

**IN THE COURT OF MS. TWINKLE WADHWA: LD.  
ADDITIONAL DISTRICT JUDGE-03:PATIALA HOUSE  
COURT:NEW DELHI DISTRICT**

**TM No. 18/17**

**Gurdeep Singh**

Proprietor

M/s. Kake Di Hatti

654-655, G F & F F

Church Mission Road,

Chandni Chowk, Delhi-06.

**.....Plaintiff**

**Versus**

**1. Vinit**

Shop No.4, Sector-10,

Patel Marg Circle

Madhyam Marg, Mansarovar,

Jaipur, Rajasthan.

**2. Shahi Kake Di Hatti**

Shop No.4, Sector-10

Patel Marg Circle,

Madhyam Marg, Mansarovar,

Jaipur, Rajasthan.

Also at:

VT Tower Veer Teja Ji Marg,

Shipra Path, Mansarovar,

Jaipur, Rajasthan.

**3. Kake Di Hatti Pvt. Ltd.**

Shop No.1-2, Sector-52,

VT Road, Mansarovar,

Jaipur, Rajasthan.

**....Defendants**

**Date of Institution** : **22.11.2016**  
**Date of Final Arguments** : **09.12.2019**  
**Date of Decision** : **17.12.2019**  
**Conclusion** : **Decreed**

## **JUDGMENT**

### **The Case-**

1. The suit has been filed by the plaintiff Company seeking permanent injunction thereby restraining infringement, passing off, delivery up of goods, rendition of accounts and damages against the defendants.

### **Plaintiff's Case-**

2. The case of the plaintiffs is that they are owners of registered Trademark "KAKE DI HATTI" and are using the same in relation to business of rendering services for providing food and drink, hotel, motel, restaurant and catering services. Plaintiff own the Trademark "KAKE DI HATTI" and they have been using it since 1942 . It is further the case of plaintiff that their predecessors adopted the trademark KAKE DI HATTI in relation to the said business and services wef 01.01.1942 and have been continuously and uninterruptedly using the same since then upto the present time. The trademark KAKE DI HATTI of plaintiff is registered under number 1851194 in class 43. The plaintiff has been regularly and continuously promoting

its distinctive trademark through extensive advertisements, publicities, promotions and marketing research and has been spending enormous amounts of money, efforts, skills and time thereon.

3. It is further the case of plaintiff that the said goods and services of the plaintiff are rendered on very large scale and the plaintiff has served millions of customers till date. The said goods and services of the plaintiff under the said trademark and trade name KAKE DI HATTI are identified as exclusively originating from the plaintiff. Plaintiff has already built up a valuable trade under his said mark/trade name and conducted handsome business there under , sale figures are furnished in the plaint.

4. It is the further the case of plaintiff that defendants are engaged in the same/similar business of providing services of food and drink, restaurant and catering services and offering services in connection therewith. The defendants have adopted and is using the trademark/label KAKE DI HATTI and SHAHI KAKE DI HATTI .

5. It is further the case of plaintiff that defendant's impugned marks/trade names are deceptively similar and identical with and confusingly similar to the plaintiff's trademark / tradename in each and every respect including phonetically, visually,

structurally, in its basic idea and in its essential features and that the defendants have been using the same in the course of trade without the leave and license of the plaintiffs. The defendants are also passing off their impugned services and business as that of the plaintiffs. He is using all kinds of false descriptions on its impugned services and business to wrongly link the impugned services and business with those of the plaintiff and mislead common people and customers.

6. It is alleged that the defendants have adopted and started using the impugned trade mark/trade names dishonestly, fraudulently and out of positive greed with a view to take advantage and to trade upon the established goodwill, reputation and proprietary rights of the plaintiff in the plaintiff's said trade mark/trade name. Defendant also adopted KAKE DI HATTI as domain name <http://Kakedihatti.co.in> which also amounts to infringement of plaintiff's trademark. Because of such activities of the defendants, the plaintiff is suffering huge losses both in business and in reputation which cannot be compensated in terms of money.

