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

+ CS(COMM) 1110/2024 & I.A. Nos. 47879/2024, 47880/2024,
47881/2024, 47882/2024 & 47883/2024

WOW MOMO FOODS PRIVATE LIMITEDPlaintiff

Through: Mr. Ankur Sangal with Mr. Ankit
Arvind and Mr. Kiratraj Sadana,
Advocates.
(M): 9205178872

versus

WOW DELICIOUSDefendant

Through: None.

CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA

ORDER
11.12.2024

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I.A. 47883/2024 (Exemption from filing original and certified copies of documents)

1. The present is an application under Section 151 of the Code of Civil Procedure, 1908 ("CPC"), on behalf of the plaintiff, seeking exemption from filing original/certified, typed, translated and fair copies of documents.
2. Exemption is granted, subject to all just exceptions.
3. Plaintiff shall file legible, clear, and translated copies of the documents, on which the plaintiff may seek to place reliance, before the next date of hearing.
4. Accordingly, the present application is disposed of.

I.A. 47880/2024 (Exemption from undergoing Pre-Institution



Mediation)

5. The present is an application under Section 12A of the Commercial Courts Act, 2015, read with Section 151 of CPC, seeking exemption from undergoing Pre-Institution Mediation.

6. Having regard to the facts of the present case and in the light of the judgment of Supreme Court in the case of *Yamini Manohar Versus T.K.D. Keerthi*, 2023 SCC OnLine SC 1382, and Division Bench of this Court in *Chandra Kishore Chaurasia Versus RA Perfumery Works Private Ltd.*, 2022 SCC OnLine Del 3529, exemption from attempting Pre-Institution Mediation, is granted.

7. Accordingly, the application stands disposed of.

I.A. 47881/2024 (Application seeking leave to file additional documents)

8. This is an application under Order XI Rule 1(4) read with Section 151 CPC as amended by the Commercial Courts Act, 2015, seeking leave to file additional documents.

9. The plaintiff, if it wishes to file additional documents at a later stage, shall do so strictly as per the provisions of Commercial Courts Act, 2015 and the Delhi High Court (Original Side) Rules, 2018.

10. The application is disposed of, with the aforesaid directions.

I.A. No. 47882/2024 (Application seeking enlargement of time for filing the Court fees)

11. The present application has been filed under Section 149 read with Section 151 CPC for seeking enlargement of time for filing the Court fees.

12. Learned counsel appearing for the plaintiff submits that the requisite Court fees shall be filed within a period of one week.

13. Liberty is so granted.



14. Noting the aforesaid, the present application is disposed of.

CS(COMM) 1110/2024

15. Let the plaint be registered as suit.

16. Upon filing of the process fee, issue summons to the defendant by all permissible modes. Summons shall state that the written statement be filed by the defendant within thirty days from the date of receipt of summons. Along with the written statement, the defendant shall also file affidavit of admission/denial of the plaintiff's documents, without which, the written statement shall not be taken on record.

17. Liberty is given to the plaintiff to file replication within thirty days from the date of receipt of the written statement. Further, along with the replication, if any, filed by the plaintiff, an affidavit of admission/denial of documents of the defendant, be filed by the plaintiff, without which, the replication shall not be taken on record. If any of the parties wish to seek inspection of the documents, the same shall be sought and given within the timelines.

18. List before the Joint Registrar (Judicial) for marking of exhibits, on 05th February, 2025.


19. List before the Court on 15th April, 2025.


I.A. 47879/2024 (Application under Order XXXIX Rules 1 and 2 CPC)

20. The present suit has been filed for permanent injunction restraining infringement of trademarks, infringement of copyright, passing off, unfair trade practice, rendition of accounts, damages, declaration etc.


21. Learned counsel appearing for the plaintiff submits that the plaintiff has filed the present suit against the defendant to restrain it from using the




trade mark/trade name “WOW! DELICIOUS”/  or any other trademarks which are identical/deceptively similar to the plaintiff’s trade

mark i.e.,  / “WOW! MOMO” / “WOW!” and/or any other “WOW!” formative trademarks.

