services provided and hence, it cannot be said to be a descriptive mark. Being an arbitrary mark, it has high claim of exclusivity, particularly when the plaintiff has been using the same commercially and continuously at least since the year 2006 and it has a number of hotels in India, Nepal and United States, using the said mark, of which the word “LORDS” is a leading and essential feature.

12. Reliance was placed on the judgment of this Court in the case of *Jagdish Gopal Kamath and others vs. Lime & Chilli Hospitality Services* (2015 SCC OnLine Bom 531), to contend that the pleadings and the material on record on behalf of the defendant, have to be of a high degree, to indicate that the common element contained in the two marks, is found in a number of other marks and that such common occurrence in the market has the effect of the consumers paying more attention to other features of the mark. It was submitted that the pleadings of the defendant in this context are absolutely

deficient and hence, the said contention of the defendant cannot be accepted.

13. On the aspect of jurisdiction, the learned counsel for the plaintiff submitted that since bookings for the hotel of the defendant can and were made at Mumbai, the plaintiff is entitled to pursue the present proceedings before this Court to press for interim reliefs. It was further emphasized that the registered trade mark of the plaintiff being an arbitrary mark as regards hotel and allied services, there is no question of the defendant claiming that the mark of the plaintiff is in common parlance and hence, no exclusivity can be claimed.

14. On the aspect of passing off, reliance was placed on the judgment of the Supreme Court in the case of *Renaissance Hotel Holdings Inc. vs. B. Vijaya Sai and others* [(2022) 5 SCC 1], to contend that the defendant's mark was nothing, but a colourable imitation of the registered trade mark of the plaintiff, with the intention to pass off the services of the defendant as those of the plaintiff. On the contention raised on behalf of the defendant that the plaintiff has filed the present proceedings with vengeance, after it failed to take over the business of the defendant, it was submitted that firstly, there is no material at all placed on record by the defendant to support the said contention and secondly, in the present proceedings, the plaintiff is asserting its proprietary rights in its registered trade marks. It was further submitted that the emphasis placed on behalf of the defendant on the aspect that the registrations in favour of the plaintiff are mostly device marks or composite marks and that even the word mark does not have the word "LORDS" in a standalone fashion, is misplaced because the leading and essential feature of all the registered trade marks of the plaintiff is the word

“LORDS”, which has been slavishly copied by the defendant in its mark. Here again, reliance was placed on the judgment of this Court in the case of **Jagdish Gopal Kamath and others vs. Lime & Chilli Hospitality Services** (*supra*). It was submitted that the judgments pertaining to anti-dissection rule relied upon by the learned counsel for the defendant, have no applicability in the facts and circumstances of the present case.

15. On the other hand, Mr. Sahay, learned counsel appearing for the defendant firstly referred to reply to the cease and desist notice, wherein the defendant specifically raised the issue about an attempt on the part of the plaintiff to take over the business of the defendant. It was submitted that the said issue clearly indicated that the plaintiff was aware about the existence of the hotel of the defendant for a long period of time, particularly because the plaintiff merely denied the said issue raised on behalf of the defendant. It was submitted that the present suit and the interim application were filed against the defendant as a matter of vengeance.

16. It was further submitted that the documents filed on record with the affidavit of the defendant, would show that the hotel was being operated by the predecessor of the defendant in Shimla from the year 1972 and the documents on record demonstrated the use of the impugned trade mark of the defendant at least from the year 1977. It was submitted that Hotel Lord’s Residency was also opened by the predecessor of the defendant at Manali and the documents on record clearly demonstrate prior use on the part of the defendant. It was submitted that the hotel business was initiated and run by the father and uncle of the defendant and thereupon, the defendant succeeded to the same, obviating the necessity for any written

assignment agreement in favour of the defendant. Much reliance was placed on the Management Agreement dated 04.07.2011, where the name of the defendant was prominently mentioned, to claim that the defendant was and is actively involved in the business of the said hotel for a considerable period of time.

