



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION (L) NO.35432 OF 2025
IN
COMMERCIAL IP (L) NO.35330 OF 2025

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Indian Express and Commercial Ventures and
Projects Private Limited

...Applicant/
Plaintiff

Versus

Fundamental Hospitality Private Limited and
Another

...Respondents/
Defendants

Mr. Sandeep Parikh i/b. Mr. Liliaan Daas, Mr. Arsalan Thaver, Ms. Samishka Malekar and Ms. Kajal Panhalkar i/b. Abhiraj Parab, for the Applicant/Plaintiff.

Mr. Anand Mohan a/w. Mr. Lavin Hirani and Mr. Ishan Puranik i/b. Mr. Vikramaditya Chavan, for Defendant Nos. 1 and 2.

CORAM :

SHARMILA U. DESHMUKH

RESERVED ON :

DECEMBER 01, 2025

PRONOUNCED ON :

DECEMBER 19, 2025

ORDER :

1. This is an action for infringement of trade mark and passing off. With consent the Interim Application is taken up for final hearing.

2. The Plaintiff and the Defendants are in the business of restaurant services. The Plaintiff seeks to restrain the Defendants and their employees, servants, agents assigns from using the impugned trademark "HOM" by itself or in combination with any other word or any other mark deceptively similar to the Plaintiff's trademarks "HOM",

“HOM House Of Mandarin” and registered trademark “HOM House of Mandarin” and from passing off their services as that of Plaintiff.

3. The Plaintiff has come with the case that in the year 2016, the Plaintiff conceived and adopted the trade mark “House Of Mandarin” and applied for registration of the trade mark in Class 16 and 43 on 26th July, 2017 and secured registration. In the year 2017, the Plaintiff started a new restaurant under the trade mark “House of Mandarin” which within a short period came to be popularly known by the acronym “HOM”. The Plaintiff runs two restaurants under the trade mark “HOM” and “ HOM House Of Mandarin”, one at Bandra which was launched in the year 2017 and the second restaurant at Powai which was launched in the year 2019.

4. It is submitted that the members of general public refer and identify HOM as the acronym of “House Of Mandarin” which has been used by the Plaintiff for restaurant and hospitality business. The Plaintiff therefore coined and adopted the trademark “HOM” for their restaurant business. The plaint makes a reference to the newspaper articles and social media posts to substantiate the association of the acronym “HOM” with the registered trade mark “House of Mandarin”. The Plaintiff applied for registration of the mark “Asian Bistro by Hom”

on 1st July, 2025 and for the mark "HOM" on 8th October, 2025.

5. It is stated that around September, 2025 the Plaintiff's Director started receiving congratulatory messages from the restaurant community and customers on impending opening of their new restaurant HOM at which point of time, the Plaintiff became aware that the Defendants have adopted an identical trade mark/ trade name HOM for their restaurant services to be launched at Bandra which is few meters away from the Plaintiff's restaurant "HOM-House Of Mandarin". It is stated that Defendant No. 2 has filed an application on 5th September, 2025 for registration of the impugned trade mark.

6. The defence is that in November, 2024, the Defendants started exploring the idea of launching high concept modern Indian restaurants where open fire would play a central role in menu as well as visual experience and developed the concept with professional marketing agency named "No Fluff LLP". One of the names suggested by the agency was the word 'HOM' which is a Sanskrit word describing the act of pouring or offering something into fire. The Defendant's mark thus came into existence, which is an independent and bonafide adoption. It is stated that the restaurant under the mark HOM was launched formally on 1st October, 2025 and prior to that in September, 2025 the

launch was covered by news articles, social media etc. It is stated that the Plaintiff does not have registration or any actionable goodwill in the mark "HOM" as falsely claimed as the registered trade mark is "House Of Mandarin" which is a composite label mark.

