
(2022) 01 DEL CK 0219

In the Delhi High Court

Case No : Civil Suit (COMM) No. 331 Of 2021

Moonshine Technology Private Limited

APPELLANT

Vs

Tictok Skill Games Private Limited & Ors ?

RESPONDENT

Date of Decision : 31-01-2022

Acts Referred:

Trade Marks Act, 1999 — Section 9(1)(c), 28, 29, 29(1), 29(2)(c), 29(3), 30, 30(2) (a), 31, 35

Citation : (2022) 01 DEL CK 0219

Hon'ble Judges : Asha Menon, J

Bench : Single Bench

Advocate : Chander M. Lall, Ananya Chug, Subhash Bhutoria, Amit Panigrahi, Abhishek Malhotra, Shilpa Gamnani, Sanya Sehgal

Judgement

S. No., "TMA No. & date of registration", Trademark, Class, Goods description
1., 3623471 30.08.2017, BAAZI (Word), 41, "Organizing competitions and sporting events, arranging, and conducting seminars, conferences etc., showcasing and broadcasting, production of radio

a n d television
programmes,
education, providing
of training,
entertainment, all
relating to sports
and gaming. On-line
gaming services,
gaming machine
entertainment
services, gaming
services for
entertainment
purpose, gaming
services, on-line
information in the
field of gaming
entertainment

2.,3623470 30.08.2017,BAAZI (Word),9,"Mobile App, Mobile
application
software, Computer
software
development tools;
Computer software
for use as an
application
programming
interface (API);
Downloadable e-
commerce

computer software
to allow users to
perform electronic
business

transactions;

Software for
sending electronic
message alerts and
reminders via the
Internet;

Downloadable
computer software
for modifying the
appearance and
enabling
transmission of

images, audio visual
and video content;

Computer software
for the collection,
editing, organizing,
modifying,
transmission,

storage and sharing
of data and
information;

Computer search
engine software.

3.,3989059 31.10.2018,"B A A Z IG AMES

(Word)",28,"G a m e s and

playthings,
gymnastic and
sporting articles.
4., "13989060
31.10.2018", "B A A Z IG AMES
(Word)", 41, "O n- line gaming
services, gaming
services for
entertainment
purpose, gaming
services, on-line
information in the
field of gaming
entertainment;
sporting and cultural
activities; Software
including software
for games;
computer programs
and databases;
Downloadable
computer software
for modifying the
appearance and
enabling
transmission of
images, audio visual
and video content;
Computer software
for the collection,

editing, organizing,
modifying,
transmission,
storage and sharing
of data and
information.

5.,3623472 30.08.2017,"P O K E RB AAZI
(Word)",9,"Mobile App, Mobile
application
software, Computer
software
development tools;
Computer search
engine software.

6.,3623474 30.08.2017,"P O K E RB AAZI
(Word)",41,"Organizing
competitions and
sporting events,
arranging, and
conducting
seminars,
conferences etc.,
showcasing and
broadcasting,
production of radio
a n d television
programmes,
education, providing
of training,
entertainment, all

relating to sports
and gaming. On-line
gaming services,
gaming machine
entertainment
services, gaming
services for
entertainment
purpose, gaming
services, on-line
information in the
field of gaming
entertainment.

7.,3124690 12.12.2015,,41,"Providing casino
facilities [gambling];
entertainment;
sporting and cultural
activities.

8.,3470776 31.01.2017,,41,"Providing casino
facilities [gambling];
entertainment;
sporting and cultural
activities.

9.,3623475 30.08.2017,,9,"Mobile App, Mobile
application
software, Computer
software
development tools;
Computer search
engine software.

10.,3623476 30.08.2017,,28,"G a m e s and
playthings,
gymnastic and
sporting articles.

11.,3759865 21.08.2018,BALLEBAAZI (Word),9,"Mobile App, Mobile
application
software, Computer
software
development tools;
Computer search
engine software.

12.,3759867 21.02.2018,BALLEBAAZI (Word),41,"O n- line gaming
services, gaming
services for
entertainment
purpose, gaming
services, on-line
information in the
field of gaming
entertainment;
sporting and cultural
activities.

13.,3759872 21.02.2018,,9,"Mobile App, Mobile
application
software, Computer
software
development tools;
Computer search
engine software.

14.,3759873 21.02.2018,,28,"G a m e s and

playthings,
gymnastic and
sporting articles.
15.,3759874 21.02.2018,,41,"O n- line gaming
services, gaming
services for
entertainment
purpose, gaming
services, on-line
information in the
field of gaming
entertainment;
sporting and cultural
activities.

16.,3989057 31.10.2018,"RUMMYBAAZI
(Word)",9,"Mobile App, Mobile
application
software, Computer
software
development tools;
Computer search
engine software.

17.,3989061 31.10.2018,,9,"Mobile App, Mobile
application
software, Computer
software
development tools;
Computer search
engine software.

18.,4589068 30.07.2020,,9,"Mobile App, Mobile

application
software, Computer
software
development tools;
Computer search
engine software.
19.,4589070 30.07.2020,,41,"O n- line gaming
services, gaming
services for
entertainment
purpose, gaming
services, on-line
information in the
field of gaming
entertainment;
sporting and cultural
activities.

20.,4589071 30.07.2020,,9,"Mobile App, Mobile
application
software, Computer
software
development tools;
Computer search
engine software.