7. The plaintiff has also pressed for his application under Order 26 Rule 9 read with Section 151 CPC for appointment of Local Commissioner for preserving and protecting infringing evidence as per Section 135(2) (b) of the Trade Mark Act, 1999.

Accordingly, the LC was appointed vide orders dated 09.12.2016

**Case of defendants-**

8. The case of defendants as is mentioned in written statement is that plaintiff has suppressed material facts from this Court and has not approached the Court with clean hands. It is denied that plaintiff is neither an honest nor bona fide adopter of the mark KAKE DI HATTI. It is denied that the plaintiff through its predecessors adopted the trademark KAKE DI HATTI and since 1942 has been continuously and uninterruptedly using the same till present time. It is denied that the said trademark and trade name KAKE DI HATTI is identified as exclusively originating from the plaintiff's source or that trademark KAKE DI HATTI is a distinctive trademark and is associated with the plaintiff's goods and services. Further the present Court does not have jurisdiction. All the averments made in the plaint are denied.

9. On completion of pleadings, following issues were framed on 19.09.2017-

**ISSUES-**

- 1. Whether plaintiff has suppressed material facts?  
OPD 1.**
- 2. Whether Courts at New Delhi have no territorial**

jurisdiction to try this suit? OPD.

3. Whether the plaintiff is entitled to decree for permanent injunction restraining defendants, their agents, representatives, stockists etc. for using, selling, soliciting etc. of impugned goods containing Trade Mark/label 'KAKE DI HATTI' of the impugned goods?OPP.
4. Whether plaintiff is entitled to decree of injunction restraining the defendants and their subjects from dealing with or disposing of the merchandise containing Trade Mark/label 'KAKE DI HATTI' of the impugned goods? OPP.
5. Whether plaintiff is entitled to decree of delivery up of impugned goods containing Trade Mark Mark/label 'KAKE DI HATTI' of the impugned goods ? OPP.
6. Whether plaintiff is entitled to Rendition of accounts and damages on account of profits made by the defendant by sale of goods containing Trade Mark/label 'KAKE DI HATTI' of the impugned goods? OPP.

**7. Relief.**

10. To prove its case, plaintiff examined **Shri Gurdeep Singh as PW-1** and exhibited the following documents-

S.No.	No. of Exhibits	Details of the documents
1	Ex. PW1/1(colly)	Representation of Trademark/ Label of plaintiff
2	Ex.PW1/2(colly)	Color copy of photograph of defendant's shop/restaurant

3	Ex.PW1/3(Colly)	Registration certificates and status of plaintiff's TM
4	Ex.PW1/4	Plaintiff's year-wise sales figure of trademark/label Kake di Hatti
5	Ex.PW1/5(colly) (OSR)	Copy of documents relating to income tax
6	Ex.PW1/6(colly) (OSR)	Copy of purchase invoice and receipt
7	Ex.PW1/7(colly) (OSR)	Copy of newspaper articles
8	Ex.PW1/8(OSR)	Cash bill of plaintiff
9	Ex.PW1/9	Copy of petition under Section 18(4) and Section 18
10	Ex.PW1/10	Screen Shot of facebook of profile of Vinit Chaudhary
11	Ex.PW1/11(OSR)	Copy of trade mark status report
12	Ex.PW1/12	Copy of Form TM 48 Power of attorney
13	Ex.PW1/13 (colly)	Copy of Whirs report of kake di hatti
14	Ex.PW1/14 (colly)	Copy of the Director's information with Registrar of Companies
15	Ex.PW1/15	Copy of extract of company Master Data from Registrar of Company
16	Ex.PW1/16(colly)	Certificate under Section 65B of Indian Evidence Act
17	Ex.PW1/17	Copy of LC report

**Reasons for Decision-**

11. Heard both the sides and gone through the record.

12. In order to prove its case that plaintiff is registered owner of trademark Kake di Hatti, plaintiff has filed and proved on record the TM certificate issued to it dated 14.09.2015 thereby showing that plaintiff is registered owner of TM Kake di Hatti.

