

BY EMAIL & DoT website

**Government of India
Ministry of Communications
Department of Telecommunications
Sanchar Bhawan, 20, Ashoka Road, New Delhi - 110 001
(Data Services Cell)**

No. 813-07/LM-32/2022-DS-II

Dated: 11.12.2023

To,

All Internet Service Licensee's

**Subject: CS (Comm) No. 303 of 2022; Burger King Corporation & Swapnil Patil & Ors.
Before Hon'ble Delhi High Court**

Kindly find the enclosed Hon'ble Delhi High Court order dated **04.12.2023** on the subject.

2. Please refer **Para 15** of said court order regarding blocking of **02 website** enumerated in **para 6** of said court order.
3. In view of the above, all the Internet Service licensees are hereby instructed to take immediate necessary action for blocking, above websites for compliance of the said Court order.



Director (DS-II)
Tel: 011-2303 6860
Email: dirds2-dot@nic.in

Encl:A/A

Copy to:

- (i) Sh. V.Chinnasamy, Scientist E (chinnasamy.v@meity.gov.in), Electronics Niketan, Ministry of Electronics and Information Technology (MeitY) New Delhi for kind information and with request to take action as per **Annexure**.
- (ii) Mr. Harish Vaidyanathan Shankar (hvscgscdhc@gmail.com), learned Central Government Standing Counsel for kind information

(iii) Sh. Mukul Kochhar, Attorney, Ira Law counsel for the plaintiff (mukul@ira.law) for kind information.

(a) Take action as per Annexure.

(iv) IT wing of DoT for uploading on DoT websites please.



\$~77

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(COMM) 303/2022 & I.A. 24159/2023**

BURGER KING CORPORATION Plaintiff

Through: Mr. Raunaq Kamath and Mr. Sauhard
Alung, Advocates. (M: 9425341404)

versus

SWAPNIL PATIL & ORS. Defendants

Through: Ms. Shweta Sahu, Adv. D-16 (M.
77387 41586)

Mr. Amit Mahaliyan, Adv. D-20 (M.
9899491980)

Mr. Harish Vaidyanathan Shankar,
CGSC, with Mr. Srish Kumar
Mishra, Mr. Alexander Mathai
Paikaday, Mr. Krishnan V. Advs.
(M. 9810788606)

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

% **04.12.2023**

1. This hearing has been done through hybrid mode.

I.A.24159/2023 (u/O XXXIX Rules 1 & 2 CPC)

2. The present suit relates to the Plaintiff's trade mark 'BURGER KING', in conjunction with its distinctive logo, which is being used by various unknown Defendants for running fake franchise/dealership websites. Such operators of the domain names are also collecting money from innocent and gullible consumers and customers. It is stated that the websites available at these domain names prominently display the Plaintiff's 'BURGER KING' trade marks and device and solicit franchise applications from the general public.

3. In this suit, earlier, many unknown Defendants were known to have



obtained registration of domain names, which were a variation of the words 'BURGER KING', 'INDIA', 'FRANCHISE' or 'FRANCHISES', etc. It is stated that these websites available at these domain names prominently displayed the Plaintiff's 'BURGER KING' trade mark and devices and solicited franchise applications from the unsuspecting general public. Further, it is stated that upon receiving a franchise application, the unknown Defendants appeared to have sent emails to the unsuspecting victims, in the guise of representatives of the master franchisee of the Plaintiff's exclusive licensor in the Asia-Pacific region viz. Restaurant Brands Asia Limited. These unknown Defendants also have been known to circulate various forged and/ fabricated documents including 'approval letters', 'letters of intent', and 'invoices' all prominently bearing the Plaintiff's trade marks.

4. In furtherance to the forgery and fabrication, the unknown Defendants asked the victims to transfer monies for payment of 'registration fees', 'franchise fee', 'equipment fee' etc., for procuring a 'BURGER KING' franchise. Once the victims transferred such monies, the unknown Defendants would cease all contact with the victims and stop responding to their calls and/ or emails.

