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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of Decision: 11th February, 2025**

+ CS(COMM) 875/2022 & I.A. 37801/2024

OZONE SPA PVT LTDPlaintiff

Through: Mr. Rajesh Mahendru, Advocate
(M): 9810194135

versus

MR ARVIND & ORS.Defendants

Through: Ms. Stuti Gupta, Advocate for
defendant no. 1 & 2.
(M): 9560493552

Email: stutigupta.d917.14@gmail.com

CORAM:

HON'BLE MS. JUSTICE MINI PUSHKARNA






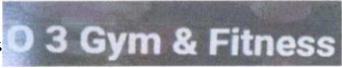
MINI PUSHKARNA, J (ORAL)

I.A. 37801/2024 (Application under Order XIII-A Rules 2 and 6 read with Section 151 of CPC)

1. The present application has been filed on behalf of the plaintiff under Order XIII-A Rules 2 and 6 read with Section 151 of the Code of Civil Procedure, 1908 ("CPC"), seeking summary judgment against the defendants.

2. The plaintiff has filed the present suit seeking permanent injunction, restraining infringement of its registered trademarks and copyrights, unfair competition, dilution, misrepresentation, damages and rendition of accounts and profits.



3. The present case pertains to the unauthorised use of plaintiff's registered trademarks, "OZONE", "O3", "ozO3ne", "", " ("Ozone marks"), by the defendants, by use of infringing marks, "", "", "", " ("impugned marks").

4. The plaintiff seeks a summary judgement against the defendants, on the ground that the defendants have no prospect of defending the plaintiff's claims.

5. The plaintiff's case, as canvassed in the plaint, is as follows:

5.1 The plaintiff company was incorporated in the year 1994 under its erstwhile name, "Taj Resorts Private Limited", which was subsequently changed to "Ozone Spa Private Limited" in 2003. The plaintiff is in the business of providing fitness, spa, health, beauty and sporting activity services under its Ozone marks.


5.2 Plaintiff's Ozone clubs are luxury health clubs, spas and salons with branches in cities like Delhi, Gurgaon, Chandigarh, Bangalore, Ludhiana, Hyderabad, etc. Further, in Delhi, the plaintiff's health clubs and spas are located in Defence Colony, Rajouri Garden, Punjabi Bagh, Greater Kailash, Kalkaji and Green Park.

5.3 The marks, "ozO3ne" and "O3", were adopted by the plaintiff in May, 2001, whereafter, in October, 2002, the plaintiff launched its first health club and spa under the said marks. Further, the plaintiff is the first chain of health



clubs in the country to be awarded ISO-9001-2000 and ISO-140001 certificates.

5.4 The plaintiff has several registrations for their Ozone marks along

with a distinct trade logo, i.e. “ozO3ne”/ “”. Further, the Ozone marks form a prominent part of the plaintiff’s corporate brand name and identity and have been in continuous use since the year 2001. The word O3 represents Ozone, which is the registered trademark of the plaintiff. The plaintiff is also the owner of the domain name www.ozoneclubs.com which was registered and acquired by the plaintiff in March, 2004.

5.5 The plaintiff has also obtained copyright registrations in the artistic

works in its marks “ozO3ne”/ “” and “O3”/ “”, vide registration nos. A-76426/2006 and A-77337/2006.

5.6 The plaintiff has earned enormous goodwill and reputation on account of its strict quality measures and owing to these standards, within 16-17 years, its brand Ozone has become synonymous with world class gym, health and fitness services.

5.7 In the last week of October, 2022, the plaintiff gained knowledge of defendants’ infringing activities by use of the identical impugned mark, “O3 Gym & Fitness Centre”, for offering similar services such as gym, fitness centre, spa, etc. Upon enquiries, the plaintiff discovered that the defendant no. 1 was operating 3 gyms and fitness centres, i.e., defendant nos. 2 to 5.

5.8 The writing style, layout, colour-scheme, and getup of the impugned marks and the manner in which the logo, “O3”, is presented as a bold capital letter is identical with and deceptively similar to plaintiff’s prior adopted, used and registered Ozone marks and the registered copyrights therein.