7. In so far as the case of passing off is concerned, it is stated that that the news articles appended to the plaint pertains to "House Of Mandarin" and even sporadic reference to HOM in the material annexed to the plaint are either undated, unreliable or offered specifically along with the words "House Of Mandarin". It is stated that no independent right of enforcement can arise by virtue of prior user, absent evidence of substantial goodwill. It is stated that in all the relevant trade channels such as Swiggy, Zomato etc., the Plaintiff's restaurant has been referred to "House Of Mandarin" and not HOM. The application for registration of the trade mark "HOM" has been filed on 8th October, 2025 with false user of 26th July, 2017 and without annexing single document showing user since the year 2017. It is stated that, the whatsapp chats are got up specifically to curate the record for filing of the suit. It is further stated that there is no question of confusion as the restaurant services offered by the Plaintiff and the Defendants are fine dine space, priced at premium prices and the customers are discerning customers. It is further stated that the Plaintiff's restaurant caters to

chinese/ pan asian cuisine whereas the Defendant's restaurant caters specifically to Indian cuisine which makes it even more distinct and different.

8. In rejoinder affidavit it is stated that the Plaintiff has been continuously using HOM as well known abbreviation of "House Of Mandarin" since inception including on menu cards, packaging, social media, delivery platforms etc. It is further stated that both marks co-exists and demonstrates use of HOM. The Defendants claim about distinguishing cuisines is immaterial as two restaurants in the same city cannot simultaneously operate under the identical name HOM without causing confusion. It is stated that the Plaintiff had already applied for registration of the mark HOM in July, 2025 and is prior user which is a determining factor for passing off.

9. Mr. Parikh, learned counsel for the Plaintiff points out the registrations in respect of the device mark "House Of Mandarin" for services of providing food, drink and hospitality services. He submits that the Plaintiff's restaurant business and adoption of the mark "House of Mandarin" and "Hom" is prior in time. He submits that the Plaintiff uses the abbreviation HOM for its registered trade mark "House Of Mandarin" and is popularly known by its acronym "HOM", and in order to

substantiate the said contention has taken this Court through the news articles, social media posts appended to the plaint. He would further point out the use of mark HOM by the Plaintiffs on the visiting cards, menu covers etc. He submits that even in respect of an unregistered trade mark, which is an abbreviation of registered trade mark, statutory protection is available. He submits that the goodwill and reputation of the registered trade mark "House of Mandarin" naturally flows in the acronym "Hom".

10. He submits that the application for registration of Asian Bistro HOM was filed on 1st July, 2025 even prior to the Defendant's launching of its restaurant and for the stand alone mark HOM on 8th October, 2025. He would submit that the reputation and goodwill has been demonstrated from the sales figures and advertisement expenses duly certified by the Chartered Accountant. He further points out the Defendants invoices as well as valet tags to show the use of the mark HOM. He submits that confusion is not only likely but has occurred as the general public has already associated the Defendant's outlet as that of the Plaintiff. He would submit that the defence raised by the Defendants of the difference in cuisine is immaterial as there is likelihood of association with the Plaintiff's restaurant business. In support he relies upon the following decisions:

- (i) **Laxmikant V. Patel vs. Chetanbhai Shah and Anr.**¹
- (ii) **Balsara Hygiene Prodcuts Limited vs. Arun Chowdhury and Anr.**²
- (iii) **Impresario Entertainment and Hospitality Private Limited vs. Social Tribe**³
- (iv) **Empire Spices and Foods Limited vs. Sanjay Bhimraoji Deshmukh Trading as M/s. Sanskriti Spices** ⁴
- (v) **Cadila Health Care Ltd. vs. Cadila Pharmaceuticals Ltd.** ⁵
- (vi) **Mahindra & Mahindra Limited and Anr. vs. MNM Marketing Pvt. Ltd. and Anr.**⁶
- (vii) **Syed Mohideen vs. P. Sulochana Bai**⁷

11. Mr. Anand Mohan, learned counsel for the Defendants would submit that there is no question of infringement of unregistered trade mark HOM. He submits that the claim in paragraph 7 of the plaint of the registered mark "House Of Mandarin" coming to be popularly known as HOM is without any corroborating evidence. Distinguishing the judgment of **Mahindra & Mahindra** (supra), he submits that in that case the Plaintiff was able to establish rights even in the acronym M & M,

1 (2002) 3 Supreme Court Cases 65.