22. It is submitted that the plaintiff through its predecessors, coined and

adopted the trademark “WOW!” / “WOW! MOMO”/  in the year 2008 for providing its products and services in the food industry to the consumers.

23. It is further submitted that the plaintiff is the registered proprietor of

the trade mark “WOW! MOMO” / “” in Classes 29, 30 and 43 which are the relevant classes for food items/business.

24. It is further submitted that the plaintiff’s business was started by Mr. Sagar Daryani and Mr. Binod Homagai in the year 2008, and since then, the plaintiff has been serving customers fresh, nutritious, and flavour-infused Chinese momo, dumplings, momo filled burgers (MoBurgs), Italian food and rendering food catering services, dine-in, delivery, take away format restaurants and proper dine-in restaurants across more than 30 cities.

25. It is submitted that the plaintiff now has over six hundred (600) outlets across thirty (30) plus cities. The plaintiff has emerged as the most



valued homegrown QSR brand in India with a valuation of INR 1225 Crores in the year 2021 and has grown more than 60% in the year 2022 and was valued at 165-170 million USD by Fintrackr.

26. It is further submitted that the plaintiff has created a revolution in the food market, with its house mark “WOW!”. The trademark “WOW!” forms the essential and significant feature of almost all the trademarks of the plaintiff. The consumers associate the trade mark “WOW!”/ “WOW!



MOMO”/ and other “WOW!” formative trademarks with the plaintiff alone.

27. It is submitted that due to the widescale reach and positive acceptance of the brand, the plaintiff company has garnered a net worth of approximately INR 2500 Crores.

28. It is further submitted that the plaintiff has expanded its operation in various food segments and the plaintiff has been using “WOW!” series of marks since 2008. All such “WOW!” series of trademarks of the plaintiff have “WOW!” as the essential dominant feature. Some of such “WOW!”










29. It is submitted that in order to statutorily safeguard its rights over its various “WOW!” formative trademarks, the plaintiff has obtained trade



mark registrations for its trade mark and “WOW!” formative trademarks with the earliest claim of use being 16th June, 2008. An illustrative list of the plaintiff’s registered trademarks in various classes are reproduced as under:

TRADE MARK	REG. NO.	CLASS	USER DETAILS	DATE OF REG.
	2014802	30	16-06-2008	27-08-2010
	2014803	43	16-06-2008	27-08-2010
	2831210	30	16-06-2008	22-10-2014
	2831211	35	16-06-2008	22-10-2014
	2831212	43	16-06-2008	22-10-2014
WOW DIMSUNS	3301059	35	16-06-2008	04-07-2016
WOW DIMSUNS	3301060	43	16-06-2008	04-07-2016
WOW DIMSUNS	3301061	30	16-06-2008	04-07-2016



	4665744	29	16-06-2008	21-09-2020
WOW MOMO	4665747	29	16-06-2008	21-09-2020
	4665746	32	13/09/2015	21/09/2020
	5291474	35	16-06-2009	19-01-2022
	5291475	43	16-06-2009	19-01-2022
	5412947	32	16/06/2008	18-04-2022
	5412948	43	16/06/2008	18-04-2022
	5321648	30	28-11-2018	09-02-2022
	5412950	43	28-11-2018	18-04-2022
	5412949	32	28/11/2018	18-04-2022
	5510349	29	12-04-2021	29-06-2022
	5510350	30	12-04-2021	29-06-2022
WOW MOMO	5510352	29	12-04-2021	29-06-2022

INSTANT				
WOW MOMO INSTANT	5510353	30	12-04-2021	29-06-2022
	5667535	9	Proposed to be used	02-11-2022
	5667537	39	Proposed to be used	02-11-2022

30. It is further submitted that apart from the aforesaid trade mark use, the plaintiff is also using “WOW! MOMO” in an artistic manner i.e.



in relation to the said goods and business and the art work involved in the said trade mark/label is an original artistic work.

