



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

% *Judgment delivered on: 30/04/2026*

+ **CS(COMM) 1134/2024**

MEDECINS SANS FRONTIERES INTERNATIONAL....Plaintiff

versus

**DHARMA PRODUCTIONS PRIVATE LIMITED
AND ORS**

.....Defendants

Advocates who appeared in this case

For the Plaintiff : Ms. Shwetasree Majumder, Ms. Priya Adlakha and Ms. Urvi Nama, Advocates.

For the Defendants : Mr. Nakul Dewan, Senior Advocate along with Mr. Parag Khandhar, Mr. Krishan Kumar, Ms. Anaheeja Verma, Ms. Atmaja Tripathy, Ms. Gahena Gambani, Advocates for Defendant Nos.1 & 2.

Mr. Nizam Pasha, Mr. Parag Khandhar, Mr. Krishan Kumar, Mr. Sidharth Kaushik & Ms. Charu Sharma, Advocates for Defendant No.3.

Mr. Saikrishna Rajagopal, Mr. Devvrat Joshi & Mr. Angad S Makkar, Advocates for Defendant No.4 (through VC).

**CORAM:
HON'BLE MR. JUSTICE TEJAS KARIA**



JUDGMENT

TEJAS KARIA, J

I.A. 48554/2024

1. The present Application has been filed on behalf of the Plaintiff under Order XXXIX Rules 1 and 2 read with Section 151 of the Code of Civil Procedure, 1908 (“CPC”) seeking interim injunction against the Defendants.

FACTUAL BACKGROUND:

2. The Plaintiff is an international humanitarian medical aid organization which operates under the name/mark ‘Médécins Sans Frontières’ / ‘Doctors Without Borders’ (“**Plaintiff’s Mark**”), providing medical assistance to people affected by armed conflict, epidemic, natural disasters or exclusion from healthcare. It is an international non-profit organization, which operates in more than 74 countries.

3. The Plaintiff’s humanitarian work has been recognised by several national and global institutions over the years. In 1996, the Plaintiff was awarded a prestigious Indira Gandhi Prize for Peace, Disarmament and Development for providing timely and much required medical aid to people in crisis. Further, the Plaintiff was also awarded the most prestigious award, i.e., the Nobel Peace Prize in the year 1999.

4. The Plaintiff operates its parent website www.msf.org and www.doctorswithoutborders.org on the internet, along with more than 45 region specific websites, providing details on the ongoing and passed projects undertaken by the Plaintiff and options for making donations to the Plaintiff organization. The Plaintiff has been operating a dedicated website



www.msf.india.in since 2006 in India. The Plaintiff also maintains an active position on social media platforms like Facebook, Twitter, Instagram, YouTube and LinkedIn.

5. The Plaintiff has been actively working in India since October, 1999 and has undertaken multiple projects, providing treatment in care for HIV, tuberculosis, malnutrition patients, survivors of sexual violence, among others, across various parts of India. The Plaintiff has received support from various international and Indian celebrities, including Defendant No. 3, who have supported the Plaintiff's humanitarian works and medical relief efforts.

6. As the Plaintiff is an international humanitarian organization, its medical personnel and relief supplies have a special right to access and free passage to the victims wounded and sick in disaster affected areas, conflict zones, prisons and detention centers, under humanitarian laws including Geneva Convention, 1949 and UN Resolutions.



7. The Plaintiff claims that it has been using the Plaintiff's Mark since its inception in 1971, and is the proprietor of the same in various countries, including in India. The details of the registrations of the Plaintiff's Mark in India are as under:

S. No.	Trademark	Registration No.	Dated	Class
1.		864826	9 th July 1999	16
2.		1794691	12 th March 2009	44



2026:DHC:3670



3.	MSF	1794692	12 th March 2009	44
4.	MEDECINS SANS FRONTIERES	1794693	12 th March 2009	44
5.	DOCTORS WITHOUT BORDERS	1875450	22 nd October 2009	44
6.	सीमा रहित चिकित्सक	1875451	22 nd October 2009	44
7.	DOCTORS WITHOUT BORDERS	4481760	24 th March 2020	16, 36, 41, 45
8.	सीमा रहित चिकित्सक	4481761	24 th March 2020	16, 36, 41, 45
9.	MEDECINS SANS FRONTIERES	4481762	24 th March 2020	16, 36, 41, 45
10.	MSF	4481763	24 th March 2020	16, 36, 41, 45
11.		4481764	24 th March 2020	16, 36, 41, 45
12.		4481765	24 th March 2020	36, 41, 44, 45



8. The Plaintiff also claims that *vide* Notification dated 19.02.2024, the Plaintiff's Mark is declared a well-known mark in India and is included in the list of well-known Trade Marks.

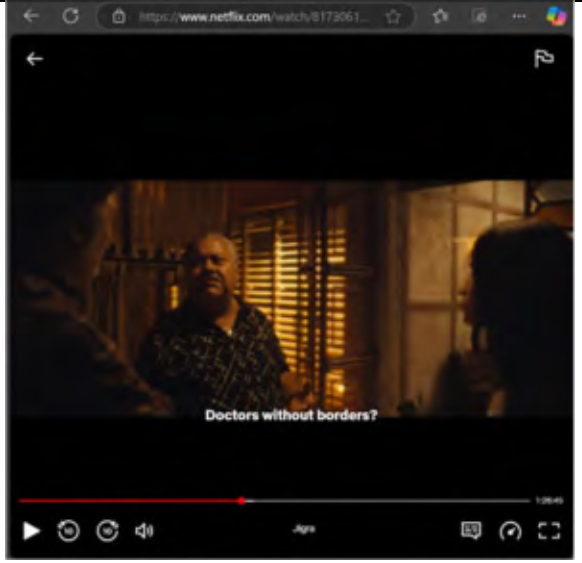

9. On 11.10.2024, the film titled JIGRA (“**Impugned Film**”) was released in theatres worldwide in Hindi and a dubbed version in Telugu language. The plot of the film is that the lead character Satya's (played by Defendant No. 3) brother Ankur, goes to an island country having fictitious name 'Hanshi Dao' for a business trip with his cousin, where he is firstly implicated for the possession of drugs and sentenced to death. Satya goes to Hanshi Dao in order to rescue her brother where, along with her allies Bhatia and Muthu, she prepares a prison break and rescue plan for Ankur and two other prisoners. She successfully executed her rescue plan and was able to rescue Hanshi Dao and enters Malaysian waters by crossing the international border.

10. The Plaintiff claims that in the last week of October, 2024, when a representative of the Plaintiff went to watch the said film at a theatre in Delhi, he was appalled to note the inclusion of the Plaintiff's Mark, Doctors Without Borders, in the storyline of the film, where Satya and Ankur along with two other prisoners disguise themselves as representatives of the Plaintiff Organization, Doctors Without Borders, to illegally escape the border of Hanshi Dao and enter Malaysian waters. The scenes in the said film, including the dialogues and key images, where the Plaintiff's Mark is used (“Impugned Scenes”), is reproduced below:


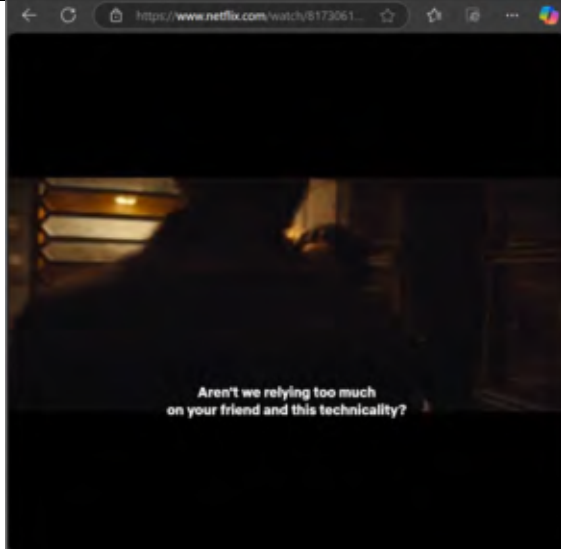


Shot Time	Speaker	Dialogue	Screenshot
Impugned Scene No. 1			
Satya, Muthu, and Bhatia discuss their prison break and escape plan to cross the Hanshi Dao border and enter Malaysian waters, disguising themselves as representatives of ‘Doctors Without Borders’			
01:06:57 - 01:07:15	Muthu	<i>Toh main humara situation usko poora sach-sach batadunga, aur yeh bhi bata doonga ki hum ‘Doctors without Borders’ banker aayenge.</i> (Translation: I’ll explain the whole situation to him and tell him that we’ll	