21.,4589072 30.07.2020,,41,"O n- line gaming
services, gaming
services for
entertainment
purpose, gaming
services, on-line

information in the
field of gaming
entertainment;
sporting and cultural
activities.

4. It is submitted by Mr. Chander M. Lall, learned senior counsel for the plaintiff, that being the registered proprietor of the trademarks-Baazi, Baazi",,,,,

Games, PokerBaazi, RummyBaazi, BalleBaazi, etc., the plaintiff had the exclusive right to use the said trademarks in relation to the goods and services",,,,,

it was providing. The defendant No.1 dishonestly started using â??Baaziâ? in respect of the services that they were providing and thus, passing off",,,,,

their services as those of the plaintiff. Learned senior counsel submitted that the defendant No.2/Paavan Nanda, who is the Director of the defendant",,,,,

No.1, had in fact been the customer of the plaintiff on pokerbaazi.com since 11th July, 2015, and was fully aware of the business reputation of the",,,,,

plaintiff. It is argued, that it was on account of the success of the plaintiffâ??s venture that the defendant No.2 began his own business called",,,,,

â??WinZo Gamesâ? in India. Thus, the defendant No.1 is a competitor of the plaintiff.",,,,,

5. However, it began to use the trademark â??Baaziâ? along with â??WinZoâ?, branding its services on its website and including its mobile App, as",,,,,

â??WinZo Baaziâ?. Learned senior counsel submitted that under Section 29(3) of the Trade Marks Act, 1999 (for short, the â??T.M. Actâ?), in",,,,,

view of the identity of the registered trademark of the plaintiff and that copied by the defendants, the court had to presume that confusion would be",,,,,

caused to the public as also within the trade circle. Therefore, the court had to restrain the defendants from using the word â??Baaziâ? in respect of",,,,,

the services they were providing.,,,,,

6. It was further submitted that in the written statement efforts had been made by the defendants to claim that the word â??Baaziâ? was only used as",,,,,

a descriptive word in â??WinZoâ??s Baaziâ? i.e., a betting game, provided by â??WinZoâ?. However, in none of the documents placed on the",,,,,

record either by the plaintiff or by the defendants, being the screenshots and print outs obtained from the defendantsâ?? sites, no apostrophe",,,,,

â??sâ?? is reflected in â??WinZoâ?. Therefore, the claim was incorrect. Moreover, the manner of use was clearly not descriptive. It was pointed",,,,,

out that the font used for â??WinZoâ? and â??Baaziâ? was the same. In other words, â??Baaziâ? was given the same significance as",,,,,

â??WinZoâ?, thereby disclosing that â??Baaziâ? was being used as a trademark. By merely claiming that the defendants were only using",,,,,

â??Baaziâ? as a descriptive word for wagering/betting, it cannot be accepted that the use of â??Baaziâ? was â??bona fide. Since the word",,,,,

â??Baaziâ?? cannot be related to a Gaming App, particularly on the mobile phone, clearly, it was not descriptive of the services of the defendants.",,,,,

7. Relying on the decision of the Supreme Court in Kaviraj Pandit Durga Dutt Sharma v. Navaratna Pharmaceutical Laboratories, AIR 1965 SC 980,",,,,

learned senior counsel for the plaintiff submitted that what needs to be compared is what is the source identifier. The common words could not be",,,,,

removed from the infringing trademark to make comparisons and therefore, â??WinZo Baaziâ? cannot be split into two words to claim there was no",,,,,

similarity. In fact, there has been a blatant copying of the word â??Baaziâ? by the defendants as they added the same to their registered trademark,",,,,

which is â??WinZoâ??.",,,,,

8. It was submitted that the stand taken by the defendants that â??Baaziâ? was a descriptive word was facetious as â??Baaziâ? is not a common",,,,,

descriptive word for Gaming Applications. Relying on the decision of the Supreme Court in Info Edge (India) Pvt. Ltd. v. Shailesh Gupta, 2002 SCC",,,,,

OnLine Del 239, it was submitted that even if â??Baaziâ? was to be considered as a descriptive word, since it operated as a source identifier just as",,,,,

Naukri.com and as in that case protection against infringement of the word â??Naukriâ? was granted even though it was used in reference to",,,,,

employment facilitation, in this case too, the plaintiff was entitled to seek a restraint on the defendants from infringing the trademarks of the plaintiff.",,,,,

Reliance has been also placed on the decisions in T.V. Venugopal v. Ushodaya Enterprises Ltd. And Anr. (2011) 4 SCC 85. and Cadila Healthcare",,,,,

Ltd. v. Gujarat Cooperative Milk Marketing Federation Ltd., 2009 SCC OnLine Del 2786. Thus, it was prayed that in the light of the clear",,,,,

infringement of the registered trademarks of the plaintiff, the defendants be restrained from using the same.",,,,,

9. Per contra, Mr. Abhishek Malhotra, learned counsel for the defendants, submitted that no interim injunction could be granted in the present case",,,,

inasmuch as, the plaintiff had failed to demonstrate the existence of a prima facie case or the â??balance of convenienceâ?? being in its favour or",,,,

even that the plaintiff would suffer â??irreparable loss and injuryâ?? if the interim injunction was to be refused. It was submitted by the learned,,,,

counsel for the defendants that the word â??Baaziâ? is a generic word, meaning â??betâ? or a â??gameâ? in Urdu. Therefore, since the plaintiff",,,,

was using the word â??Baaziâ? for a web-based gaming application, which involved betting, the word â??Baaziâ? merely described their services.",,,,

