



2026 :DHC :2995



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

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Judgment delivered on: 10/04/2026

+ **C.A.(COMM.IPD-TM) 12/2023 & I.A. 4139/2024**

**IMPRESSARIO ENTERTAINMENT AND HOSPITALITY  
PVT. LTD. ....Appellant**

Versus

**VARDHAMAN CHOKSI AND ORS. ....Respondents**

**AND**

+ **C.O.(COMM.IPD-TM) 72/2021**

**VARDHAMAN CHOKSI ....Petitioner**

Versus

**IMPRESARIO ENTERTAINMENT AND HOSPITALITY PVT.  
LTD. AND ANR. ....Respondents**

**AND**

+ C.O. (COMM.IPD-TM) 93/2021

+ C.O. (COMM.IPD-TM) 96/2021

+ C.O. (COMM.IPD-TM) 98/2021

+ C.O. (COMM.IPD-TM) 194/2021

+ C.O. (COMM.IPD-TM) 212/2021

+ C.O. (COMM.IPD-TM) 264/2021

+ C.O. (COMM.IPD-TM) 269/2021

+ C.O. (COMM.IPD-TM) 283/2021

+ C.O. (COMM.IPD-TM) 333/2021

+ C.O. (COMM.IPD-TM) 406/2021

+ C.O. (COMM.IPD-TM) 47/2022

+ C.O. (COMM.IPD-TM) 135/2022



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- + C.O. (COMM.IPD-TM) 150/2022
- + C.O. (COMM.IPD-TM) 152/2022
- + C.O. (COMM.IPD-TM) 197/2022
- + C.O. (COMM.IPD-TM) 200/2022
- + C.O. (COMM.IPD-TM) 254/2022
- + C.O. (COMM.IPD-TM) 259/2022
- + C.O. (COMM.IPD-TM) 284/2022
- + C.O. (COMM.IPD-TM) 552/2022
- + C.O. (COMM.IPD-TM) 681/2022

**Advocates who appeared in this case**

For the Petitioner : Mr. Chander M. Lall, Senior Advocate with Ms. Shikha Sachdeva, Mr. Manish Dhir, Ms. Kriti Rathi, Ms. Annie Jacob, Mr. Jaskaran Singh Bindra & Ms. Annanya Mehan, Advocates for Impressario Entertainment and Hospitality Pvt. Ltd.

For the Respondents : Mr. Adarsh Ramanujan, Mr. Mustafa Alam, Ms. Yashima Sharma, Mr. Lakshya Kaushik, Mr. Sidharth Kausik, Ms. Divyanshi Bansal, Mr. Parth Singh, Mr. Amit Garg, Ms. Navya, Mr. Zubair Hanifi, Ms. Saba Tasleem and Ms. Aalia, Advocates for Vardhaman Choksi. Ms. Rukhmini Bobde, CGSC along with Mr. Amlaan Kumar, Mr. Jatin Dhamija & Mr. Vinayak Aren, Advocates for the Registrar of Trade Marks.

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

**JUDGMENT**



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## **TEJAS KARIA, J**

1. By way of the present common Judgment, C.A.(COMM.IPD-TM) 12/2023 (“**Appeal**”) and C.O.(COMM.IPD-TM) 72/2021, C.O.(COMM.IPD-TM) 93/2021, C.O.(COMM.IPD-TM) 96/2021, C.O.(COMM.IPD-TM) 98/2021, C.O.(COMM.IPD-TM) 194/2021, C.O.(COMM.IPD-TM) 212/2021, C.O.(COMM.IPD-TM) 264/2021, C.O.(COMM.IPD-TM) 269/2021, C.O.(COMM.IPD-TM) 283/2021, C.O.(COMM.IPD-TM) 333/2021, C.O.(COMM.IPD-TM) 406/2021, C.O.(COMM.IPD-TM) 47/2022, C.O.(COMM.IPD-TM) 135/2022, C.O.(COMM.IPD-TM) 150/2022, C.O.(COMM.IPD-TM) 152/2022, C.O.(COMM.IPD-TM) 197/2022, C.O.(COMM.IPD-TM) 200/2022, C.O.(COMM.IPD-TM) 254/2022, C.O.(COMM.IPD-TM) 259/2022, C.O.(COMM.IPD-TM) 284/2022, C.O.(COMM.IPD-TM) 552/2022 and C.O.(COMM.IPD-TM) 681/2022 (“**Rectification Petitions**”) are being decided as the issues raised therein are identical.

2. The Appeal has been filed by Impressario Entertainment and Hospitality Pvt. Ltd. (“**Impressario**”) seeking rectification of the Mark **SOCIAL HOUSE**, registered under Application No. 2230483 in Class 43 in favour of Vardhaman Choksi, while the Rectification Petitions have been filed by Vardhaman Choksi against the following registered Marks of Impressario (“**Impressario’s Marks**”).