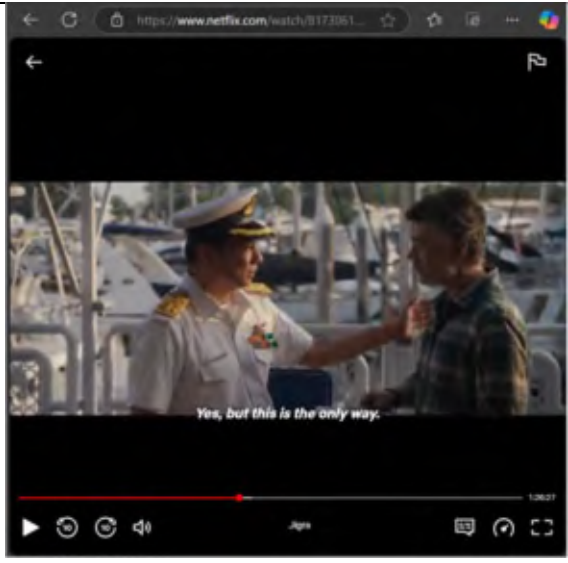


		be posing as <i>'Doctors without Borders'.)</i>	
	Bhatia	<i>Are bhai, yeh Doctors without Border kya hai?</i> (Translation: What are <i>'Doctors without Borders'?</i>)	
	Muthu	<i>Okay, Google- Search 'Doctors Without Borders'</i>	



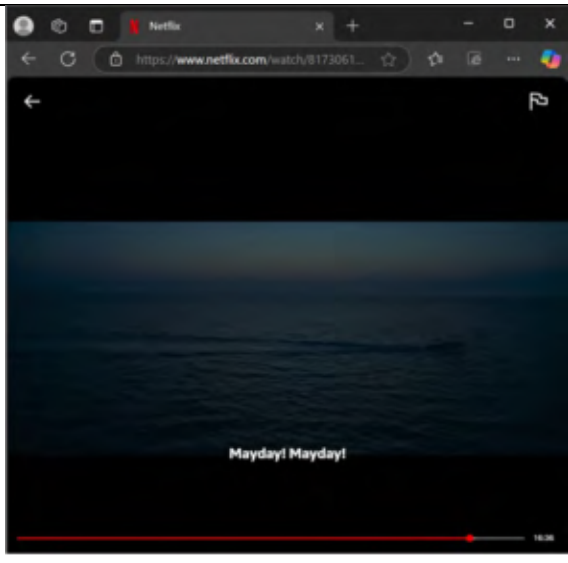
	Bhatia	<i>International Medical ...</i>	
	Satya	<i>Don't you think ki hum log kuch zayada dependent hain tumhare dost par aur iss technicality par?</i> (Translation: Aren't we relying too much on your friend and this technicality?)	



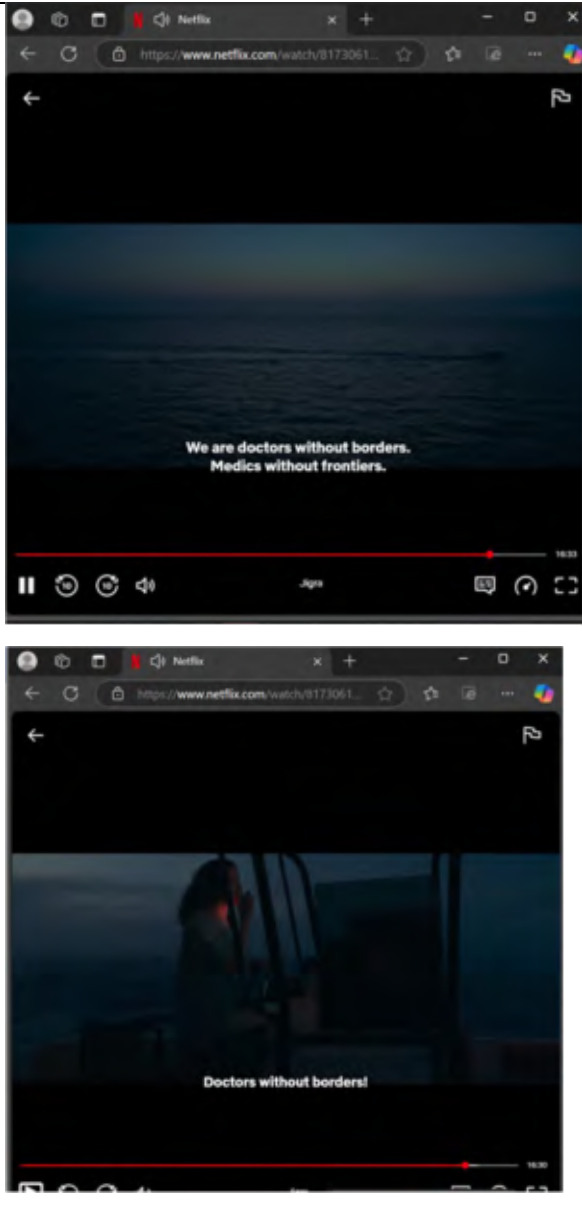
	Muthu	<i>Yes, but this is the only way.</i>	
	Satya	<i>Okay, I trust you.</i>	

