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

+ CS(COMM) 807/2022

TATA SIA AIRLINES LIMITED

..... Plaintiff

Through: Mr. Pravin Anand,
Mr. Achuthan Sreekumar and Mr. Rohil
Bansal, Advocates.

versus

VISTARA MEDIA PRIVATE LIMITED Defendant

Through: None.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

22.11.2022

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I.A. 19362/2022 (exemption)

1. Subject to the Plaintiff filing originals, clearer and certified copies of the documents with proper margins, which it may seek to place reliance on, within four weeks from today, exemption is granted.
2. Application is allowed and disposed of.

I.A. 19363/2022 (exemption from service to Defendant)

3. Since there is an urgency in the matter and the same is being heard today, Plaintiff is exempted from serving advance notice on Defendant.
4. For the reasons stated in the application, the same is allowed and disposed of.

I.A. 19361/2022 (seeking leave to file additional documents)

5. Present application has been preferred on behalf of the Plaintiff seeking leave to file additional documents under Order XI Rule 1(4) CPC.

6. Plaintiff, 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.

7. Application is allowed and disposed of.

I.A. 19364/2022 (exemption from filing Court fees at this stage)

8. For the reasons stated in the application, Plaintiff is permitted to file requisite Court Fees within a period of two weeks from today.

9. Application is allowed and disposed of.

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10. Let plaint be registered as a suit.

11. Upon filing of process fee, issue summons to the Defendant, through all permissible modes, returnable on 01.02.2023 before the learned Joint Registrar.

12. Summons shall state that the written statement shall be filed by the Defendant within 30 days from the receipt of summons. Along with the written statement, Defendant shall also file an affidavit of admission/denial of the documents filed by the Plaintiff.

13. Replication be filed by the Plaintiff within 15 days of the receipt of the written statement. Along with the replication, an affidavit of admission/denial of documents filed by the Defendant, shall be filed by the Plaintiff.

14. If any of the parties wish to seek inspection of any documents, the same shall be sought and given within the timelines.

I.A. 19359/2022 (under Order XXXIX Rules 1 and 2 CPC, by Plaintiff)

15. Present application has been preferred by the Plaintiff under Order XXXIX Rules 1 and 2 read with Section 151 of the Code of Civil Procedure, 1908 for grant of an *ex-parte ad-interim* injunction.

16. Issue notice to the Defendant through all prescribed modes, returnable on 23.03.2023, before the Court.

17. Plaintiff is a joint venture between TATA Sons Private Limited, the holding Company of the TATA Group and Singapore Airlines Limited. Plaintiff has filed the present suit seeking permanent injunction restraining infringement of its registered and well-known trademark VISTARA, passing off, dilution and tarnishment, damages, rendition of accounts, delivery up, costs, etc.

18. It is averred that Plaintiff is the registered proprietor of the trademark VISTARA which is registered across various classes. Trademark VISTARA is a coined and invented word drawn from the Sanskrit word 'VISTAAR', meaning limitless expanse and limitless possibilities. The trademark VISTARA for travel services is arbitrary and therefore, inherently distinctive. The trademark has been declared as a well-known trademark under Section 2(1)(zg) of the Trade Marks Act, 1999 (hereinafter referred to as the 'Act') by this Court *vide* judgment dated 05.08.2019 passed in ***TATA SIA Airlines Limited vs. M/s Pilot18 Aviation Book Store & Anr., CS(COMM) 156/2019.*** Therefore, the trademark VISTARA is entitled to highest degree of protection conferred under law, across all classes including against disparate products and services.

19. It is also averred that Plaintiff has registrations for the trademark VISTARA and its various formatives in different permutation and combinations in several classes and the registrations are valid and subsisting, details whereof have been furnished in the plaint.

20. It is further averred that Plaintiff's website www.airvistara.com and the mobile app used to book tickets for the Vistara airlines is visited by millions of internet users each year across the world.

Plaintiff has several awards and accolades to its credit including the award for 'Best Airline' in India and Southern Asia. Plaintiff has built immense goodwill and reputation which is evident from its sales turnover over the years and which for the financial year 2021-22 alone is Rs.5,520 crores.