S.No.	Petition No.	Impressario’s Mark	Class & Application No.
1.	C.O.(COMM.IPD-TM) 72/2021.	“ODEON SOCIAL” 	Class: 43 App No: 3162950



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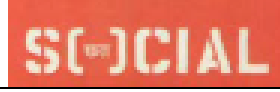



2.	C.O.(COMM.IPD-TM) 93/2021	“COLABA SOCIAL” 	Class: 32 App No: 2796783
3.	C.O.(COMM.IPD-TM) 96/2021	“DEF. COL. SOCIAL” 	Class: 33 App No: 2952952
4.	C.O.(COMM.IPD-TM) 98/2021	“FUN REPUBLIC SOCIAL” 	Class: 43 App No: 3311928
5.	C.O.(COMM.IPD-TM) 194/2021	“COLABA SOCIAL” 	Class: 33 App no: 2796784
6.	C.O.(COMM.IPD-TM) 212/2021	“TODI MILL SOCIAL” 	Class: 43 App no: 2975785
7.	C.O.(COMM.IPD-TM) 264/2021	“TODI MILL SOCIAL” 	Class: 32 App no: 2975784
8.	C.O.(COMM.IPD-TM) 269/2021	WHITEFIELD SOCIAL 	Class: 43 App No. 3162945
9.	C.O.(COMM.IPD-TM) 283/2021	“SOCIAL OFFLINE” (WORDMARK)	Class: 30 App no: 2781077



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10.	<b>C.O.(COMM.IPD-TM) 333/2021</b>	<b>“DEF. COL. SOCIAL”</b> 	<b>Class: 43</b> <b>App no: 2952954</b>
11.	<b>C.O.(COMM.IPD-TM) 406/2021</b>	<b>“CAPITAL SOCIAL”</b> 	<b>Class: 43</b> <b>App no: 3294399</b>
12.	<b>C.O.(COMM.IPD-TM) 47/2022</b>	<b>“ODEON SOCIAL”</b> 	<b>Class: 33</b> <b>App no: 3162948</b>
13.	<b>C.O.(COMM.IPD-TM) 135/2022</b>	<b>“PALLADIUM SOCIAL”</b> 	<b>Class: 32</b> <b>App no: 3051174</b>
14.	<b>C.O.(COMM.IPD-TM) 150/2022</b>	<b>“MOCHA SOCIAL HOUSE”</b> 	<b>Class: 32</b> <b>App no: 2382248</b>
15.	<b>C.O.(COMM.IPD-TM) 152/2022</b>	<b>“SOCIAL CHHAT”</b> 	<b>Class: 32</b> <b>App no: 2834742</b>
16.	<b>C.O.(COMM.IPD-TM) 197/2022</b>	<b>“antiSOCIAL”</b> 	<b>Class: 43</b> <b>App no: 2830081</b>



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17.	<b>C.O.(COMM.IPD-TM) 200/2022</b>	“SOCIAL OFFLINE” 	<b>Class: 33</b> <b>App no: 2781070</b>
18.	<b>C.O.(COMM.IPD-TM) 254/2022</b>	“PALLADIUM SOCIAL” 	<b>Class: 33</b> <b>App no: 3051175</b>
19.	<b>C.O.(COMM.IPD-TM) 259/2022</b>	“CHURCH STREET SOCIAL” 	<b>Class: 43</b> <b>App no: 2736081</b>
20.	<b>C.O.(COMM.IPD-TM) 284/2022</b>	“SOCIAL Chhat” 	<b>Class: 33</b> <b>App no: 2834745</b>
21.	<b>C.O.(COMM.IPD-TM) 552/2022</b>	“TODI MILL SOCIAL” 	<b>Class: 33</b> <b>App no: 2975783</b>
22.	<b>C.O.(COMM.IPD-TM) 681/2022</b>	“DEF.COL. SOCIAL” 	<b>Class: 32</b> <b>App no: 2952951</b>



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### **FACTUAL BACKGROUND:**

3. On 20.10.2017, Impressario filed the rectification petition before the Intellectual Property Appellate Board (“**IPAB**”), Mumbai bearing No. ORA/5/2018/TM/MUM, for cancellation of the Mark

‘**SOCIAL HOUSE**’. On 04.12.2017, Impressario filed a suit before this Court seeking a permanent injunction against the use of the Mark ‘SOCIAL HOUSE’ by Vardhaman Choksi. This Court *vide* order dated 06.12.2017 passed an *ex-parte ad-interim* injunction restraining Vardhaman Choksi from opening a restaurant with the Marks ‘SOCIAL HOUSE’ and ‘SOCIAL’.

4. Thereafter, Vardhaman Choksi filed the Rectification Petitions before the IPAB, New Delhi, seeking rectification of the Impressario’s Marks from the Register of Trade Marks. *Vide* order dated 14.05.2018, this Court returned the plaint of Impressario in CS(COMM.) No. 826/2017 on the ground of territorial jurisdiction and granted liberty to Impressario to file the suit for injunction against the use of the Mark ‘SOCIAL HOUSE’ in the Bombay High Court.

5. In June 2018, Impressario filed a suit before the Bombay High Court seeking an injunction against the use of the Mark ‘SOCIAL HOUSE’ by Vardhaman Choksi. On 22.06.2018, Vardhaman Choksi gave an undertaking before the Bombay High Court that he will give Impressario 3 weeks’ prior notice in writing if he intends to open a restaurant under the Mark ‘SOCIAL HOUSE’ or ‘SOCIAL’. No such undertaking has been provided by Vardhaman Choksi to Impressario till date.



