

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

% Decided on: 28<sup>th</sup> February, 2020

+ CS(COMM) 676/2019

STARBUCKS CORPORATION ..... Plaintiff

Represented by: Mr.Ashish Sharma and Mr.Kiratraj  
Sadana, Advocates.

versus

COPAMOCHA CAFE & RESTAURANT & ANR..... Defendants

Represented by: Defendants ex-parte.

**CORAM:**

**HON'BLE MS. JUSTICE MUKTA GUPTA**

**MUKTA GUPTA, J. (ORAL)**

**CS(COMM) 676/2019**

1. Summons in the present suit were issued vide order dated 10<sup>th</sup> December, 2019. Despite service of summons, none appeared on behalf of Defendant Nos. 1 and 2. Defendants were thus proceeded ex – parte vide order dated 24<sup>th</sup> February, 2020.

2. By the present suit, the Plaintiff inter alia prays for a decree of permanent injunction restraining the Defendants, their partners, proprietors, agents, servants licensees, sub-licensees, franchisees, sub-franchisees, representatives and employees or any one claiming under them, directly or indirectly from infringing the Plaintiff's registered trademark "FRAPPUCCINO" or any other deceptively similar mark in relation to their goods, services and business, rendition of accounts, delivery and possession of impugned goods, menu cards and stationery and damages to the tune of ₹ 2,00,01,000 /-.

3. Plaintiff is a company organized and existing under the laws of the State of Washington, United States of America. Mr. Raghuvver Singh Rathore is authorized by the duly notarized Power of Attorney executed by Ms. Phyllis Turner – Brim of Starbucks Corporation to institute and file the present suit on behalf of the Plaintiff. Plaintiff company was incorporated as “STARBUCKS CORPORATION” in the year 1985 and has since then opened 30,848 retail stores over 81 countries around the world with over 510,000 employees in its company and affiliates.

4. The registered trademark “FRAPPUCCINO” has been adopted by the Plaintiff company in respect of cold beverages since 1994 which are widely popular throughout the world as the Plaintiff’s handcrafted cold beverages. The Plaintiff also sells bottled “FRAPPUCCINO” beverages in various countries in different flavors. Some of the varieties of flavors include Coffee, Mocha and Vanilla. It is noteworthy that the mark “FRAPPUCCINO” is registered in over 185 countries and territories in relation to various goods and services.

5. On 28<sup>th</sup> October 1997 the Plaintiff obtained the domain name Frappuccino.com which is redirected to the Plaintiff’s website at <https://www.starbucks.com/menu/drinks/Frappuccino-blended-beverages>. The Plaintiff has also obtained other top-level domain names where “FRAPPUCCINO” is the prominent part.

6. The Net Revenue of the Plaintiff in respect of various products sold under the registered mark “FRAPPUCCINO” has increased from US \$ 13,276.8 Billion in FY 2012 to US \$ 24,719.5 Billion in FY 2018. The Plaintiff also spends considerable amounts on advertisement and sales

promotions of its products and services including those under the “FRAPPUCCINO” marks.

7. The Plaintiff company has consistently received top-level brand rankings from various agencies such as Interbrand, a leading international brand consultancy company which has ranked the Plaintiff company amongst “Top 100 brands” in the world. Forbes has also consistently ranked the Plaintiff company amongst the most valuable brands during the period from 2013 – 2019. The Plaintiff and its trademarks including the “FRAPPUCCINO” mark have been advertised and featured in various electronic and print versions of International and Indian magazines and newspapers.

8. In January 2011, the Plaintiff company entered into a pact with India’s Tata Coffee Ltd. to open retail stores in India by way of equity joint venture and Tata Starbucks Private Limited was incorporated on 30<sup>th</sup> September, 2011. In October 2012, the Plaintiff company entered the Indian market by opening its first store at Elphinstone Building in Horinman Circle, Mumbai. Thereafter, the Plaintiff company has expanded its presence in India to include at least 162 Starbucks stores. It is pertinent to note that the Plaintiff company is the registered proprietor of the mark “FRAPPUCCINO” under various classes in India as well.