31. It is submitted that the original artistic work in the device mark



was conceived, designed, and created as per the directions of the plaintiff (which includes its predecessor), for and on behalf of the plaintiff after having received a valuable consideration. Consequently, the plaintiff is the owner of the copyright subsisting in the said artistic work under the provisions of the Indian Copyright Act, 1957 and therefore, has



the statutory right for protection of its artistic work

32. It is further submitted that the plaintiff has in fact, secured copyright



registration in the artistic work for . The plaintiff is the owner of the artistic work bearing registration no. A-136676/2021 for



33. It is submitted that since the plaintiff is the owner of the copyright of



the artistic work , the plaintiff has exclusive right to use and reproduce the said copyrighted work under Copyright Act, 1957.

34. It is submitted that given the widespread promotional and advertising activities undertaken by the plaintiff, the plaintiff's trade mark "WOW!



MOMO"/ / "WOW!" have become the source identifier of the plaintiff and its goods and services. In the aforesaid circumstances, the plaintiff has the sole and exclusive rights in and over the plaintiff's trademarks and other "WOW!" formative trademarks.

35. It is further submitted that by such extensive use of plaintiff's trademarks and other "WOW!" formative trade marks by the plaintiff, for over 15 years, in the market, together with tremendous goodwill accumulated over such a long period of time, gives every reason to the plaintiff to claim proprietorship over the plaintiff's trademark "WOW!



MOMO"/ "WOW!". Any use of the mark which is identical or deceptively similar to the plaintiff's trademark "WOW!




MOMO"/ "WOW!" in respect of any goods and/or



services would amount to infringement of trade mark, passing off and unfair trade practice.


36. It is submitted that in view of the aforesaid facts and circumstances, the plaintiff has the sole and exclusive rights in and over the plaintiff's

trademarks including "WOW!"/ "WOW! MOMO"/  and other "WOW!" formative trademarks and that any use of the mark which is identical or similar to the plaintiff's well-known trademarks including "WOW!"/ "WOW! MOMO" and the "WOW!" formative trademarks in respect of any goods or services would tantamount to infringement of trade mark and passing off.

37. It is further submitted that recently, in the first week of December 2024, the plaintiff came across the listing of defendant's restaurant/ outlet/

shop operating under the mark  /  / "WOW!" / "WOW! DELICIOUS".

38. It is submitted that the plaintiff was shocked to see that the defendant has adopted the essential and dominant feature "WOW!" of the plaintiff's

trade mark "WOW!" / "WOW! MOMO" /  and the manner of use and device is identical as that of the plaintiff, including, the background colour i.e. yellow. The defendant is also operating its outlet for