6. After the abolition of the IPAB and upon promulgation of Tribunals Reforms (Rationalization and Conditions of Service) Ordinance, 2021, the Rectification Petitions got transferred to this Court. *Vide* Order dated 01.05.2023, the record of the rectification petition filed by Impressario before IPAB, Mumbai bearing No. ORA/5/2018/TM/MUM got transferred to this Court and thereafter, the rectification petition filed by Impressario, bearing No. ORA/5/2018/TM/MUM, was registered as the Appeal.

7. After completion of arguments, judgment in the Appeal and in the Rectification Petitions was reserved on 24.12.2025.

**SUBMISSIONS ON BEHALF OF IMPRESSARIO:**

8. The learned Senior Counsel for Impressario made the following submissions:

8.1 Impressario commenced business in the year 2001 and is engaged in providing restaurant services, including but not limited to conducting and managing restaurants and coffee shops, operating restaurants and coffee shops, providing expertise relating to provision of food and drink. Impressario presently is running various well-known restaurants and coffee shops including Smoke House Deli, Stone Water Grill, Salt Water Cafe, Le Kebabiere, The Tasting Room, Prithvi Cafe, and 'SOCIAL' and its variants.

8.2 Impressario in the year 2012, thought of a unique concept of blending the best of office and cafe by offering to the general public a collaborative work space and a multi cuisine offering. The Trade Mark 'SOCIAL' was adopted in respect of such cafes. Since the business model of Impressario was to open



multiple ‘SOCIAL’ cafes in one city, they coined the unique concept of prefixing and/or suffixing the Trade Mark ‘SOCIAL’ with the particular area of the city and / or any other interesting prefix and / or suffix in which the cafe would be located and coined Impressario’s Marks and various others to indicate to the general public the area in which the cafe was located in each city and would be nearest to them for a visit.

8.3 Combining work and play, the ‘SOCIAL’ cafes / restaurants of Impressario are urban hangouts designed to take people offline while still keeping them connected. Impressario’s ‘SOCIAL’ cafes / restaurants are a collaborative workspace, a hub for artists and innovators. Even the interiors of the ‘SOCIAL’ cafes and bars have been designed to give a very rugged and bare feel to its customers with brick walls and bare bulbs hanging down from the ceiling, with simple wooden and leather furniture. Each ‘SOCIAL’ outlet operated by Impressario has a distinct theme and the interiors are designed around that theme. The theme itself has become exclusively identified to Impressario. Impressario operates over 52 ‘SOCIAL’ restaurants in India and has obtained registrations over various Trade Marks containing ‘SOCIAL’ in a standalone manner or as a prefix or suffix, the details of which are as follows:

<b>Trademark</b>	<b>TM. No.</b>	<b>Class</b>	<b>Date of Application</b>	<b>Journal No.</b>	<b>Date of Journal</b>
Mocha Social House	2382261	16	21/Aug/2012	1601	12/Aug/2013
Mocha Social House	2382248	32	21/Aug/2012	1753	11/Jul/2016



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Mocha Social House	2382254	45	21/Aug/2012	1601	12/Aug/2013
Mocha Social	2382255	9	21/Aug/2012	1601	12/Aug/2013
Mocha Social	2382256	16	21/Aug/2012	1601	12/Aug/2013
Mocha Social	2382257	25	21/Aug/2012	1601	12/Aug/2013
Mocha Social	2382249	42	21/Aug/2012	1611	21/Oct/2013
Mocha Social	2382251	45	21/Aug/2012	1618	09/Dec/2013
Hauz Khas Social	2736080	42	13/May/2014	1729	25/Jan/2016
Church Street Social	2736081	43	13/May/2014	1729	25/Jan/2016
SOCIAL OFFLINE	2781070	33	25/Jul/2014	1733	22/Feb/2016
SOCIAL OFFLINE	2781074	9	25/Jul/2014	1733	22/Feb/2016
SOCIAL OFFLINE	2781077	30	25/Jul/2014	1733	22/Feb/2016
Social Chhatt	2834742	32	30/Oct/2014	1741	18/Apr/2016
Social Chhatt	2834745	33	30/Oct/2014	1746	23/May/2016
Social Chhatt	2834744	42	30/Oct/2014	1741	18/Apr/2016
Def. Col. SOCIAL	2952950	25	29/Apr/2015	1753	11/Jul/2016
Def. Col. SOCIAL	2952951	32	29/Apr/2015	1753	11/Jul/2016
Def. Col. SOCIAL	2952952	33	29/Apr/2015	1753	11/Jul/2016
Def. Col. SOCIAL	2952953	42	29/Apr/2015	1753	11/Jul/2016
Def. Col. SOCIAL	2952954	43	29/Apr/2015	1753	11/Jul/2016
Todi Mill Social	2975784	32	01/Jun/2015	1755	25/Jul/2016
Todi Mill	2975783	33	01/Jun/2015	1755	29/Feb/2016