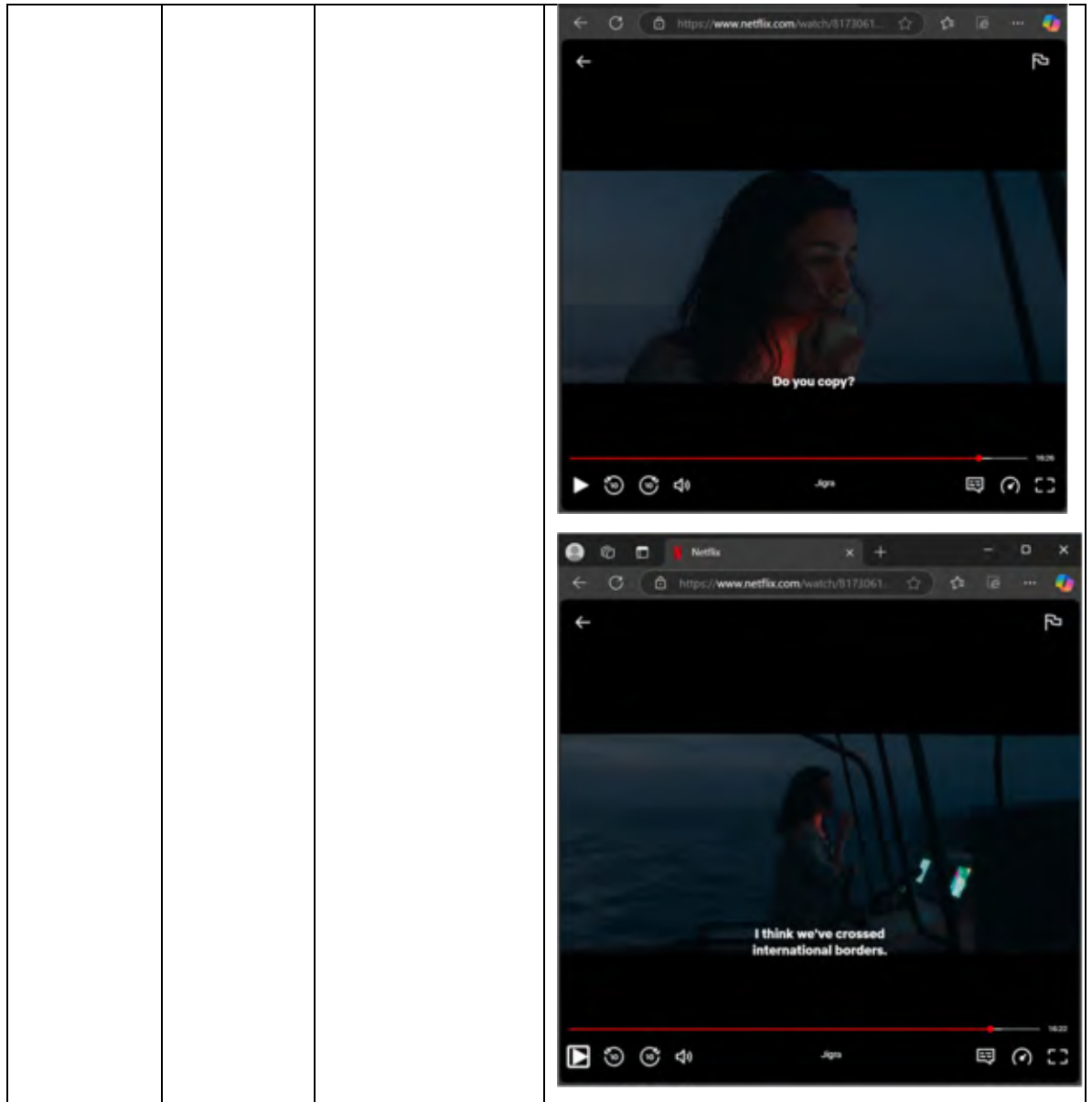
Impugned Scene No. 2

Satya, Ankur, and two other prisoners (one of them portraying an ‘injured’ person) are escaping the Hanshi Dao border on a speed boat to enter Malaysian waters, disguised as ‘Doctors Without Borders’. Satya makes a distress call from the speed boat

02:17:08 - 02:17:15	Satya	<i>Mayday, Mayday, Mayday Mayday We are Doctors Without Borders...Med ics Without Frontiers.....</i>	
---------------------------	-------	---	--



		<p><i>Yīshēng wú guójiè (Chinese translation for Doctors Without Borders)... Do you copy? Do you copy? I think we have crossed international borders.</i></p>	
--	--	---	---



11. The Plaintiff sent a letter dated 29.10.2024 to Defendant Nos. 1 and 2, requesting them to remove the Plaintiff's Mark from the Impugned Film. However, *vide* reply dated 19.11.2024, Defendant Nos. 1 and 2 rejected the Plaintiff's grievance and denied its request.

12. Aggrieved by the unauthorized usage of the Plaintiff's Mark in the Impugned Film, the present Suit along with this Application has been filed by



the Plaintiff seeking interim injunction restraining the Defendants from broadcasting the Impugned Scenes, which cause disparagement and / or infringement of the Plaintiff's Mark.

SUBMISSIONS ON BEHALF OF THE PLAINTIFF:

13. Ms. Shwetasree Majumder, the learned Counsel for the Plaintiff advanced the following submissions:

- 13.1. The Plaintiff is a non-profit, impartial, independent international medical aid humanitarian organization founded in 1971. The Plaintiff has been active in India since October, 1999, providing emergency medical assistance and humanitarian aid across various states.
- 13.2. The goodwill and reputation of the Plaintiff in the Plaintiff's Mark has been recognized all around the world, which is evident from various prestigious awards and accolades, including Indira Gandhi Prize for Peace, Disarmament and Development in 1996, Nobel Peace Prize in 1999, Nansen Refugee Award in 1996 and Tipperary International Peace Award in 2023. The Plaintiff has also been supported by various international and Indian celebrities, including Defendant No. 3.
- 13.3. The Plaintiff is entitled to a special right to access and free passage across international borders, under the Geneva Convention and UN Resolutions.
- 13.4. The Plaintiff's Mark is registered across several jurisdictions, including India since 1999, and was declared well-known in India on in 2024.
- 13.5. In the last week of October 2024, the Plaintiff discovered the unauthorized use of its well-known Mark, in the Impugned Film. The Plaintiff issued a legal notice dated 29.10.2024 to Defendant Nos. 1



and 2, requesting removal of the Plaintiff's Mark from the Impugned Film. The request was turned down by the Defendants *vide* reply letter dated 19.11.2024 claiming that *firstly*, the Impugned Film is a fictional work and the use of the Plaintiff's Mark is coincidental and covered by a disclaimer; and *secondly*, the Plaintiff's Mark consists of common words with no exclusivity.

- 13.6. The misuse of the Plaintiff's Mark by the Defendants in the Impugned Film, is not "by way of permitted use", as Plaintiff's permission or authorization was not obtained, and therefore, satisfies the threshold of trademark infringement under Section 29(4) and (9) of the Trade Marks Act, 1999 ("Act"), as *firstly*, the Plaintiff's Mark used in the Impugned Film, i.e., 'Doctors Without Borders' is identical to the Plaintiff's Mark, while the other Trade Mark 'Medics Without Frontiers' is deceptively similar to the Plaintiff's registered and well-known Mark 'Médecins Sans Frontières' and the Chinese term 'Yīshēng wú guójiè', translates to Plaintiff's Mark 'Doctors Without Borders'. *Secondly*, usage of Plaintiff's Mark is clearly a "use in the course of trade" as a cinematography film is a commercial product. *Thirdly*, the Plaintiff's Mark has been declared well-known in India and its goodwill and reputation has been admitted by the Defendants. *Fourthly*, such use is without "due cause" and in fact, could have been easily avoided by the Defendants by using a fictitious name.
- 13.7. The misuse of the Plaintiff's Mark is to take "unfair advantage" of the Plaintiff's goodwill and reputation, on account of its free access across border, which has been admitted by the Defendants. Such use is 'detrimental' to the distinctive character and repute of the Plaintiff's



Mark, as it creates a dangerous and highly defamatory impression that the Plaintiff's credibility can be used for illegal immigration and that anyone can impersonate the Plaintiff's worker to illegally cross international borders.

- 13.8. The distinctive element of Plaintiff's Mark includes words, which has been used in the impugned film by way of spoken words as well as visual representation.
- 13.9. It is a settled position of law that in cases of disparagement, the Court is required to consider how an ordinary, reasonable viewer would perceive and interpret the content in question. The three factors that contribute to the tort of disparagement are -
 - (a) intent of the content;
 - (b) manner of representation; and
 - (c) message sought to be conveyed.
- 13.10. The claims that the Impugned Film is a work of fiction and carries a disclaimer, do not justify infringement which causes disparagement and tarnishment of the Plaintiff's goodwill and reputation for commercial gain. The use of the Plaintiff's trademark is admittedly deliberate and integral to the film's storyline.
- 13.11. It is settled law that that connection between a film's content and real-life entities must be determined by comparing the film with actual facts, and not by relying on any misleading disclaimer.
- 13.12. The use of the Plaintiff's Mark clearly qualifies as 'use in the course of trade', as the film is admittedly a commercial venture. The Defendants' claim of incidental use is contradicted by their own



admission of deliberate and planned use to exploit the Plaintiff's reputation.

- 13.13. Under the Act, an alleged *de minimis* use is not a valid defence to infringement. The frequency or duration of use is immaterial, and even a single disparaging reference is sufficient to sustain a cause of action.
- 13.14. The prohibition on trademark infringement via spoken words and visual representation under Section 29(9) of the Act is a legitimate restriction on commercial speech. Additionally, protection against brand disparagement is a facet of the tort of defamation and falls squarely within the reasonable restrictions under Article 19(2) of the Constitution of India, 1950.
- 13.15. The fact that parties are not competitors or not in the same business is irrelevant, particularly under Section 29(4) and 29(9) of the Act, as the Plaintiff's Mark is declared well-known in India. Moreover, Plaintiff's Mark is registered in class 41, and it produces short films. Accordingly, both infringement and disparagement are clearly established.
- 13.16. There is no requirement of proof of 'actual confusion', and a mere likelihood of confusion or association with the registered Trade Mark is sufficient. The Defendants' unauthorized use of the Plaintiff's Mark in connection with illegal border crossing takes unfair advantage and is detrimental to the Plaintiff's goodwill and reputation. The lack of immediate or quantifiable damage is not a valid defence to the same.
14. In view of the foregoing submissions, the Plaintiff prays that the present application be allowed.