Thus, such a descriptive word used in relation to gaming services could not be monopolized by any person. Reliance has been placed on the decision in",,,,

Marico Limited v. Agri Tech Foods Limited, 2010 SCC Online Del 3806.",,,,

10. Learned counsel submitted that in fact under Section 9(1)(c) of the T.M. Act, such a word could not have been registered in the first place . It",,,,

was submitted that whenever the word â??Baaziâ? was used in vernacular or colloquially, it always signifies betting in a game. If and when such a",,,,

common word develops a secondary meaning, which identifies that particular product with the proprietor of the trademark, then alone could any",,,,

protection be given to the registered trademarks. Learned counsel further submitted that this would be, no doubt, a matter of evidence to be proved by",,,,

the plaintiff.,,,,

11. At the present stage, there was nothing on the basis of which it could be concluded that the original and primary meaning of the word â??Baaziâ?",,,,

had been lost and was now identified only with the services rendered by the plaintiff. According to learned counsel for the defendants that the word,,,,

â??Baaziâ? had not attained any secondary meaning was clear from the very fact that the plaintiff itself does not use â??Baaziâ? in a standalone,,,,

form, but uses it along with other words, such as, Balle Baazi, Poker Baazi, Rummy Baazi, etc.",,,,

12. It was also contended that there were several other entities using the word â??Baaziâ? as part of their trademark, such as, E-bayâ?" Domain",,,,

names â?" www.baazi.com; www.baazi.in; www.baazi.co.in; ESPN â?" Show â?" CricketBaazi; Times Internet Limited â?" Mobile App â?",,,,

BaaziNow; Dev Anandâ??s film Baazi; Radio show of Music Broadcast Limited

â??Dialogue Baazi; and the Mobile App by Bennet Coleman & Co.,,,,

Limited by the name of â??BrainBaaziâ?. It was thus clear that the word â??Baaziâ? was incapable of obtaining a secondary meaning at least in,,,

respect of the betting services. Reliance has been placed on the decisions in Phonepe Pvt Ltd v. Ezy Services & Anr., 2021 SCC OnLine Del 2635;,,,

Godfrey Phillips India Ltd v. Girnar Food & Beverages Pvt Ltd., 1997 SCC Online Del 533; Godfrey Philips India Ltd v. Girnar Food & Beverages",,,,

(P) Ltd., (2004) 5 SCC 257 and Bharat Biotech International Ltd. v. Optival Health Solutions Pvt. Ltd., 2020 SCC OnLine Del 852, People Interactive",,,,

(India) Private Limited v.Vivek Pahwa & Ors, 2016 SCC Online Bom 7351 and Aegon Life Insurance Company Ltd v Aviva Life Insurance India",,,,

Ltd., 2019 SCC Online Bom 1612 in support of these contentions.",,,,

13. As regards the use of the word â??Baaziâ? by defendant No.1, learned counsel urged that the defendant No.1 was not using it in the",,,,

â??trademark senseâ?. Neither had the defendant No.1 sought registration of the said word and â??Baaziâ? was not being used in the standalone",,,,

fashion but was used in conjunction with the registered trademark of the defendant No.1, namely, â??WinZoâ??. The word â??Baaziâ? was used only",,,,

to describe the services that were being provided and was descriptive of the services. It was submitted that the word has been used to disclose the",,,,

intended purpose of the site and was only to highlight the characteristics of the services provided by defendant No.1 and was being done bona fide",,,,

Therefore, statutory defences under Section 30(2)(a) and Section 35 of the T.M. Act were available to it. Therefore, no case for infringement of",,,,

trademark was made out as there was no prima facie case and no injunction could be granted to the plaintiff.,,,,

14. With regard to passing off, placing reliance on the decision in Reckitt & Colman Products Ltd. v. Borden Inc., [1990] 1 All E.R. 873, as accepted",,,,

and adopted by the Indian courts in various cases, including S. Syed Mohideen v. P Sulochana Bai, (2016) 2 SCC 683 and Vinodkumar Panditrao Patil",,,,

v. Pradeep Panditrao Patil & Ors. 2017 SCC OnLine Bom 8877, it was contended that in order to establish passing off, the plaintiff had to pass the",,,,

â??classical trinity testâ?, namely, (i) that the plaintiff had acquired a reputation or goodwill in his services, (ii) that there was misrepresentation by",,,,

the defendants by using the plaintiff's mark and (iii) that the plaintiff has

already suffered damage or was likely to suffer damage due to such,,,,
misrepresentation.,,,,

15. According to the learned counsel, from the documents filed by the plaintiff, it was evident that 16 trademarks had been transferred for a mere sum" ,,,,
of Rs.1,000/- by the Baazi Group. Thus, their trademarks were really of no value. It was reasonable to conclude, therefore, that the plaintiff has and" ,,,,
would suffer no loss.,,,,

16. Learned counsel submitted that the name had to be taken as a whole and the word could not be split, as held in Amritdhara Pharmacy vs." ,,,,