21. The grievance of the Plaintiff is that in July 2022, Plaintiff learnt that the Defendant Company called VISTARA MEDIA PRIVATE LIMITED incorporated in November, 2021 is engaged in the business of news broadcasting services and has been using Plaintiff's registered and well-known trademark VISTARA in various forms and manner as follows:-

(a) As part of Defendant's corporate name VISTARA MEDIA PRIVATE LIMITED, which is reflected from the ROC records.



(b) By using the logo on its mobile application, which is available at Google Play store.

(c) By registering it as a part of its domain name, i.e. www.vistaraneews.com. This domain was registered on 15.11.2021 as per the 'Whois' result.



(d) By using the mark on the website parked at its domain name www.vistaraneews.com. The said mark displays the word

‘VISTARA’ written in Kannada language along with the word ‘NEWS’ written below in small font size and yellow colour.

(e) By creating its accounts in the name of ‘VISTARA NEWS’, thereby conspicuously incorporating and using Plaintiff’s registered and well-known trademark VISTARA, on various social media and social networking websites such as Facebook, Twitter, Instagram, YouTube, etc.



(f) By using the logo on its promotional materials such as visiting cards, which mention that the Defendant is located and carries on business in New Delhi.

(g) By continuing to apply for trademark registrations by conspicuously incorporating Plaintiff’s registered and well-known trademark VISTARA as a part thereof, such as



Plaintiff has filed an opposition to Defendant’s trademark application No. 529304 which contains the mark VISTARA.

(h) It is stated that Plaintiff has also conducted an investigation which has confirmed that Defendant is engaged in providing news broadcast services using Plaintiff’s well-known and registered trademark VISTARA. Plaintiff has placed on record a news article appearing on Defendant’s website which mentions about the Plaintiff and its airline business and destinations and operations, using VISTARA.

22. It is contended by learned counsel for the Plaintiff that being a registered proprietor of the trademark VISTARA, Plaintiff has an exclusive right to use the trademark and to protect the same from infringement by third parties. Being a declared well-known trademark, VISTARA is entitled to highest degree of protection. Defendant has dishonestly copied the trademark VISTARA in its entirety and can have no plausible reason for its adoption. It is manifestly clear that the intention is to confuse the customers into believing that the services and packages offered by the Defendant originate from the Plaintiff and is a clear case of infringement under Section 29 of the Act. The unauthorised use of an identical mark by the Defendant is also leading to dilution and tarnishment of the well-known trademark VISTARA, as Plaintiff has no control over the activities of the Defendant and the quality of services rendered by it. Plaintiff has, over the years, built a stellar reputation and misrepresentation by the Defendant to the general public is leading to an incalculable harm and injury to Plaintiff's goodwill and business.

23. Having heard learned counsel for the Plaintiff, this Court is of the view that Plaintiff has made out a *prima facie* case for grant of *ex parte ad-interim* injunction. Balance of convenience lies in favour of the Plaintiff and it is likely to suffer irreparable harm in case the injunction, as prayed for, is not granted.

24. Accordingly, till the next date of hearing, Defendant and all others acting for and on its behalf are restrained from using Plaintiff's registered and well-known trademark VISTARA, in any form or manner whatsoever, including but not limited to its variations in vernacular languages such as Kannada, amounting to infringement and are also restrained from passing off its services or goods as that of the Plaintiff.

25. Defendant is directed to take down the website parked at the domain www.vistaraneews.com forthwith.

26. Plaintiff shall comply with the provisions of Order XXXIX Rule 3 CPC within a period of ten days from today.

I.A. 19360/2022 (for appointment of Local Commissioner, by Plaintiff)

27. Present application has been preferred by Plaintiff under Order XXVI Rules 4, 9 and 10 read with Order XXXIX Rule 7 and Section 151 CPC, seeking appointment of a Local Commissioner.

28. Mr. Pravin Anand, learned counsel for the Plaintiff, does not press the application and the same is accordingly dismissed.

29. Application stands disposed of.

JYOTI SINGH, J

NOVEMBER 22, 2022/shivam/rk