SUBMISSIONS ON BEHALF OF THE DEFENDANT NOS. 1 AND 2:

15. Mr. Nakul Dewan, the learned Senior Counsel for Defendant Nos. 1 and 2 advanced the following submissions:

- 15.1. The Plaintiff has instituted the present Suit, claiming infringement by the Defendants of the Plaintiff's Mark by use name in the Impugned Film. Defendant No. 1 is the producer of the movie and the Defendant No. 2 is the Director of Defendant No. 1, as well as the co-producer of the Film.
- 15.2. The Plaintiff's case in the plaint is that it is the registered proprietor of the Plaintiff's Mark, which according to the Plaintiff has been used in the Film in a manner that violates its rights as the owner of the Trade Mark.
- 15.3. The controversy in the present case is restricted to whether the use of the Plaintiff's Mark by the Defendants results in an infringement of the Trade Mark under Section 29 of the Act. With respect to this controversy, the Plaintiff's case against the Defendants is three-fold. The Plaintiff asserts that the Defendants' use of the Plaintiff's Mark in the Impugned Film results in an infringement - *firstly*, under Section 29(4) of the Act, by giving an unfair advantage to the Defendants and at the same time being detrimental to the distinctive character and reputation of the Plaintiff's Mark; *secondly*, under Section 29(2) of the Act, on account of the Plaintiff's Mark being registered in the same class as that of the Impugned Film; and *lastly*, under Section 29(9) of the Act, on account of spoken use of the Plaintiff's Mark in the Film.
- 15.4. Section 29 of the Act does not grant the owner of a Trade Mark an unqualified right to have a non-owner of a Trade Mark injuncted from



using its Trade Mark. Instead, under Section 29 of the Act, the use of a Trade Mark is qualified by the restrictions under Section 30 of the Act read with the conditions prescribed in each sub-provision of Section 29. Simply put, a mere use of a Trade Mark without meeting the conditions prescribed in Section 29 does not establish a case for infringement of a Trade Mark.

- 15.5. A claim for infringement under Section 29(4) of the Act seeks to protect dilution, tarnishment and disparagement of a Trade Mark from its use by a person who is neither the registered owner nor has rights for its permitted use in the class of goods and services for which the trade mark is not registered. Given that Section 29(4) of the Act protects a Trade Mark from dilution or disparagement or tarnishment from its use in any class of goods or services, a higher threshold of proof is required under Section 29(4) of the Act.
- 15.6. It is necessary for the Plaintiff to establish that the use of the Plaintiff's Mark by the Defendants takes unfair advantage of the said Mark; or is detrimental to - *firstly*, the distinctive character of the Plaintiff's Mark; or *secondly*, the repute of the Plaintiff's Mark.
- 15.7. Section 29(4) requires demonstration of what constitutes either unfair advantage or detriment to the use of a Trade Mark. Unfair Advantage requires the Plaintiff to demonstrate that the Defendants sought to 'ride on the coat-tails'; and that mere economic advantage is insufficient.
- 15.8. The decision of this Court in *ITC Ltd. v. Philip Morris Products SA* 2010 SCC OnLine Del 27 sets out that 'unfair advantage' cannot be presumed and must be affirmatively proved as a matter of fact.



15.9. There are two broad aspects that require to be considered for determining whether there has been any unfair advantage from the use of a Trade Mark. *First*, it must be demonstrated that the Defendants sought to ‘ride on the coat-tails’ of the trademark owner in order to benefit from the reputation of the Mark. This principle, articulated in *Argos Ltd. v. Argos Systems Inc.* [2018] EWCA Civ 2211, has also been accepted by this Hon’ble Court in *Bloomberg Finance LP v. Prafull Saklecha & Ors* 2013 SCC OnLine Del 4159, where this Court, applied the test of ‘free-riding on the goodwill’ of a Trade Mark. *Second*, it is insufficient to simply assert that the Defendants are obtaining an economic advantage without demonstrating a change in economic behaviour of customers for the Plaintiff’s goods or services, or the likelihood of such a change. The fact of economic advantage is not enough and there has to be an "unfair" advantage, not merely an economic (or commercial) one.

15.10. Detriment requires the Plaintiff to demonstrate harm to the distinctive character or reputation of the Trade Mark. There are two broad aspects which the Plaintiff is required to establish. *First*, the Plaintiff must show detriment to the distinctive character or dilution or blurring or whittling away of the distinctive character, which only occurs when, in the consumer’s mind, the Trade Mark is weakened. This threshold of detriment to the distinctive character of a Trade Mark, which has been applied by the English Court of Appeal in the case between *Comic Enterprises Ltd. and Twentieth Century Fox Film Corporation* [2016] EWCA Civ 41, requires a proof of change in economic behaviour of average consumers of the plaintiff’s goods or services, or the likelihood



of such a change to occur in future to establish detriment. *Secondly*, detriment may also be to the ‘reputation’ of a Trade Mark, otherwise known as tarnishment or degradation. This has been accepted in ***Bloomberg*** (supra) and effectively requires the Plaintiff to show that the power of attraction of the well-known Trade Mark has been reduced in the eyes of the users.

15.11. In the present case, however, the Plaintiff has failed to meet all the conditions under Section 29(4), particularly the conditions regarding ‘unfair advantage’ and ‘detriment’ caused to the distinctive character or reputation of the Plaintiff’s Mark as a result of its use by the Defendants. That is because the Plaintiff has failed to demonstrate how the use of ‘Doctors Without Borders’ amounts to freeriding on the goodwill attached to its well-known Mark, a necessary threshold to prove ‘unfair advantage’. The Plaintiff has not substantiated how the Defendants’ use of ‘Doctors Without Borders’ for a miniscule part of the movie, i.e., 25 seconds out of a total run time of 2 hours 33 minutes aimed to free-ride, encash or derive economic benefit from the Trade Mark, particularly when the entire movie has a distinctive plot which is not premised or monetized on the basis of use of the Plaintiff’s Mark. Even in ***Bloomberg*** (supra), this Court rendered a *prima facie* finding that the Plaintiff had ‘encashed and derived economic benefits’ from a well-known Trade Mark by free-riding. In fact, the Plaintiff’s suggestion that it is immaterial how long the alleged infringement took place is also without any merit in the facts of this case because when a global assessment is done on the entire movie and its plot, it would become apparent that the Defendants have not gained any unfair



advantage by the use of the Plaintiff's Mark. Indeed, there is no evidence produced by the Plaintiff on the basis of a global assessment to demonstrate unfair advantage gained by the Defendants from the use of the Trade Mark.

15.12. Further, the Defendants' use of the Plaintiff's Mark does not dilute, transpose or replace the image of the Plaintiff's Mark in the minds of viewers with the Defendants' services. This is bolstered by the fact that the plot of the Impugned Film has various elements. It is only one part of that plot where the protagonist stated that she would pretend to be a member of the Plaintiff organization in order to exit from Hanshi Dao to gain entry into Malaysian waters.

15.13. The plot also shows that the protagonist was to be assisted by an officer of the Malaysian Navy to facilitate the escape of the protagonist posing as members of the Plaintiff organization. The plot does not solely rely on 'Doctors Without Borders' to commute through international waters as the assistance it gathered from the Malaysian Navy was critical for the success of the rescue operation. Even during the actual scene, the protagonist is seen wearing the identity card of 'Han's Island' hospital. None of these demonstrated that the protagonist was actually a member of the Plaintiff organization or was suggestive of the fact that it was the Plaintiff organization that assisted with the jail break. Notably, the Defendants further disclaimed any reference to real-life entities.

15.14. The Plaintiff has also failed to substantiate how the use of the Plaintiff's Mark is perceived by the public in a way that reduces the value of the Plaintiff's Mark or attracts negative publicity. No evidence has been brought on record to demonstrate a change in the consumer behaviour.



The Plaintiff has even failed to show any negative impact on its investments as evidently, no donors have walked away from funding the Plaintiff solely on account of use of the Plaintiff's Mark in the Impugned Film.