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Social					
Todi Mill Social	2975786	42	01/Jun/2015	1734	25/Jul/2016
Todi Mill Social	2975785	43	19/Nov/2015	1755	25/Jul/2016
Palladium Social	3051174	32	09/Sep/2015	1758	15/Aug/2016
Palladium Social	3051175	33	09/Sep/2015	1758	15/Aug/2016
Whitefield Social	3162944	42	19/Jan/2016	1783	06/Feb/2017
Whitefield Social	3162945	43	19/Jan/2016	1762	12/Sep/2016
ODEON SOCIAL	3162948	33	19/Jan/2016	1763	19/Sep/2016
ODEON SOCIAL	3162950	43	19/Jan/2016	1763	19/Sep/2016
Capital Social	3294398	42	27/Jun/2016	1770	07/Nov/2016
Capital Social	3294399	43	27/Jun/2016	1770	07/Nov/2016
Fun Republic Social	3311928	43	18/Jul/2016	1776	19/Dec/2016

8.4 Impresario's annual revenue from restaurants under the Mark 'SOCIAL' for the Financial Year ("FY") 2024-25 was ₹5,89,39,00,000 while the promotional expenses incurred by Impresario during the FY 2024-25 was ₹29,19,00,000. Impresario has also successfully obtained various favourable orders from this Court recognizing its rights in Impresario's Marks.

8.5 Vardhaman Choksi applied for the registration of the Mark **SOCIAL HOUSE**, bearing Application No.



2230483 in Class 43 on 08.11.2011 with a user date of 08.11.2011. The registration for the same was granted on 14.10.2015.

8.6 It is well settled that use of a Trade Mark has to be genuine use and in the relevant class of goods and services in which the mark is registered, which is absent in the present case. Admittedly, Vardhaman Choksi does not have a restaurant

under the Mark ‘**SOCIAL HOUSE**’.

Therefore, the Mark ‘**SOCIAL HOUSE**’ is liable to be expunged under Section 47 of the Trade Marks Act, 1999 (“Act”). It is an admitted position that Vardhaman Choksi has never used the

Mark ‘**SOCIAL HOUSE**’ in respect of the services for which it is registered, i.e., restaurant or restaurant related services under Class 43. In the judgments of *Russell Corp Australia Pty Ltd. v. Shri Ashok Mahajan*, 2023 SCC OnLine Del 4796 and *Kiranakart Technologies Private Limited v. Mohammad Arshad & Anr.*, 2025 SCC OnLine Del 1401, this Court has held that it is the settled legal position that use has to be genuine use in the relevant class of goods and services. Unless the non-use is explained by way of special circumstances in the trade, the mark would be liable to be removed for non-use.



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- 8.7 Furthermore, admittedly Vardhaman Choksi applied for registration of the Mark ‘**SOCIAL HOUSE**’, in Class 43 for arranging and conducting of entertainment events which comes under the ambit of Class 41 and not under Class 43 and even so, mere trading with respect to one category of products in a class does not give Vardhaman Choksi the right to claim monopoly over the entire Class of products as has been held in the judgment of *Vishnudas Kishandas v. Vazir Sultan Tobacco Co. Ltd., Hyderabad & Anr.*, AIR 1996 SC 2275. The Madras High Court in the judgment of *Financiare Batteur Sas v. Kalai Arasu*, Neutral Citation: 2024:MHC:4092, held that mere anticipation of cancellation petition does not constitute special circumstance in the trade as envisaged in Section 47(3) of the Act. The Calcutta High Court in the judgment of *Akteibolaget Jonkoping Vulcan v. V.S.V. Palanichamy Nadar*, 1968 SCC OnLine CAL 48, held that exposition of special circumstances in the trade as being the non use of the trade mark emphasises the aspect that the non-use is due to external forces and not due to voluntary act or omission on the part of the trader. Special circumstances in the trade must be special circumstances for all the trade in those particular goods.
- 8.8 Vardhaman Choksi has wrongly registered over 100 international brands in India, with no corresponding use of the same. Vardhaman Choksi currently runs only a single restaurant in Mumbai by the name ‘ESCOBAR’ which is also copied from



a famous restaurant in Malibu, USA. This Court in the judgments of *Volans Uptown LLC v. Mahendra Jeshabhai Bambhaniya*, 2024 SCC OnLine Del 881 and *Osram GMBH & Anr. vs. Tejmeet Singh Sethi & Anr.*, 2022 SCC OnLine Del 1744, has held that the practice of Trade Mark squatting is a menace and needs to be curbed.

8.9 Existence of various Marks containing common elements to those of the Impressario's Marks will only help the case of Vardhaman Choksi if he was able to show substantial use of those Marks as has been held in *Corn Products Refining Co. v. Shangrila Food Products Ltd.*, AIR 1960 SC 142. The Mark 'SOCIAL' is neither generic nor it is descriptive, it is suggestive. In the judgments of *T.N. Venugopal v. Ushodaya Enterprises Limited*, (2011) 4 SCC 85 and *Bata India Limited v. Chawla Boot House*, 2019 SCC OnLine Del 8147, it has been held that the line between suggestive marks and descriptive marks is very thin and the Imagination Test has been laid down to determine as to whether a Mark is descriptive or suggestive.

8.10 In view of the above, the Appeal deserves to be allowed and the Mark '**SOCIAL HOUSE**' is liable to be removed from the Register of Trade Marks and the Rectification Petitions deserve to be dismissed.