Satyadeo Gupta AIR 1963 SC 449. When the word was taken as a whole, it was more than evident that "WinZo Baazi" was not similar or" ,,,,

identical with the words used by the plaintiff, namely, "Balle Baazi", "Poker Baazi", "Rummy Baazi", etc. Thus, there was no likelihood" ,,,,

of any confusion with persons, who were accessing the services of the plaintiff and the defendants. The identities of the entities providing the services" ,,,,

were very clear as the defendant No.1 used its registered trademark of "WinZo" to provide its services. No confusion would arise merely ,,,,

because of the commonality of the word "Baazi" on both the gaming sites.,,,,

17. Learned counsel for the defendants next submitted that the "balance of convenience" was in favour of the defendant No.1, inasmuch as the" ,,,,

plaintiff had filed the suit with inordinate delay i.e., after three years of constructive knowledge of the existence of the defendant No.1 and its use of" ,,,,

the term "WinZo Baazi". The plaintiff had taken no action but had allowed the defendant No.1 to grow in its reach on account of the heavy ,,,,

investments that the defendant No.1 had made in promotional activities and in the form of advertisements.,,,,

18. Attention was drawn to the WhatsApp messages, placed on the record at page 22 of the documents filed by the defendants, where the Director of" ,,,,

the plaintiff had congratulated the defendant No.2, Director of defendant No.1, on obtaining a \$65 million investment in July, 2021 and had even" ,,,,

suggested that they both work together. According to the learned counsel, it was only when the defendant No.2 declined to do so that the entire" ,,,,

litigation had been commenced by the plaintiff, disclosing their mala fides. According to the learned counsel for the defendants, the services of the" ,,,,

defendant No.1 were much more popular than those of the plaintiff and any

injunction would cause them greater inconvenience. In any case, for three" ,,,, years, both had existed side by side, without any impact on the plaintiff's business and there was no reason as to why the defendants should be" ,,,, restrained from continuing with their services. ,,,,

19. Finally, it was submitted by learned counsel for the defendants that the plaintiff was disentitled for any interim relief on account of the delay, " ,,,,

laches and acquiescence. Reliance has been placed on the decisions in *Vikas Makhija v. The Bengal Phenyle & Allied Products (P)* 2001 SCC ,,,,

OnLine Del 643, Peshawar Soap and Chemicals Ltd. v. Godrej Soap Ltd 2000 SCC *OnLine Del 959 and Hindustan Pencils Pvt. Ltd. v. M/s. India* " ,,,,

Stationery Products Co. & Anr. 1989 SCC. *OnLine Del 34*. It was submitted that the defendant No.1 came into existence in 2018 and the defendants ,,,,

have filed proof of the Director of the plaintiff playing a game on their platform in 2019. Yet, the suit has been filed only on 16th July, 2021. It was, " ,,,,

therefore, submitted, that even on this ground, no interim directions could be issued." ,,,,

20. Accordingly, learned counsel prayed that the application be dismissed. Additionally, it was submitted that an issue may be framed in view of the" ,,,,

challenge raised by the defendant No.1 to the registration of the word 'Baazi' and the present suit be stayed, to enable the defendant No.1 to" ,,,,

seek rectification. ,,,,

21. In rejoinder, learned senior counsel for the plaintiff reiterated that under Section 29(1), 29(2)(c) and 29(3) of the T.M. Act, the presumption had to" ,,,,

be drawn in favour of the plaintiff that the identical use of 'Baazi' for gaming services will create confusion and no evidence in this regard was ,,,,

called for. Drawing attention to page 93 of the plaintiff's documents and the manner in which 'WinZo Baazi' has been written, it was" ,,,,

submitted that the word 'Baazi' was being used as an indicator of origin along with 'WinZo'. 'Baazi' was not used to describe the ,,,,

services, but rather, it was claimed that 'WinZo Baazi' is one of the best Apps, as evident from the documents filed by the plaintiff, including in" ,,,,

the additional documents. On Twitter, '#WinZOBaazi' has been used. Furthermore, the two words were used in the same colour and font with" ,,,,

the same prominence. The defendants' documents show that the money had been transferred from and to 'WinZoBaazi'. All this would ,,,,

indicate that the defendant No.1 was not using "Baazi" as a descriptive word for its services, but actually branding it with the said word. It was",,,,

also submitted that "Baazi" had other synonyms and the defendant No.1 in order to describe its services could have used any other word, yet it",,,,

chose only "Baazi". Moreover, the use of "TeamBaazi" was again a copy of the mark of the plaintiff. Thus, it was submitted that there has",,,,

been continuous acts of infringement by the defendant No.1 entitling the plaintiff to interim protection.,,,,

22. As regards the others who had registered "Baazi" in their names, it was submitted that the plaintiff has already filed an opposition to the",,,,

application of Bennet and Coleman to register "BrainBazzi" and that the other domain names were not in use. The screenshots/print outs of web",,,,

pages have been filed as additional documents by the plaintiff.,,,,

23. It was again reiterated by the learned senior counsel that "Baazi" by no means brought to mind online betting games. Thus it was not a",,,,

descriptive word. Considering the fact that there were 6 million registered users of the plaintiff's online games platform, clearly "Baazi" had",,,,

in any case, acquired a "secondary meaning" and the use of "Baazi" by the defendant No.1 was intended to cash on that reputation to",,,,

bolster their revenue. The defendants were well aware that "Baazi" was a reputed trademark of the plaintiff, which was used as standalone",,,,

"Baazi", including for its corporate name, and was not always used in conjunction with other words, such as, "Balle Baazi", "Poker",,,,