- 15.15. Contrary to the Plaintiff's allegations, instead of casting a negative impact on the image of the Plaintiff's Mark, the reference and use of the Plaintiff's Mark demonstrate the wide reputation and positive association with the Plaintiff's Mark, which is used as a ploy by the protagonist to exit from Hanshi Dao and gain entry into Malaysian waters by pretending to be a member of the Plaintiff organization.
- 15.16. This Court in *Tata Sons Limited v. Greenpeace International & Anr.* 2011 SCC OnLine Del 466, has set out the legislative intent behind Section 29(4) of the Act. In the said case, despite the name of 'TATA' being used in the online game "TURTLE v. TATA" as a demonstration of Tata's Dhamra port project eating away olive ridley turtles, this Court took the view that no reasonable person would consider it as disparagement.
- 15.17. The Defendants' use of the Plaintiff's Mark does not disparage the same as it does not speak slightly, undervalue, derogate, depreciate or bring discredit to the Plaintiff's Mark. While the Plaintiff has accurately summarized the Indian legal position that disparagement is to be viewed from the lens of harm to the reputation of the brand caused due to the content, it has acutely failed to adduce any evidence in support of the alleged disparagement of the Plaintiff's Mark on account of its use in the Impugned Film.



15.18. Applying the test for disparagement, it is evident that the use of the Plaintiff's Mark does not directly or indirectly bring nor is intended to bring any negative reference or inference to the Plaintiff's Mark. Further, in using the Plaintiff's Mark, the Defendants have not been unfair, untruthful or deceptive as the plot of the Film clearly shows the protagonist to be posing as a member of the Plaintiff organization to exit from Hanshi Dao and gain entry into Malaysian waters. The use of the Plaintiff's Mark when seen in the context and storyline of the Film is a mere exercise of creative expression to which the restrictions under Article 19(2) of the Constitution do not apply in the facts of the present case, particularly when the Plaintiff has failed to demonstrate a case for disparagement. No reasonable viewer of the Film or a potential donor of the Plaintiff would consider the use to be offensive against the Plaintiff's Mark.

15.19. In *Google LLC v. DRS Logistics (P) Limited & Others*, 2023 SCC OnLine Del 4809, the Division bench of this Court held that the use of a registered Trade Mark as a keyword, without confusion, dilution or compromise of the Trade Mark would not amount to infringement of the Mark.

15.20. It is submitted that the mere spoken words referring to Plaintiff's Mark 'Doctors Without Borders' does not satisfy the threshold of statutory infringement under Section 29(9) of the Act as the Plaintiff has failed to satisfy the standard of 'use of trade mark' under Sections 2(2)(b) and (c) of the Act.

15.21. In *Tata Sons* (supra), this Court made a reference to parody, which is also undertaken on a commercial basis, and set out its observations on



when a reasonable user would consider the use of a Trade Mark as disparagement. A commercial film to entertain people on a fictitious plot is also a form of entertainment and must only be viewed as such.

SUBMISSIONS ON BEHALF OF THE DEFENDANT NO. 3:

16. Mr. Nizam Pasha, the learned Counsel for Defendant No. 3 advanced the following submissions:

- 16.1. Cinematographic works are a recognised form of speech and expression, whose freedom is guaranteed under Article 19(1)(a) of the Constitution of India. Any restraint on the Impugned Film's content must, therefore, satisfy Article 19(2) of the Constitution of India and be narrowly tailored to one of the enumerated grounds, including defamation.
- 16.2. In *Rogers v. Grimaldi* 875 F.2d 994, the Court held that the use of a real name of a public figure within the title of a fictional work does not become actionable as long as it forms part of the plot and does not explicitly mislead audiences into believing that the rights holder endorses or is responsible for the fictional work. This principle, evolved in the context of film titles has subsequently been extended to references to Trade Marks in the body of artistic works as well. This Court reaffirmed this principle in *Tata Sons* (supra) and held the use of the Trade Mark of the plaintiff by the defendant not to be actionable, placing reliance on the fact that the Defendant was not engaged in a competing business with that of the Plaintiff and the work did not suggest origination or endorsement from the Plaintiff.
- 16.3. Applying this principle, mere reference to a well-known Mark within a narrative, without a direct attack on the Plaintiff or its market



reputation, or an attempt to pass off the work as originating with the Plaintiff cannot meet the constitutional threshold for restraint. In the present case, the Defendants have not made any qualitative assessment, criticism, or adverse commentary on the Plaintiff's functioning, integrity or reputation. The reasoning of the Court in *Louis Vuitton Mallater S.A. v. Warner Brothers Entertainment Inc.* 868 F. Supp. 172, is squarely applicable as in the present case as well, as the use of the Plaintiff's Mark is confined to a fictional narrative context, does not attribute any wrongdoing to the Plaintiff, and does not suggest endorsement, association, or responsibility on the part of the Plaintiff for the film in order to mislead consumers into believing the Plaintiff produced or endorsed the film. A representation that merely depicts statedly unauthorised misuse by fictional characters within a fictional plotline without any attribution of wrongdoing by members of the Plaintiff organization cannot, in law, amount to Trade Mark infringement or disparagement.

16.4. The infusion of an element of realism to give the viewers a sense of particularized reality is a permissible goal of art, which would not be possible if law required every element of the artistic work to be fictional. In *Wham-O, Inc. v. Paramount Pictures Corp.* 286F. Supp. 2d 1254, the Court refrained from interfering when the misuse of Trade Mark in the artistic work is an obvious and unmistakable misuse, one recognizable by even the youngest or most credulous film viewer, and one expressly described as a misuse in the film itself. Similarly, in *Caterpillar, Inc. v. Walt Disney Co.* 287 F. Supp. 2d 913, the Court declined to interfere on the ground that it is clear to even the most



credulous viewer or child that the bulldozers in the movie are operated by humans and are merely inanimate implements of Lyle's environmentally unfriendly schemes. This is similar to the present case where it is evident to a viewer that the name of the Plaintiff within the fictional plotline is being misused by the protagonists and not even the most credulous user would carry the impression that the Plaintiff indulges in illegal activities.

- 16.5. To the extent that it was sought to be argued that the impugned scenes in the present film would inspire viewers to misuse the name of the Plaintiff to attempt illegal border crossings, it is also relevant that ensuring that the modus operandi of criminals, other visuals or words likely to incite the commission of any offence are not depicted, falls within the mandate of the Central Board of Film Certification ("CBFC") under the Guidelines issued under Section 5B(2) of the Cinematograph Act, 1952. It is settled law that once the CBFC has granted a certificate of fitness for public viewing, there is a presumption that the CBFC has taken into account all the guidelines and courts will not interfere lightly, especially at an interim stage.
- 16.6. Disparagement operates as a constitutional exception to the freedom of speech under Article 19(1)(a) of the Constitution of India, 1950 and is, therefore, subject to strict construction. For speech to fall within Article 19(2) of the Constitution of India, 1950 on the ground of defamation or disparagement, the impugned expression must directly lower the reputation of the plaintiff in the estimation of right-thinking members of society by making a false or damaging imputation concerning the Plaintiff's character, conduct, or goods. Mere contextual reference,



associative discomfort, or narrative proximity to unlawful conduct does not meet this constitutional threshold.

16.7. In *Tata Sons* (supra), the Court held that if the user's intention is to focus on some activity of the Trade Mark owners, and is 'denominative', drawing attention of the reader or viewer to the activity, such use can *prima facie* constitute 'due cause' under Section 29(4) of the Act, which would disentitle the plaintiff to a temporary injunction. The emphasis, therefore, was on the nature and purpose of the use, distinguishing denominative reference from infringing exploitation. Therefore, the focus of the reasoning was on the nature of use by the defendant.

16.8. When this principle is applied to the present case, the reference to the Plaintiff's Mark in the Impugned Film is clearly denominative in nature. The film does not portray the Plaintiff as endorsing, affiliating with, or being complicit in the acts depicted, and nor does it use the Mark to derive commercial advantage or to trade upon its reputation. The reference is confined to a narrative depiction of fictional characters misusing the Plaintiff's name, serving only to use the name within the story to depict reliance on an actual position of international law in relation to humanitarian organizations. Such use falls squarely within "due cause" and cannot be equated with infringement, disparagement, or dilution under Section 29(4) of the Act.

