

(2013) 04 BOM CK 0130

In the Bombay High Court

Case No : Notice of Motion (Lodging) No. 890 of 2013 in Suit (Lodging) No. 339 of 2013

Gopal Kaushik

APPELLANT

Vs

Gastro Pub Private Ltd. and Others

RESPONDENT

Date of Decision : 22-04-2013

Acts Referred:

Citation : (2013) 04 BOM CK 0130

Hon'ble Judges : S.J. Kathawalla, J

Bench : Single Bench

Advocate : Birendra Saraf instructed by Ms. Rani Boazz and Ms. Megha Dhuri, for the Appellant;

Judgement

S.J. Kathawalla, J.—The Plaintiff has filed the above suit seeking an injunction against the Defendants from infringing the Plaintiffs trade mark/service mark and also from passing off their services as those of the Plaintiffs by using the trade mark "THE LAZY DOG" or any other mark deceptively similar thereto. In the Notice of Motion, the Plaintiff has sought interim orders against the Defendants. The Plaintiff, since 2008, owns and manages a pub/lounge bar at Mahali known as "THE LAZY DOG" which according to the Plaintiff was a nick name used by the Plaintiffs friend to describe him. The Plaintiff has explained as to how the name "THE LAZY DOG" was conceived. Since 2008, the Plaintiff has been continuously using the trade mark "THE LAZY DOG". The Plaintiff applied for and obtained registration of the trade mark which has been registered in India under No. 2090479 in Class 43 in relation to "restaurant, bar and hotel (services for providing drinks & temporary accommodation)". A perusal of the registration certificate discloses that "THE LAZY DOG" is a prominent and essential part thereof. The Plaintiff has asserted that the Plaintiff has acquired reputation amongst the members of the public and trade and the mark "THE LAZY DOG" is associated with the Plaintiff and none other. In or about March 2012, Plaintiff and two other persons also entered into a partnership and the Plaintiff has licensed the use of the mark "THE LAZY DOG" to the said partnership at a nominal fee. A

lounge/bar/pub has also been set up in Goa by the partnership firm in or about January 2013. The Plaintiff thereafter started receiving enquiries from patrons as to whether an outfit known as "THE LAZY DOG in Mumbai is associated with the Plaintiff. The Plaintiff conducted enquires and came to know that the Defendants are also operating a pub by the name of "THE LAZY DOG in Mumbai. The Plaintiff contends that the Defendant's mark is identical to and in any case deceptively similar to the Plaintiff's mark. The Defendants are trading upon the Plaintiff's goodwill and passing off their service as those of the Plaintiff.

2. The Plaintiff attempted to serve the Defendant at the address of the registered office as available in the records of the Registrar of Companies and also at the address of Defendant Nos. 2 and 3, who are the Directors of Defendant No. 1, at their addresses available with the Registrar of Companies. Upon such attempts, the Plaintiff came to know that there was never any office of the Defendant at the address of the registered office and the addresses of the Defendant Nos. 2 and 3 were also not correct. The Plaintiff therefore, served the Defendants at the place from where the Defendants are running the bar/ restaurant by the name "THE LAZY DOG". The Manager of the restaurant duly accepted the service and acknowledged the same. The Plaintiffs have filed an affidavit of service.

3. The learned counsel for the Plaintiff drew my attention to the registration certificate at Exhibit "C to the plaint and submitted that the mark "THE LAZY DOG" is an essential and prominent part of the said registered mark. He also drew my attention to the distinct and prominent reviews received by the Plaintiff in various well-known magazines and newspapers including the well-known international travel guide Lonely Planet, Travel Guide Frommers, Outlook Traveller, The Economic Times, various international travel guide books and also the website www.tripadvisor.com. The Plaintiff have also been operating a website by the name of www.thelazydog.in since 2008. The Plaintiff has a Face Book page with almost 2,65,204 persons associated with the said page. The learned counsel pointed out that the Defendant's use of the said mark is a flagrant infringement of the registered trade mark of the Plaintiff and also an attempt to trade upon the goodwill of the Plaintiff. I have considered the documents on record and the submissions of the counsel. A perusal of the registered mark of the Plaintiff discloses that "THE LAZY DOG" is a prominent part of the registered trade mark of the Plaintiff and is mentioned twice, once inside the circle and again prominently below it. The reputation of the Plaintiff's bar is reflected in the popular reviews given by the various travel guides and also Indian newspapers including the Mumbai edition thereof. The various articles and reviews disclose that the Plaintiffs bar/lounge is highly recommended by various reputed travel magazines and is very popular. Even popular travel websites carry appreciative reviews. The material disclosed by the Plaintiff in the Plaint clearly indicates that the Plaintiff has high goodwill and reputation in the services under the mark "THE LAZY DOG". The Plaintiff has been carrying on business continuously from 2008 at Manali and have now also commenced business in Goa. The Plaintiff also has a website by the name of www.thelazydog.in. The

Defendants despite service have remained absent. Prima facie, the case of the Plaintiff is meritorious. Prima facie, the mark used by the Defendants is deceptively similar to the Plaintiffs mark. The Defendants cannot be permitted to use the mark "THE LAZY DOG" in violation of the Plaintiff's rights. Prima facie, if the Defendants are permitted to continue to use the mark "THE LAZY DOG", serious prejudice would be caused to the Plaintiffs reputation and goodwill apart from being in violation of their rights. The balance of convenience is in favour of the Plaintiff. In these circumstances, ad-interim reliefs is granted in terms of prayer clauses (a) and (b) of the Notice of Motion.