9. It is claimed that the registered trademark “FRAPPUCCINO” has continuously and extensively been used by the Plaintiff company for more than 24 years and is recognized as a well – known trademark falling within the meaning of Section 2(1)(zg) of the Trademarks Act, 1999. Courts of different jurisdictions have given decisions in favor of the Plaintiff company upholding their registered trademark as a well – known mark. The Plaintiff

company has also been successful in its actions under the World Intellectual Property Organization Uniform Dispute Resolution Policy (URDP) in respect of its domain names [www.frappuccino.com](http://www.frappuccino.com) and [www.starbuckscoffee.com](http://www.starbuckscoffee.com) against Duncan P. Freeman where the panel vide their order dated 9<sup>th</sup> July, 2003 directed that the disputed domain names be transferred to the Plaintiff.

10. It is the grievance of the Plaintiff that in the third week of January, 2019 it was brought to their notice that the Defendants were operating a café/restaurant by the name of “Copamocha Café and Restaurant” in Thirissur, Kerala whereby and whereunder Defendant No.1 sold various cold beverages under the name/mark “FRAPPUCCINO” which were identical and deceptively similar to the Plaintiff’s hand crafted beverage items sold under the registered trademark “FRAPPUCCINO”. That the mark “FRAPPUCCINO” has been adopted by the defendants with the malafide intent to derive benefits from the existing reputation and goodwill of the Plaintiff company. The reference to the registered mark “FRAPPUCCINO” has also been made in the electronic menu cards of the Defendants restaurant for the identical beverage flavor as offered by the Plaintiff. The same is uploaded on third party listings such as [www.swiggy.com](http://www.swiggy.com), [www.zomato.com](http://www.zomato.com) and [www.ubereats.com](http://www.ubereats.com) for the purposes of promotion and advertisements in order to generate business for the defendants.

11. The Plaintiff company thereafter sent cease and desist notices through their counsel by Registered Post A.D. on 24<sup>th</sup> January 2019 and 18<sup>th</sup> February 2019 inter alia requesting the defendants to adopt a different name for their cold beverages which is not similar to the Plaintiff company’s

registered mark. The said notices were duly delivered however the Plaintiff received no response from the defendants.

12. Upon making inquiries for the second time, the Plaintiff company learnt that the defendants were still using the impugned mark on the menu cards and invoices of Defendant No. 1's café. Accordingly, the Plaintiff through their counsel attempted to make telephonic contact with the Defendants but to no avail. In March, 2019 the plaintiff's call was answered by a person claiming to be the Manager of Defendant No.1's café who informed the Plaintiff's counsel that efforts were being made to remove all references to the impugned mark and said that a months' time was needed to finalize the revisions and have their menu in circulation.

13. On the expiry of the one-month period requested by the opposite party, the Plaintiff made another inquiry on the internet to find that the references to the impugned mark still remained unchanged. Pursuant to the above, the plaintiff sent several reminder letters through their counsel by Registered Post A.D. on 16<sup>th</sup> May 2019, 12<sup>th</sup> June 2019, 7<sup>th</sup> September 2019 and on 5<sup>th</sup> October 2019 but to no avail.

14. From the pleadings of the plaintiff in the plaint as also the documents along with necessary certificates enclosed with the plaint, the plaintiff has clearly made out a case for grant of injunction in terms of prayer (a) and (b) of para 44 as the defendants are violating the rights of the plaintiff in its trademark as well as copyright.

15. Learned counsel for the plaintiff does not press the prayers (c), (d), (e), (f), (g) and (i). Hence no decree in terms of prayer (c), (d), (e), (f), (g) and (i) is being passed.

16. Plaintiff has also handed over an additional affidavit whereby the plaintiff has authorized the learned counsel for the firm appearing on behalf of the plaintiff to receive the cost or damages as awarded in favour of the plaintiffs. Same is taken on record.

17. As regards cost in terms of prayer (h), the plaintiff has filed an advocate's fee certificate indicating the cost incurred by the plaintiff including the fees of lawyers which amounts to total sum of ₹7,34,100/-.

18. Suit is accordingly decreed in terms of prayer (a) and (b) of para 50 of the plaint in favour of the plaintiff and against the defendant. Cost of ₹7,34,100/- is awarded in favour of the plaintiff and against the Defendants.

**I.A.17464/2019 (under Order XXXIX Rule 1 and 2 CPC)**

Application is disposed of as infructuous.

**FEBRUARY 28, 2020**  
**'am'**

**(MUKTA GUPTA)**  
**JUDGE**

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