Baazi", "Rummy Baazi", etc.. In any case, by using the word "WinZoBaazi", a confusion would arise in the mind of the players that this",,,,

was another game offered by the plaintiff. Therefore, it was submitted that the defences under Section 30 and Section 35 could not be claimed by the",,,,

defendants on account of lack of bona fides.,,,,

24. It was argued that the plaintiff had clearly disclosed a prima facie case and the "balance of convenience" in its favour, and that, therefore",,,,

its business, accounting for more than Rs.120 crores, could not be allowed to be ruined by the defendant No.1, who was a late entrant, and that too, in",,,,

such a manner that would end up reducing the word "Baazi" into a common word and thus diluting the trademark of the plaintiff, such as had",,,,

happened to the words, "refrigerator", "escalator", "Xerox",,

etc.." ,,,,

25. In response to the argument of "acquiescence" and "delay", it was submitted that the facts in the cases relied upon by the learned" ,,,,

counsel for the defendants were vastly different from the present case. The plaintiff in the present case had taken prompt action as the defendant" ,,,,

No.1 has used the word "Baazi" in 2021 whereas, in *Vikas Makhija (supra)*, the parties had co-existed for 35 years. Learned senior counsel also" ,,,,

submitted that though *Hindustan Pencils (supra)* had been relied upon by the defendants, in fact, the court in that case had clearly observed that delay" ,,,,

was not fatal to a case where infringement and passing off was made out, as the interests of the consumers, purchasers/public were also required to" ,,,,

be protected. Thus, it was submitted that this was a clear case where the court ought to grant injunction." ,,,,

DISCUSSION ,,,,

26. I have heard the contentions of both, learned senior counsel for the plaintiff as also the learned counsel for the defendants, and considered the" ,,,,

material on record, the written submissions and the judgments cited by them. As held in *Wander Ltd. and Another v. Antox India P. Ltd., 1990 (Supp)*" ,,,,

SCC 727, the object of an interlocutory injunction is to protect the plaintiff against injury by violation of its rights. No doubt, the need for such" ,,,,

protection must be weighed against the corresponding injury that may be caused to the defendant when restrained from exercising its rights, if, at the" ,,,,

end of the day, the suit was to be dismissed. The recompense is to be considered in both cases and balanced." ,,,,

27. It is clear from the documents placed on the record by the plaintiff at pages 6 to 44 that the plaintiff is the registered proprietor of the trademark" ,,,,

(word) "BAAZI" under class 41 (providing on-line gaming services; sporting and cultural activities); under class 9 (Mobile App, Mobile" ,,,,

application software, computer software development tools; Computer search engine software); the trademark (word) "Baazi Games" under" ,,,,

class 28 (providing games and playthings, gymnastic and sporting articles) and other trademarks, both words, devices and domain names in the same" ,,,,

classes of gaming services , being "POKER BAAZI" and and and" ,,,,

"BALLEBAAZI" and and "RummyBaazi" and and and . ,,,,

28. That apart, an Assignment Agreement had been executed on 28th November,

2018 between Baazi Networks Pvt. Ltd. and the plaintiff for",,,,,

assignment of various trademarks listed in Ex. â??Aâ??. which are as follows:
-"",,,,,

Trade mark (word) BAAZI;,,,,

POKER BAAZI;,,,,

RUMMYBAAZI;,,,,

BAAZI GAMES;,,,,

and trade mark (device);,,,,

29. Another Assignment Agreement was executed on 28th November, 2018 between SDN Gaming Network Pvt. Ltd. and the plaintiff in respect of",,,,,

the following trademarks: -",,,,,

Trade mark (word) BALLEBAAZI;,,,,

and trade mark (device);,,,,

30. Thus, not only the combined words, such as, â??Poker Baaziâ?, â??Rummy Baaziâ?, â??BalleBaaziâ?, etc., are registered in the name of the",,,,,

plaintiff, but the word â??Baaziâ? is also so registered. On the other hand, the defendants do not even claim that they too have registered trademarks",,,,,

in their names with the word â??Baaziâ?. In fact the defendants insist that they are not even using â??Baaziâ? in the trademark sense. The plaintiff",,,,,

has obtained through its registration the exclusive rights in respect of the whole/ combination words such as PokerBaazi etc as also of the standalone",,,,,

word Baazi. Section 28, confers on the plaintiff the exclusive right to use these trademarks in relation to its services in respect of which the various",,,,,

trademarks have been registered, be it a word or a device or domain name as the courts have also recognized the right to protect a domain name on",,,,,

the same parameters. (see Yahoo.com vs Akash Arora 1999 (19) PTC201).,,,,

31. Though it has been argued on behalf of the defendants that this right under Section 28 would be available only if the trademarks were validly",,,,,

registered, and which Baazi has not been, since it was only a descriptive word, but till date, they have not moved the Trademark Registry for",,,,,

rectification. In the course of arguments, a plea was taken that an issue be framed whether the registration of â??Baaziâ? was properly and validly",,,,,

done. As of now, at this preliminary stage, the validity of the registration is accepted as provided for under Section 31. The courts have accepted that",,,,,

the original registration and all subsequent assignments of a trademark would be prima facie evidence of their validity.,,,,

32. Before proceeding further, some other facts may be noted. On the website of the plaintiff (page 57 of the documents filed by the plaintiff), the",,,,

plaintiff's Group of Companies is described as "the Baazi Group". The website is called the "Baazi Games". The plaintiff has claimed to,,,,

be a Gaming Innovator. It is also seen that the revenue and operation since 2015-2016 of the entire group was Rs.2,69,04,575/-, which had increased",,,,

exponentially to Rs.71,92,61,369/- in 2019-2020. In the same time period, the total expenditure by the Group for advertisements, promotions and",,,,

marketing rose from Rs.47,18,926/- to Rs.31,51,93,167/-. These figures would show that the plaintiff's business is a thriving business and they",,,,

have established their popularity as an online gaming platform. It is not evident that any other competitor was using "Baazi", throughout this time",,,,

period and therefore, prima facie it does appear that "Baazi" is a brand indicating the name of the provider of the services, namely, the plaintiff.",,,,