17. It was submitted that the word “LORDS” is *publici juris* and merely because the plaintiff had obtained registrations for its marks, the defendant cannot be disentitled to resist the prayer for interim reliefs, particularly when he is asserting prior use of the said mark. It was emphasized that the plaintiff had obtained registrations for composite/label/device marks and hence, it cannot claim exclusivity on the individual elements of such marks, much less exclusivity in the word “LORDS”. On this basis, it was submitted that since “LORDS RESIDENCY” is not a registered trade mark of the plaintiff, interim reliefs cannot be granted in its favour.

18. Much emphasis was placed on the fact that even in the word mark of the plaintiff, the word “LORDS” is not used in a standalone manner. The judgment in the case of **Jagdish Gopal Kamath and others vs. Lime & Chilli Hospitality Services** (*supra*) was sought to be distinguished on the ground that the impugned mark therein was an exact copy of the registered trade mark of the plaintiff. Reliance was also placed on the judgments of the Delhi High Court in the case of *Vasundhara Jewellers Pvt. Ltd. vs. Kirat Vinodbhai Jadvani and another* (2022 SCC OnLine Del 3370) and in the case of *Dolphin Mart Private Limited vs. Avenue Supermarts Limited and another* (2023 SCC OnLine Del 5170), to emphasize on the anti-dissection rule in such cases, involving composite/label/device marks. On the aspect of the word “LORDS” being *publici juris*, reliance was placed

on the judgment of this Court in the case of *Freudenberg Gala Household Product Pvt. Ltd. vs. GEBI Products* (order dated 01.08.2017 passed in Commercial Appeal No.72 of 2017) and judgment of the Delhi High Court in the case of *Om Logistics Ltd. vs. Mahendra Pandey* (2022 SCC OnLine Del 757) and the judgment of the Madras High Court in the case of *A. D. Padmasingh Isaac and another vs. Aachi Cargo Channels Private Limited* (2013 SCC OnLine Mad 3382).

19. It was further submitted that the turnover figures given in the pleadings of the plaintiff, showed a poor and insignificant turnover of the hotel business of the plaintiff, thereby demonstrating that the plaintiff cannot rely upon such figures to claim considerable goodwill in the market. In this regard, reliance was placed on the judgment in the case of *Bhole Baba Milk Food Industries Ltd. vs. Parul Food Specialities Pvt. Ltd.* (2011 SCC OnLine Del 4422). On this basis, it was submitted that this Court may consider dismissing the application.

20. Having heard the rival submissions, this Court is now proceeding to decide the issues that arise in the present application, in the context of the defences raised on behalf of the defendant.

21. The defendant has specifically claimed prior use of its trade mark, in order to resist the interim reliefs claimed by the plaintiff. The said defence of the defendant is based on Section 34 of the Trade Marks Act, 1999 (the said Act), which pertains to saving of vested rights. In the case of *Kamat Hotels (India) Ltd. vs. Royal Orchid Hotels Ltd. and another* (*supra*), while discussing the ingredients of the defence of prior use under Section 34 of the said

Act, this Court held as follows:

“14. Section 34 carves out an exception and creates an overriding provision which within the sphere of its operation prevents a proprietor or registered user of a registered trade mark from interfering with the use of an identical trade mark or a mark which nearly resembles the registered mark. Section 34 in consequence provides for a defeasance of the statutory entitlement which flows from the registration of a trade mark. Before such a consequence ensues the conditions which Parliament has enacted must be fulfilled. The most fundamental requirement is four fold. Firstly, the use by a person of a mark which is identical to or nearly resembles a registered trade mark must be *in relation to those goods and services* for which the first mentioned mark has been registered. Secondly, the use that is postulated by section 34 is a *continuous use* of the trade mark. Thirdly, in order to avail of the protection the trade mark must be used by the proprietor or by his predecessor-in-interest. Fourthly, the mark in respect of which protection is sought must have been used from a date prior to the use of the registered trade mark or the date of registration of the registered trade mark whichever is earlier. Hence, as an illustration, if the user by the Plaintiff is prior to registration, then the use by the Defendant must be established to be prior to the use by the Plaintiff. If the Plaintiff has not used the mark prior to the date of registration, the use by the Defendant has to be prior to the date of registration of the Plaintiff's mark. The use must be in respect of goods and services for which the Plaintiff's mark is registered. The use has to be by the Defendant or by his predecessor-in-title. The use must be continuous. The expression "continuously used that trade mark" by Parliament has a specific connotation. The concept of continuous use emphasizes that a right vests in a person when he puts his goods with the mark in the market. A use which is continuous is distinct from a use which is stray, isolated or disjointed. The notion of a continuous use establishes that a mere adoption of a