SUBMISSIONS ON BEHALF OF THE DEFENDANT NO. 4:

17. Mr. Saikrishna Rajagopal, the learned Counsel for Defendant No. 4 advanced the following submissions:



- 17.1. There is no statutory presumption of Trade Mark infringement under Section 29(4), even if the identity of the two Marks is established. Thus, the Plaintiff must necessarily demonstrate, at least *prima facie*, that the use of an identical mark as theirs was without due cause and also took unfair advantage of or caused detriment to the Plaintiff's Mark's distinctive character or reputation. The Plaintiff however has entirely failed in this exercise as there is not a single document filed by the Plaintiff on record buttress the claim that the impugned use of the Plaintiff's Mark is likely to prejudicially affect the Plaintiff's Mark's distinctive character or reputation.
- 17.2. Having failed to discharge this initial burden and in the absence of a material foundation for the alleged negative impact on reputation of the Plaintiff's Mark, the Plaintiff's dilution claim, predicated on bare averments of detriment or reputational harm, is liable to fail. If such a barebones claim were to be accepted, any and all uses of a mark would be liable to be interdicted and trademark-owners would be conferred a monopoly far larger than intended by the Legislature.
- 17.3. The Plaintiff has made claims that the use of the Plaintiff's Mark in the Impugned Film tarnishes the Plaintiff's image amongst its current and prospective donors and impacts its fundraising efforts. This co-relation that the Plaintiff has sought to draw is based purely on assumptions, surmises and lacks any material foundation, especially since the Impugned Film, having been in the public domain for a significant amount of time, the Plaintiff has failed to show any material that the Film has made any negative impact in the minds of the general viewing public or even its current donors.



- 17.4. The Impugned Film is not promoted under the Plaintiff's Mark, does not use the Plaintiff's Mark in a disproportionate or prominent manner, does not display the Plaintiff's Mark, and only uses 6 oral references to the Plaintiff's Mark. This evident *de minimis* usage is only as-much-as-needed and therefore, does not take unfair advantage in any manner of the Plaintiff's Mark.
- 17.5. The Defendants have not attained or taken any 'unfair advantage' from use of the Plaintiff's Mark. This limited and purely referential use of the Mark does not serve as the driving factor behind the Film's commercial success or appeal, nor in any manner seeks to ride or rides on the goodwill and/or reputation of the Mark to promote the Impugned Film in any manner. Merely because a limited advantage is drawn from such use, i.e., briefly lending a sense of realism to the elaborate prison-break shown in the Impugned Film, it would not fall under the teeth of Section 29(4).
- 17.6. It is trite that every advantage, commercial or not, drawn by use of a Trade Mark cannot be termed as drawing unfair advantage of the said Mark, without cause – particularly when such use is not 'as a Trade Mark' as held in the case of *Google LLC* (supra).
- 17.7. It is clear that no reasonable or even incredulous person viewing the Impugned Film will, in any manner whatsoever, be left with the impression from 25 seconds that the Plaintiff is associated with, or endorses the Film, or that the Film originates from the Plaintiff. There is no dilution or tarnishment of the distinctive character of the Plaintiff's Mark, i.e., the unique source identifying function that it serves to inform the public of the Plaintiff's goods and/or services.



- 17.8. In the present case, the use of the Plaintiff's Mark in the Impugned Film cannot be construed to be comparative, misleading, deceptive or disparaging. The Film does not make any comment or suggestion, including any false comment, as to the Plaintiff's Mark's reputation or characteristic.
- 17.9. There is, irrefutably, no direct, or even indirect, negative reference to any property or characteristic of the Plaintiff's services in the Title. It is settled position of law that for an act to amount to disparagement, it must be of such a nature which conveys something negative attributable to the Plaintiff and carries an element of demeaning, condemning, ridiculing, disgracing, belittling, mocking, falsity, etc. with a view to cause injury or harm. In this background, where there is *ex facie* no element of demeaning / criticizing / condemning / denigrating the Plaintiff's Mark, the Plaintiff's claim for disparagement cannot be sustained.
- 17.10. Even assuming, in arguendo, that the Plaintiff's aforesaid claims of dilution and/or disparagement are *prima facie* made out, such use would nonetheless be saved by Section 30(1) of the Act. This is because the use of the Plaintiff's Mark is evidently at most, 'denominative' in nature, i.e., intended to refer to the Trade Mark owner, and contextual within the fictional narrative of the Impugned Film. Such denominative use, wherein the use of a Mark is in reference to its original proprietor and not involving any appropriation of the said Mark, is completely permissible.
- 17.11. In accordance with long-standing and honest industrial / commercial practice in the film industry, of referential use of real world Marks in



fictional settings, which no reasonable viewer will construe to be use ‘as a trade mark’, and which carries no denigratory elements, is permitted usage.

REJOINDER SUBMISSIONS ON BEHALF OF THE PLAINTIFF:

18. Ms. Shwetasree Majumder, the learned Counsel for the Plaintiff advanced the following rejoinder submissions:

- 18.1. There is no dispute with the fact that the conditions in subsections (a), (b) and (c) of Section 29(4) of the Act are conjunctive. In sub-section (c), the Plaintiff must first demonstrate that the registered Mark has a reputation in India, and thereafter, show that the use of the Mark without due cause takes unfair advantage of or is detrimental to, the distinctive character or repute of the registered Mark. Neither unfair advantage or detriment need to be measured through an economic lens alone, as suggested by the Defendants.
- 18.2. In the Written Statement of Defendant Nos. 1 and 2, the Defendants admit that the escape plan in the Impugned Firm is implemented by posing as members of the Plaintiff organisation “since the Plaintiff organization, on account of their reputation, has comparatively easier mobility over international borders / international waters.” This is a categorical admission that the Plaintiff’s reputation was the reason for choosing the mark, and that reputation was exploited to enable illegal cross-border movement. This is the clearest possible admission of unfair advantage, which is not incidental, accidental, or referential, and is clearly functional reliance on Plaintiff’s goodwill.
- 18.3. In the Written Statement, the Defendants further plead that the protagonists use the name on the premise that the Plaintiff has an



“established reputation” and that they “might not be stopped” if they pretend to be members of the Plaintiff organisation. Thus, the Defendants accept that public authorities repose special trust in the Plaintiff’s Mark; and that the Mark was invoked to exploit that trust. In Trade Mark law, there can be no stronger evidence of “riding on the coat-tails” than an admission that the Mark was used because of its credibility and authority.

- 18.4. “Unfair advantage” includes free-riding on the power of attraction, reputation, or prestige of a well-known Mark. In the present case, the Plaintiff’s humanitarian reputation and internationally recognised access rights are used as a plot device. The Defendants derive narrative credibility and realism solely by invoking the Plaintiff’s Mark. The Impugned Film monetized through theatrical release and OTT streaming. Unfair advantage need not be a commercial gain alone; reputational leverage and enhanced credibility in a commercial work would also suffice.
- 18.5. The Defendants wrongly insist on proof of actual loss, confusion, or donor behavior change, which is legally incorrect. Under Section 29(4) of the Act, the detriment to distinctive character or repute is independent of confusion, and dilution occurs when the Mark’s singular association is weakened or distorted.
- 18.6. The Impugned Film associates the Plaintiff’s Mark with impersonation, deception, illegal border crossings, and criminal escape, conveying that the Plaintiff’s Mark’s credentials can be misused as a cover for illegality, undermining the neutrality, trust, and humanitarian integrity that form the core of the Plaintiff’s reputation.



19. In view of the foregoing submissions, it is prayed that the present Application be allowed.

ANALYSIS AND FINDINGS:

20. The main issue that requires determination is in this Application is whether *prima facie* the Impugned Scenes in the Impugned Film infringe the Plaintiff's Mark in terms of Section 29(4)(c) of the Act, which is reproduced as under:

"29. Infringement of registered trade marks.

(4) A registered trade mark is infringed by a person who, not being a registered proprietor or a person using by way of permitted use, uses in the course of trade, a mark which—

(a)

(b)

(c) the registered trade mark has a reputation in India and the use of the mark without due cause takes unfair advantage of or is detrimental to, the distinctive character or repute of the registered trade mark."