5. In the present suit, injunctions have already been granted by this Court in favour of the Plaintiff vide orders dated 10th May 2022, 28th July 2022, 24th November 2022, 21st December 2022, 22nd December 2022, 6th January 2023, 1st February 2023, 20th February 2023, 19th April 2023, 27th April 2023, 21st June 2023, 21st July 2023 & 15th September 2023 in respect of various illegal domain names. A table detailing the injunction orders passed by this Hon'ble Court against the various domain names and bank accounts registered by the various Defendants, have been listed in



paragraph 8 of this application.

6. The present application has been moved by the Plaintiff seeking injunction against the following two domain names.

www.burgerkingfoodindia.com

www.burgerkingfranchisesindia.co.in

7. These domain name websites are mirror images of earlier enjoined domain names by this Court.

8. Mr. Raunaq Kamath, Id. Counsel for the Plaintiff submits that the said two websites are again offering fake franchise and also collecting monies, similar to earlier unknown Defendants who have been already enjoined. In addition, there is a bank account which is also being used for the said collection by the said Defendants. The details of the bank account are as under:

Account No.110138486246

IFSC : CNRB0002840

Branch : Andheri (E), Mumbai (Canara Bank)

**Bank account number 110138486246 registered with
Defendant No. 15 (Canara Bank)**

i. The details of the bank account are as follows:

Name: Restaurant Brands Asia Limited

(i.e. name on Defendants' invoice but likely incorrect)

Account No.: 1101384486246

IFSC: CNRB0002840

Branch: Andheri (E), Mumbai (Canara Bank)

9. Id. Counsel for the Plaintiff, therefore, prays that the said two domain



names/websites be injuncted. In addition, he prays for a Dynamic Plus injunction to be passed against various domain name registrars (*hereinafter, DNRs*) as also the Ministry of Electronics and Information Technology and Department of Telecommunications (*hereinafter, MEITY/DoT*), such that whenever the Plaintiff gives information about illegal fraud franchise websites, the same can be blocked & locked/suspended as well.

10. Considering the dynamic nature in which the duplication of websites can happen, especially the mirror websites that surface shortly following the issuance of the injunction of previous websites, the decision *UTV Software Communication Ltd. and Ors v. 1337x.to and Ors, (2019) 78 PTC 375 (Del)* is referred to wherein this aspect is considered by the Court as under:

87. This Court is also of the opinion that it has the power to order ISPs and the DoT as well as MEITY to take measures to stop current infringements as well as if justified by the circumstances prevent future ones.

xxx

xxx

xxx

107. Keeping in view the aforesaid findings, a decree of permanent injunction is passed restraining the defendant-websites (as mentioned in the chart in paragraph no. 4(i) of this judgment) their owners, partners, proprietors, officers, servants, employees, and all others in capacity of principal or agent acting for and on their behalf, or anyone claiming through, by or under it, from, in any manner hosting, streaming, reproducing, distributing, making available to the public and/or communicating to the public, or facilitating the same, on their websites, through the internet in any manner whatsoever, any cinematograph work/content/programme/show in relation to which plaintiffs have copyright. A decree is also passed directing the ISPs to block access to the said defendant-websites. DoT and MEITY are



directed to issue a notification calling upon the various internet and telecom service providers registered under it to block access to the said defendant-websites. The plaintiffs are permitted to implead the mirror/redirect/alphanumeric websites under Order I Rule 10 CPC in the event they merely provide new means of accessing the same primary infringing websites that have been injuncted. The plaintiffs are also held entitled to actual costs of litigation. The costs shall amongst others include the lawyer's fees as well as the amount spent on Court-fees. The plaintiffs are given liberty to file on record the exact cost incurred by them in adjudication of the present suits. Registry is directed to prepare decree sheets accordingly.