mark is not sufficient. The legislation mandates that in order to avail of the benefit of section 34 a test of a high order must be fulfilled which requires a commercially continuous use of the mark in relation to goods or services. Section 34 thus provides for specific requirements which relate to (i) the nature of the goods or services in relation to which the mark is used; (ii) the nature and character of use; (iii) the person who must use; and (iv) the date from which the mark should have been used. Section 2(2)(b) provides that in the Act, unless the context otherwise requires, any reference to the use of a mark is to be construed as a reference to the use of printed or other visual representation of the mark. Any reference to the use of a mark in relation to goods shall be construed as a reference to the use of the mark upon or in any physical or in any other relation whatsoever, to such goods. The Supreme Court has interpreted these words in the context of section 46(1)(b) in *Hardie Trading Ltd. vs. Addisons Paint and Chemicals Ltd*, AIR 2003 SC 3377.”

22. It is crucial that as per the said position of law, there has to be continuous commercial use of the impugned mark in relation to the goods or services by the defendant or its predecessor. There has to be cogent material on record to show such continuous commercial use and use in a stray/isolated or disjointed manner, can be of no avail.

23. In this backdrop, when the reply affidavit of the defendant is considered alongwith the documents at Exhibits A to E, this Court finds that the pleadings as well as the documents on record filed on behalf of the defendant, do not satisfy the test of prior use, embodied in Section 34 of the said Act. The defendant has stated that in the context of hotel services, the word “LORDS” was used by the “family business venture” under the name Hotel Lord’s Grey in Shimla, Himachal Pradesh since the year 1977. It was claimed that the hotel was registered in the year 1977 and a registration certificate issued

in June 1990 by the Department of Tourism, was relied upon. Reference was thereafter made to an order dated 31.12.1982 passed by the District Court, in respect of an order of demolition.

24. The pleadings on record further show a claim made on behalf of the defendant that apart from Hotel Lords Grey in Shimla being run by a “partnership” of the father of the defendant and his uncles, in 2003, the father of the defendant independently leased a hotel in Manali under the name Hotel Lords Residency, which was run by the father of the defendant till the year 2017. Certain documents have been placed on record regarding renewal of permissions, etc., pertaining to such hotels. Thereafter, reference is made to a management agreement dated 04.07.2011, whereby the defendant allegedly leased out the property in question from one Mr. Deepak Singh and started running a hotel under the name “LORDS RESIDENCY”, adjacent to the property where the father of the defendant was allegedly running Hotel Lords Residency till the year 2017. These are the only pleadings and documents in the reply affidavit of the defendant, to claim prior use of the word “LORDS” in hotels allegedly run by the defendant.

25. But, this Court finds that other than general references to “family business venture”, partnership of the defendant’s father with his uncles and the defendant then joining the “family business” of hotel services, there is no pleading or supporting documents on record to show as to the manner in which the trade mark “HOTEL LORDS” was commercially and continuously used by the predecessor of the defendant and then, by the defendant. The pleadings on record and the documents in that context are stray, vague, isolated and disjointed. There is nothing to show that the trade mark “HOTEL

LORDS” was ever assigned to the defendant by way of an “assignment”. The term “assignment” has a specific legal connotation as defined under Section 2(1)(b) of the said Act, which means that an assignment has to be in writing by an act of the parties concerned. There is nothing of that sort in the present case.

26. In this context, the plaintiff is justified in relying upon the judgment of Madras High Court in the case of **T. G. Balaji Chettiar vs. Hindustan Lever Ltd. Bombay** (*supra*), wherein it is laid down that prior user or concurrent user cannot be based on discrepant versions without any specifics and that the burden of proving the evidence of user on a party like the defendant herein, is a heavy burden to be discharged. In the facts of the present case, the defendant has failed to discharge such a burden, even at a preliminary or interim stage.