33. The defendant No.1, admittedly, has come into existence in 2018. Prior to that, the defendant No.2 had played on the gaming platform of the",,,,

plaintiff on 11th July, 2015. Thus, having found the platform interesting and probably, economically viable, the defendant No.2 created his company",,,,

and the App with the word "WinZo". It is clear that "Baazi" has been adopted by them only after some time of operation of the",,,,

defendant's platform. In 2021 it introduced a mobile application in the name of "Winzo Baazi 2021". The description on the website, as placed",,,,

on the record at page 94, about the "WinZo Baazi" App, clearly reveals that the use of the word "Baazi" is not descriptive of what the App",,,,

provides. Rather, it is clear that the defendant No.1 has used "WinZo Baazi" only in the "trade mark sense" to brand its App. It is also to be",,,,

noted that the defendants, even during the pendency of the suit, have chosen to adopt "Team Baazi" in September, 2021, which has been used by",,,,

the plaintiff way back in 2020, as evident from the printouts of the plaintiff's social media pages.",,,,

34. The word "Baazi" may be used in Hindi/Urdu to mean a test of skill or strength in a game. It may indicate wagering or betting. As observed",,,,

by Lord Simon , Lord Chancellor in Yorkshire Copperworks Limited , the more apt is a word to describe the goods of a manufacturer the less apt",,,,

would it be to distinguish them, but surely 'Baazi' is not a word apt to describe gaming or wagering services online or as a mobile App. Thus it is",,,,

a clever and creative use of a common word by the plaintiff for its services. There is nothing on record to indicate that the word 'Baazi' is",,,,

commonly used in the industry. Even though reference was made to several applications for trademark and domain names, the plaintiff has filed",,,,

documents to show that these are not in use or are under opposition by the plaintiff. Of course, the parties will be entitled to lead evidence in this",,,,

regard as also the acquisition of secondary meaning.,,,,

35. Nevertheless, on a prima facie view, the plaintiff has disclosed a case for protection of its rights as a registered proprietor, which is assured to it",,,,

under Section 28 of the T.M. Act. Even under Section 29 of the T.M. Act, the plaintiff has disclosed a case, inasmuch as the use by the defendants is",,,,

of the exact word i.e., the registered trademark of the plaintiff. Even the conjunctive use of 'Baazi' with 'WinZo' is similar to the use by the",,,,

plaintiff of 'Baazi' with 'Poker', 'Rummy', 'Balle', etc.. The services provided are identical and therefore, in the light of such",,,,

identity under Section 29(2)(c) read with Section 29(3) of the T.M. Act, the court will necessarily presume that confusion would arise in the mind of a",,,,

player as to the origin of the services and accordingly, injunction would have to be issued.",,,,

36. This view gains strength from the view taken by the Supreme Court in Renaissance Hotel Holdings INC versus B. Vijaya Sai and Ors, Civil",,,,

Appeal No. 404 of 2022 (arising out of SLP (C) No.21428 of 2019) dated 19th January, 2022. In that case, the defendants' use of 'Sai',,,,

Renaissance' was found to be identical or similar to the registered trademark of the plaintiffs namely, 'Renaissance' and was found being",,,,

used in relation to similar goods and services. It was observed:,,,

'54. In these circumstances, we are of the considered view that it was not open for the High Court to have entered into the discussion as",,,,

to whether the appellant -plaintiff's trade mark had a reputation in India and the use of the mark without due cause takes unfair",,,,

advantage of or is detrimental to the distinctive character or repute of the registered trade mark. We find that the High Court has erred in",,,,

entering into the discussion as to whether the respondents- defendants and the

appellant-plaintiff cater to different classes of customers and,,,,
as to whether there was likely to be confusion in the minds of consumers with regard to the hotel of the respondents-defendants belonging,,,,
to the same group as of the appellant-plaintiff's. As held by this Court in the case of Ruston & Hornsby Limited (supra), in an action for",,,,,
infringement, once it is found that the defendant's trade mark was identical with the plaintiff's registered trade mark, the Court",,,,,
could not have gone into an enquiry whether the infringement is such as is likely to deceive or cause confusion. In an infringement action,",,,,
an injunction would be issued as soon as it is proved that the defendant is improperly using the trade mark of the plaintiff.â??,,,,
(emphasis added),,,,,

37. As regards the plea that since the defendants were raising statutory defence under Section 30 of the T.M. Act and therefore, no interim injunction",,,,,
can be granted, suffice it to note that at this stage the defendants have failed to establish that the use of the word â??Baaziâ? was in accordance with",,,,,
honest practices in industrial or commercial matters and was not such as to take unfair advantage of or be detrimental to the distinctive character or,,,,
repute of the trademark of the plaintiff. As already noticed, as the word has not been used by either party as descriptive of the services being provided",,,,,
by them, Section 35 of the T.M. Act too appears inapplicable.",,,,