21. As per this provision of the Act, the proprietor of the registered Trade Mark must establish that the Trade Mark has a reputation in India and the use of such Trade Mark without due cause has resulted in unfair advantage of the registered Trade Mark or it is detrimental to the distinctive character or repute of the registered Trade Mark.

22. Accordingly, to establish infringement under Section 29(4)(c) of the Act, the use of the registered Mark must be by a person who is not a registered proprietor or has license to use the said Trade Mark. Further, the use of the registered Trade Mark has to be in the course of trade.

23. In view of the above, it is required to be considered as to whether Plaintiff's Mark has a reputation in India and its use by the Defendants in the Impugned Film has been:



- (a) In the course of trade; and
- (b) Without any due cause; and
- (c) Causing unfair advantage to the Defendant; or
- (d) Detrimental to the distinctive character or repute of the Plaintiff's Mark.

Reputation of the Plaintiff's Mark in India

24. The Plaintiff has submitted that the Plaintiff is an international organization and has undertaken multiple projects by providing medical treatment and relief across India since 1999. The Plaintiff has been providing humanitarian and medical support to the victims of war and disaster, patients of HIV, Tuberculosis, Malnutrition and survivor of sexual violence. The Plaintiff and its medical personnel and relief suppliers have a special right to access and free passage under the Geneva Convention, 1949 and United Nations Resolutions.

25. The Plaintiff has been using the Plaintiff's Mark since its inception in 1971 and have registered the same under various classes since 1999 in India. The Plaintiff has used the Plaintiff's Mark extensively and also has websites www.msf.org and www.doctorswithoutborders.org. The Plaintiff also maintains an active presence on social media platforms like Facebook, Twitter, Instagram, YouTube and LinkedIn.

26. The Plaintiff has more than 69000 people including doctors, nurses and medical staff providing emergency medical aid. The Plaintiff has been recognized by several national and global institutions and was awarded "Indira Gandhi Prize for Peace, Disarmament and Development" in 1996 in India and "Nobel Peace Prize" in 1999, "Nansen Refugee Award" in 1996 and "Tipperary International Peace Award" in 2023.



27. The Plaintiff's Mark has been declared as a well-known Mark in India in 2024 and the Plaintiff's Mark has garnered goodwill and reputation over a period of time.

28. In view of the above, the Plaintiff has submitted that the Plaintiff's Mark has a reputation in India. The said assertion has not been denied by the Defendants. The Defendants have acknowledged and admitted that the Plaintiff has reputation in India. Accordingly, the first condition for seeking injunction against infringement of the Plaintiff's Mark under Section 29(4)(c) of the Act that the Plaintiff has a reputation in India is fulfilled in the present case.

Use of Plaintiff's Mark in Course of Trade:

29. The second condition required to be fulfilled for asserting the right under Section 29(4)(c) of the Act is that the use of the Plaintiff's Mark has to be in the course of trade.

30. In the present case, the Plaintiff's Mark is not used for providing any goods or services by the Defendant, however, it is used in dialogues in the Impugned Film. It is the case of the Plaintiff that such use is in the course of the trade as the cinematograph film produced and displayed by the Defendants is a commercial venture and the Defendants have earned huge profits from the Impugned Film.

31. Moreover, the Plaintiff asserts that the use of its Mark by the Defendants is deliberate and not coincidental. The Plaintiff maintains that the Defendants have intentionally sought to benefit from the goodwill and reputation associated with the Plaintiff, who is recognized as an international organization with cross-border standing and rights of access. Accordingly, the



Plaintiff contends that the Defendants have used the Plaintiff's mark in the 'course of trade'.

32. Whereas, the Defendants have defended the use of the Plaintiff's Mark as merely incidental and *de minimis*. The Defendants have contended that the use of the Plaintiff's Mark has not resulted in any commercial benefit to the Defendants as an average person who views the Impugned Film will not associate the Plaintiff's Mark with the Defendants.

33. Given the foregoing stands taken by the Parties, the relevant question is whether the use of the Plaintiff's Mark in the Impugned Film constitutes use "in the course of trade". Generally, the term "in the course of trade" refers to the buying or selling of goods or provision of services. While a cinematograph film does not fall strictly within the category of goods or services, it is undeniably a commercial venture. The Impugned Film was released in theatres and is accessible on OTT platform(s). Therefore, the use of the Plaintiff's Mark is clearly "in the course of trade" as envisaged by Section 29(4) of the Act.

Use of Plaintiff's Mark without due cause

34. The Plaintiff has submitted that the Plaintiff's Mark has been used "without due cause" in the Impugned Film and is not "by way of permitted use" as the Plaintiff's permission or authorization was not obtained by the Defendants before using the Plaintiff's Mark in the Impugned Film. The Defendants have not been able to provide any justifiable reason for using the Plaintiff's Mark in the Impugned Film. The Defendants have purposefully identified the Plaintiff's Mark to gain unfair advantage of the popularity and the special status enjoyed by the Plaintiff's Mark as the Plaintiff has a special right to access and free passage across International Borders. The Plaintiff has



contended that the Defendants would have easily avoided using the Plaintiff's Mark by using a fictitious name instead of using the Plaintiff's Mark. Accordingly, there is no due cause shown by the Defendants for using the Plaintiff's Mark.

35. The Defendants have contended that the use of the Plaintiff's Mark is coincidental and covered by the disclaimer. Further, the use of the Plaintiff's Mark does not disparage, undervalue, derogate, deprecate or bring any discredit to the Plaintiff's Mark. In fact, the use of the Plaintiff's Mark in the Impugned Film demonstrates the wide reputation and positive association with the Plaintiff's Mark, which is used as a ploy by the protagonist of the Impugned Film to gain entry into the Malaysian waters by pretending to be a member of Plaintiff's organization.

36. Upon considering the arguments presented by both the Plaintiff and the Defendants, it is evident that the use of the Plaintiff's Mark in the Impugned Scenes demonstrates that the Defendants used the term "Doctors Without Borders" to leverage the Plaintiff's reputation, particularly the perception that its personnel of the Plaintiff may cross international borders without restriction.

37. The term "due cause" under Section 39(4)(c) of the Act implies that the use of a registered Trade Mark must be justified to avoid infringement. In this matter, the Defendants have not demonstrated any valid reason for utilizing the Plaintiff's Mark in the Impugned Film, apart from claiming incidental use. This argument is insufficient, as it is evident that the Defendants deliberately employed the Plaintiff's Mark in the Impugned Scenes to benefit from the Plaintiff's reputation and the prestige associated with unrestricted International Border access. Furthermore, the Defendants' position lacks



credibility as they assert no harm to the Plaintiff's reputation, but concede that the Plaintiff possesses significant standing and reputation in the Plaintiff's Mark. Consequently, the use of the Plaintiff's Mark in the Impugned Film was made without any due cause.

Unfair Advantage

38. It is undisputed that the Plaintiff enjoys reputation in the Plaintiff's Mark. The central issue is whether the Defendants' use of the Plaintiff's Mark confers an unfair advantage upon the Defendants.

39. The Plaintiff has submitted that the use of the Plaintiff's Mark in the Impugned Film has provided the Defendants with an 'unfair advantage' by misusing the advantage the Plaintiff has for unrestricted access across borders. The Defendants have utilized the Plaintiff's Mark in such a way as to convey a defamatory implication that the Plaintiff facilitates illegal immigration and that unauthorized individuals could impersonate the Plaintiff's personnel to unlawfully cross international boundaries.

40. The Defendants have contended that the "Unfair Advantage" cannot be presumed and must be affirmatively proved as a matter of fact as held in *ITC Ltd.* (supra) and the Plaintiff has failed to *prima facie* establish that the Defendants sought to "ride on the coat-tails" of the Plaintiff's Mark. It was further contended on behalf of the Defendants that the concept of unfair advantage resulting from the use of a registered trade mark requires the Plaintiff to demonstrate that there has been dilution or blurring or whittling away of the Plaintiff's Mark in the consumer's mind, which is likely to result in the weakening of the Plaintiff's Mark. It was further submitted by the Defendants that mere 'economic advantage' is not sufficient to hold that there has been an 'unfair advantage'.



