



An issue of concurrent user resolved through settlements. Here the dispute involves use of the mark THEOS. Both Plaintiff and Defendants are using mark involving the word 'THEOS'. While defendant is a popular chain of cafes all across India with prominent presence of 81 outlets in Mumbai itself and are the prior adopter and user of the impugned Marks (THEOBROMA and variants) since 2004; Plaintiff too are offering restaurants services in Delhi-NCR region under the mark since 2008. Both parties claimed goodwill and reputation.

Court carefully considered extent of the business and commercial activities of both the parties and observed that an amicable resolution of the disputes between the parties ought to be explored. Inter alia, the following terms of settlements were agreed by the parties:

- i. Plaintiff recognised and acknowledged Defendant as the owner and proprietor of the mark 'THEOBROMA';
- ii. Plaintiff agreed not to use the mark or name 'THEOBROMA' (belongs to defendant) in any manner whatsoever, either in respect of any products of its manufacture, or sale, or any other services;
- iii. Defendant no longer objects to the use of the mark 'THEOS'/'THEO'S' in respect of its goods and services, by the Plaintiff so long as plaintiff restricts its business activities to the Delhi-NCR region;
- iv. Defendant to restrict the use of the mark/name 'THEOS'/'THEO'S' per se only for 5 food items offered by it;
- v. Plaintiff restricted from making online sales outside Delhi-NCR region under the mark/name 'THEOS'/'THEO'S'. For sale outside Delhi-NCR, plaintiff have to use a prefix or a suffix along with 'THEOS'/'THEO'S' for such expansion, which is not identically or deceptively similar or does not create confusion with 'THEOBROMA';
- vi. Defendant retains all its trademark registrations for 'THEOBROMA' and its registered variants and derivatives, including 'THEOS' and

shall also be entitled to protect and take all enforcement-related steps and opposition-related actions to safeguard its rights in these names and marks;

- vi. Applications or registrations of the said marks by Plaintiff shall be geographically restricted to the Delhi-NCR region;
- vii. Neither party shall oppose each other's marks or object to the same, in any manner, so long as the same are in compliance with the terms of this settlement;
- viii. Defendant is free to expand its outlets under the mark/name 'THEOBROMA' across the country. Plaintiff shall be restrained to the Delhi-NCR region, insofar as its goods and services provided under the mark/name 'THEOS'/'THEO'S' is concerned.

Theos Food Pvt. Ltd. & Ors vs. Theobroma Foods Pvt. Ltd.

This is a case of copyright infringement and injunctions where Plaintiff alleged infringement of literary work in Urdu language titled as "Islami Taleemat" series of books part I to VIII. Defendant contested the suit claiming that content of the book is not the original thoughts or words of author or anyone else in the world instead are the basic tenets and principles of Islam which neither can be altered nor substituted with any other thought, ideology or principles. Ld. Court cited findings of Hon'ble Supreme Court in R. G. Anand Vs. M/s. Delux Films & Ors., [1979 SCR (1) 218] and held that in fact there cannot be any copy rights on word "Islam or studies", and some contents are bound to be similar as teaching given in the Holy Books Quran and Hadees and other religious text related to Islam. Religion are bound to be same in all books which are about teaching on Islam. Nobody can have copyright on these teachings which are written in the Holy Books Quran and Hadees or other Islamic books.

Islamic Book Service (P) Ltd. vs. Sh. Abdur Rauf Najeeb Bakali

Delhi High Court have directed MEITY to block 3 websites through ISPs due to infringement of Plaintiff's trademarks KOO (with Bird device). Plaintiff has 2 mobile apps namely, "Vokal" and "Koo" and domain name www.kooapp.com which are micro-blogging platform available in several Indian languages; and have good reputation due to the large social media following and downloads. Plaintiff also runs a scheme "Koo Coin" to reward its active users. This trademark 'KOO' (BIRD device) is registered trademark in multiple classes.

Defendants, who are related parties according to plaintiff, have launched a deceptively similar website www.koo.money which is a block chain based market place, where buyers and sellers can carry out transactions involving digital goods and assets. Defendants are openly using Plaintiff's 'KOO' (BIRD device) and also have launched a mobile application "Koo Network". This 'Koo Network' is a severely criticised app with a low rating. Defendant is also micro blogging application through an application "Koo Tweet Social Media" wherein defendants have hosted copyright violative content of third parties.

Bombinate Technologies Private Limited vs. Koo Coin And Others