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## **SUBMISSIONS ON BEHALF OF VARDHAMAN CHOKSI**

9. The learned Counsel for Vardhaman Choksi made the following submissions:

9.1 The Mark 'SOCIAL' is generic and is commonly used. The Cambridge dictionary defines the word itself as an adjective, "relating to activities in which you meet and spend time with other people and that happens during the time you are not working." With the advent of the Social Media age, the word 'SOCIAL' has become a part of common parlance and everyday language. It has also been widely adopted in conjunction with words and logos as Trade Marks by several parties for diversified goods and services in India and abroad. A bare search on the Trade Mark registry website indicates how commonly the word has been adopted and that several entities have acquired rights in their Trade Marks through long use and registration. This Court in the judgment of *Delhivery Private Limited v. Treasure Vase Ventures Private Limited*, 278 (2021) DLT 485, held that no party can be allowed to have exclusive right to use and register a generic word.

9.2 Impressario has applied and acquired Trade Mark registration for the Mark 'SOCIAL', either in a standalone manner or as a prefix or a suffix, under various classes which is clear evidence of intent that Impressario is trying to restrain any third party from using the English word 'SOCIAL' jointly, severally or in any manner whatsoever with respect to restaurant and bar services and such an attempt is to create a monopoly over the



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Mark 'SOCIAL' in relation to the hospitality industry that would gravely disadvantage and hamper the rights of other players in the market. In the judgment of *Stokley Van Camp, Inc v. Heinz India Private Limited*, 2010 SCC OnLine Del 2153, this Court held that the trade marks which are formed from commonly used words of the current language cannot be granted exclusive rights. This judgment was challenged before the Division Bench of this Court in *Stokley Van Camp, Inc v. Heinz India Private Limited*, FAO(OS) No. 488/2010 wherein the Division Bench upheld the judgment and held that proprietor of a registered trade mark cannot sue for infringement if the use of the Trade Mark by the defendant falls within the exceptions carved out in Sections 30 and 35 of the Act. Stokley filed a SLP against the decisions of the Single Judge and the Division Bench, being SLP (C) No. 8016/2011, the SLP was dismissed, however, the question of law was left open.

- 9.3 Vardhaman Choksi applied for the registration of the Trade Mark '**SOCIAL HOUSE**', on 08.11.2011, *vide* Application No. 2230483, under Class 43. Vardhaman Choksi relies on the invoices issued since 20.11.2011 bearing the Trade Mark '**SOCIAL HOUSE**', to establish its prior use of the Trade Mark '**SOCIAL HOUSE**'. In *Tata Sons Ltd. v. Manoj Dodia & Ors.*, CS (OS) No. 264/2008, this



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Court vide judgment dated 28.03.2011 has held that when a trade mark is used on an invoice issued for selling the goods, it does indicate connection between the goods being sold under the invoice and the trade mark which the invoice bears, and therefore, amounts to use of the mark in relation to the goods, which are sold under that invoice. In 2014, there was a massive fire at the premises of Escobar, the restaurant of Vardhaman Choksi, which was reported extensively in the media. Because of the said fire, a lot of material and evidence, qua the use of the Mark '**SOCIAL HOUSE**', could not be retrieved by Vardhaman Choksi.

- 9.4 Impresario has admittedly opened its first outlet under the Mark 'SOCIAL' in the year 2014, which is after 3 years of the continuous and uninterrupted usage of the Mark '**SOCIAL HOUSE**', by Vardhaman Choksi. Vardhaman Choksi launched and owns Asia's largest bar since 2009 named Escobar in Mumbai, which boasts a bar longer than 77 feet and is one of the major attractions in Mumbai, Maharashtra and has acquired immense popularity among the celebrities and general public. The Mark '**SOCIAL HOUSE**', has been extensively used for hosting events at night in Escobar and has come to be exclusively associated with the tailored nights attended by various celebrities and covered by media channels for publicity.



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‘SOCIAL HOUSE’ events garnered enthusiasm among the partygoers and socialites in a short span of time. As a result, the profits of ‘ESCOBAR’ lounge rose substantially from FY 2011-2012 onwards. The right of Vardhaman Choksi as a prior user will override those of the subsequent user, even though it has been accorded registration of its Trade Mark. The rights of the proprietor who was first to the market have been recognised in the judgments in *Neon Laboratories v. Medical Technologies*, (2016) 2 SCC 672, *Victoria Foods Pvt. Ltd. v. Rajdhani Masala Co. & Ors.*, CS (Comm) 108/2021 judgment dated 01.09.2021, *The Timken Company v. Timken Services Pvt. Ltd.*, CS (OS) No. 3/2010 judgment dated 30.05.2013, *Cadila Healthcare Limited v. Cadila Pharmaceuticals Ltd.*, AIR 2001 SC 1952 and *S. Syed Mohideen vs. P. Sulochana Bai*, AIR 2016 SCC 683.