Attention of the Court is also drawn to the application made for registration of their trademark by plaintiff. Date of application was 17.08.2009 wherein user was claimed since 11.04.1942. Also attention of the Court is drawn towards application filed by defendants dated 25.10.2013 thereby claiming registration of trademark Kake di Hatti which was objected.

13. In order to support its claim, plaintiff has duly filed and exhibited on record their year wise sales from the year 2000 onwards. For the financial year 2000-2001, the sales of the plaintiff have been shown as Rs.21,69,734/- which increased in the financial year 2015-2016 to Rs.50 lacs. Further plaintiff has duly exhibited on record his income tax statement for the year 1963 which was filed under the name Kake di Hatti and of subsequent years. Further duly exhibited on record are letters exchanged with income tax authorities regarding the filing of income tax for Kake di Hatti outlet. One employee Jaspal Singh who was working with Kake di Hatti, his employees Provident Fund claim document is filed on record along with other documents. Further copies of telephone bills have been placed on record thereby showing bill in the name of Kake di Hatti Fatehpuri for the year 1993 onwards. Further licences from MCD in the name of Kake di Hatti have been placed on record. Further various bills / memos generated in the name of Kake di Hatti have been filed on record since the year 2010 onwards to

show continuous user of this tradename.

14. On the basis of above documents, it is established on record that plaintiff is registered owner of trademark Kake di Hatti which he is continuously using since the year 1996 onwards if not earlier.

15. After the filing of the case, a Local Commissioner was appointed to visit the premises of the defendant to show the trade name being used by him. The said report is on record. The Local Commissioner visited the premises of defendant on 17.12.2016 at Shahi Kake Di Hatti Shop No.4, Patel Marg Circle, Jaipur, Rajasthan. As per the report of LC which is already on record as Ex.PW1/17, he found display of the board Kake di Hatti at the site. The display boards were removed and seized. Also LC seized 10 pamphlets, 15 menu cards, one bill, two duplicate bill books, two door stickers, one T-shirt having sign of Kake di Hatti and Shahi Kake di Hatti were also found and seized by LC. They were handed over on superdaginama to Proprietor Vinit. Thereafter, LC visited VT Tower Veer Teja Ji Marg, Shipra Path, Mansarovar Jaipur, Rajasthan along with plaintiff. On inspection, three duplicate bill books, delivery polybags, one chef coat, one review pad, seven pamphlets, one award certificate, one wooden name plate with the name Kake

di Hatti and Shahi Kake di Hatti were found and seized. They were handed over to owner Vinit Chaudhary on superdaginama. The LC report is duly exhibited on record and there is nothing to show that the same cannot be relied upon. There is no such suggestion to PW1 that LC did not visit the premises of defendant on that particular date or that the report is incorrect.

16. Further plaintiff has filed on record print out from the website of WHOIS to show that defendant is using the domain name kakedihatti.co.in since 2016 vide Ex.PW1/13. Further plaintiff has also filed on record documents Ex. PW1/14 and 15 from Zaubacorp.com wherein defendant has got a company registered with the name Kake Di Hatti Pvt. Ltd.

17. I have perused the cross examination of PW1 done by the defendant. The cross examination of PW1 is regarding the use of Trademark Kake Di Hatti by plaintiff. It is suggested to PW1 that they discontinued the use of Kake di Hatti and started using 'Deepak Restaurant' as their trade name. The said suggestion is denied by PW1. However, PW1 submitted that in the year 1973, he was using the TM Deepak Restaurant as well along with Kake di Hatti but they never discontinued the use of Kake di Hatti. Certain bills for the said duration of Deepak Restaurant have also been brought on record by the plaintiff. However, it is

not proved that plaintiff discontinued the use of TM Kake di Hatti after 1973. After this period, various documents have been filed on record to show the user of TM Kake di Hatti by plaintiff.

