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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on : 30th July, 2018

Date of decision : 27th August, 2018

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CS (COMM) 919/2016 & CC(COMM) 122/2017

BURGER KING CORPORATION Plaintiff

Through: Mr. Pravin Anand, Ms. Tusha
Malhotra & Ms. Pankuri Malik,
Advocates (M-9810383514).

versus

TECHCHAND SHEWAKRAMANI & ORS Defendants

Through: Mr. Amarjit Singh, Advocate for D-1
to 3 & 5 (M-9810054311).

Mr. Mahendra Rana, Advocate for D-
4&6 (M-9810019842)

Mr. Pranav Sarthi, Advocate for D-7
(M-8826457307).

CORAM:

JUSTICE PRATHIBA M. SINGH

JUDGMENT

Prathiba M. Singh, J.

I.A. 17221/2015 (u/O VII, R.11), I.A. 17220/2015 (u/O VII, R.10) & I.A. 23496/2014 (u/O VII, R.11 on behalf of Defendant No. 7)

1. The Plaintiff has filed the present suit seeking permanent injunction restraining infringement of trademark, passing off, damages, etc. in respect of the trademark '*Burger King*' and '*Hungry Jack's*' both as a trademark as also part of their corporate names. All the Defendants are based out of Mumbai, Maharashtra. The Plaintiff is a U.S. based company. The Defendants have filed the above application seeking rejection of the plaint on the ground of lack of cause of action and lack of territorial jurisdiction.

2. The jurisdiction paragraph in the plaint reads as under:

“50. This Hon'ble Court has the necessary jurisdiction to entertain and try the present suit for the following reasons:

(i) Under Section 134 (2) of the Trade Mark Act, 1999 since the Plaintiff is carrying on business in New Delhi by virtue of:

- Numerous agreements and contracts entered into by the Plaintiff with various parties within the territory of New Delhi in furtherance of the imminent launch of its Burger King franchisee outlet in New Delhi;*
- Approvals sought from the appropriate authorities pursuant to its imminent launch of its Burger King franchisee outlet in New Delhi*

(ii) Under Section 20 of the Code of Civil Procedure 1908 as:

- The Plaintiff has a strong and credible apprehension that the Defendants will expand their operations under the impugned trading style/ trade mark of Burger King Restaurants in New Delhi and the threat that the Defendants will use the impugned trade marks/ trade names within the jurisdiction of this Hon'ble Court is credible and imminent, thus, giving rise to a substantial and integral part of the cause of action within the jurisdiction of this Hon'ble Court;*
- Further the above apprehended activities of the Defendants will be within the jurisdiction of this Hon'ble Court.*
- In addition the Defendants' infringing activities are likely to have a dynamic effect on the Plaintiff's business, both current and forthcoming, within the territory of Delhi. It is evident that the dynamic effect of the Defendant's activities is being felt in Delhi and there exists an undeniable nexus between the cause of action in the present suit and the territory of Delhi.*
- Defendant No. 7 operates an interactive website at*

www.rasresorts.com allowing customers to book rooms and make reservations online thereby specifically targeting customers in Delhi and purposefully availing of the resources of Delhi creating an undeniable nexus of their business with Delhi.”

3. The grounds taken by the Defendant No.7 in I.A. 23496/2014 seeking rejection of the plaint are:

- i) that the Delhi High Court does not have territorial jurisdiction;
- ii) that there is no relationship between Defendant No.5,6 and 7;
- iii) that the Defendant No.7 carries on business activities independent of Defendants No.5 and 6;
- iv) that the Defendant No.5 and 6 are independent and distinct entities from Defendant No.7;
- v) that there is no triable issue that arises.

4. The grounds taken by the Defendants Nos. 1, 2, 3 & 5 in I.A. 17720/2015, seeking return of the plaint are:

- i) that Defendants No.1,2,3 and 4 are actually and voluntarily residing in Mumbai;
- ii) that Defendant No.5,6 and 7 have their registered offices in Mumbai;
- iii) that the cause of action, infringement, passing of are independent and distinct;
- iv) that the cause of action is quia timet cause of action passed on an imminent lounge of franchise by the Defendants in Delhi.