27. In this context, the plaintiff is also justified in relying upon a recent order of this Court in the case of **Yogi Ayurvedic Products Pvt. Ltd. vs. Vaishali Industries** (*supra*), wherein it was held that once the link between the predecessor and the defendant is snapped, there is no question of the defendant claiming any right of continuous commercial use of the impugned trade mark. In the present case, there is not even a semblance of a link being established and therefore, the contention pertaining to prior use, raised on behalf of the defendant, cannot be accepted. It is to be noted that only in the document of the year 2011 i.e. the management agreement, that the name of the defendant is found. But, this is much after the trade marks of the plaintiff stood registered in the year 2008. Hence, the said contention is rejected.

28. In this context itself, it would be relevant to deal with the contention raised on behalf of the defendant, with regard to the alleged poor turnover of the hotel of the plaintiff. In this regard, reliance was placed on the judgment of the Delhi High Court in the case of **Bhole Baba Milk Food Industries Ltd. vs. Parul Food Specialities Pvt. Ltd.** (*supra*). Suffice it to say that the judgment of the Delhi High Court, at best, is of persuasive value before this Court and in any case, the observations made therein are based on the facts and circumstances of the said case. This Court is satisfied that the turnover figures and the figures pertaining to advertising and promotional expenses placed on record by the plaintiff, show that from the year 2008 onwards, when the trade marks were registered in the context of hotel and allied services, substantial goodwill has been indeed earned by the plaintiff in the context of its registered trade marks. The said contention of the defendant also stands rejected.

29. The next contention of the defendant pertains to the word “LORDS” being *publici juris* and hence, the plaintiff being disentitled to claim exclusivity, despite registration of its trade marks. A perusal of the judgment of this Court in the case of **Jagdish Gopal Kamath and others vs. Lime & Chilli Hospitality Services** (*supra*) shows that at the interim stage, a broad overview has to be taken by the Court to find out whether the claim of the defendant regarding *publici juris*, can be sustained or not. This Court finds substance in the contention raised on behalf of the plaintiff that the word “LORDS” in the context of hotel and allied services, can be said to be an arbitrary mark and that it cannot be said to be a word of common parlance or common to trade, in respect of the specific services being provided by the plaintiff. In any case, the plaintiff has placed sufficient material on

record to make out a *prima facie* case in its favour about having earned reputation and goodwill over a considerable period of time in its registered trade mark, with continuous commercial use of the same, pertaining to hotel and allied services in its hotels all over India and even in some other countries.

30. In this context, reliance placed on behalf of the defendant on the judgment of the Madras High Court in the case of **A. D. Padmasingh Isaac and another vs. Aachi Cargo Channels Private Limited** (*supra*), is also misplaced because the said judgment refers to Section 30 of the said Act, which necessarily concerns certain limits on effect of a registered trade mark. The defendant has not been able to make out a case to contend that its mark can be covered under the aforesaid provision, as an exception of Section 29 of the said Act. Hence, by relying upon the said judgment, the defendant cannot resist the interim reliefs claimed in the present application.

31. Reliance placed on behalf of the defendant on the judgment of this Court in the case of **Freudenberg Gala Household Product Pvt. Ltd. vs. GEBI Products** (*supra*) and of the Delhi High Court in the case of **Om Logistics Ltd. vs. Mahendra Pandey** (*supra*), is not found to be of much relevance. In **Freudenberg Gala Household Product Pvt. Ltd. vs. GEBI Products** (*supra*), this Court was concerned with the mark “LAXMI” and “MAHALAXMI” and it was held that since the words are related to Hindu Gods, no monopoly could be claimed. Similarly, in the case of **Om Logistics Ltd. vs. Mahendra Pandey** (*supra*), the Delhi High Court was concerned with the marks incorporating the word “OM” and also common place words like “LOGISTICS”. The Delhi High Court held that religious symbols or names of deities, cannot be monopolized and equally, descriptive

words like “LOGISTICS” cannot also be monopolized, holding that such words could be of non-distinctive character and common to trade. The said position of law cannot apply to the facts of the present case, for the reason that the word “LORDS” in the context of hotel and allied services, *prima facie* cannot be said to be common to trade or non-distinctive. The word cannot also be said to be descriptive of the services provided by the plaintiff and therefore, the contention pertaining to *publici juris* and common to trade of the defendant, deserves to be rejected.

