



\$~27

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(COMM) 517/2024, I.A. 31610/2024, I.A. 31611/2024
I.A. 31612/2024 & I.A. 31613/2024
DOMINOS IP HOLDER LLC & ANR. Plaintiffs
Through: Mr. Pravin Anand, Mr. Shantanu
Sahay, Ms. Imon Roy and Ms.
Vareesha Irfan, Advs.

versus

M/S MG FOODS & ANR. Defendants
Through:

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

ORDER

% **31.05.2024**

I.A. 31611/2024 (Seeking leave to file additional documents)

1. The present application has been filed on behalf of the plaintiffs under Order XI Rule 1(4) of the Code of Civil Procedure, 1908 as applicable to commercial suits under the Commercial Courts Act, 2015 seeking to place on record additional documents.
2. The plaintiffs, if it wishes to file additional documents at a later stage, shall do so strictly as per the provisions of the Commercial Courts Act, 2015 and the DHC (Original Side) Rules, 2018.
3. Accordingly, the present application is disposed of.

I.A. 31612/2024 (Exemption from filing original/certified copies etc.)

1. Exemption is granted, subject to all just exceptions.
2. Applicant shall file legible, clear, and original copies of the documents on which the applicant may seek to place reliance before the next



date of hearing.

3. Accordingly, the present application is disposed of.

I.A. 31613/2024 (Exemption from conducting pre-litigation mediation)

1. Having regard to the facts of the present case and in light of the judgement of Division Bench of this Court in *Chandra Kishore Chaurasia v. R.A. Perfumery Works Private Ltd.*, FAO (COMM) 128/2021, exemption from attempting pre institution mediation is allowed.

2. Accordingly, the application stands disposed of.

CS(COMM) 517/2024

1. Let the plaint be registered as a suit.

2. Upon filing of process fee, issue summons to the defendants by all permissible modes. Summons shall state that the written statements be filed by the defendants within 30 days from the date of receipt of summons. Along with the written statements, the defendants shall also file affidavits of admission/denial of the documents of the plaintiffs, without which the written statement shall not be taken on record. Liberty is given to the plaintiffs to file a replication within 30 days of the receipt of the written statements. Along with the replication, if any, filed by the plaintiffs, affidavits of admission/denial of documents filed by the defendants, be filed by the plaintiffs, without which the replications shall not be taken on record. If any of the parties wish to seek inspection of any documents, the same shall be sought and given within the timelines.

3. List before the Joint Registrar for marking of exhibits on 02nd September, 2024.



4. It is made clear that any party unjustifiably denying documents would be liable to be burdened with costs.

I.A. 31610/2024 (Application under Order XXXIX Rules 1 and 2 CPC)

1. This application has been filed under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908 as part of the accompanying suit seeking decree of permanent injunction restraining defendant No.1 and all those acting for and on their behalf from promoting, selling, marketing, packaging any product or material using, depicting and displaying in any manner in the



marks “DONITO’s”, or any other mark which is identical or deceptively similar to the plaintiffs’ registered trademarks.

2. Plaintiff No.1 - Domino’s IP Holder LLC, belonging to the Domino’s pizza group of companies, owns and manages certain intellectual property under the ultimate ownership of Domino’s Pizza, LLC. Plaintiff No. 2 - Jubilant Food Works Limited has exclusive rights to operate Domino’s franchises in India, operating as a single economic entity with Plaintiff No. 1 for the purpose of protecting intellectual property rights and business under the same in India.





3. Plaintiffs are the first and prior adopter of the mark “**DOMINO’S**” since the year 1965, and now conduct operations in more than 90 countries, with over 20,500 stores. The Plaintiffs’ initial adoption of the said mark is arbitrary, as it has no meaning or significance in relation to pizza or fast food restaurants, and thus it is distinctive and exclusively associated with the



Plaintiffs and their goods. Consequently, on account of their extensive and continuous use, the Plaintiffs' trademarks have acquired immense goodwill and reputation, as demonstrated by the Plaintiffs' revenue and promotional expenses, details whereof are delineated at Paragraph Nos. 13 and 15 of the plaint, respectively.

4. Plaintiff No. 2 runs 1,928 Domino's Pizza outlets in over 407 cities in India, which is the Plaintiffs' biggest market outside of the United States of America. Plaintiffs have a considerable online presence in India, accepting online orders through their website at the domain name www.dominos.co.in, which has been operational since the year 2007. Further, Plaintiff No. 2 has enlisted their various outlets on online food-ordering platforms such as Defendant No. 14, Zomato and Defendant No. 15, Swiggy. Moreover, Plaintiffs have acquired statutory rights in their trademarks under the Trade Marks Act, 1999 [*'Act'*]. Details of such relevant trademark registrations are set out as follows:



Application No.	Trademark	Application date	Class	Status
463304	DOMINO'S	19/11/1986	30	Registered
572312		30/04/1992	30	Registered
1238053		18/09/2003	42	Registered
1238054		18/09/2003	39	Registered
2145011		16/05/2011	29, 30, 39 & 43	Registered

5. Accordingly, Plaintiffs have the exclusive right to use as well as restrain the use of the aforementioned trademarks, including “*Domino’s*” and “*Domino’s Pizza*”, in relation to its business. To this effect, Plaintiffs have been vigilant in safeguarding their intellectual property rights, having obtained injunction orders in their favour on several occasions, details whereof have been set out at Paragraph No. 24 of the plaint.