- 9.5 The present Appeal is a quintessential example of how Vardhaman Choksi, sought to be stifled under the garb of intellectual property by Impressario. Impressario has gone to the length of even calling Vardhaman Choksi, a ‘Rank Trade Mark Squatter’ and submitting a list of all the Trade Marks that have been applied by Vardhaman Choksi, without an iota of relevance to the case. Impressario itself has registered known international brands like ‘JAGERBOMB’, ‘LA VA LA VA’, ‘SANGRIA’, amongst many others. The First Mark applied by Impressario with the word ‘SOCIAL’ was ‘SOCIAL MOCHA’. In fact, the Impressario’s adoption of the mark ‘MOCHA’ itself



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is in bad faith as the brand is prior owned by McDonalds and has been challenged vehemently by the same. Impressario is deliberately trying to mislead this Court by diverting the attention from Vardhaman Choksi's prior use and registration by mudslinging Vardhaman Choksi and repeatedly alleging Trade Mark squatting which is not true and is also irrelevant to the issue in the Appeal and the Rectification Proceedings.

- 9.6 The idea of prefixing and / or suffixing the Trade Mark 'SOCIAL' with particular area of the city and / or any other interesting suffix and / or prefix in which the café would be located is copied from Mr. Jason Atherton, who first implemented and launched 'Pollen Street Social' and has obtained a Trade Mark registration for the same and it has been running since the year 2010, much before Impressario started its restaurant business with the suffix 'SOCIAL' and the same idea is blatantly copied by Impressario and falsely implicating that the idea is unique and coined by Impressario.
- 9.7 Impressario has sought to rectify the Register of Trade Marks and to remove Vardhaman Choksi's Mark ' **SOCIAL HOUSE** ', for non-use. Vardhaman Choksi used the Mark ' **SOCIAL HOUSE** ', continuously for seven years, from 2011 to 2018, and only ceased using it due to the litigation initiated by the Petitioner and orders passed thereunder. The Supreme Court in *Hardie Trading* (supra) has held that removal for non-use shall only be



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in cases where there is a clear intention to abandon the trade mark. At no point did Vardhaman Choksi abandon the Mark **‘SOCIAL HOUSE’**, in fact, Vardhaman Choksi has always intended to continue using it. This is clearly demonstrated by the fact that Vardhaman Choksi utilised the Mark **‘SOCIAL HOUSE’**, for a significant duration of seven years and has been actively engaged in litigation since 2018 to protect its rights over the mark. The importance of the Mark **‘SOCIAL HOUSE’**, to Vardhaman Choksi is further evidenced by his persistent efforts to secure it, as seen from the filing of the Rectification Petitions against Impressario and the substantial time and money invested in these legal proceedings. Vardhaman Choksi’s actions unequivocally illustrate the value placed on the Mark **‘SOCIAL HOUSE’**, and the intent to maintain its use and protection.

9.8 Actions taken pursuant to ongoing litigation and court orders cannot be construed as abandonment of the Mark **‘SOCIAL HOUSE’**, or as having no intention to use it in the future. The principle of safe distance applies to parties in ongoing litigation and / or those enjoined by the Courts and thus, Vardhaman Choksi has adhered to this principle in its conduct. Vardhaman Choksi remains committed



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to protecting its rights over the Mark

‘**SOCIAL HOUSE**’, and intends to resume its use once the legal proceedings are resolved.

- 9.9 Section 47(3) of the Act carves out an exception to non-use. The circumstances of the present case fall under the category of special circumstances in the trade as contemplated under Section 47(3) of the Act. As a result, the standard time period of 5 years and 3 months for non-use of the Mark ‘**SOCIAL HOUSE**’, has not expired, considering the impact of the pandemic and the associated delays. Thus, Vardhaman Choksi’s right to the Mark ‘**SOCIAL HOUSE**’, remains intact, and the period of non-use should not be held against Vardhaman Choksi during these unprecedented times as has been held in *Hardie Trading* (supra) and *Ace Technologies Corp and Ors v. Communication Components Antenna Inc.*, 2023 SCC OnLine Del 2082.

**SUBMISSIONS ON BEHALF OF THE REGISTRAR OF TRADE MARKS:**

10. The learned Counsel for the Registrar of Trade Marks submitted that the Registrar of Trade Marks is a formal party and will abide by any Order passed by this Court.



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### ANALYSIS AND FINDINGS:

11. The learned Senior Counsel for Impressario submitted that Impressario adopted the Mark 'SOCIAL' in the year 2012 and has since expanded its chain of restaurants under the Impressario's Marks pan India. In order to protect its proprietary rights, Impressario has obtained Trade Mark registrations for various Marks with the Mark 'SOCIAL' either in a standalone manner or as a prefix or as a suffix, some of which are the Impressario's Marks which have been challenged in the Rectification Petitions and even though Impressario is the subsequent adopter, it is still the only *bona fide* user. The Impressario's Marks which have been challenged in the Rectification Petitions are not generic Marks but are rather Suggestive. The existence of various Marks comprising of common elements of Impressario's Marks will only help the case of Vardhaman Choksi if he is able to show substantial use of the same.

12. The learned Senior Counsel for Impressario further submitted that the Mark '**SOCIAL HOUSE**', has never been used by Vardhaman Choksi with respect to the goods and service it was registered for and therefore, is liable to be cancelled and removed from the Register of Trade Marks under Section 47 of the Act. No special circumstances in the trade as envisaged under Section 47(3) of the Act have been demonstrated by Vardhaman Choksi for non use of the Mark '**SOCIAL HOUSE**'. Further, Vardhaman Choksi is a Trade Mark squatter who routinely adopts Well-Known Trade Marks, without *bona fide* intent and uses it for obtaining unfair advantage.