32. The defendant also raised a defence that since the registrations of the trade marks of the plaintiff, pertain to label/composite/device marks, they have to be taken as a whole and constituent parts, including the word “LORDS” cannot be monopolized by the plaintiff. It is submitted that even the word mark registration of the plaintiff is “LORDS ECOINN”, thereby showing that it is a combination of two words. According to the defendant, if at all it had used the exact same two words, the plaintiff could have had a cause of action. But, since the hotels of the defendant are “LORDS RESIDENCY” and “LORD’S GREY”, no grievance can be made by the plaintiff.

33. In this context, much emphasis is placed on the “anti-dissection rule” and in that context, reliance is placed on the judgments of the Delhi High Court in the cases of **Vasundhara Jewellers Pvt. Ltd. vs. Kirat Vinodbhai Jadvani and another** (*supra*) and **Dolphin Mart Private Limited vs. Avenue Supermarts Limited and another** (*supra*).

34. But, this Court finds that in the judgment in the case of **Jagdish Gopal Kamath and others vs. Lime & Chilli Hospitality**

Services (*supra*) of this Court, the aspect of leading, prominent and essential feature of the composite/device marks, has been referred to and in that context, the position is clarified as to the manner in which the comparison of marks has to be undertaken. It is laid down that the Court must necessarily consider the leading, prominent and essential feature of that mark by whatever name it is called i.e. label, composite or device or even word. It is indicated that while the whole of the label/device/composite mark is to be considered for comparison, while juxtaposing the same with the impugned trade mark, necessarily the Court would have to look at the leading, essential and prominent feature of such a device/label/composite mark. This would not mean that the plaintiff is asserting exclusivity or monopoly in individual constituents of the label/device/composite mark, which it cannot, under Section 17 of the said Act. But, the process of comparison by the Court in such circumstances, inevitably involves the procedure of identifying the essential, prominent and leading features of such marks.

35. Applying the said position of law, this Court is of the opinion that the plaintiff has indeed made out a strong *prima facie* case of infringement against the defendant in the facts and circumstances of the present case. Even in the judgments concerning “anti-dissection rule” of the Delhi High Court, the position of law cannot be said to be laid down in conflict with the said position of law, clarified by this Court in the case of **Jagdish Gopal Kamath and others vs. Lime & Chilli Hospitality Services** (*supra*). In fact, in the cases of **Vasundhara Jewellers Pvt. Ltd. vs. Kirat Vinodbhai Jadvani and another** (*supra*) and **Dolphin Mart Private Limited vs. Avenue Supermarts Limited and another** (*supra*), it is noted that in the context of such label/device/composite marks, what has to be considered is an

overall impression created by the mark from the point of view of an ordinary consumer, while making a cursory observation in the market place and if the Court finds that the impugned mark of the defendant is likely to lead to confusion, an order/direction in favour of the plaintiff, has to follow. It is settled law that the two marks are not to be examined through a microscope to find out differences. But, an overall impression has to be considered.

36. Applying the said position of law to the facts of the present case, this Court finds that when an ordinary person looks in the market place for hotels, including on the websites like www.makemytrip.com, www.booking.com, www.traveladvisor.in, etc., there is likelihood of confusing the hotels and allied services provided by the defendant, to be those of the plaintiff. A *prima facie* case is indeed made out by the plaintiff in its favour to claim that there is likelihood of confusion, even if its registered trade mark is taken as a label/composite/device mark or combination of words. Hence, there is no substance in the said contention raised on behalf of the defendant on the ground that the plaintiff cannot claim protection, as its registered trade marks are label/device/composite marks.

