

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

+ **CS (OS) 1407/2004**

Pronounced on: 1.12.2009

INFOSYS TECHNOLOGIES LTD.

.....Plaintiff

Through: Ms. Neha Kapoor, Advocate

Versus

BYTES INFOSYS INDIA PVT. LTD.

.....Defendant

Through: Nemo

**CORAM:**  
**HON'BLE MR. JUSTICE S. RAVINDRA BHAT**

- |    |                                                                           |     |
|----|---------------------------------------------------------------------------|-----|
| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to Reporter or not?                                        | Yes |
| 3. | Whether the judgment should be reported in the Digest?                    | Yes |

**HON'BLE MR. JUSTICE S.RAVINDRA BHAT (OPEN COURT)**

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1. The plaintiff has filed the present suit seeking the reliefs for permanent injunction against the defendants from filing any trade mark application for the mark "Infosys" or "Infy" and from passing off their goods and/or services and/or business by manufacturing, marketing, selling, advertising, directly or indirectly dealing in goods/services under the trade mark/name "Infosys" as if they were those of the plaintiff and an order of delivery-up of the infringing material by the defendants as well as a claim for damages and an order for rendition of accounts of profits illegally earned by the defendants. On 10th December, 2004 an *ad interim ex-parte* injunction was granted in favor of the plaintiff and against the defendants.

2. By order dated 20.07.2009 the defendants were set down *ex-parte* and in the circumstances the plaintiff was directed to file its *ex-parte* evidence by way of affidavit; further, the interim injunction granted by order dated 10.12.2004 was confirmed. The plaintiff has filed its evidence by way of an affidavit of Shri Utham Chengappa K.G., its constituted attorney, which is exhibited as Ex. PW-1/A. In this view, for the purposes of adjudication on the present case, only the facts averred by the plaintiff in the suit and proved through affidavit by way of evidence are required to be considered.

3. The facts established on record show that the plaintiff was incorporated as a Company under the Companies Act, 1956 on 2nd July, 1981 as “Infosys Consultants Pvt. Ltd.” in the State of Maharashtra. The plaintiff shifted its base to Karnataka in the year 1992 and changed its claim to “Infosys Technologies Pvt. Ltd.” on 21st April, 1992. Subsequently, the name was further changed to Infosys Technologies Ltd. on 2nd of June, 1992 when the plaintiff became a public company. The expression “Infosys” at all material times was and still is the key, essential prominent and principal part of the corporate and trade name of the plaintiff since its inception in the year 1981. The plaintiff is engaged in the business of *inter alia*, software development, customized software development, e-commerce, remediation, maintenance of software systems, etc. The softwares developed by the plaintiff are of excellent quality and acclaimed world-wide.

4. The plaintiff has coined and adopted the expression "Infosys" in the year 1981 and has extensively used the said expression since its inception. The plaintiff is listed with the leading stock exchanges of the country as well as the NASDAQ. Further the plaintiff's trademark/service mark is proved to have been registered by the plaintiff in various classes in over 20 countries; it is also a well-known trade mark as defined under section 2 (1) (zg) of the 1999, Act. In India, the trademark has been registered towards various categories of goods since 15th July, 1987. The copies of trademark registration certificates in the plaintiff's favour are collectively exhibited as Ex. PW-1/2. The plaintiff has also proved the validity of the registrations which are stated to have been renewed from time to time and are subsisting and in force in favor of the plaintiff even at present.

5. To prevent any confusion and protect its registered trademark from infringement the plaintiff, from time to time, published various caution notices in leading newspapers and journals in 1996, 1999, 2000, 2004 and 2007. The plaintiff has extensively spent, for sales, promotional and marketing expenses a sum in excess of Rs. 24869 crores under the said trade mark. In para 14, the deposition testifies about the plaintiff's achievements, on various dates, in various world events, and the awards of excellence earned by it.

6. It is stated that on 15.11.2002 the plaintiff discovered that the defendants were carrying on a business of Information Technology Service Provider of C-DAC, networking and hardware solutions, corporate training under the said expression, i.e. "Infosys" being an essential part of their corporate name, through a newspaper advertisement circulated by the defendant, which is on record as Ex. PW-1/3. A "cease and desist" notice was issued to the defendants on 09.12.2002, that is placed on record as Ex. PW-1/4. Since the defendants did not comply with the plaintiff's request, a reminder was issued to them on 13.03.2003, a copy of which is placed on the record as Ex. PW-1/5. A third "cease and desist" notice was issued to the defendants on 29.07.2004, which is placed on record as Ex. PW-1/6.

7. The plaintiff has adequately established on record that the expression 'infosys' due to substantial continued, extensive and open use since 1981 i.e. for over two decades, combined with the quality of goods/services offered under this trademark and name that by extensive sales promotional efforts has become distinctive of the plaintiff in the eyes of the consumers. The plaintiff also acquired the exclusive right to use the trademark 'Infosys' by virtue of the above-noticed registrations under the provisions of the Trade and Merchandise Marks Act, 1958 and the corresponding provisions of the Trademarks Act, 1999.