2 2002 SCC OnLine Cal 625.

3 2025 SCC OnLine Bom 2389.

4 2025 SCC OnLine Bom 2259.

5 (2001) 5 Supreme Court Cases 73.

6 2014 SCC OnLine Bom 1343.

7 (2016) 2 Supreme Court Cases 683.

which was registered and in the present case, the pleadings and material in the present case makes out no case of independent rights in acronym. He would further submit that even in the respect of passing off, the Plaintiff has failed to satisfy even a single ingredient of the cumulative test of goodwill, misrepresentation and likelihood of injury. He submits that the Defendants adoption of the mark HOM is honest and bonafide adoption and there is no deception or misrepresentation. He submits that there is no cogent case of goodwill and reputation of HOM as on the date of adoption of the mark by the Defendant. He submits that the material relied upon by the Plaintiff is undated without any pleading as to when the said material was designed or printed and installed or used and it is only after the filing of the suit that the re-branding addition has occurred. He submits that the Chartered Accountant certificate sets out the sales for the "House Of Mandarin" business as a whole and much of the Plaintiff's business is not even done with reference to HOM. He submits that, there is no misrepresentation or deception and there is a clear difference of offerings by the rival parties and the customers are both discerning customers. He submits that there is no use of HOM by the Plaintiff on the primary trade avenues such as Swiggy, Zomato etc and the evidence of actual confusion is unreliable and not supported by any affidavit. In support he relies upon the following decisions :

- (i) **Foodworld vs. Foodworld Hospitality Pvt. Ltd.** ⁸
- (ii) **Turning Point and Anr. vs. Turning Point Institute Pvt. Ltd.** ⁹
- (iii) **Aegon Life Insurance Co. Ltd. vs. Aviva Life Insurance Co. India Ltd.** ¹⁰
- (iv) **IAL No. 7446 of 2025 Dt.03-09-2025 (Bombay High Court)**
- (v) **Uniply Industries Ltd. vs. Unicorn Plywood Pvt. Ltd. and Ors.** ¹¹
- (vi) **Exegesis Infotech (India) Pvt. Ltd. vs. Medimanage Insurance Broking Pvt. Ltd.** ¹².

12. In rejoinder Mr. Parikh would point out paragraph Nos. 9, 10 and 11 of the plaint to submit that that there are sufficient pleadings to demonstrate that the Plaintiff's trade mark "House Of Mandarin" is popularly referred by the acronym "HOM". He would further submit that the Chartered Accountant's certificate makes specific reference to sales figure of "House Of Mandarin" along with HOM and it is a matter of evidence as to whether the sales figure refers to "House Of Mandarin" along with additional mark HOM or not. He submits that the prominent part of the registered trade mark is HOM. He submits that the subsequent use by the Defendants is an admitted position and being a

8 2009 SCC OnLine Del 3862.

9 2018 SCC OnLine Del 10257.

10 2019 SCC OnLine Bom 1612.

11 MANU/SC/0315/2001.

12 2015 SCC OnLine Bom 3797.

prior user the Plaintiff is entitled to protection even of the abbreviation of trade mark. He would further submit that as held in the case of **Mahindra** (supra), the goodwill in the registered trade mark naturally flows into the abbreviations and therefore it cannot be said that there is no goodwill attached to the abbreviation HOM.

REASONS AND CONCLUSION:

13. During the hearing, this Court had posed a specific query to Mr. Parikh as to whether infringement is claimed of the mark “House of Mandarin” or “HOM”. The response was that the rival marks are HOM vs. HOM. The Plaintiff’s case is therefore of infringement not of the registered trade mark “House of Mandarin” but its abbreviation “HOM” and for passing off in respect of HOM.