38. Turning now to the question of delay and acquiescence. It is claimed by the defendants that the Director of the plaintiff, Mr. Puneet Singh had",,,,,
played on the defendant's platform in January 2019, and so was aware of the use of the word â??Baaziâ? by the defendants and yet action has",,,,,
been initiated only now. It may be noted at this juncture that the document placed on record by the defendant at page 16 of their documents is not,,,,
clear and legible. The date â??27-06-2018â? has been recorded separately. It will be a matter of proof that the defendants had begun using,,,,
â??Baaziâ? in 2018 itself. Be that as it may, any delay in filing of the present suit, as alleged by the learned counsel for the defendants, would alone",,,,,
not suffice to deny relief to the plaintiff.,,,,,

39. As held by the Supreme Court in Midas Hygiene Industries (P) Limited and Another v Sudhir Bhatia and others (2004) 3 SCC 90:,,,,

â??5. The law on the subject is well settled. In cases of infringement either of

trade mark or of copyright, normally an injunction must" ,,,,

follow. Mere delay in bringing action is not sufficient to defeat grant of injunction in such cases. The grant of injunction also becomes ,,,,

necessary if it prima facie appears that the adoption of the mark was itself dishonest.â?? ,,,,

40. Thus, if the adoption of the word â??Baaziâ? appears to be dishonest and intended to take unfair advantage of the reputation of or the distinctive" ,,,,

use of the word by the plaintiff, delay will not come in the way. In the present case, the defendants have copied even the word â??Team Baaziâ?" ,,,,

from the website of the plaintiff after the filing of the present suit. It is the considered view of this Court that delay is not made out and cannot be ,,,,

taken as a material factor in the present case, while deciding whether or not to grant interim injunction." ,,,,

41. Delay and acquiescence are not the same thing. The distinction between delay, laches and acquiescence was succinctly explained in Hindustan" ,,,,

Pencils (supra), and can be fruitfully reproduced here:" ,,,,

â??19. It would appear that â??inordinate delayâ??, which has never been defined by the Courts so far, would be analogous or similar" ,,,,

â??lachesâ??. In Whitman v. Dismey Productions, 263 F2d 229 (5) it was observed by the 9th Circuit Court of Appeal in USA as follows:" ,,,,

â??Mere passage of time cannot constitute laches, but if the passage of time can be shown to have lulled defendant into a false sense of" ,,,,

security, and the defendant acts in reliance thereon, laches may, in the discretion of the trial court, be found.â??" ,,,,

It would follow, logically, that delay by itself is not a sufficient defence to an action for interim injunction, but delay coupled with prejudice" ,,,,

caused to the defendant would amount to â??lachesâ??. As observed by McCARTHY at page 383 â??Laches=delay prejudiceâ?. In this ,,,,

formula, it is the magnitude of the product of delay and prejudice which must be weighed, not the magnitude of solely the quantum of delay" ,,,,

or prejudice alone. For example, in one case, a long delay coupled with even a slight amount of prejudice may suffice to prove an adequate" ,,,,

defence of laches. Yet, in another case, a short delay coupled with a great amount of resulting prejudice to defendant may also suffice for" ,,,,

lachesâ?. It has been emphasised that it is for the defendant to show that there

has been prejudice caused by reason of the delay and that it,,,,
would be unfare to injunct the defendant from carrying out its activities.,,,,

20. â??Lachesâ? and â??Inordinate delayâ?, however, are not similar to â??acquiescenceâ?. Acquiescence is a different concept which",,,,
has been explained by Kerly at page 310 paragraph 15.45 as follows:,,,
â??The classic case of acquiescence proper is where the proprietor, knowing of his rights and knowing that the infringer is ignorant of",,,,
them, does not something to encourage the infringer's misapprehension, with the result that the infringer acts upon his mistaken belief and",,,,
so worsens his position. It seems clear that something less than that is needed to offer a defence, but how much less is not clear. The current",,,,
tendency is to hold that a defence of acquiescence or laches may be set up whenever it is unconscionable for the plaintiff to deny anything,,,,
that he (consciously or unconsciously) has allowed or encouraged the defendant to believe. Mere failure to use, without some positive act of",,,,
encouragement, is not in general enough to give a defence. A defendant who infringes knowing of the plaintiff's mark can hardly complain",,,,
if he is later sued upon it, nor is a defendant who starts to infringe without searching the Register of Trade Marks in any better position",,,,
than if he had searched and so learned of the plaintiff's mark. Acts of the proprietor done in ignorance of the infringement, or even done",,,,
without his own registration in mind, will not amount to acquiescence. A defence of estoppel by acquiescence is to be distinguished from a",,,,
defence that by delay the mark has become publici jurisâ?|.â??,,,,

42. The court agreed with the view taken by Evershed M.R. in *Electrolux v Electrix*, 71 R.P.C.23 (16) that a person ought not to be deprived of his",,,,
rights unless he has acted in such a way as would make it fraudulent for him to set up those rights. Acquiescence is founded upon conduct of a party",,,,
endowed with knowledge of his own rights but not asserting those rights and encouraging another, either directly or through such inaction, to incur",,,,
expenditure or build a business successfully over a period of time. None of these features exist in the present case. Only because Mr. Puneet Singh,,,,
played on the platform of the defendants in 2019, or because another Director Mr. Navkiran Singh congratulated Mr.Paavan Nanda co-founder of the",,,,
defendant No.1, by no stretch of imagination can acquiescence be read, to deny

to the plaintiff its rights as the proprietor of a registered trademark." , , , ,