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13. *Per contra*, the learned Counsel for Vardhaman Choksi submitted that ‘SOCIAL’ is a generic term and Impressario cannot have the monopoly to use the Mark ‘SOCIAL’ with respect to restaurant services. The Mark ‘SOCIAL’ is common to trade and there are a lot of other companies using the Mark ‘SOCIAL’ for various goods and services. Vardhaman Choksi is also the prior user and received prior registration of the Mark ‘**SOCIAL HOUSE**’, and has been using the same for hosting events at his club ‘ESCOBAR’ in Mumbai and has produced bills using the Mark ‘**SOCIAL HOUSE**’, as evidence of use.

14. It was further submitted by the learned Counsel on behalf of Vardhaman Choksi that Vardhaman Choksi is not a squatter of Trade Marks as has been alleged by Impressario, instead, it is Impressario who has copied the idea of using the Mark ‘SOCIAL’ in a standalone manner or as a prefix or suffix, from various International brands. Further, Vardhaman Choksi was using the Mark ‘**SOCIAL HOUSE**’, continuously from 2011 to 2018, and only stopped using it considering the ongoing litigations between Impressario and Vardhaman Choksi, thus, the present case falls in the category of special circumstances in the trade and therefore the Mark ‘**SOCIAL HOUSE**’, falls within the exception of non-use laid down under Section 47(3) of the Act.

15. From the averments made in the Appeal and the Rectification Petitions and the evidence on record, Impressario has been able to prove that Impressario is the registered proprietor of Impressario’s Marks. Due to its



long and extensive use, Impressario has also been able to demonstrate and prove the goodwill and reputation in respect of Impressario's Marks.

16. Impressario has been using the Impressario's Marks continuously and uninterruptedly at least since the year 2014. Impressario has been expanding its foothold in the hospitality industry. Impressario has earned considerable goodwill and reputation in India which is evident from the enormous revenue earned by Impressario since FY 2014-15. The total turnover for Impressario from dealing under goods and services under the Impressario's Marks in FY 2024-25 was ₹5,89,39,00,000/-. Impressario has also spent a large amount of money as promotional expenditure between the FY 2014-15 and 2024-25, the promotion expenditure of Impressario in the FY 2024-25 was ₹29,19,00,000/- and has led to the Mark 'SOCIAL' becoming synonymous with Impressario alone.

17. In the Imagination Test, it must be determined that when a consumer comes across the trade mark, any imagination or mental leap is required to form an association between the mark and the product. When some level of imagination or mental leap is required then the mark is suggestive. This Court in the judgment of *Teleecare Network India Pvt. Ltd. v. Asus Technology Pvt. Ltd.*, 2019 SCC OnLine Del 8739, held that the category of suggestive marks refers to those marks which are neither exactly descriptive on the one hand, nor truly fanciful on the other. A term is suggestive if it requires imagination, thought and perception to reach a conclusion as to the nature of the goods, further a Mark maybe generic qua certain businesses, however, but not across the board for all businesses or trades or industries. The Mark 'SOCIAL' with respect to the hospitality industry has become associated with Impressario and is not generic for the hospitality industry.



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18. The use of the Mark 'SOCIAL' with respect to hospitality services is not generic and therefore, the judgment in the case of *Delhivery Private Limited* (supra) will not help the case of Vardhaman Choksi. Existence of various Marks containing elements common to those of the Impressario's Marks will only help the case of Vardhaman Choksi if he was able to show substantial use of those Marks as has been held in *Corn Products* (supra).

19. A perusal of Section 47 of the Act would reveal that a registered Trade Mark is liable to be taken off the Register of Trade Marks, if the registered Mark is not used for a period of five years and three months prior to the date of filing of the Petition. This has been laid down in Section 47(1)(b) of the Act.

20. Vardhaman Choksi has never used its registered Mark 'SOCIAL HOUSE', with respect to the services for which it was registered in Class 43, instead, Vardhaman Choksi has admitted in his pleadings that the Mark 'SOCIAL HOUSE', was used for certain events at night at its restaurant named 'ESCOBAR'. Arranging and conducting of entertainment events comes under the ambit of Class 41 and not under Class 43. It is settled law that to establish use of a Mark, the use of the Mark must be with respect to the goods and services in respect of which it was registered. This view has been consistently upheld in the judgments of *Russell Corp* (supra) and *Kiranakart Technologies* (supra).

21. Impressario has placed on record the documents to prove the continuous use of Impressario's Mark with respect to the goods and services for which it was registered. The adoption of the Impressario's Mark has been proved to be *bona fide*. Vardhaman Choksi is admittedly the prior



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registrant of the Mark '**SOCIAL HOUSE**', however, he has not been able to show any genuine use of the Mark '**SOCIAL HOUSE**', with respect to the services it had obtained the registration.