5. Defendant No.6 in I.A. 17721/2015, seeking rejection of the plaint, makes averments similar to the averments made by the Defendants No.1, 2, 3 and 5. Thus, the broad objections raised in this application relate to lack of cause of action and lack of territorial jurisdiction.

6. Ld. counsels for the parties have addressed their submissions on these applications. It is submitted by Mr. Amarjit Singh Ld. Counsel, who addressed arguments on behalf of all the Defendants that a reading of the plaint clearly shows that there is no cause of action in Delhi. The Plaintiff having invoked the cause of action on the basis of Section 134 (2) of the Trade Mark Act, 1999 (*hereinafter*, 'TM Act'), as per the settled law as laid down in *Indian Performing Rights Society Ltd. v. Sanjay Dalia 2015 (63) PTC 1 (hereinafter*, 'IPRS v. Sanjay Dalia'), followed by *Ultra Home Construction Pvt. Ltd. v. Purshottam Kumar Chaubey and others 227 (2016) DLT 320 (DB) (hereinafter*, 'Ultra Home'), this Court does not have the jurisdiction to try the present suit. It was also submitted by Mr. Singh that for invoking jurisdiction even under Section 20 of the CPC, there has to be a strong and credible apprehension. The website www.rasresorts.com is a completely different business of the Defendants which permits online reservation but the said company i.e. Defendant No.7 has no connection whatsoever with the use of the mark '*Burger King*'. It is also submitted that subsequent events, after the filing of the suit, cannot be taken into consideration to hold that the Court has jurisdiction. Ld. Counsel also submits that the issue of jurisdiction in the present case is not a mixed question of fact and law as there are no allegations of clandestine or surreptitious sale by the Defendants.

7. On the other hand, Mr. Pravin Anand Ld. Counsel appearing for the

Plaintiff, submits that all the Defendants are connected with each other. Defendant No.7 has a website which is interactive. The website of Defendant No.5 which is registered in the name of Defendant No.3 lists Defendant No.7 as its property, and uses the impugned mark 'Burger King'. Ld. Counsel further submits that the Defendants are expanding their operations into Delhi as is clear from the various documents placed on record and the apprehensions are not just imminent but in fact real. Thus, this Court has jurisdiction to entertain the present suit. He further submits that the business of Defendant No.7 is intricately linked with the other Defendants and hence there exists a valid cause of action against the Defendants.

8. Jurisdiction of this Court, has been invoked by the Plaintiff not just on the basis of Section 134 of the TM Act, but also on the basis of Section 20 CPC. Plaintiff has also prayed for damages in the present suit and thus Section 19 CPC would also be relevant.

9. The first and foremost issue is the relationship between the various parties. The relationship between the parties as pleaded in the plaint is not seriously disputed by the Defendants. Para 26 of the plaint captures the relationship between the various parties and is set out below:

"26. The Defendants in the present proceedings are as under:

(i) Defendant No. 5 viz. Burger King Restaurant Pvt. Ltd. is a company having its registered address at 99/C, Rosewood Chambers, Tulsiwadi, Tardeo, Mumbai - 400 034, Maharashtra.

(ii) Defendant No. 6 viz. Hungry Jacks Fast Food Pvt. Ltd. is a company having its registered address at 99/C, Rosewood Chambers, Tulsiwadi, Tardeo, Mumbai - 400 034, Maharashtra.

(iii) Defendant No. 7 viz. *Ras Resorts and Apart Hotels Pvt. Ltd.* is a company having its registered address at 99/C, Rosewood Chambers, Tulsiwadi, Tardeo, Mumbai - 400 034, Maharashtra.

(iv) Defendant No. 1 is a director of Defendant No. 7 and Defendant No. 5.


(v) Defendant No. 2 is an executive director of Defendant No. 7 and a director of Defendant No. 5 and Defendant No. 6.

(vi) Defendant No. 3 is the managing director of Defendant No. 7 and is also a director of Defendant No. 5 and Defendant No. 6.

(vii) Defendant No. 4 is a director of Defendant No. 6. It is verily believed that Defendant Nos. 1, 2, 3 and 4 are related however the exact constitution of the Defendants would be known only after discovery in the present proceedings. The Plaintiff reserves its right to amend the plaint if necessitated after discovery.”