14. The case pleaded in the plaint is that the Plaintiff’s registered trade mark “House Of Mandarin” was adopted and conceived in the year 2016 and within short period of time came to be popularly referred to as HOM. The Plaintiff therefore seeks statutory protection *qua* the acronym of the registered trade mark. The acronym though capable of independent registration has been applied for registration on 8th October, 2025 i.e. after the launching of the Defendant’s restaurant.

15. The provisions of the Trade Marks Act affords statutory protection to registered trade mark and gives right to take action against infringement of the registered trade mark. To seek extension of the benefit of registration of the mark House of Mandarin to the abbreviation HOM, Mr. Parikh would rely upon the decision of ***Mahindra & Mahindra Limited vs MNM Marketing Pvt Ltd*** (supra). It is necessary to consider the decision in some detail. In that case, action was brought for infringement of the Plaintiff's registered trademark "M & M". The Plaintiff was the registered owner of the marks Mahindra (word per se and label) Mahindra and Mahindra (word per se and label) and M & M (word per se and label). The benefit of the goodwill and reputation of the mark Mahindra/ Mahindra and Mahindra was sought to be extended to the mark M&M on the basis that the marks have become immensely popular amongst the members of the public and trade that the same has naturally flown into and is associated with the abbreviation M&M. It was claimed that the benefit of use and registration of Mahindra and Mahindra inures to its natural abbreviation.

16. The learned Single Judge of this Court considered the material produced such as the specimen news reports of the years 1969, 1972 and 1985 to 2011 to hold that the said trademark M & M being a natural abbreviation of their well known mark Mahindra and Mahindra is used

by the Plaintiff in the course of their business and the Plaintiffs are known and referred amongst the members of the trade, public, press and other media as M & M since at least 1969. In these facts, the learned Single Judge accepted the contention that the popularity, goodwill and reputation of the marks Mahindra /Mahindra and Mahindra has naturally flown into and is associated with the acronym M & M in any field of business/activity and benefit of use and registration of the marks Mahindra/Mahindra & Mahindra inures to its natural abbreviation. The learned Single Judge also referred to the extract from the commentary “McCarthy on Trademarks and Unfair Competition” stating that several Court decisions have indicated that:

“where as a result of use by customers, the trade or by news media, an abbreviation has become identified in the public mind with a particular company, then that abbreviation is a protectable trade mark, even if the company itself has not formally used the abbreviation as a trademark. It is public use that will set the stage for confusion, which is the evil to be remedied in trade mark cases.”

17. In that case there was sufficient material placed before the Court for coming to a prima facie finding that the popularity, goodwill and reputation of the marks Mahindra/Mahindra & Mahindra naturally flowed into the abbreviation M&M. It also helped that the abbreviation M&M was registered. The issue which mainly arose for consideration

was as regards the goodwill and reputation of the registered trade marks to be associated with the abbreviation as the action was for infringement of registered acronym as well as passing off. In that context the learned Single Judge considered the facts to hold that the goodwill and reputation flowed in the abbreviation.

18. In my view, the said decision is an authority for the proposition that the benefit of use and registration of the trade marks inures to the natural abbreviation subject to the satisfaction that the use of the abbreviation/acronym for purpose of business is to such an extent that the general public and members of the trade recognize the Plaintiff by the acronym. To put it simply the abbreviation must take the mantle of being the brand identifier indicating the source of the services as that of the Plaintiff which is the essence of trade mark protection. The abbreviation must be shown to be identified in the public mind with the company. It is therefore necessary for the Plaintiff to produce cogent material on record to demonstrate that the abbreviation when used will be associated only with the Plaintiff in the public mind.