5.9 Aggrieved by the unauthorised exploitation of its Ozone marks by the defendants' use of identical and deceptively similar marks to offer similar gym and fitness services leading to dilution of its reputed brand, the plaintiff has filed the present suit, seeking *inter alia* permanent injunction and damages.

6. At the outset, this Court notes that *vide* order dated 16th December, 2022, an *ex-parte ad-interim* injunction was granted in favour of the plaintiff, whereby, the defendants were restrained from using the impugned marks, "O3" or "ozO3ne" or any identical or deceptively similar marks with respect to services like gym, fitness centres, spa, health services, gymnasium and any other like services either as trademark, trade name or domain name.

7. Further, *vide* order dated 26th February, 2024, the Court had recorded the undertaking on behalf of the counsel for defendant nos. 1 and 2, that they had stopped the usage of the infringing mark, and were operating under the mark, 'A3'. Relevant portion of order dated 26th February, 2024 is reproduced as under:

"xxx xxx xxx

2. *The said application had appended the photograph of a billboard in front of the outlet of defendant no. 1 which still showed the mark 'O3'. In response to the said application, counsel for defendant nos.1 & 2, has stated that the particular billboard was at a height of 60 to 80 feet and facing the main busy road, therefore, the said billboard was replaced later. **Counsel for defendants undertakes on behalf of defendant nos.1 & 2 that all references to 'O3' have been removed from their outlets, including all the sign boards as well. They are now using the mark "A3".***

xxx xxx xxx"

(Emphasis Supplied)



8. Pursuant to the said order, defendant nos. 1 and 2 filed a compliance affidavit dated 23rd April, 2024, giving an undertaking to the effect that they are not using the infringing mark.

9. This Court also notes that *vide* order dated 16th July, 2024, the injunction order dated 16th December, 2022 was confirmed, upon recording the undertaking of the counsel for defendant nos. 1, 2 and 3 that defendant nos. 1 to 3 shall not use the mark O3, and upon the statement of the plaintiff, that after passing of the injunction order, the defendant no. 4 has stopped the usage of the infringing mark. The relevant portion of order dated 16th July, 2024 reads as under:

“xxx xxx xxx

5. Learned counsel appearing for the defendant nos. 1, 2 & 3 undertakes before this Court that defendant nos. 1, 2 and 3 shall not use the mark O3. It is further submitted that the defendant nos. 1, 2 and 3 had already started using the mark A3.

6. The aforesaid undertaking of the defendant nos. 1, 2 and 3 is taken on record.

7. Learned counsel appearing for the plaintiff submits that after the injunction order passed by this Court, defendant no.4 has stopped the user of the infringing mark.

8. Accordingly, the injunction order dated 16thDecember, 2022 is confirmed.

9. The present application is, accordingly, disposed of.

xxx xxx xxx”

(Emphasis Supplied)

10. However, during oral arguments on 11th February, 2025, learned counsel appearing on behalf of defendant nos. 1 and 2, submitted that she did not appear on behalf of defendant no. 3. In furtherance to the order dated 16th July, 2024, an undertaking by way of an affidavit dated 21st August, 2024, was filed only on behalf of defendant no. 1. The relevant portion of the said affidavit is reproduced as under:



“xxx xxx xxx

3. I have removed logo/name O3 from the gym premises and have also got it changed from the website of JustDial. I'm not using logo/name O3 for any gym related activity instead I have changed the name/ logo to A3.

4. I have removed all the bill boards & sign board wherein it was mentioned 'O3' and as such, has complied with the interim order passed by this Hon'ble Court.

5. I have made all the endeavours to get the name of 'O3' and the address removed from Facebook & Instagram, as the said account have neither created by the deponent nor does he have any access. I have written an email dated 03.08.2024 to facebook at fbgoindia@support.facebook.com & to Instagram at support@instagram.com, thereby requesting them to deactivate and/or permanently delete the account "O3 Gym & Fitness". The proof same is annexed herewith as Annexure A-1 (Colly).