37. This Court is of the opinion that in the light of the material placed on record on behalf of the plaintiff, a *prima facie* case of passing off is made out against the defendant. The pleadings on record show that the plaintiff has given details of the places in India and abroad, where it is running its hotels. The annual sales turnover figures as well as figures pertaining to annual publicity and sales promotion expenses have been given, to demonstrate a *prima facie* case as regards the goodwill earned over a considerable period of

time. The plaintiff has also placed on record details of awards received by its chain of hotels from various entities, including travel and tourism websites, thereby supporting its claim of widespread presence and goodwill earned over a considerable period of time, particularly in the backdrop of the trade marks being registered for the purposes of hotel and allied services from the year 2008 onwards.

38. On the other hand, the defendant has miserably failed to support his claim of having continuously and commercially used the impugned trade mark in the context of such hotel services, thereby indicating a strong *prima facie* case against the defendant of having dishonestly adopted the impugned trade mark. Use of the word “LORDS” in the name of the hotel and the trade name of the defendant, including on travel and tourism websites, shows an attempt on the part of the defendant to cash in on the goodwill of the plaintiff, nurtured vigorously over a period of time. Hence, a case is made out by the plaintiff to claim that by using the impugned mark, the defendant is illegally seeking to pass off its services as those of the plaintiff, thereby illegally profiteering and enjoying a free ride over the goodwill of the plaintiff.

39. On the question of jurisdiction, this Court is of the opinion that since the booking for hotels of the defendant can and is made online even in Mumbai on interactive websites, which is within the jurisdiction of this Court, the plaintiff is entitled to approach this Court to institute the present proceedings and to seek interim reliefs.

40. The contention raised on behalf of the defendant that the plaintiff has filed the present proceedings out of vengeance, as the

attempt to take over the business of the defendant failed, is stated only to be rejected. A registered trade mark holder is always entitled to assert its statutory rights in accordance with law.

41. Hence, this Court finds that defences raised on behalf of the defendant are unsustainable and a strong *prima facie* case is made out by the plaintiff to claim interim reliefs. This Court further finds that unless such interim reliefs are granted to the plaintiff, it is likely to continue to suffer grave and irreparable loss, thereby indicating that the balance of convenience lies in favour of the plaintiff.

42. In view of the above, the application is allowed and interim reliefs are granted in favour of the plaintiff, in terms of prayer clauses (a) and (b), which read as follows:

- “(a) that pending the hearing and final disposal of the suit the Defendants be restrained by themselves, their proprietors, directors, partners, servants, agents, dealers from infringing the Plaintiff’s LORDS trade mark(s) listed at Exhibit “A” hereto registered in Class 42 and 43 by the use of the impugned trade mark “LORDS RESIDENCY”/  and/or impugned business name “Lord’s Residency” and/or or any other impugned mark/domain name/business name/trading style containing the word LORDS and/or any other impugned mark/domain name/business name/trading style identical with or deceptively similar to the Plaintiff’s LORDS trade mark(s) registered in class 42 and 43 listed at Exhibit “A” hereto in respect of the goods for which the Plaintiff’s trade mark(s) are registered and/or same or similar goods or in any other manner whatsoever;
- (b) that pending the hearing and final disposal of the present suit, this Hon’ble Court be pleased to pass a temporary order and injunction restraining the

Defendant by themselves, their proprietors, directors, partners, servants, agents, dealers from using the impugned trade mark “LORDS RESIDENCY”/  and/or impugned business name “Lord’s Residency” and/or any other impugned mark/domain name/business name/trading style containing the word Lords and/or any other trade mark, domain name or business name/trading style identical with and/or deceptively similar to the Applicant’s well-known trade mark “LORDS” in respect of its business and said services including hotel services, boarding, food, restaurant or same or similar services so as to pass off or enable others to pass off the Defendant’s impugned services and/or business as and for the Applicant’s well-known services and/or business, or in any other manner whatsoever;”

(MANISH PITALE, J)

PRIYA
KAMBLI

Digitally
signed by
PRIYA KAMBLI
Date:
2025.03.05
18:04:54
+0530

Priya Kambli