19. In this background, the material produced by the Plaintiff will have to be scrutinized to ascertain whether the use of the abbreviation HOM by the Plaintiff was to such an extent as being identified by the

public with the Plaintiff. Looking into the pleadings, paragraph 9 of the Plaintiff pleads that in 2017 the Plaintiff started a new restaurant under the trademark "House Of Mandarin" which within a short period came to be popularly referred to by the acronym "HOM". The pleadings are extremely vague, and bereft of any elaboration as to the extent of the identification of HOM with the Plaintiff's establishment. There are numerous ways in which it can be demonstrated that the Plaintiff's restaurant is popularly known as HOM in this era of advanced information technology. There can be social media posts, customer reviews, reference to the Plaintiff's restaurant as HOM by the trade vendors, restaurant community. The Plaintiff had launched its second restaurant in the year 2019. As the Plaintiff's claim is that the first restaurant was launched in 2017 and was popularly referred to as HOM, the promotional material for launch of second restaurant would prominently reflect the mark "HOM". There is no such cogent material produced by Plaintiff.

20. What is necessary to be shown is that by virtue of the identification as HOM, the Plaintiff has taken steps for rebranding by giving details of the conceptualization, use and adoption of the brand logo of HOM. The pleadings and supporting documentation in that respect are unfortunately missing. It is also pertinent to note that on

the delivery platforms such as Swiggy, Zomato etc. which play an important role in online food delivery system, the Plaintiff's restaurant has been referred to House Of Mandarin and not HOM. A specific plea in that respect has been taken by the Defendant which has not been disputed by the Plaintiff in the rejoinder. Perusal of the extracts of the delivery platforms shows reference to House of Mandarin and not HOM. To extend the benefit of use and registration of a registered trade mark to an acronym, the acronym must be shown to be consistently in public domain and contemporaneously documented.

21. Another aspect that militates against the Plaintiff's claim is that the House of Mandarin was registered in the year 2017 and within short span of time came to be popularly known as HOM. In these circumstances, the natural conduct would be to capitalize the brand identifier as the value of the trade mark is to stimulate the sales. The Plaintiff has acted to the contrary while registering its other mark "Asian Bistro by HOM" in July, 2025. Perusal of the signage, uniform, menu card of Asian Bistro would show that prominence is given to the words Asian Bistro and the word HOM is depicted in negligible font. Instead of according greater visibility to the word HOM in the sub brand Asian Bistro, the reverse has occurred which *prima facie* creates a doubt about the Plaintiff's claim. In so far as the registration application of

the device mark HOM is concerned, the application has been filed on 8th October, 2025 just two days prior to the filing of the present suit and is evidently after launch of the Defendant's restaurant.

22. In order to substantiate its claim, paragraph 10 of the Plaint, refers to several news articles, social media platforms. In all, the reference in paragraph 10 is to four articles. There is only one article using HOM in the headline, whereas in the other articles, the word HOM is not prominent and is based on quote by the founder of House of Mandarin. The Plaintiff first restaurant was launched in the year 2017. During the period of eight years i.e. from the year 2017 to 2025, there are only four articles featured on the Plaintiff as set out in the plaint. In this era of pervasive social media, the publishing of such few articles with time gaps is *prima facie* insufficient to hold identification of the abbreviation in the public mind with the Plaintiff. Even accepting that these are specimen articles, I do not find the articles to make prominent reference to the Plaintiff's establishment by the abbreviation to demonstrate a unified identification of the marks "House of Mandarin" and "HOM". The Plaintiff has produced two invoices of the year 2024 using HOM which is insufficient to *prima facie* demonstrate extensive use of trade mark HOM or that the Plaintiffs were popularly known by the mark HOM.

23. The photographs of facade and signage of the Plaintiff's establishment are unsupported by relevant pleadings as to its installation and use. In so far as the Plaintiff's website extract at Page 62 is concerned, the website makes a mention of Asian Bistro by Hom. The pleading in the plaint is that in the year 2025, the Plaintiff adopted and started using the trade mark "Asian Bistro by Hom". The website extract therefore is of recent origin. Considering that the "HOM" brand logo must have been designed either in house or through an external agency, the pleadings to that effect are expected. There are no pleadings in the plaint giving details about the concept, design, use and adoption of the brand logo "HOM". The material produced by the Plaintiff in the form of menu cards, tax, delivery stickers are all undated. It is therefore a matter of trial as to whether the Plaintiff is popularly known by the acronym "HOM". The requirement of association of the abbreviation "HOM" in public mind with the Plaintiff has *prima facie* remained unsatisfied in present case and therefore no benefit of registration of the trade mark "House of Mandarin" can be extended to "HOM" to maintain an action for infringement of the mark HOM.