10. In I.A.23496/2014, it is admitted that Defendant Nos.1, 2, and 3 are common Directors in the companies i.e. Defendant Nos.5, 6, and 7. It is also not disputed that Defendant No.4 is a Director of Defendant No.6. Thus, it is also clear that the company *Ras Resorts and Apart Hotels Pvt. Ltd.* i.e. Defendant No.7 is promoted by the same person as that of Defendant No.5 and Defendant No.6 – ‘*Burger King Restaurant*’ and ‘*Hungry Jack’s Fast Food Pvt. Ltd.*’. The Defendants have registered the domain name “*theburgerking.in*” which was created on 9th July, 2014 and is registered in the name of Defendant No.3. The organization which owns the said domain name is shown as ‘*the Burger King*’ and the contact details are also of Defendant No.3. The WHOIS search reveals that the said domain name was registered on 7th September, 2014. A printout of the website has been placed on record and the same also provides for a franchise form i.e. people can fill up the

form and ask for being a franchisee of the Defendants – *Burger King*. What is interesting is that the website extracts of *theburgerking.in* claims as under:




The administrative office of Burger King Restaurant Pvt. Ltd. is at:

RAS GROUP OF HOTELS

1st Floor, Rosewood Chambers,
99/C, Tulsiwadi, Tardeo,
Mumbai – 400 034

Tel: +91-22-43216600



OUR STREET CART LOCATIONS

1. Silvassa Naroli Road, Silvassa	View Map
2. Vandhara Garden, Silvassa	View Map
3. Jampore Beach, Daman	View Map
4. East Street, Pune Camp	View Map
5. Koregaon Park, Pune	View Map

COMING SOON

1. Mumbai	View Map
2. Surat	View Map
3. Ahmedabad	View Map
4. Delhi	View Map

11. Along with the above text, the logo of *Ras Resorts and Apart Hotels Pvt. Ltd.* appears and in the list of “*Coming Soon*” and “*Street Cart Locations*”, Delhi is clearly mentioned. Any person wanting to set up a street cart with the name *Burger King* can apply on this form to the Defendants. Thus, the Defendants are actually promoting their business and using the mark *Burger King* within the jurisdiction of this Court. It would be too stringent a test to hold that unless and until an outlet is set up, there

would be no jurisdiction. In this day and age of e-commerce and online businesses, the Defendants' conduct of seeking franchise queries in Delhi would itself confer jurisdiction of this Court under Section 20 of the CPC.

12. The Plaintiff's averment that there is a credible and imminent threat of the Defendants launching the *Burger King* carts and outlets in Delhi is also proved to be more than credible in view of the various agreements filed by the Defendants themselves. In fact, an article appearing in the Business Digest Magazine on 30th July, 2014 titled "*BURGER KING RESTAURANTS PLANS EXPANSION IN INDIA*" quotes the Defendant No.3 as having plans to expand all across the country and also going international. Even in the memorandum and Article of Association, Defendant No.6 claims that it intends to establish branches, offices and agencies *anywhere in India or outside India*.

13. The Defendants have also filed a counter claim in the present suit claiming that his Court has the jurisdiction as under:

"41 This Hon'ble Court has the jurisdiction to entertain and try the counter claim as it arises out of CS(OS) No. 2429 of 2014, which is pending before this Hon'ble Court in which the Counter Claimant no. 1 & 2 are arrayed as defendant no. 2&5 respectively. In addition, the defendants have threatened to commence their business activities in the National Capital Region in press articles and in CS(OS) No. 2429/2014."

14. In a reply affidavit filed on behalf of Defendant No.3 dated 10th April, 2015, in response to the affidavit of the Plaintiff, the Defendant No.3 states categorically as under:

"4. I say that pursuant to the newspaper advertisements published during November 2014, of

Burger King Restaurant Pvt. Ltd., numerous applicants from different parts of the country were received by the company in which many firms/companies expressed their willingness to become franchisees of Burger King Restaurant Pvt. Ltd. Respective franchise applications were received providing the relevant information sought for by way of post/scanned copies/email copies. I say that hundreds of applications and inquiries on phone calls from potential franchisees were also received and attended by Burger King Restaurant Pvt. Ltd. Out of those numerous franchise applications only few were considered suitable as they fulfilled the required criteria of Burger King Restaurant Pvt. Ltd. Few Applications were kept on hold for future reference and some of them which did not fulfill the required criteria for franchisees were rejected. I say that those whose applications were accepted were duly communicated with and pursuant thereto franchisee agreements are being entered into with the respective applicants. Copies of the advertisement and franchise communication are filed on record marked as ANNEXURE - A (colly).”