6. I say that I have complied with all the orders of this Hon'ble Court and have undertaken to completely stop the usage of O3 for the gym. Accordingly, I am not using O3. I have nothing to do with the Facebook & Instagram page, this Hon'ble Court may direct the Facebook & Instagram to permanently delete the said pages of "O3 Gym & Fitness"

xxx xxx xxx”

(Emphasis Supplied)

11. This Court also notes that Local Commissioners were appointed *vide* order dated 16th December, 2022, consequent to which the Local Commissioners filed their reports dated 5th January, 2023. The Local Commissioner who visited the premises of defendant nos. 2 and 3, recorded that infringing materials were found on the said premises and further recorded that defendant no. 1 is the owner, and runs the gym and fitness centre located at the premises of both defendant nos. 2 and 3. The relevant portion of the said Local Commissioner report is reproduced as under:

“xxx xxx xxx



6. The premises are located on the first floor of the building. On approaching the person who was looking after the Gym namely Mr. Harish Kumar, and apprising him about the commission directed by this Hon'ble Court, I was informed that the owner Mr. Arvind Gehlot would take some time to arrive. He then arrived after some time with his wife Ms. Preeti Gehlot and I apprised him about the order of the court. He was handed over the copy of the order along with the suit paper-book by the counsel for the Plaintiff.

xxx xxx xxx

18. Below is a list of infringing articles that were seized, sealed, inventoried and signed in the presence of parties:

Srl No.	Product type	Quantity
1.	Receipt Book (Unfilled)	18
2.	Receipt Book (filled)	9
3.	Pamphlets	2000 pcs.

4.	Laminated fee sheet	1 pc.
5.	O3 (wooden)	2 pc.
6.	Membership Book	1 pc.
7.	Posters	2 pc.
8.	Advertisement board	1 pc.

xxx xxx xxx

20. On reaching the second premises I learnt that this too was owned by Mr. Arvind Gehlot, the defendant who owned the gym we visited earlier even though it was denied by him when he was asked about the same. His wife, Ms. Preeti Gehlot was present at the second premises.

xxx xxx xxx

22. There were two 'O3' Sign Boards displayed on the side of the Gym but they could not be removed owing to them sticking to the



glass so tight and the sign boards were at such a distance that they could not be covered as well. Therefore, Ms. Preeti gave an undertaking assuring that the same shall be removed/covered within a day with the required equipment and the photograph of the same will be shared with me, however, she did not share any such photograph.

23. I was informed by Ms. Preeti that no books of accounts, ledgers, cash registers, invoices have been maintained in this premises as the records are common for both the gyms and the ones seized in the first premises have records of this gym too. She also said that this gym is old and running since 2019 with few interruptions owing to Covid and renovation. On searching rooms, nothing was found except one register in which daily handwritten entries of members who were coming to the gym were mentioned.

xxx xxx xxx”

(Emphasis Supplied)

12. Concerning the Local Commissioner who visited the premises of defendant nos. 4 and 5, it was found that defendant no. 4 is owned by one Mr. Imran Saifi; and defendant no. 5 entity, does not exist at the premises, and another gym facility was operating therein. The relevant portion of the Local Commissioner report dated 5th January, 2023, is as under:

“xxx xxx xxx

5. At this point, Mr. Imran Saifi, Owner of the Gym and resident of T-220/H, Kali Masjid, Savitri Nagar, South Delhi, Delhi - 110017 reached the premises and was supplied a copy of the Order dated 16.12.2022 passed by this Hon'ble Court alongwith a copy of the paperbook. He candidly states that he has been running the said Gym for the past 10-11 years and merely copied the impugned mark from the Internet without cross checking.

xxx xxx xxx

6. In furtherance of the order, Mr. Imran Saifi showed the Local Commissioner the members list, a rough noting of the inventory list. Rate list and schedule cards which contain personal information of the customers and type of exercises prescribed/advisable to them and hoardings/ banners bearing the infringing mark "O3 Gym" having Word Mark and Logo which appears to be an obvious imitation of the registered mark of the Plaintiff.



xxx xxx xxx

8. *Items bearing infringing mark that have been obtained on Superdari-*

i. Handwritten inventory list of equipments at the premises

ii. Rate List

iii. Schedule Cards (59 in total)

iv. One Old Register of entries of customers (14.09.2020 to 28.12.2022)

v. Receipt Booklet and two sheets of blank receipt pages

vi. One Member Entry Register (01.12.2022 to 23.12.2022) total entries in the register are around 80-85 customers in a day

vii. Member Entry List Register (17.08.2022 to 29.11.2022)

xxx xxx xxx

15. *Upon entering the premises, it was discovered that another gym having a different name is functioning at the same address. The trainers at the gym apprised the Local Commissioner that O3 Gym Fitness and Spa has closed down long back but they do not know when it closed down.*