22. The exception of special circumstances in the trade as has been carved out in Section 47(3) of the Act contemplates a situation where a registered proprietor can defend its rights over a Trade Mark despite non-use of the Trade Mark. For the exception under Section 47(3) to be applicable, the registered proprietor must show that special circumstances in the trade did not allow him to use the trade mark with respect to the goods or services for which it was registered. The exception of special circumstances in the trade include either a statutory or regulatory bar against the use of the registered Mark and not to any intention to abandon or not to use the trade mark in relation to the goods or services to which the application relates. As has been in the judgment of *Akteibolaget Jonkoping* (supra) that special circumstances in the trade include situations where non-use of a registered mark is due to external forces and not due to voluntary act or omission on the part of the trader. Special circumstances in the trade must be special circumstances for all the goods in those particular goods. Special circumstances in the trade shall be some external force, distinct from voluntary acts of an individual.

23. Vardhaman Choksi has pleaded that he has stopped using the Mark '**SOCIAL HOUSE**', as a precautionary measure considering the multiple litigations between Impressario and him and the ongoing litigations



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between the Parties is the special circumstance due to which he is not using the Mark ‘**SOCIAL HOUSE**’, but he does not have the intention of abandoning the Mark ‘**SOCIAL HOUSE**’, and has constantly used the Mark ‘**SOCIAL HOUSE**’, between 2011 and 2018. It has been held in the judgment of *Financiare Batteur* (supra) that imminent threat of cancellation of Mark upon its registration is not a special circumstance in the trade under Section 47(3) of the Act.

24. In the context of non-use, it is the settled legal position that use must be genuine use in the relevant class of goods and services. Unless the non-use is explained by way of special circumstances in the trade, the Mark would be liable to be removed for non-use. In the present case, no special circumstances have been cited and, in these facts, the Mark ‘**SOCIAL HOUSE**’, is liable to be removed on the ground of non-use itself. Under Section 57 of the Act, if any Trade Mark is wrongly remaining on the Register of Trade Marks, the same would be liable to be rectified. In the present case, it has been observed that there is no use of the Mark ‘**SOCIAL HOUSE**’, with respect to the relevant services it was registered for, and Vardhaman Choksi has been unable to substantiate special circumstances in the trade for non-use thereof and therefore, the Mark ‘**SOCIAL HOUSE**’, is wrongly remaining on the register of Trade Marks and is liable to be cancelled.



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25. Facts in the present case suggest a pattern of Trade Mark squatting by Vardhaman Choksi. As no genuine use of the Mark ‘**SOCIAL HOUSE**’, with respect to the services for which it was registered has been demonstrated by Vardhaman Choksi. Impressario has produced a list of over a hundred internationally recognised Trade Marks that Vardhaman Choksi has registered in India, with no corresponding use of the same. The evidence points towards Vardhaman Choksi being a squatter of Trade Marks. Vardhaman Choksi’s approach of applying for Marks identical to globally renowned Marks reflects a deliberate practice of Trade Mark squatting. This manipulative tactic entails adopting, seeking registration of, or even securing registration for Trade Marks linked with established brands, with the calculated intent of later selling these rights at a premium to the genuine Trade Mark proprietors. Such conduct undermines the sanctity of the Trade Mark Register and highlights the necessity to uphold and protect the rights of *bona fide* proprietors. Accordingly, the Mark ‘**SOCIAL HOUSE**’, is liable to be rectified from the Register of Trade Marks.

### CONCLUSION

26. In view of the above analysis, it is directed that:

- i. The Appeal C.A.(COMM.IPD-TM) 12/2023 is allowed and the Registrar of Trade Marks is directed to remove the Impugned Trade Mark, ‘**SOCIAL HOUSE**’, registered under Trade Mark Application No. 2230483, in Class 43, from the Register of Trade Marks. The Appeal and the pending Application stand disposed of.



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ii. The Rectification Petitions being C.O.(COMM.IPD-TM) 72/2021, C.O.(COMM.IPD-TM) 93/2021, C.O.(COMM.IPD-TM) 96/2021, C.O.(COMM.IPD-TM) 98/2021, C.O.(COMM.IPD-TM) 194/2021, C.O.(COMM.IPD-TM) 212/2021, C.O.(COMM.IPD-TM) 264/2021, C.O.(COMM.IPD-TM) 269/2021, C.O.(COMM.IPD-TM) 283/2021, C.O.(COMM.IPD-TM) 333/2021, C.O.(COMM.IPD-TM) 406/2021, C.O.(COMM.IPD-TM) 47/2022, C.O.(COMM.IPD-TM) 135/2022, C.O.(COMM.IPD-TM) 150/2022, C.O.(COMM.IPD-TM) 152/2022, C.O.(COMM.IPD-TM) 197/2022, C.O.(COMM.IPD-TM) 200/2022, C.O.(COMM.IPD-TM) 254/2022, C.O.(COMM.IPD-TM) 259/2022, C.O.(COMM.IPD-TM) 284/2022, C.O.(COMM.IPD-TM) 552/2022 and C.O.(COMM.IPD-TM) 681/2022 are dismissed.

27. A copy of the Judgment is directed to be sent to the Trade Mark Registry at e-mail: [llc-ipo@gov.in](mailto:llc-ipo@gov.in) for necessary compliance.

**TEJAS KARIA, J**

**APRIL 10, 2026**

*'AK'*