15. Along with the affidavit dated 10th April, 2015, several documents have been placed on record. These documents show that franchisee requests have been made from various persons in New Delhi including Madangiri, Okhla Industrial Area, Delhi, Naraina, Hauz Khas, Adarsh Nagar, South Extension, Punjabi Bagh, Dwarka and adjoining regions. These documents filed by the Defendants themselves go to show, beyond any doubt that the Defendants are actively promoting and intending to expand their business in Delhi.

16. The judgments relied upon by the Defendants i.e. ***IPRS v. Sanjay Dalia (supra)*** and ***Ultra Home (supra)*** deal with a situation where

jurisdiction is claimed only on the basis of Section 134 of the TM Act and Section 62 of the Copyright Act, 1957 (*hereinafter*, 'Copyright Act'). In *IPRS v. Sanjay Dalia (supra)*, the Supreme Court was considering a case where the Plaintiff had filed a suit before the Delhi High Court, invoking Section 134 of the TM Act, on the ground that it had a branch office in Delhi. The Supreme Court in the said judgment observed that Section 62 of the Copyright Act and Section 134 of the TM Act provided an additional forum. Paragraphs 12 and 13 of the said judgment are relevant and are set out herein below:

*“12. Considering the very language of section 62 of the Copyright Act and section 134 of the Trade Marks Act, an additional forum has been provided by including a District Court within whose limits the plaintiff actually and voluntarily resides or carries on business or personally works for gain. The object of the provisions was to enable the plaintiff to institute a suit at a place where he or they resided or carried on business, not to enable them to drag defendant further away from such a place also as is being done in the instant cases. In our opinion, the expression “notwithstanding anything contained in the Code of Civil Procedure” does not oust the applicability of the provisions of section 20 of the Code of Civil Procedure and it is clear that additional remedy has been provided to the plaintiff so as to file a suit where he is residing or carrying on business etc., as the case may be. **Section 20 of the Code of Civil Procedure enables a plaintiff to file a suit where the defendant resides or where cause of action arose.** Section 20(a) and section 20(b) usually provides the venue where the defendant or any of them resides, carries on business or personally works for gain. Section 20(c) of the Code of Civil*

Procedure enables a plaintiff to institute a suit where the cause of action wholly or in part, arises. The Explanation to Section 20 C.P.C. has been added to the effect that Corporation shall be deemed to carry on business at its sole or principal office in India or in respect of any cause of action arising at any place where it has subordinate office at such place. Thus, 'corporation' can be sued at a place having its sole or principal office and where cause of action wholly or in part, arises at a place where it has also a subordinate office at such place.

13. Learned author Mulla in the Code of Civil Procedure, 18th Edn., has observed that under clauses (a) to (c) of section 20, plaintiff has a choice of forum to institute a suit. The intendment of the Explanation to section 20 of the Code of Civil Procedure is that once the corporation has a subordinate office in the place where the cause of action arises wholly or in part, it cannot be heard to say that it cannot be sued there because it did not carry on business at that place. The linking of the place with the cause of action in the Explanation where subordinate office of the corporation is situated is reflective of the intention of the Legislature and such a place has to be the place of the filing of the suit and not the principal place of business. Ordinarily the suit has to be filed at the place where there is principal place of business of the corporation."

