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

*Date of decision: 13<sup>th</sup> May, 2022.*

+ **CS (COMM) 262/2021 & I.As. 7532/2022, 7596/2022**

**MS COPENHAGEN HOSPITALITY AND RETAILS**

**& ORS.**

..... Plaintiffs

Through: Mr. Chander M. Lall, Sr. Advocate with Ms. Priya Adlakha, Ms. Tanvi Bhatnagar, Ms. Shilpi Sinha and Ms. Ananya Chugh, Advocates. (M:9818202368)

versus

**MS. A.R. IMPEX & ORS.**

..... Defendants

Through: Mr. Jayant Mehta, Sr. Advocate with Mr. Naqeeb Nawab, Mr. Himanshu Deora, Mr. Raghav Vig, Mr. P.D.V. Srikar and Mr. Yashwardhan Singh, Advocates. (M:8141980864)

**CORAM:**

**JUSTICE PRATHIBA M. SINGH**

**Prathiba M. Singh, J.(Oral)**

1. This hearing has been done through hybrid mode.

**I.A.7532/2022 (u/O XXXIX Rule 2(A) CPC) & 7596/2022 (modification of order dated 22.02.2022)**

2. These are two applications moved by the Plaintiffs. The first application alleges breach of the injunction order dated 22<sup>nd</sup> February, 2022 by Defendant No.1. The second application seeks extension of the injunction order dated 22<sup>nd</sup> February, 2022 to a third sub-franchisee, which has now been taken over by Defendant No.1.

3. The history of these proceedings is that the Plaintiffs have claimed rights in the mark “LA PINO’Z PIZZA” and various other sub-brands.

Defendant No.1 was the 'master franchisee' of the Plaintiffs for the state of Gujarat. However, the relationship between the two broke. Defendant No.1 started its own pizza outlets under the name "LA MILANO PIZZERIA". It is the allegation of the Plaintiffs that Defendant No.1 is trying to pass off its own goods, services and business as that of the Plaintiffs.

4. Initially, vide order dated 2<sup>nd</sup> June, 2021 an interim order was passed in the following terms:

*"25. In view of the foregoing, the court is of the view that the Plaintiff has made out a prima facie case. The balance of convenience also lies in favour of the Plaintiff, and irreparable harm is likely to be caused to it if such relief is not granted. Accordingly, the following interim relief is deemed fit to be granted till the next date of hearing:*

- (a) Defendant Nos. 1 and 2, their partners, associates, franchisee, sub-franchisee, licensees, sub-licensees, agents, servants, affiliates or any one claiming under it, directly or indirectly, in any manner infringing the Plaintiff's registered trade mark, are restrained from selling the pizzas under the impugned names SPRING BLING, LOVERS DELIGHT, BURN TO HECK, AMERICAN RETREAT, MILANO RETREAT and 7 CHEESY/CHEESE 7, which is infringing the Plaintiffs' registered trade marks SPRING FLING, LOVERS BITE, BURN TO HELL and ENGLISH RETREAT, and misuse Plaintiff's product names/marks LAS VEGAS RETREAT, CHICAGO RETREAT and CHEESY 7.*
- (b) Defendants are restrained from using Plaintiff's propriety products at any of their outlets.*
- (c) Defendant are restrained from accessing and*

*controlling LA PINO'Z PIZZA's official social media handles or any other websites. They are further directed to immediately, on the service of this order, hand-over the control of the official social media accounts to the Plaintiff.*

*(d) Defendants are restrained from using the Plaintiff's registered trademark LA PINO'Z PIZZA in any derogatory manner or in any public or private communication."*

5. The said order was modified vide order dated 22<sup>nd</sup> February, 2022.

Further undertakings were given by the Defendants in the following terms:

*"10 ...The Defendant has without prejudice, undertaken to abide by the following actions:*

- A. To deactivate its Facebook and Instagram pages;*
- B. To not use the sachets of chili flakes and oregano seasonings bearing the mark LA PINO'Z PIZZA;*
- C. To neither use nor shall use, the mark LA PINO'Z PIZZA on pizza delivery bags;*
- D. To neither use nor shall use, (lapinozahmedabad@gmail.com) or any other email ID containing the mark LA PINO'Z PIZZA;*
- E. To neither use nor shall use, the mark LA PINO'Z PIZZA as Unified Payments Interface (UPI) IDs;*
- F. To not disparage the Plaintiffs and their brand, inter alia, in any public communications."*

6. The Defendants have, without prejudice, undertaken to abide by the said undertaking in respect of the new franchisee as well.. Thereafter, an application under Order XXXIX Rule 2A CPC was filed by the Plaintiffs claiming that the undertakings were not adhered to by the Defendants. In the said application, vide order dated 27th April, 2022 the following direction was issued:

“7. In the meantime, the Plaintiffs are also permitted to communicate with all these directories giving them information of the order passed by this Court that the Defendants cannot use the name 'LA PINO'Z PIZZA' any further. Accordingly, upon receiving said communication, the concerned directories, social media platforms and any other internet-based platforms shall remove any link between the Defendants and the Plaintiffs' names, within 72 hours. If the same is not implemented by any such third parties, the Plaintiffs are permitted to approach this Court.