41. To consider the submissions made by the Parties, it is necessary to determine whether the use of the Plaintiff's Mark in the Impugned Film confers an 'unfair advantage' upon the Defendants. For such determination, it is required to assess potential harm caused to the Plaintiff's Mark from the perspective of the average consumer. As established in *Comic Enterprises* (supra), evidence of a change in the economic behavior of an average consumer is necessary to demonstrate 'undue advantage'. Additionally, as affirmed in *Bloomberg* (supra), it must be shown that the distinctive attraction of the well-known trade mark has diminished among consumers. Notably, even the likelihood of a change in consumer economic behavior may suffice to establish 'unfair advantage'.

42. In this case, the Plaintiff contends that the depiction of the Impugned Scenes clearly indicates that the use of the Plaintiff's Mark was intentional rather than accidental and as a result, the Plaintiff's Mark is likely to be perceived by members of the public as being associated with crime and prison escapes following their viewing of the Impugned Film. This negative perception is said to have resulted in the alleged disparagement of the Plaintiff's Mark, as well as the tarnishing of the Plaintiff's reputation and goodwill within the community, particularly in the minds of potential donors of the Plaintiff.

43. The Plaintiff asserted that the negative association has adversely affected donors' willingness to support its cause. The Plaintiff contended that the Defendants obtained an undue advantage by deliberately incorporating the Plaintiff's Mark in the Impugned Scenes, thereby implying that its use authorizes impersonation and facilitates unlawful immigration and this unauthorized use of the Plaintiff's Mark to cross international borders has



resulted in reputational harm and diminished value of the Plaintiff's Mark. Additionally, the Plaintiff submits that its standing as an independent and impartial humanitarian organization, particularly in politically sensitive and conflict-affected regions, has been undermined among both current and potential donors.

44. Although the Plaintiff has asserted that the use of the Plaintiff's Mark in the Impugned Film may influence prospective donors not to support the Plaintiff's efforts, it has not provided any evidence demonstrating any impact on the Plaintiff's activities. At this *prima facie* stage, it is incumbent upon the Plaintiff to demonstrate that the use of the Plaintiff's Mark in the Impugned Film would directly and negatively impact the Plaintiff to cause unfair advantage to the Defendants. The Impugned Scenes depict the Plaintiff's Mark being used by the protagonist to cross an International Border via sea. According to the Plaintiff, this portrayal by the Defendants has purportedly caused harm by diminishing the likelihood of donations to the Plaintiff. However, the same is not sufficient to determine the 'unfair advantage' to the Defendants.

45. While the inclusion of the Plaintiff's Mark is essential to the narrative of the Impugned Film, as its absence could have impeded the completion of the story, such usage does not diminish, alter, or supplant the public perception of the Plaintiff's Mark with that of the Defendants' services. Consequently, it cannot be asserted that the Defendants have gained any economic advantage through unjust association with the Plaintiff's Mark or by leveraging its reputation for their own benefit.

46. Moreover, economic benefit alone does not suffice to establish an unfair advantage. The Plaintiff must demonstrate a probable risk of harm or



damage to the Plaintiff's Mark among consumers. Additionally, it is necessary to show that such unfair advantage leads to a change in the economic behaviour of the average consumer of the Plaintiff's services, or at least a likelihood of such a change. In this instance, the Plaintiff has not provided any evidence of alteration in the perceptions or actions of donors resulting from the use of the Plaintiff's Mark in the Impugned Film. The submissions of the Plaintiff are speculative in nature.

47. Since the Impugned Film has received certification from the CBFC for public exhibition, it is presumed that the requirements stipulated under the Cinematograph Act, 1952 have been satisfied. The Plaintiff has not provided evidence to show that the use of the Plaintiff's Mark in the Impugned Film has misled viewers into believing that the Plaintiff endorses the film. The Mark appears in the Impugned Film solely through fictional characters and, at first glance, does not suggest that the Plaintiff engages in illegal activities. Although the Defendants have benefitted from the use of the Plaintiff's Mark, this cannot be categorised as an 'unfair advantage', as there is no indication that the Defendants intended to harm the Plaintiff or dilute the distinctiveness of the Plaintiff's Mark.

48. The use of a Trade Mark may confer an unfair advantage on the user when it is employed with the intent to derive economic benefit by capitalising on the goodwill associated with the mark, which can further lead to its dilution and disparagement in the perception of the general public. In the present case, the Impugned Film has not utilised the Plaintiff's Mark in any manner that suggests endorsement, affiliation, or involvement by the Plaintiff.



49. Accordingly, at this *prima facie* stage, the Plaintiff has not established that the Defendants derived any unfair advantage from the use of the Plaintiff's Mark in the Impugned Film.

Detrimental to the Distinctive Character or Reputation:

50. The Plaintiff has submitted that the Impugned Film shows that the protagonist uses the Plaintiff's Mark to cross the international borders. According to the Plaintiff, the use of the Plaintiff's Mark in the Impugned Film creates a negative impact on the Plaintiff's Mark and is detrimental to the reputation of the Plaintiff's Mark by reducing the value of the Plaintiff's Mark in the eyes of the public. The Plaintiff has contended that the Plaintiff's Mark has been used in a manner that would under-value, derogate and bring discredit to the Plaintiff's Mark.

51. The Defendants have submitted that there has been no damage to the distinctive character of the Plaintiff's Mark. Further, the use of the Plaintiff's Mark in the Impugned Film does not suggest that the Plaintiff's Mark has been mocked or belittled. The viewer of the Impugned Film would not be left with an impression that the Plaintiff is associated with any illegal activities that tarnishes the distinctive character or image of the Plaintiff's Mark.

52. Upon careful consideration of the submissions by both Parties, it is evident that the Defendants have used the Plaintiff's Mark in the Impugned Film without authorization. The manner of use aligns directly with how the Plaintiff employs the Mark for its services. As a distinctive source identifier, the Plaintiff's Mark allows the public to recognize the Plaintiff's services. Under Section 29(4)(c) of the Act, an infringement occurs if the use of a registered trade mark negatively impacts its distinctive character or reputation. Although the Impugned Film does not overtly reference the



reputation or qualities of the Plaintiff's Mark, the Impugned Scenes depict its use as facilitating the illegal crossing of international borders. This usage is neither incidental nor accidental and demonstrates a clear association with the repute of the Plaintiff's Mark.

53. Evidently, the Plaintiff holds an excellent reputation as an international organisation, with public authorities placing significant trust in the Plaintiff's Mark. The Defendants selected the Plaintiff's Mark due to its established reputation, to lend credence to the Impugned Film, else a fictitious name could also have been used. The Impugned Scenes utilise the Plaintiff's Mark to depict the ease of crossing international borders without the need for a visa. Thus, the Plaintiff's Mark was chosen solely on account of its repute. Consequently, the use of the Impugned Mark in the Impugned Film adversely affects the distinctive character and reputation of the Plaintiff's Mark.

CONCLUSION:

54. In view of the above analysis, the Plaintiff has not been able to demonstrate that the Defendants obtained any unfair advantage by using the Plaintiff's Mark in the Impugned Film. Nevertheless, considering the Plaintiff's reputation in India and the manner of using the Plaintiff's Mark, such use is likely to adversely affect the distinctive character and reputation of the Plaintiff's Mark. As the Plaintiff has not established a *prima facie* case of the Defendants exploiting the Plaintiff's Mark for unfair advantage in the Impugned Film, it is expedient in the interest of justice and to balance the convenience between the Parties, to restrict the detriment to the distinctive character and reputation of the Plaintiff's Mark to avoid irreparable loss to the Plaintiff during the pendency of this Suit by directing the Defendants to display an appropriate Acknowledgement at the commencement of the



2026:DHC:3670



Impugned Film. This Acknowledgement should appropriately mention that the use of the Plaintiff's Mark in the Impugned Film is not intended to cause any harm or detriment to its distinctive character and reputation of the Plaintiff's Mark in any way.

55. Accordingly, the Plaintiff is not entitled to the interim injunction restraining the Defendants from using the Plaintiff's Mark in the Impugned Film, however, the Defendants shall display the Acknowledgment at the start of the Impugned Film as directed above within a period of four weeks from the date.

56. The present Application is disposed of with the aforesaid direction.

TEJAS KARIA, J

APRIL 30, 2026

st/gsr