17. A perusal of the above paragraphs clearly shows that insofar as the explanation to Section 20 is concerned, the same relates to Section 20(a). The Supreme Court categorically observes that Section 20 enables the Plaintiff to file a suit where the cause of action arises under Section 20(c). The remainder of the judgment in ***IPRS v. Sanjay Dalia*** (*supra*) primarily

deals with and interprets the manner in which Section 134 of the TM Act and Section 62 of the Copyright Act can be invoked, but does not dilute the principle of Section 20(c) of the CPC in any manner whatsoever. Even the Division Bench judgment of this Court in *Ultra Home (supra)* while interpreting Section 134 of the TM Act and Section 62(2) of the Copyright Act has laid down various tests. However, what is interesting is the observation of the Division Bench in *Ultra Home (supra)* is as under:

“13. It is evident from the above observations that the interpretation given to the expression "carries on business" in the context of a defendant under section 20 of the Code has also been employed in the context of a plaintiff under the said sections 134(2) and 62(2). Thus, in addition to the places where suits could be filed under section 20 of the Code, the plaintiff can also institute a suit under the Trade Marks Act, 1999 and the Copyright Act, 1957, as the case may be, by taking advantage of the provisions of section 134(2) or section 62(2), respectively. Both the latter provisions are in pari materia. Under these provisions four situations can be contemplated in the context of the plaintiff being a corporation (which includes a company). First of all, is the case where the plaintiff has a sole office. In such a case, even if the cause of action has arisen at a different place, the plaintiff can institute a suit at the place of the sole office. Next is the case where the plaintiff has a principal office at one place and a subordinate or branch office at another place and the cause of action has arisen at the place of the principal office. In such a case, the plaintiff may sue at the place of the principal office but cannot sue at the place of the subordinate office. The third case is where the plaintiff has a principal office at one place and the cause of action has arisen at the place where its subordinate office is located. In this eventuality, the plaintiff would be deemed to carry on business at the

place of his subordinate office and not at the place of the principal office. Thus, the plaintiff could sue at the place of the subordinate office and cannot sue (under the scheme of the provisions of section 134(2) and 62(2)) at the place of the principal office. The fourth case is where the cause of action neither arises at the place of the principal office nor at the place of the subordinate office but at some other place. In this case, the plaintiff would be deemed to carry on business at the place of its principal office and not at the place of the subordinate office. And, consequently, it could institute a suit at the place of its principal office but not at the place of its subordinate office. All these four cases are set out in the table below for greater clarity:

S.No.	Place of Plaintiff's Principal Office (Sole office in s.no. 1)	Place of Plaintiff's Subordinate /Branch Office	Place where cause of action arose	Place where Plaintiff can additionally sue under section 134(2) and section 62(2)
1	A	--	C	A
2	A	B	A	A
3	A	B	B	B
4	A	B	C	A

”

18. Thus, the provisions of Section 134 of the TM Act and Section 62 of the Copyright Act are in addition to and not in exclusion of Section 20 of the CPC. If the Plaintiff can make out a cause of action within the territorial jurisdiction of this Court under Section 20, no reference needs to be made to Section 134.

19. What constitutes cause of action in the context of a suit alleging violation of rights in a trade mark, would therefore be the question. In a case

involving trade mark infringement, infringement happens when a person “uses in the course of trade” any mark without the owner’s consent. Thus, use of a mark is the cause of action in an infringement as also in a passing off action. If use takes place in a territory where the suit is filed, that Court has the jurisdiction to entertain the suit. When there is use of a mark, there is a cause of action to sue, where the use takes place. it is relevant to point out that “use” of a trademark as per Section 2(2) (c) of the TM Act is as under:

“(2) In this Act, unless the context otherwise requires, any reference –

...

(c) to the use of a mark, -

(i) in relation to goods, shall be construed as a reference to the use of the mark upon, or in any physical or in any other relation whatsoever, to such goods;

(ii) in relation to services, shall be construed as a reference to the use of the mark as or as part of any statement about the availability, provision or performance of such services;”

20. This provision stipulates that use of a mark in relation to goods could be either in any physical *or in any other relation* whatsoever to such goods. In ***Kerly’s Law of Trade Mark and Trade Names,***¹ “use” of a mark is meant to include the following:

“13-24 It has never been the law that the spurious mark should be actually affixed to the goods, provided it was so used in relation to them as to be calculated to lead to the belief that the goods were designated by the mark. This position is maintained under the 1994 Act which, in section 10(4) and (5), follows the permissive provisions of Article 5(3) of the TM Directive in

¹ David Kitchen, David L. Lewelyn, James Mellor, Richard Meade, Thomas Moody Stewart, *Kerly’s Law of Trade Marks and Trade Names*, pp. 354, 356 (13th Edn., 2001)

identifying the various activities which constitute use of a sign for the purposes of the infringement provisions.