24. Coming to the common law rights, it is well settled that a passing off action is common law remedy to protect the goodwill and reputation against misrepresentation by another which causes or is likely to cause

confusion amongst consumers. The classic trinity test of goodwill, misrepresentation and likelihood of injury will have to be satisfied. It cannot be disputed that in common law jurisdiction, passing off right is broader and superior remedy than that of infringement.[See **S. Syed Mohiden** (supra).

25. The superior right existing in the common law is unaffected by the non-registration of the trade mark and is also recognized by Section 27(2) of the Trade Marks Act. In a recent decision of **Pernod Ricard India Private Limited and Ors. vs. Karanveer Singh Chhabra Trading**¹³ the Hon'ble Apex Court summarized the legal principles governing the infringement of trade mark and passing off. In so far as the action of passing off is concerned, the Hon'ble Apex Court noted that passing off action applies to both registered and unregistered marks, and is rooted in the principle that one trader should not unfairly benefit from the reputation built by another and key distinction between the two lies in the requirements of proof. It held that in a passing off action, the plaintiff must prove: (i) the existence of goodwill or reputation in the mark, (ii) a misrepresentation made by the defendant, and (iii) a likelihood of damage to the plaintiff's goodwill. It held that an intent to deceive is not a necessary element nor actual deception or damage be proved but proof of likelihood of confusion or deception is required. It

¹³ 2025 SCC OnLine SC 1701.

also held that in a passing off action, the defendant's goods need not be identical to those of the plaintiff they may be allied or even unrelated, provided the misrepresentation is such that it affects or is likely to affect the plaintiff's business reputation. Passing off is grounded in equitable principles and imposes a higher evidentiary burden to safeguard commercial goodwill under common law.

26. It is trite that passing off action is a tortious action of deceit and injunction against passing off cannot be granted for asking. In **Parker Knoll Limited vs. Knoll International Ltd.**¹⁴ it was held as under:

"secondly to deceive is one thing. To cause confusion is another. The difference in this; when you deceive a man, you tell him a lie. You make a false representation to him and thereby causing to believe a thing to be true which is false. You may not doing it knowingly or intentionally, but still you do it and so you deceive him. But you may cause confusion without telling him lie at all and without making any false representation to him. You may indeed him tell him the truth, the whole truth and nothing but a truth but still you may cause confusion in his mind, not by any fault of yours, but because he has not knowledge or ability to distinguish it from the other pieces of truth known to him or because he may not even take the trouble to do so".

27. It would also be apposite to make a reference to the decision in the case of **Cadila Health Care Ltd** (supra). The Hon'ble Apex Court laid

¹⁴ 1962 RPC 265

down the following factors to be considered in an action for passing off on the basis of unregistered trade mark generally for deciding the question of deceptive similarity :

- a) The nature of the marks.
- b) The degree of resemblance between the marks, phonetically similar and hence similar in idea.
- c) The nature of the goods in respect of which they are used as trade marks.
- d) The similarity in the nature, character and performance of the goods of the rival traders.
- e) The class of purchasers who are likely to buy the goods bearing the marks they require, on their education and intelligence and a degree of care they are likely to exercise in purchasing and/or using the goods.
- f) The mode of purchasing the goods or placing orders for the goods and
- g) Any other surrounding circumstances which may be relevant in the extent of dissimilarity between the competing marks.

28. The judicial pronouncements concretize the well established principles of goodwill, misrepresentation and likelihood of damage for establishing case of passing off.