6. The plaintiffs are aggrieved by defendant No.1, who is operating in various regions of Punjab infringing six outlets located at Jalandhar, Nakodar, Goraya and Mehatpur, where defendant No.1 is using a

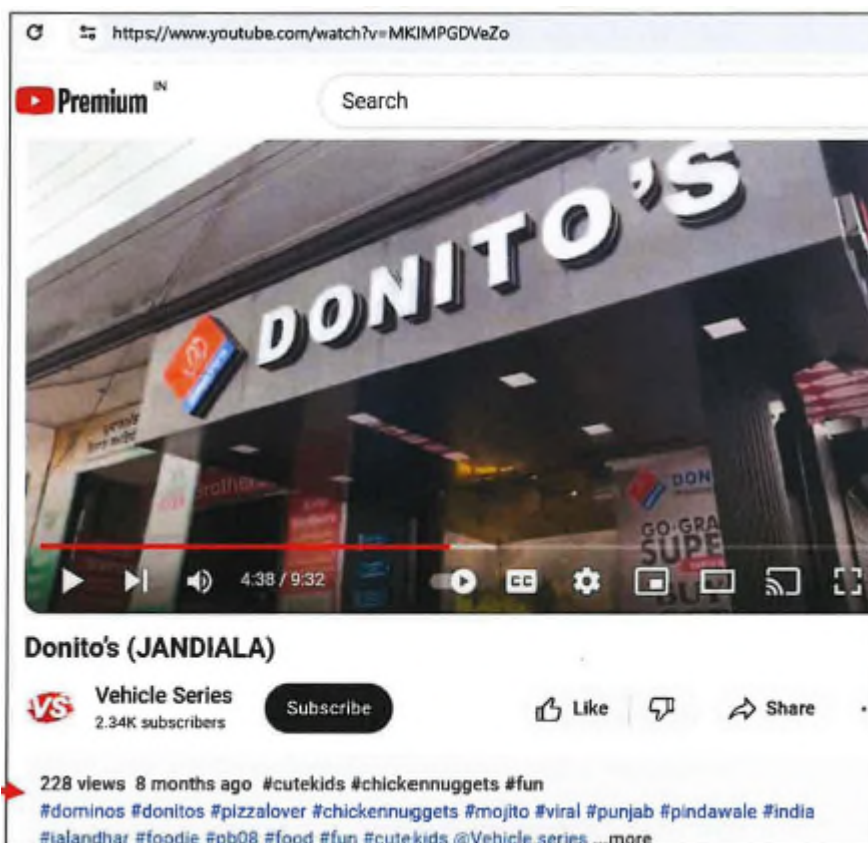


phonetically and visually deceptively similar mark 'DONITO'S'



for selling identical goods *inter alia*

Pizzas and Burgers. The plaintiffs acquired knowledge of the use of the impugned marks in April 2024 and they came across a video on YouTube, which was using the plaintiffs' # DOMINOS and was being linked with the defendant's # DONITOS. A screenshot of the same is as under:



7. A perusal of the record shows that the defendant No.1 has applied for their registration of the impugned mark 'DONITO'S' and the device mark



under application No.5208690 under Class



them with a copy of the order of this Court indicating the particular listing which are also tabulated as under:

Facebook	https://www.facebook.com/mangalsinghdonitosinjalandhar/
Instagram	<p><i>i.</i> Donito's- https://www.instagram.com/donitos_thefoodieattitude/</p> <p><i>ii.</i> Donitos Goraya- https://www.instagram.com/donitos_goraya_official/</p> <p><i>iii.</i> Donitos – https://www.instagram.com/donitos_jandiala_official/</p> <p><i>iv.</i> Donito's- https://www.instagram.com/donitosnakodar/?next=https%3A%2F%2Fwww.instagram.com%2Fp%2FBzRg42n19-e%2Fliked_by%2F%3F_coig_login%3D1</p> <p><i>v.</i> Donitos Mehtpur https://www.instagram.com/donitos_mehatpur/</p> <p><i>vi.</i> Donito's Nurmahal https://www.instagram.com/donitos_nurmahal_official?igsh=cW01eGh4bTZubmNy</p> <p><i>vii.</i> Donito's Pizza and Burger https://www.instagram.com/donitos_pizza_burger?igsh=MW1obHhoOGE1bmNubg==</p>
Twitter/X	https://x.com/donitosindia?lang=en
YouTube	https://www.youtube.com/@DonitosFood?app=desktop
Pinterest	https://in.pinterest.com/donitosindia/
JustDial	<p><i>i.</i> Donitos, Jandiala Jalandhar https://www.justdial.com/Jalandhar/Donitos-Near-Jalandhar-City-Jandiala-Manjki/0181PX181-X181-231111171654-T6S7_BZDET/amp</p> <p><i>ii.</i> Donitos, Jalandhar https://www.justdial.com/Jalandhar/Donitos-Pizza-Shop-Near-Post-Office/0181PX181-X181-230907020411-I2F1_BZDET</p>
LinkedIn	<p><i>i.</i> https://in.linkedin.com/in/donitos-pizza/en?original_referer=https%3A%2F%2Fwww.google.com%2F</p> <p><i>ii.</i> https://in.linkedin.com/in/donito-s-india-ab0b74241</p>

11. Upon receiving the said communication, the platforms shall takedown the listings within 72 hours of receiving the same and shall communicate the confirmation to the plaintiffs.



12. On steps being taken by plaintiffs, issue notice to defendants through all permissible modes including speed post, courier and email. Affidavit of service, along with proof thereof, be placed on record before the next date of hearing.
13. Reply be filed within eight weeks with advance copy to counsel for plaintiff, who may file rejoinder thereto, if so desired, before the next date of hearing.
14. Compliance of Order XXXIX Rule 3 of CPC be effected within one week.
15. Compliance affidavit will be filed by defendant Nos.14 and 15 in respect of the takedown within a period of four weeks from today with copies to the opposing side.
16. List on 15th October, 2024.
17. Order be uploaded on the website of this Court.

ANISH DAYAL, J

MAY 31, 2024/MK/ig