13-33 It is an infringement to use an offending sign on business papers on in advertising: this has always been the law. But with the wider definition of use including oral use of a trade mark it will now be an infringement to advertise using an offending mark by, for example, radio or through oral use of the mark by salesman.”

21. Thus, jurisdiction of a Court in a trade mark action, could be invoked where there is use *upon* or *in relation to* goods. The phrase '*in relation to*' has been interpreted to include advertising, promotion, publicity, etc. Thus, in addition to actual sale of goods and providing services, if a person advertises his or her business under the mark in a territory, promotes his or her business under the mark in a territory or for example invites franchisee queries from a particular territory, sources goods from a particular territory, manufactures goods in a particular territory, assembles goods in a particular territory, undertakes printing of packaging in a particular territory, exports goods from a particular territory, it would constitute 'use of a mark'.

22. This scheme of the TM Act is amply clear from a reading of Sections 28 and 29 as also Section 56. Under Section 28, the rights conferred are the exclusive right *to use* of a mark. Under Section 29, use of a mark could be any form of use, including -

- as part of a trade name or a corporate name or name of a business concern [Section 29(5)]
- use by affixing it to products/services [Section 29(6)(b)];
- use by affixing it to packaging [Section 29(6)(b)];
- use by offering goods/services for sale;

- use for the purpose of import or export [Section 29(6)(c)];
- use on business papers [Section 29(6)(d)];
- use in comparative advertising which is detrimental to distinctive character or repute of the mark [Section 29(4)]
- use in advertising [Section 29(7)].
- Applying a mark in a territory for purposes of export of goods/services [Section 56(1)]
- Use by which a trade connection is created between the user and the proprietor [Section 56 (2)].

23. Thus, when Section 20 of the CPC provides that a suit could be filed in any place where the cause of action arises, in a suit involving rights in a trademark, cause of action arises in each and every place where there is any form of use of the said mark. Principles which apply to infringement, actions to determine 'use' would equally apply to passing off actions.

24. Applying the above test to the facts of the present case, the Defendants have used the mark in the following manner:

- a) by promoting the mark *Burger King* in Delhi;
- b) by entertaining franchisee queries from the territory of Delhi;
- c) by seeking franchise requests through the website *theburgerking.in*;
- d) by openly and publically expressing their intention to expand all across the country including Delhi;
- e) by allowing would be franchisees to apply through the website by filling a form.

25. For all these reasons, jurisdiction under Section 20 of the CPC is clearly vested in this Court. In *Laxmikant V. Patel v. Chetanbhat Shah &*

Ors AIR 2002 SC 275, the Supreme Court categorically observes that passing off is not to be determined on the basis of the facts as they exist on the date of the filing of the suit, but keeping in mind the future expansion of a business. The relevant portion of the Supreme Court’s observation is set out herein below:

“13. In an action for passing off it is usual, rather essential, to seek an injunction temporary or ad-interim. The principles for the grant of such injunction are the same as in the case of any other action against injury complained of. The plaintiff must prove a prima facie case, availability of balance of convenience in his favour and his suffering an irreparable injury in the absence of grant of injunction. According to Kerly (ibid, para 16.16) passing off cases are often cases of deliberate and intentional misrepresentation, but it is well-settled that fraud is not a necessary element of the right of action, and the absence of an intention to deceive is not a defence though proof of fraudulent intention may materially assist a plaintiff in establishing probability of deception. Christopher Wadlow in Law of Passing Off (1995 Edition, at p.3.06) states that the plaintiff does not have to prove actual damage in order to succeed in an action for passing off. Likelihood of damage is sufficient. The same learned author states that the defendant's state of mind is wholly irrelevant to the existence of the cause of action for passing off (ibid, paras 4.20 and 7.15). As to how the injunction granted by the Court would shape depends on the facts and circumstances of each case. Where a defendant has imitated or adopted the plaintiff's distinctive trade mark or business name, the order may be an absolute injunction that he would not use or carry on business under that name, (Kerly, ibid, para 16.97).

.....