16. *Now a gym named Empire of Fitness is being run by what seems and stated by the trainers, completely different entities. Photograph of Hoarding of Empire of Fitness, Gym at 2nd Floor, SCO – 31&32, Above Reliance Fresh, Sector 23, Main HUDA Market, Gurugram is annexed herewith as ANNEXURE - L and Photograph of pamphlet of Empire of Fitness, Gurugram is annexed herewith as ANNEXURE -M.*

xxx xxx xxx”

(Emphasis Supplied)

13. This Court further notes that *vide* order dated 26th September, 2023, upon oral request on part of the plaintiff, the defendant no. 5, was deleted from the array of parties. The relevant portion of order dated 26th September, 2023 is reproduced as under:

“xxx xxx xxx

The counsel for the plaintiff states that the defendant no. 5 be deleted on his oral request. This request is accepted. The defendant no. 5 is accordingly deleted. The amended memorandum of parties in respect thereof be filed in due course.

xxx xxx xxx”



14. From the above, it is manifest that though the counsel for defendant nos. 1 and 2, has made a categorical averment to the effect that she only appears on behalf of the said defendants, nevertheless, keeping in account the findings by the Local Commissioners and facts as recorded above, the following comes to light:

- i. Defendant no. 1, Mr. Arvind Gehlot, is the owner of defendant nos. 2 and 3 gym and fitness centres. A number of infringing materials, in the form of stickers, advertisements, posters, books of accounts, receipt books, etc., were seized during the commission from both the premises. The same is further corroborated by the statement recorded on behalf of Mrs. Preeti Gehlot, i.e., wife of defendant no. 1, that, the books of accounts are common for both the fitness centres located at the premises of defendant nos. 2 and 3, and an undertaking provided by her to the effect that she shall remove the infringing materials from the premises of defendant no. 3 as well.
- ii. The owner of the defendant no. 4 gym and fitness centre is one Mr. Imran Saifi, who admitted that he had copied the impugned mark and had been using the same since the last 10-11 years. The Local Commissioner was able to identify and inventory various items bearing the infringing impugned marks *inter alia* rate lists, receipt books and membership books showing approximately 150 members.
- iii. Upon visit to the premises of defendant no. 5, it was found that that “O3 Gym and Fitness and Spa” had closed down long back and another gym was operating in its place, under the name, “Empire of Fitness”. Further, the said defendant was deleted upon the oral request of the plaintiff, as recorded in the order dated 26th September, 2023.



15. It is noted that the plaintiff has been continuously using the Ozone marks since the year 2001. Further, the plaintiff has a domain name, i.e., www.ozoneclubs.com, which was registered and acquired on 25th March, 2004. The plaintiff's health and fitness centres under the Ozone marks are spread all across the country, which are in compliance with several international standards, i.e., ISO-9001-2000 and ISO-140001. The plaintiff is also the owner of several registrations in its favour for the Ozone marks, which are reproduced as under:

Mark	Registration /App No.	Class	Date of Application	Status	User claim since
ozO3ne	1205586	16	11.6.2003	Registered	1.1.2003
ozO3ne	1205587	30	11.6.2003	Registered	1.5.2001
ozO3ne	1205588	32	11.6.2003	Registered	1.5.2001
ozO3ne	1205590	33	11.6.2003	Registered	1.5.2001
ozO3ne	1254797	41	11.12.2003	Registered	1.5.2001
ozO3ne	1285723	42	24.05.2004	Registered	1.5.2001
ozO3ne	2323060	43	27.4.2012	Registered	1.5.2001
ozO3ne	2323063	44	27.4.2012	Registered	1.5.2001
O3	1343509	16	09.03.2005	Registered	15.1.2003
O3	1906894	41	09.01.2010	Registered	15.5.2001
O3	2323061	43	27/4/2012	Registered	1.5.2001
O3	2323062	44	27.04.2012	Registered	1.5.2001
O3	1906895	43	09.03.2005	Registered	1.5.2001

16. The plaintiff has also obtained copyright registration in its favour of the artistic form involved in the mark 'OZONE (ozO3ne)' and 'O3' vide registration nos. A-76426/2006 and A-773371/2006, respectively. Furthermore, the plaintiff has shown its substantial turnover which runs into





crores and the expenditure of nearly Rs. 2.5 crores towards business promotion under the Ozone marks, from the years 2003-04 to 2021-22.