8. However, it is made clear that this does not mean that the Defendants do not take steps on its own to remove the said listings. The Plaintiffs shall hand over a complete list of the impugned listings along with the URLs, to the Defendants' counsel within three days and steps shall be taken to get the same removed.

XXX

XXX

XXX

10. If the listings are not taken down, the concerned partner of the Defendant-firm, who is looking after the promotional activity on the internet shall remain present in Court, on the next date.”

7. The present modification application has been moved by the Plaintiffs on the ground that a third sub-franchisee at Rajendra Nagar, New Delhi, which was earlier attached with the Plaintiffs, has now been taken over by the Defendants. The same has now become a franchisee of “LA MILANO PIZZERIA”. However, the said franchisee of the Defendants continues to use the same Facebook profile, Instagram page, email etc. on the internet, which were in some manner or the other linked with the Plaintiffs’ “LA PINO’Z PIZZA”.

8. The Court has perused some of the Facebook pages of the said franchisee. Though the main pages of the Facebook profile have been changed to “LA MILANO PIZZERIA”, since the said Facebook profile was earlier associated with the Plaintiffs’ brand “LA PINO’Z PIZZA”, certain historical/earlier comments, views, listings, etc. also appear with the name “LA PINO’Z PIZZA” on the said Facebook page. When the said fact is pointed out by the Id. Senior Counsel for the Plaintiff, Mr. Mehta, Id. Senior Counsel for the Defendant submits, without prejudice to his client’s rights, insofar as the Facebook, Instagram pages are concerned, any references to “LA PINO’Z PIZZA” has been instructed to be removed by the franchisee. Accordingly, let the said removal be affected within five working days.

9. It has further been pointed out to the Court that whenever messages are now sent on WhatsApp on the telephone number which was earlier being associated with the Defendants as the franchise outlet of the Plaintiffs, the following message appears in reply on the WhatsApp:

**“Thank you for contacting La Pino’z Pizza Rajinder Nagar! We are taking extra safety measures for arresting COVID-19. Keep ordering @https://uen.io/lapinoz”**

10. The manner in which food is sold has undergone a considerable change with the advent of the internet, especially during and post the pandemic. While visiting food outlets was the usual norm, in recent times, substantial sale of food products is made through online delivery services. For the said purposes, the consuming public uses the reviews on Facebook pages, Instagram pages and other social media platforms. Other communication means such as messenger services also play a very crucial role as the consumer is no longer visiting the outlet in order to be able to

distinguish between the earlier name used and the new name adopted. The manner in which search engines and other social media platforms function shows that the historical data is always linked to the earlier name. Thus, there is a conscious need to ensure that no confusion is perpetuated due to the earlier association of the Defendants with the Plaintiff, as its franchisee. Accordingly, it is made clear that the Defendants or its franchisees would have no right in law to represent to the consuming public that its outlets under the name “*LA MILANO PIZZERIA*” are in any manner associated or connected in the past, with “*LA PINO’Z PIZZA*”. The name “*LA PINO’Z PIZZA*” shall also not be used by them in any manner whatsoever. Any such usage either on WhatsApp or any other messenger service as also social media platforms, shall be immediately deactivated/deleted by the Defendants and/or its franchisee.

11. Mr. Mehta, Id. Senior Counsel points out to the Court, certain comments and exchanges on social media wherein the Plaintiffs have termed the Defendants’ brand as “*cheap imitation*”. Any such derogatory remarks which are available on the internet in respect of “*LA MILANO PIZZERIA*” shall be pointed out by Id. Counsel for the Defendants within 24 hours and the same shall be taken down by the Plaintiffs within 72 hours thereafter.

12. If there are any derogatory remarks against the Plaintiffs by the Defendants or the people under the Defendants’ control, the same shall also be removed within 72 hours after the details of the same are provided by the Ld. counsel for the Plaintiffs to the Defendants.

13. In terms of the previous order dated 22nd February, 2022, the undertaking given by the Defendants, without prejudice to their rights and contentions, shall stand extended to the new franchisee, which has been

taken over by the Defendants. Accordingly, the said undertaking shall be given effect to within a period of five working days.

14. Insofar as any third-party directory listings are concerned, which connect the Defendants or its franchisee to the Plaintiffs, the Plaintiffs are also free to write to the directories and ask them to delist the said listings from the said directory. Since the said directories are only intermediaries, they shall adhere to the orders passed by this Court. However, the Defendants' independent listing under the name "*LA MILANO PIZZERIA*" would continue to be listed.

15. Mr. Mehta, Id. Senior Counsel, further submits that the Defendants are in complete compliance of the earlier orders passed by the Court and reserves his right to file the reply to the application under Order XXXIX Rule 2A CPC.

16. If the Defendants wish to file a response to *I.A.7532/2022*, they are permitted to do so.

17. *I.A. 7596/2022* for modification is disposed of in the above terms.

**PRATHIBA M. SINGH**  
**JUDGE**

**MAY 13, 2022/dk/sk**