18. Defendant did not step into witness box to lead evidence. Defendant failed to establish how he was authorised to use the Trademark Kake di Hatti which is a registered trademark of plaintiff. Further in the year 2019, a fresh inspection was conducted at the premises of VT Tower, Jaipur, Rajasthan and 70/34, Patel Marg, Mansarovar, Jaipur. At the time of inspection, again infringing material was found which was seized as per the orders of this court. Defendants have not filed any objection with respect to this fresh report of LC.

19. Issue Wise finding is as follows-

**Issue No.1-Whether plaintiff has suppressed material facts? OPD**

20. The onus to prove this issue was on defendants. But defendants failed to prove the same. Hence, this issue is decided in favour of plaintiff and against defendants.

**Issue No.-2Whether Courts at New Delhi have no territorial jurisdiction to try this suit? OPD.**

21. As per Section 134 of Trademark Act, the place where plaintiff resides or carries on business also have jurisdiction. Hence, the present suit is within territorial jurisdiction of this Court.

**Issue No.3- Whether the plaintiff is entitled to decree for permanent injunction restraining defendants, their agents, representatives, stockists etc. for using, selling, soliciting etc. of impugned goods containing Trade Mark/label 'KAKE DI HATTI' of the impugned goods?OPP.**

22. In view of above discussion, plaintiff is entitled to permanent injunction thereby restraining the defendants and its representatives, stockists etc. from using, selling, soliciting etc. of impugned goods containing Trade Mark/label 'KAKE DI HATTI'. This issue is decided in favour of plaintiff.

**Issue No 4.Whether plaintiff is entitled to decree of injunction restraining the defendants and their subjects from dealing with or disposing of the merchandise containing Trade Mark/label 'KAKE DI HATTI' of the impugned goods? OPP?**

23. In view of above discussion, plaintiff is entitled to decree of injunction restraining the defendants and their subjects from dealing with or disposing of the merchandise containing Trade Mark/label 'KAKE DI HATTI' . This issue is decided in favour of plaintiff.

**Issue No.5-Whether plaintiff is entitled to decree of delivery up of impugned goods containing Trade Mark Mark/label 'KAKE DI HATTI' of the impugned goods ? OPP.**

24. Plaintiff is entitled to decree of delivery up of impugned goods involving the trademark of the plaintiff. This issue is decided in favour of plaintiff.

**Issue No.6-Whether plaintiff is entitled to Rendition of accounts and damages on account of profits made by the defendant by sale of goods containing Trade Mark/label 'KAKE DI HATTI' of the impugned goods? OPP.**

25. Plaintiff has not led any evidence to show the actual damages suffered. However, in view of the second report of LC thereby showing that defendant has still been using the trademark Kake Di Hati despite there being injunction orders by this court, I hereby award plaintiff estimated damages of Rs.50,000/- against the defendants jointly and severally.

**Issue No.7-Relief-**

26. In view of the above, **plaintiff is entitled to-**

(I) Decree for permanent injunction restraining defendant , its agents, representatives, stockists etc. for using, selling, soliciting etc. of impugned goods containing Trade Mark/label 'KAKE DI HATTI'.

(iii) Plaintiff is entitled to decree of injunction restraining the defendants and their subjects from dealing with or disposing of the merchandise containing Trade Mark/label 'KAKE DI HATTI'.

(iv) Plaintiff is entitled to decree of delivery up of impugned goods involving the trademark of the plaintiff.

(v) Plaintiff is entitled to Rs. 50,000/- towards damages against the damages.

(v) I also award cost of litigation of Rs. 2.10 lacs considering the fact that LC was also appointed in this case twice.

Decree sheet be prepared accordingly.

**File be consigned to record room.**

**Announced in an open Court**

**On 17th December, 2019**

TWINKLE  
WADHWA

Digitally  
signed by  
TWINKLE  
WADHWA  
Date:  
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**(TWINKLE WADHWA)  
ADJ-03/ PHC/NEW DELHI  
17.12.2019**