17. This Court notes that the rights of defendant nos. 1 and 2 to file written statement was closed, as recorded *vide* order dated 01st February, 2024, wherein, the application seeking condonation of 213 days in filing the written statement, beyond the statutory period of 30 days, was dismissed. Further, the right to file written statement on behalf of defendant nos. 3 and 4 was also closed *vide* order dated 26th September, 2023. Moreover, despite multiple opportunities, no reply has been filed by the defendants to the present application for summary judgment.


18. Further, on account of the undertakings and statements made before this Court, the defendants have either stopped using the infringing mark, i.e., ‘O3’ or adopted the new mark, ‘A3’.

19. At this stage it would be relevant to compare the marks of the parties. A comparative table towards the same is reproduced as under:

PLAINTIFF'S MARKS	DEFENDANTS' MARKS
	



20. From perusal of the table above, it can be culled out that the prominent part of the plaintiff's mark is the logo 'O3' which as a standalone term is also independently registered in favour of the plaintiff. Furthermore,

the trade logo of the plaintiff, "ozO3ne"/ "", comprises of artistic work in the form of letters 'o, z, n, e' in the word Ozone which are written in small letters, while the middle letter "O" is presented in a larger size in bold red colour wherein the numeral "3" is overlapping with the letter "O".

21. In comparison, the defendants' marks have completely subsumed the logo 'O3' which is the dominant and prominent part of the plaintiff's registered marks. Moreover, the manner in which the logo, 'O3', is presented as a bold capital letter is identical with and deceptively similar to plaintiff's marks. Further, both the parties deal in similar business, i.e., healthcare and fitness and serve the same customer base. Thus, despite noting the factum of undertaking and statements towards change in logo, nevertheless, this Court cannot disregard the determination that defendants' impugned marks are deceptively similar to that of the plaintiff's marks, thereby, constituting infringement of the plaintiff's marks.

22. Therefore, in view of the detailed discussion as above, this Court is of the opinion that the plaintiff is entitled to a summary judgement as the defendants lack any prospect of succeeding. Law is well settled that if the Court comes to a conclusion that the defendants lack a real prospect of being successful in defending the claim, a Commercial Court is entitled to pass a summary judgment in terms of the summary procedure as given the Commercial Courts Act, 2015.



23. On the aspect of costs and damages, learned counsel appearing for defendant nos. 1 and 2, by inviting the Court's attention to various documents filed by the plaintiff, submitted that the plaintiff is not entitled to any costs and damages. It is submitted that the Ozone marks and impugned marks are different, the locations of gyms being operated by the said defendants and the plaintiff are far apart and the economic category of customers being targeted is also different. Further, the plaintiff has not pleaded loss of business or reputation in its plaint.

24. In rejoinder arguments, learned counsel appearing for the plaintiff submitted that the defendants' unauthorised use of the impugned marks has diluted plaintiff's Ozone marks. He further submitted that once the aspect of infringement is proven, the plaintiff has the right to demand damages after estimating the profit earned by the defendant.

25. On account of the discussion hereinabove, it is established that the mark adopted by the defendants is identical and/or deceptively similar to the plaintiff's prior adopted, used and registered trademarks. It is manifest that the defendants have deliberately adopted an identical/deceptively similar mark in respect of same/similar services. The defendants' adoption is clearly dishonest and *malafide*.