11. In ***UTV Software Communication Ltd. (Supra)***, the ld. Single Judge of this Court took note of the dynamic nature in which the duplication of websites can happen, especially because mirror websites can spring up within a matter of a few minutes. Several other orders have also been passed by this Court with respect to rogue websites, such as in ***CS(COMM) 157/2022*** titled ***Star India Pvt. Ltd v. Live Flixhub.Net***, ***CS(COMM) 471/2019*** titled ***Star India Pvt. Ltd. Vs. Moviemad.biz & Ors***, and ***CS(COMM) 195/2019*** titled ***Star India Pvt. Ltd. Vs. Extramovies.host & Ors***. These orders have clearly established that these websites surface frequently, and on a periodic basis, as domain names can be registered with minor modifications, and the content of the website can be very easily moved from one website to the other.

12. Further, in one of the recent decisions of this Court stringent measures were directed to be taken against such websites in ***CS(COMM) 514/2023*** titled ***Universal City Studios LLC. & Ors. v. Dotmovies.baby & Ors***. The



relevant extract of the said decision is extracted below:

16. *The dynamism of the injunction, by itself, in one country or another may not, however be sufficient to protect copyright owners. **There is an imminent need to evolve a global consensus in this regard inasmuch as despite ISPs blocking these websites, the said websites can be accessed through VPN servers, and other methods to which the long arm of the law cannot extend etc.***

17. ***Any injunction granted by a Court of law ought to be effective in nature. The injunction ought to also not merely extend to content which is past content created prior to the filing of the suit but also to content which may be generated on a day-to-day basis by the Plaintiffs.** Thus, though, in a usual case for copyright infringement, the Court firstly identifies the work, determines the Copyright of the Plaintiff in the said work, and thereafter grants an injunction, owing to the nature of the malafide, there is a need to pass injunctions which are also dynamic qua the Plaintiff as well, as it is seen that upon any film or series being released, they may be immediately uploaded on the rogue websites, causing immediate monetary loss. Copyright in future works comes into existence immediately upon the work being created, and Plaintiffs cannot be forced to approach the Court for each and every film or series that is produced in the future, to secure an injunction against piracy.*

19. ***As innovation in technology continues, remedies to be granted also ought to be calibrated by Courts. This is not to say that in every case, an injunction qua future works can be granted. Such grant of an injunction would depend on the fact situation that arises and is placed before the Court.***

20. *In the facts and circumstances as set out above, an ex parte ad interim injunction is granted restraining the **Defendants, who are all rogue websites, from in any manner streaming, reproducing, distributing, making available to the public and/or communicating to the public any copyrighted content of the Plaintiffs including future works***



of the Plaintiffs, in which ownership of copyright is undisputed, through their websites identified in the suit or any mirror/redirect websites or alphanumeric variations thereof including those websites which are associated with the Defendants' websites either based on the name, branding, identity or even source of content. To keep pace with the dynamic nature of the infringement that is undertaken by hydra-headed websites, this Court has deemed it appropriate to issue this 'Dynamic+ injunction' to protect copyrighted works as soon as they are created, to ensure that no irreparable loss is caused to the authors and owners of copyrighted works, as there is an imminent possibility of works being uploaded on rogue websites or their newer versions immediately upon the films/shows/series etc. The Plaintiffs are permitted to implead any mirror/redirect/alphanumeric variations of the websites identified in the suit as Defendants Nos. 1 to 16 including those websites which are associated with the Defendants Nos. 1 to 16, either based on the name, branding, identity or even source of content, by filing an application for impleadment under Order I Rule 10 CPC in the event such websites merely provide new means of accessing the same primary infringing websites that have been enjoined. The Plaintiffs are at liberty to file such an impleadment application based on their copyrighted works, including future works, when the need so arises. Upon filing such application before the Registrar along with an affidavit with sufficient supporting evidence seeking extension of the injunction to such websites, to protect the content of the Plaintiffs, including future works, the injunction shall become operational against the said websites and qua such works. If there is any work in respect of which there is any dispute as to ownership of copyright, an application may be moved by the affected party before the Court, to seek clarification.