16..... In such a situation, on the plaintiff succeeding in making out a prima facie case, the court shall have to concentrate on the **likelihood of injury which would be caused to the plaintiff in future and simply because the business under the offending name had already commenced before the filing of the written statement or even shortly before the institution of the suit would not make any difference and certainly not disentitle the plaintiff to the grant of ad-interim injunction.**”

26. It is clear from the above extract and the dictum of the Supreme Court that the concept of infringement and passing off is not fixed in time. It is elastic in nature inasmuch as use of a mark is continuous and each and every use constitutes a fresh cause of action. In a suit where infringement and passing off is complained of, basing the jurisdiction, only as per the date of the plaint would not be the correct approach. The judgment in ***Federal Express Corporation v. Fedex Securities Ltd. & Ors. 2018 (74) PTC 205 (Del) (DB)*** would have no application as it was based on Section 134 of the TM Act and not Section 20 CPC. Even the judgment in ***HSIL Ltd. v. Marvel Ceramics & Ors. 2018 (73) PTC 77 (Del) (DB)***, cited by the Defendants, also was in the context of Section 134. The Division Bench in the said case concluded that no part of cause of action has arisen in Delhi. However, in the present case, it is not so.

27. The Defendants in their Memorandum of Association, categorically state as under:

“To carry on business of running hotels, motels, restaurants, cafeteria, pubs, beer bars, permit rooms, refreshment rooms, caterers to railways, airlines, steam ship corporation and to public amusements, guest houses, hotel cum holiday resorts, health centres,

franchisers, franchisees, boarding and lodging house keepers, clubs in India or any part of the world”

“To establish branches, offices or agencies anywhere in India or outside India for the purpose of enabling the Company to carry business and discontinue, if necessary at any time and reconstitute any such branches, offices and agencies.”

28. The documents placed on record by the Defendants themselves go to show that they have been actively entertaining franchisee requests from Delhi. Interviews have been given by the promoters of the Defendants that they intended to expand all over India. The Defendants have also filed a counter claim in the present case and the matter has proceeded to trial. Defendant No.7 is intricately linked with the business of Defendants No.1, 2 and 3. The trademark ‘*Burger King*’ is claimed to be a property of *Ras Resorts* i.e. Defendant No.7. The mark is being promoted in Delhi.

29. For all the above reasons, this court clearly has jurisdiction to try and entertain the present suit. The allegation of lack of cause of action is bereft of merit.

30. The applications are dismissed.

CS (OS) 919/2016 & CC(COMM) 122/2017

31. It is noticed that the Plaintiff and the Defendants have not conducted admission/denial as per the provision of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 (*hereinafter, ‘Commercial Courts Act’*). The present suit is a suit under the Commercial Courts Act as was directed on 22nd September, 2016.

A large number of documents belonging to the parties have been denied indiscriminately. Documents which are available publicly and are verifiable such as trademark certificates, copyright certificates from India and other countries, as also documents issued by governmental authorities ought not to be permitted to be denied. Such denials are completely bereft of merit and tend to prolong the trial in a suit. The purpose of admission/denial is to deny only those documents whose existence, genuinity or authenticity is disputed and not to merely harass the opposite side into proving each and every document with certified copies/original. Especially in commercial matters, the process of admission/denial deserves to be cut short where the dispute between the parties is very narrow. Documents such as e-mail correspondences, legal notices, replies, internet printouts, etc. ought not to be permitted to be denied. The practice adopted by parties to deny in general all the documents of the opposite side has been the bane of adjudication of civil suits. It is with this purpose that the provisions of the Commercial Courts Act as also the recent amendments by the Delhi High Court in the Original Sides Rules has been carried out. Admission/denial affidavits ought to be fair, bona fide and not with an intention to prolong trials. Keeping these provisions in mind, parties are given another opportunity to file their affidavits of admission/denial so that triable issues can be easily identified and struck. Any unjustified denial would be liable to be dealt with as per the provisions of the Commercial Courts Act and Delhi High Court (Original Side) Rules, 2018.

32. Let the affidavit of admission/denial be filed within two weeks.

33. List for marking of exhibits before the Joint Registrar on 20th September, 2018.

34. List before Court for case management hearing on 26th October, 2018.

**PRATHIBA M. SINGH
JUDGE**

AUGUST 27, 2018/Rahul