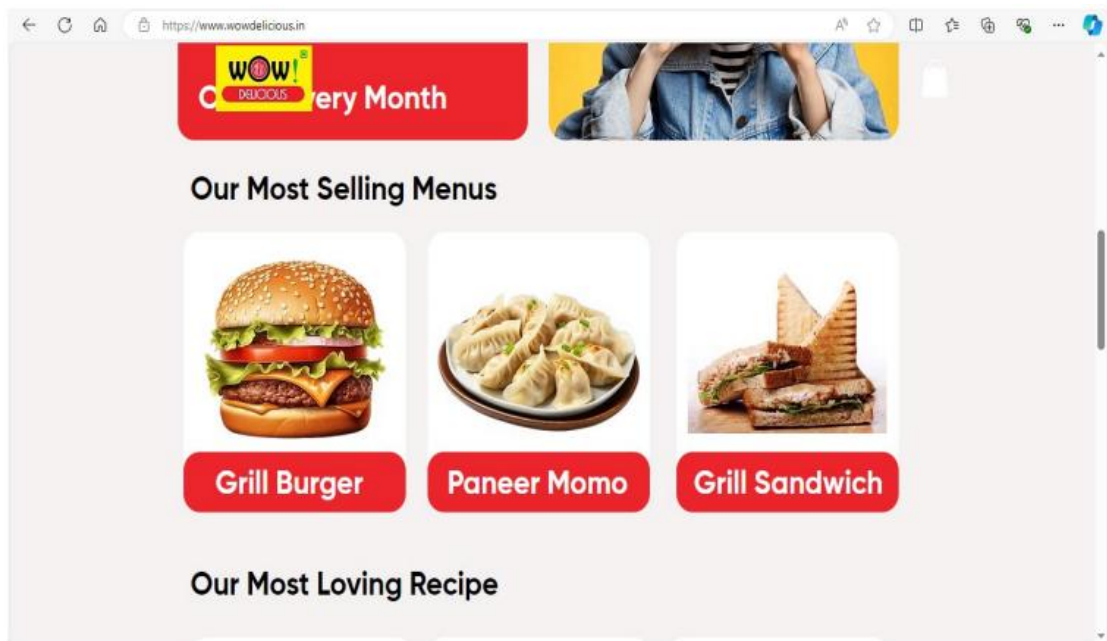
sale and delivery of food items. The representation of comparison between the plaintiff's trademarks and defendant's impugned trademarks is reproduced as under:

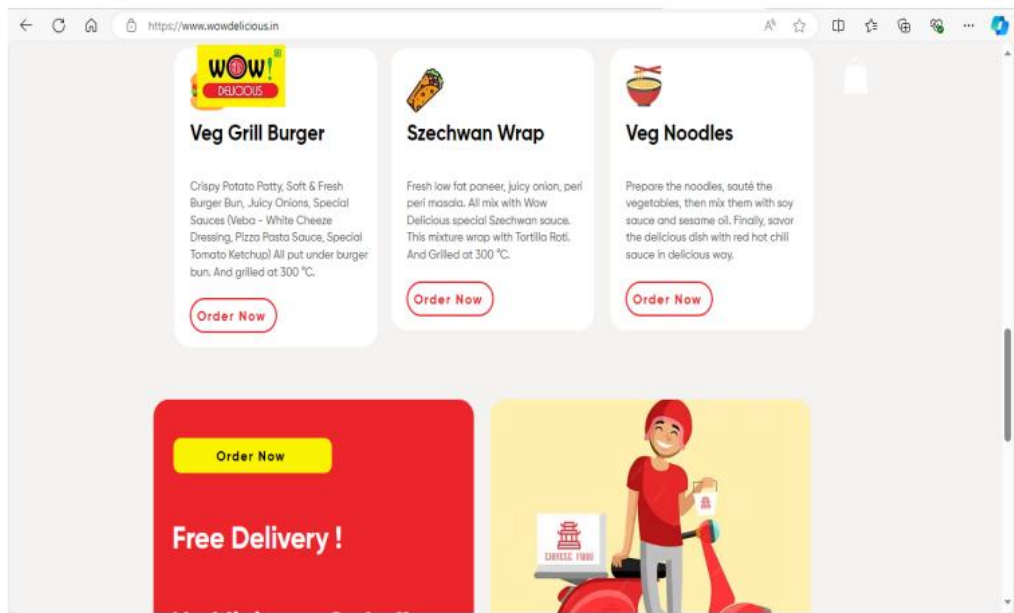
PLAINTIFF'S TRADE MARK	DEFENDANT' TRADE MARK
	
WOW! MOMO	WOW! DELICIOUS
WOW!	WOW!