8. In support of their case the plaintiff relies upon a judgment of this court which was it i.e. *Infosys Technologies Ltd. v. Park Infosys and Ors.*, 2007 (34) 178 (DEL). The facts alleged and grounds taken are similar to those in the present case. The defendants there were also using the expression "Infosys" as a prominent part of their business/trade name and domain name. After noticing various provisions of law and relevant precedents the court, in that matter held as under:

*“27. The trade mark 'Infosys' is certainly associated distinctively with the business and trade of the plaintiff. The pre-fix by the defendant of the word "Park" before the trademark 'Infosys' is certainly of no significance in as much as the word 'Infosys' is distinctive of the business and trade of the plaintiff. There can be no manner of doubt that use by the defendant is likely to result in confusion and the same has propensity of diverting customers and business of the plaintiff to the defendant. It is well settled that honesty and fairplay are required to be the basic policies in business and trading and no person has any right to carry on his business in such a way as would lead the public into believing that the goods or services belonging to someone else are his or associated therewith. The service range of the defendant is also similar to that of the plaintiff. In this view of the matter, I am of the considered view that the plaintiff is entitled to a decree for injunction as prayed for.*

9. The facts and legal position averred by the plaintiff in this case are closely similar to what were before the Court in that case. There the defendants were using the expression “Park Infosys” and more prominently “Infosys” in respect of their goods and services as a part of their trademark and corporate name. In this case the defendants are marketing their services under the business name “Bytes Infosys India Pvt. Ltd.”, they are using “Infosys” as a salient part of the expression. By promoting their services under that expression the defendants are most certainly trading on the goodwill which the plaintiff has acquired in its trade by delivering quality services and undertaking extensive brand building exercises. There is nothing on record to suggest that the defendants could have *bona fide* hit upon the same expression “Infosys” in relation to the same or similar products and services. The mark is a coined phrase, and has acquired a strong secondary meaning, connecting it with the plaintiff’s services. The facts revealed to this Court are sufficient to hold that the defendants are indulging in infringement of the plaintiff’s trademarks, with the attendant confusion. There is no reason why this Court should deviate from what was held in that case. The plaintiff has obtained similar relief in the past in another action

initiated by it against one “Marwari Infosys Pvt. Ltd.” in CS (OS) No. 783/2007. The plaintiff is thus, held entitled for a decree of injunction as is claimed.

10. On the question of damages it is settled that the assessment of damages has to be based on cogent evidence furnished for the purpose. In its additional evidence by way of affidavit the plaintiff has not provided any record of the business procured by the defendants as being detrimental to the business of the plaintiff nor has it annexed a statement of loss of profits suffered by it on account of business diversion due to the defendants using the mark. All that is stated by the plaintiff is that the profits made by the defendants by misappropriating the goodwill and reputation, as well as on account of business diversion is the loss suffered by the plaintiff and that as it has no access to the accounts of the defendants, it is unable to assess the profits made by them. In *Park Infosys* (supra), the court after noticing the observations of the Court in *Microsoft Corporation v. Yogesh Popat and Anr.* 118 (2005) DLT 580, *The Heels v. V.K. Abrol and Anr.* CS (OS) No. 1385/2005, *Hindustan Pencils Ltd. v. Aparna Enamel Industries* 131 (2006) DLT 65 and *Hero Honda Motors Ltd. v. Shree Assuramji Scooters* 125 (2005) DLT 504 and discussing the reasoning of the Court in detail and distinguishing the facts and law cited in those cases from the case for consideration before the Court, held as under:

*“42. Upon a consideration of the plaint and the affidavit by way of the evidence filed before this court, I find that the plaintiff has failed to prove either the profits derived by the defendant from its illegal activities or such sales record to establish the loss which has resulted to the plaintiff by establishing a decline in the value of its business or a fall in the percentage increase in the business as compared to preceding years. The only material which has been placed by the plaintiff on record is the value of its international sales over different years. Bald figures without even an assertion of loss or diminution in business and without any submission in this behalf do not establish the essential features noticed above which would have entitled the plaintiff to damages. Therefore, while holding that the defendants cannot be permitted to continue with its illegal activities, however, I find that no award of damages can be made in favor of the plaintiff.”*

The Court is entirely in agreement with the above observations, in the previous case (supra); the plaintiff cannot claim anything more than costs of these proceedings.

11. In view of the above discussion, the suit is entitled to succeed in so far as the claim for permanent injunction is concerned. Accordingly, the suit is decreed in terms of Para 28 (i), (ii) and (iii); with costs. Counsel's fee is quantified at Rs.25,000/-. Let decree be drawn in these terms.

December 01,2009

**(S.RAVINDRA BHAT)**

**JUDGE**