29. To resist the first ingredient of goodwill and reputation, Mr. Mohan would point out absence of goodwill and reputation in the stand alone mark HOM. The decision of **Mahindra & Mahindra** (supra) holds that the natural abbreviation of a well known registered trade mark

would result in the popularity, goodwill and reputation of that mark to naturally flow into and be associated with the acronym as used. For associating the goodwill and reputation of the registered mark with the acronym, the circumstances as existed in case of **Mahindra** (supra) must be shown to exist. In such eventuality, it is not necessary to establish goodwill and reputation in stand alone mark of HOM. As discussed above, there is no cogent material produced by the Plaintiff to persuade this Court to accept that the Plaintiff's use of the abbreviation is to such an extent so as to be popularly known and be associated in the public mind with the abbreviation. I am thus not inclined to accept the submission that the goodwill and reputation of House of Mandarin must be held to naturally flow into HOM.

30. There is no standalone sales figure and advertisement expenses produced in respect of standalone mark HOM. Though the chartered accountant certifies the sales turnover of the trade mark House of Mandarin(HOM), *prima facie* the same cannot be accepted as goodwill and reputation of the mark HOM. It cannot be debated that the test is of cumulative satisfaction and even if one the ingredients are not satisfied, the case of passing off is not established.

31. Going one step further, though not required as one of the

ingredients of existence of goodwill has been answered against the Plaintiff, passing off requires proof of likelihood of confusion or deception. Firstly for confusion to exist, the Plaintiff must be shown to be popularly known by the abbreviation, which is not so and secondly even to show confusion and deception, the reliance on few whatsapp chats is unacceptable. The chats are undated and unsupported by pleadings as regards the dates and details. Neither are the chats substantiated by affidavits of the concerned individuals. I do not find any material to persuade this Court to come to a *prima facie* finding that if the relevant consumer base were to come across the acronym HOM, they would be confused as to whether the same refers to the Plaintiff or the Defendants.

32. There is nothing produced before this Court to suggest that the Defendants made any attempted misrepresentation to portray its restaurant as that of the Plaintiff intentionally or unintentionally or put out a false representation. It is necessary to show false representation, even if unintentional, to the public that leads it to believe that the goods and services of the Defendant are that of the Plaintiff. The sporadic instances by way of whatsapp chat which even *prima facie* are not substantiated are not enough to restrain the use of the mark by the Defendants. It is necessary to have sufficient material on record than is

placed by the Plaintiff in order to sustain a *prima facie* case of passing off.

33. Even upon *prima facie* comparison of the rival marks, the Defendant's mark demonstrates different calligraphy from that of the Plaintiff's mark as the Defendant uses the mark Hom in a stylized manner and form which is distinct from that of the Plaintiff's mark HOM which is depicted in straight English alphabets.

34. In so far as the adoption of the Defendant's mark is concerned, the Defendant has *prima facie* placed material on record to substantiate the manner in which the mark was adopted which idea was borne in November, 2024 and has thereafter culminated into adoption of the mark HOM. Contrast are the vague and sketchy pleadings in respect of Plaintiff's association with the abbreviation HOM.

35. Dealing with the decisions relied upon by Mr. Parikh, the decisions reiterates the well settled principles pertaining to action for infringement and trade mark and there is no quarrel with the propositions laid down in the said decisions. It is only the applicability of the well settled proposition of law to the facts of each case which differs and when so applied in the present case, in my view, there is no

prima facie case made out for infringement of trade mark and copyright. The likelihood of injury to the Plaintiff, could have been considered if there was *prima facie* material on record to demonstrate that the Plaintiff were popularly known by the mark HOM and the use of the impugned mark would result in causing injury. It is also not denied that both the restaurants are premium restaurants which would obviously cater to a distinct well informed and well educated consumer base and the likelihood of confusion is bleak in such cases.

36. In light of the above discussion, the Plaintiff has failed to make out *prima facie* case for grant of interim relief. Interim Application stands dismissed.

(SHARMILA U. DESHMUKH, J.)