39. It is further submitted that the plaintiff has also come across the use of



the trade mark “WOW! DELICIOUS” / “” by the defendant on its impugned website <https://www.wowdelicious.in/>. The screenshot of the defendant's impugned website is reproduced as under:





40. It is submitted that the dishonesty of the defendant is evident from the above manner of use of the trade mark “WOW!”/ “WOW! DELICIOUS”/

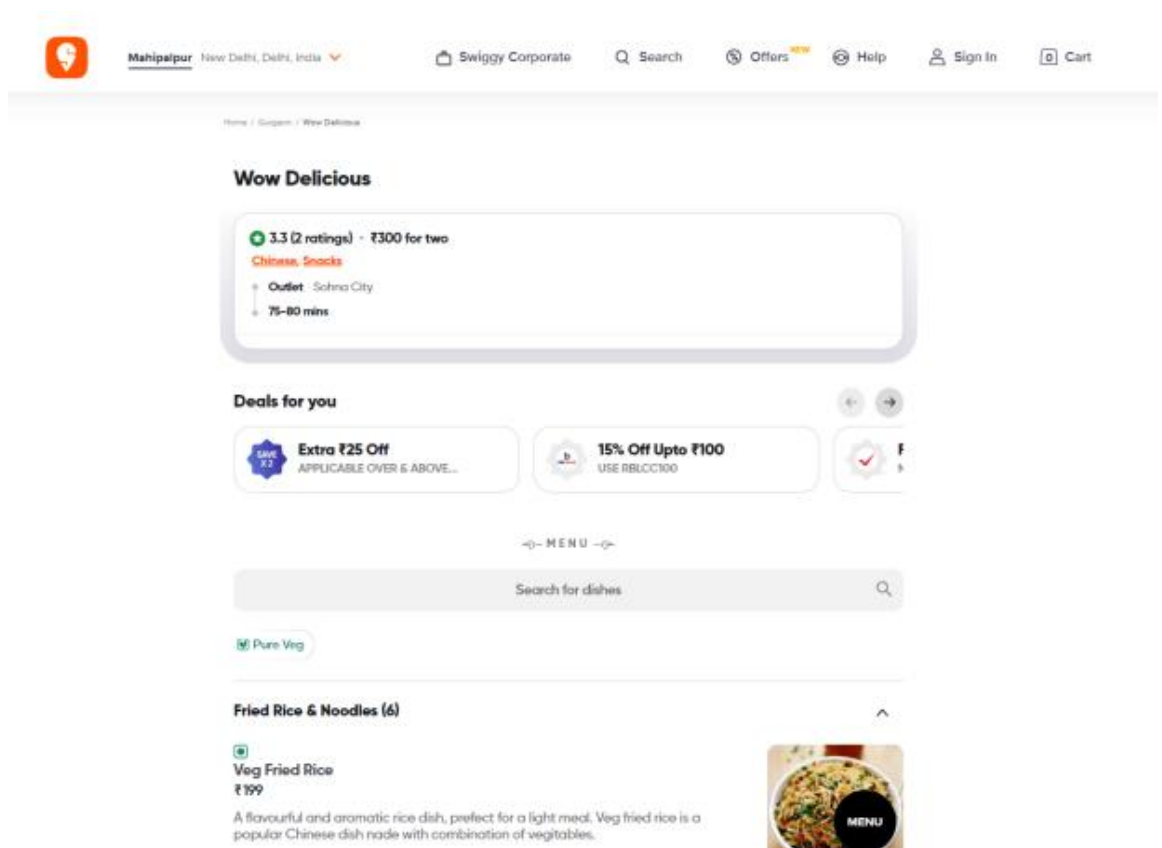
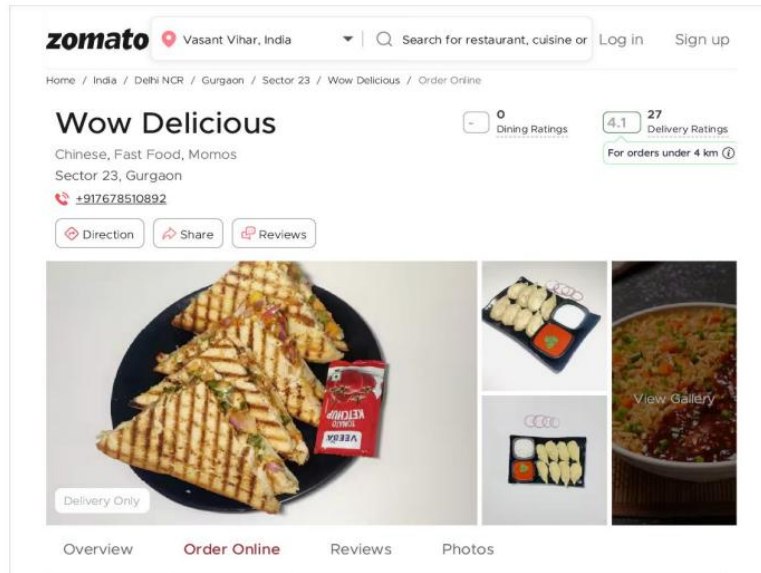