13. Keeping in mind the above legal position as also considering the nature of this mater, the Court has perused the screen shots of the websites i.e. Documents 3 and 4 with this Application. The use of the ‘BURGER KING’ in this manner and calling for franchises could result in large scale fraudulent payments of money to the operators of these websites. Such websites are noted to surface frequently and periodically. Additionally, the deceptive nature of their operations extends beyond mere trade mark infringement, raising concerns about consumer safety and ethical business practices.

14. In light of these circumstances, considering the broader implications of such Defendants’ actions, in order to safeguard both the integrity of the market and the welfare of consumers, the said websites and their operators are restrained from using the said domain names or any other domain names which bear the mark ‘BURGER KING’ as also the words ‘BURGER’ and ‘KING’ together.

15. In addition, if any other domain names/websites offering fake franchises are noticed/ discovered by the Plaintiff bearing the mark ‘BURGER KING’, the Plaintiff is free to file an affidavit along with the application for impleadment under Order I Rule 10 CPC. The Plaintiff is permitted to implead any mirror/redirect/alphanumeric variations of the websites identified in the suit as Defendant websites which are associated with the Defendants either based on the name, branding, identity etc., by filing the application. The Joint Registrar may examine the documents filed with the same and direct extension of the injunction orders to the said domain names as well. MEITY/DoT shall, upon receiving of any information in respect of fake franchises/websites shall immediately issue



blocking orders in respect of the said websites.

16. The above-mentioned two domain name websites shall also be blocked by MEITY and the Internet Service Providers (*hereinafter, ISPs*) shall give effect to these orders. National Internet Exchange of India (*hereinafter, NIXI*) shall give effect to this order immediately and block/suspend the said domain names.

17. Further, GoDaddy.com LLC shall lock/suspend the domain name www.burgerkingfoodindia.com and www.burgerkingfranchiseindia.co.in. They shall also provide the details of the registrants within one week, including the payment details, if any, which are available with them to Id. Counsel for the Plaintiff.

18. Canara Bank shall freeze the bank account- 110138486246 immediately and file an affidavit of compliance confirming that it has frozen the said bank account. For the said purpose, this order shall be communicated to Ms. Hetu Arora Sethi, Id. ASC through the Cyber Cell, who is already looking into the similar matters issuing freezing orders.

19. In addition, the order shall be communicated to Canara Bank and no further withdrawal shall be permitted from the said account.

20. Issue notice.

21. List before the Court on 11th January, 2024 and 1st February, 2024.

PRATHIBA M. SINGH, J.

DECEMBER 04, 2023/dk/bh

Annexure

Subject: Action requested to be taken by MEITY and Plaintiff for effective removal of content for viewing by public at large within India as per the said orders of Hon'ble Court.

It is observed that a number of orders of Hon'ble Court are issued for blocking of websites every month. There are around more than 2700 ISPs in India and these ISPs are connected among themselves in a mesh network. DOT is instructing each of the ISPs through emails/through its website for blocking of the websites as ordered by the Hon'ble Courts. Ensuring compliance of the orders by each of the ISPs is a time-consuming and complex task especially in view of multiplicity of orders of Hon'ble Courts, multiplicity of websites to be blocked and multiplicity of ISPs.

2. Allocation of Business Rules inter-alia states thus:-

'Policy matters relating to information technology; Electronics; and Internet (all matters other than licensing of Internet Service Provider).'

3. In view of above and in order to ensure effective removal by content for viewing by public at large, the plaintiff is requested to do a trace route of the web server hosting the said website. In case the web server happens to be in India, the plaintiff may inform the same to Meity who may direct the owner of such web server to stop transmission of content as per IT Act and as directed by the Hon'ble Court so that the content would be blocked from the source itself and the exercise of blocking by 2700 ISPs would not be required.

4. In case such server is located abroad i.e. outside India then access to such URL/website can be blocked through the international internet gateways which are much less in number. This would result in timely and effectively removal of undesirable content for viewing by public at large as is the requirement as per the orders of Hon'ble Court.