43. It cannot be overlooked that the interests of the consumers would also need to be protected, as it is for the benefit of consumers that a trademark" , , , ,

is used by a manufacturer or service provider to distinguish his products from those of competitors, so that on the basis of the quality provided the" , , , ,

purchaser may make an informed and considered selection of the products in the market. The trademark signifies the origin of the product. When , , , ,

people are satisfied with the products supplied by a manufacturer or service provider, they buy them on the basis of the trade mark and over time it" , , , ,

becomes popular and well known. Thus, the use of a similar or identical trademark by a competitor in the same product would lead unwary customers" , , , ,

to believe that it originates from the same source. In the present case, online players may be led into believing that "WinZo Baazi" was another" , , , ,

service offered by the plaintiff. Thus, in order to protect such unwary customers, it would be necessary to protect the plaintiff's rights to its" , , , ,

registered trademark. , , , ,

44. In the facts of the present case, neither delay nor acquiescence is made out. Furthermore, the defence of delay and acquiescence are defences in" , , , ,

equity and in the present case, the defendants do not appear to be fair and honest in adopting "Baazi" along with their registered trademark" , , , ,

"WinZo" , , , ,

45. Though "passing off" and "infringement" are two distinct causes of action reliefs, in the light of the foregoing discussion, not only is" , , , ,

infringement established, but passing off is also established. The manner in which "Baazi" is written and projected, and used in a mobile App in" , , , ,

2021, and the adoption of "Team Baazi", while the suit itself was pending, reinforces the plaintiff's grievance that the defendants were trying" , , , ,

to pass off their services as probably originating from the plaintiff. , , , ,

46. Thus, the plaintiff has disclosed a prima facie case for interim injunction for infringement of trademark as well as for passing off." , , , ,

47. The plaintiff will suffer irreparable loss and injury as the plaintiff, which came into existence in 2014, has steadily increased the numbers of its" , , , ,

users and revenues. If the defendants are not permitted to use the word "Baazi" on their gaming platform, no injury would be suffered by them," , , ,

as between 2019-2020, they had used "WinZo" to establish themselves. Yet

in 2021 they chose to introduce a gaming App with the name",,,,
 "WinZo Baazi" and also commenced using "Team Baazi", copying straight out of the webpage of the plaintiff, which would lead to confusion",,,,
 among the players about a probable connection between the two, thus impacting the distinctiveness of the registered trademark of the plaintiff. Hence",,,,
 the continued use of the word "Baazi" by the defendant No.1 would impact the reputation and goodwill of the plaintiff, which clearly cannot be",,,,
 compensated in terms of money.,,,,

48. As regards "balance of convenience" the defendants have a registered trademark of their own, namely WinZo, and can easily continue their",,,,
 business without obstruction under its registered trademark i.e., "WinZo", but by continued use of the word "Baazi" and the terminology used",,,,
 by the plaintiff on its various webpages in respect of various online wagers games, the plaintiff would certainly suffer injury from a business opponent.",,,,
 The "balance of convenience" clearly tilts in favour of the plaintiff.,,,,

49. To sum up, no reason for such adoption of the same word "Baazi" has been offered by the defendants except to claim that "Baazi" is a",,,,
 descriptive word. After all, the trademark of the defendants is WinZo. Where was the need to borrow the word used by the plaintiff along with its",,,,
 registered trademark, if it was not for benefitting from the goodwill of the plaintiff's trademark? There are several words that could have been",,,,
 used to describe the gaming services and App of the defendant instead of "Baazi" and which are indicative of gaming /wagering/competing. The.,,,,
 defendants have alleged that the plaintiff had become jealous of the \$65 million investment that was coming to the defendant No.1, prompting the filing",,,,
 of the present suit. But the opposite appears to be more true, that the defendant No.2/Paavan Nanda, having realized the worth of "Baazi", has",,,,
 sought to piggyback ride on the reputation and goodwill of the plaintiff by somehow giving an impression that "WinZo Baazi" was just like.,,,,
 "Baazi Games" or "Poker Baazi", "Rummy Baazi", "Balle Baazi", etc.. User of a similar word by a competitor coupled with",,,,
 dishonest intention and bad faith would suffice to restrain such user and misuser, to do equitable justice to the plaintiff.",,,,

50. The application is accordingly allowed and the defendants are restrained, till the disposal of the suit, from using or attempting to use the",,,,

plaintiff's well-known brand and registered mark "Baazi", "Baazi Games", "PokerBaazi", "BalleBaazi", et al., or any other mark",,,,

or trade indicia, which is confusingly similar to the Plaintiff's said trademarks, in any form or manner, whatsoever, including as Winzo Baazi /",,,,

WinzoBaazi, in respect to any product and service for which the plaintiff has obtained registration including inter alia gaming services, which use",,,,

amounts to infringement or passing off its products/ services as that of the plaintiff.,,,,

51. The defendants are also directed to remove/delete/omit or withdraw any and all references or use of the plaintiff's well-known brand and,,,

registered mark, "Baazi", in any form or manner, including inter alia from its mobile gaming application, promotional and marketing material,",,,

keywords, hashtags, metatags, domain name etc., which use amounts to violation of the plaintiff's intellectual property rights.",,,

52. The application [I.A. 8678/2021] is disposed of.,,,,

CS(COMM) 331/2021.,,,,

53. List before the Joint Registrar on 14th March, 2022 for completion of pleadings.",,,

54. The order be uploaded on the website forthwith.,,,,