26. This Court notes the report of the Local Commissioners, wherein, they have disclosed details about the membership register and the fees being charged by the defendants for membership to their respective gyms. The Local Commissioner appointed by this Court visited the two outlets of defendant no.1, i.e., defendant nos. 2 and 3 gym and fitness centres, wherein, the rate chart showed the fee charged by the defendant no.1 as Rs. 1,700/- per person per month and Rs. 3,200/- per month for couples. The



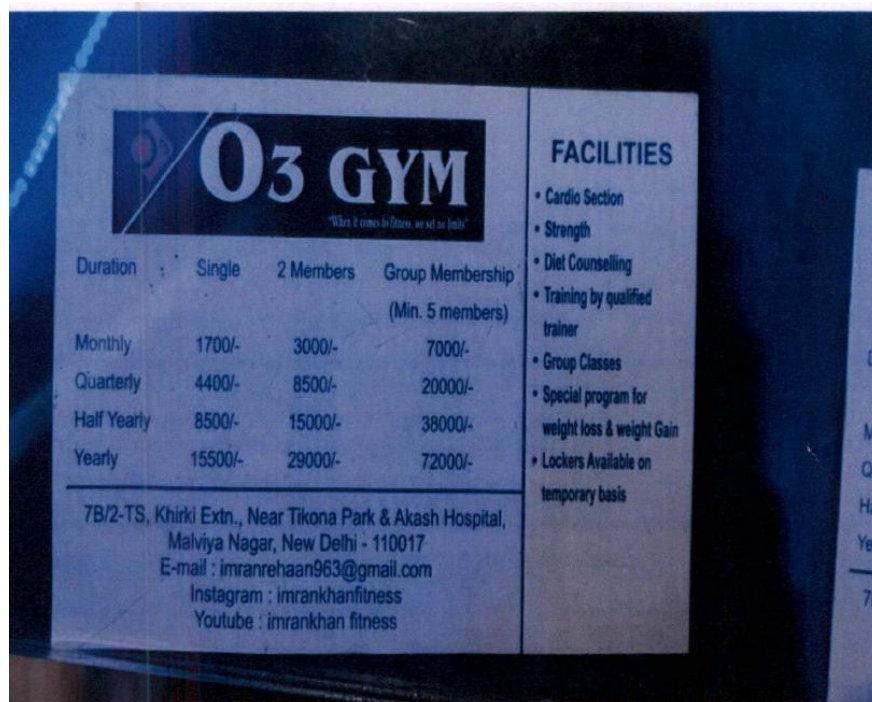
register maintained at one outlet showed that there were about 160 regular members. The document regarding the fee charged by defendant no.1 for its outlets, as filed by the Local Commissioner, is reproduced as under:



O₃ GYM & FITNESS	
Timing 6 AM TO 10 PM	
1 Month Fee	
Single Person	1700
Pair	3200
3 Month Fee	
Single Person	4800
Pair	9000
6 Month Fee	
Single Person	8500
Pair	16000
Yearly	
Single Person	15000
Pair	26000
On 15th & 30th Every Month GYM will be Close	

27. It is further to be noted that the GST registration of defendant no.1 is of the year 2018.

28. The Local Commissioner also visited the outlet of defendant no.4, wherein, the owner Mr. Imran Saifi admitted that he was using the mark of the plaintiff for the last 10-11 years. The Local Commissioner took photographs of the membership register, which showed more than 300 members. The rate list also showed monthly charges of Rs. 1,700/- per person and Rs. 3,000/- for couples. The rate list for the outlet of defendant no.4, as filed by the Local Commissioner, is reproduced as under:



29. Considering the aforesaid facts and circumstances, the plaintiff is entitled to costs and damages.

30. This Court is of the view that ends of justice will be met if costs and damages to the tune of Rs. 10 Lacs is paid by defendant no.1 to the plaintiff and costs and damages to the tune of Rs. 5 Lacs is paid by defendant no.4 to the plaintiff.

31. Accordingly, the following directions are issued:

I. Decree of permanent injunction is passed in favour of the plaintiff and against the defendants, in terms of prayer clauses (a), (b) & (c) of the plaint.

II. The plaintiff is held entitled to costs and damages to the tune of Rs. 10 Lacs to be paid by defendant no. 1, and Rs. 5 Lacs to be paid by defendant no. 4, totalling to Rs. 15 Lacs. The aforesaid amounts shall be paid by the defendants within a period of three months, failing which the same shall carry interest at the rate of 6% per annum.



32. Decree sheet be drawn up.
33. The present suit, along with the pending application, is disposed of.

MINI PUSHKARNA, J

FEBRUARY 11, 2025

Corrected & Released on: 24th February, 2025

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