wherein the defendant is deliberately trying to draw an association with the plaintiff in order to ride upon the goodwill and reputation vested in the plaintiff’s well-known trade mark ‘WOW!’/




“WOW! MOMO”/ and “WOW!” formative trade marks.

41. It is submitted that as per Zomato and Swiggy “WOW! DELICIOUS” is providing food service even in Delhi. Such use of the impugned trademarks by the defendant is likely to confuse the consumers into believing that goods and services of the defendant is coming from the source of the plaintiff. The screenshot of the defendant’s listing from Zomato and Swiggy are reproduced as under:





42. It is further submitted that the defendant’s adoption and use of the impugned trademarks is *mala fide ab initio*, as the plaintiff’s trade mark




“WOW!” / “WOW! MOMO”/  had already garnered tremendous goodwill and reputation and the plaintiff had become a well-known established player in the food industry much before the inception of the defendant.

43. It is submitted that use of the said impugned trademarks by the defendant for identical goods cannot be permitted. Moreover, considering that the goods in question relate to the food industry, any confusion and compromise in the quality of food can lead to harmful consequences and the defendant is liable to be enjoined forthwith.

44. It is submitted that therefore, the adoption and use of trade marks/

trade name “WOW!” / “WOW! DELICIOUS”/  /  by the defendant for food items/business amounts to infringement of the

plaintiff’s trade mark “WOW! MOMO” /  and violates the plaintiff’s statutory right of exclusive use of its registered trademarks under Section 29 of the Trade Marks Act, 1999.

45. In the above circumstances, the plaintiff has demonstrated a *prima facie* case for grant of injunction and, in case, no *ex parte ad interim* injunction is granted, the plaintiff will suffer an irreparable loss. Further, balance of convenience also lies in favour of the plaintiff, and against the defendant.

46. This Court also notes that advance service of the present plaint has



been done upon the defendant. Despite advance service, none has appeared for the defendant.

47. Accordingly, till the next date of hearing, the defendant, its proprietors, partners or directors, as the case may be, its principal officers, servants, distributors, dealers and agents, and all others acting for and on behalf of the defendant, are restrained from selling, offering for sale, advertising, directly or indirectly dealing in any goods and services under



the impugned trademarks



“WOW!” / “WOW! DELICIOUS”

or

any other trade mark/trade name as may be identical to or deceptively similar with the plaintiff’s registered trade mark “WOW!”/ “WOW!



MOMO”/ and other “WOW!” formative trade marks and their variants thereof so as to cause infringement/passing off of the plaintiff’s trademarks.

48. Issue notice to the defendant by all permissible modes upon filing of the Process Fee, returnable on the next date of hearing.

49. Let reply be filed within a period of four weeks.



50. Rejoinder thereto, if any, be filed within two weeks, thereafter.
51. Compliance of Order XXXIX Rule 3 CPC, be done, within a period of one week.
52. List before the Court on 15th April, 2025.

MINI PUSHKARNA, J

DECEMBER 11, 2024

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