

. * HIGH COURT OF DELHI : NEW DELHI

+ CS (OS) No.1070/2005

Frankfinn Aviation Services Pvt. Ltd. Plaintiff
Through : Mr. Ajit Nair, Adv. with Mr. Dheeraj, Adv.

Versus

Akash Gupta Defendant
Through: None

Judgment reserved on: 10th December , 2009
% Judgment decided on : 22nd December, 2009

Coram:

HON'BLE MR. JUSTICE MANMOHAN SINGH

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | No |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

MANMOHAN SINGH, J.

1. The plaintiff filed the aforesaid suit against the defendant on the basis of advertisement published by the defendant in the newspaper HT City of Hindustan times (Delhi edition) dated 3rd August, 2005 in which the defendant has allegedly made a false, misleading, disparaging and defamatory statement against the plaintiff which harms/injure the plaintiff's reputation and business interest as well as mislead the public especially the existing and prospective students and their parents.

2. The plaintiff is a company incorporated under the Companies Act, 1956 having its registered office at 721, Suneja Tower-

II, Dist. Centre, Janak Puri, New Delhi-110058. The suit has been filed by Mr. Arun Kumar, Manager (Operations) of the plaintiff company who is authorized to sign and institute the present suit on behalf of the plaintiff company by board resolution passed in his favour on 26th May, 2005 which is exhibited as Ex.PW-1/1.

3. The plaintiff provides training in aviation, hospitality and travel industry. It is running a chain of institutes under the name and style of “Frankfinn Institute of Airhostess Training” and has 43 centres all over the country constituting the largest network of Airhostess training centres in the country.

4. It is stated that the plaintiff company trains the students about the detailed functioning of an aircraft and has leased a real Airbus A-300 Aircraft for the said purpose. The training includes all the aspects of in flight services including door handling, use of emergency oxygen masks, using life jackets, escapes chutes, ditching, serving passenger besides familiarizing the students with a cockpit and cargo sections of the Aircraft. BBC World, Financial Times and other international news channels in UK and USA have given a wide spread coverage to the institute of the plaintiff. The Limca Books of Records, 2005 has also acclaimed about the achievements made by the institute of the plaintiff.

5. The plaintiff submits that its institute is very popular amongst the students aspiring to join the aviation, hospitality and travel industry and is endorsed by well-known celebrity, Ms. Soha Ali Khan Pataudi who is its Brand Ambassador. The plaintiff published several advertisements in leading newspapers across the country stating that 70

of its students have been selected by SpiceJet Airline.

6. The defendant is also engaged in the same trade i.e. providing training in the aviation and hospitality industry and is running its centre under the name and style of “AHA” (Air Hostess Academy). The alleged defamatory statements made by the defendant in the issue of HT City of Hindustan Times (Delhi Edition) dated 3rd August, 2005 are reproduced hereunder :

	ANY IN-FINN-SHIN INSTITUTE
In-Flight and Airport exposure	They provide training in a stationed aircraft, which is useless, as for cabin crew to have real hands-on training, the plane must take off.
Brand Ambassador	They have to resort to using celebrities, as they have no real successes to speak of.
Placements	You will not disagree that the only criteria to choose any educational institute is its placement percentage and not numbers. All tall claims are hollow unless supported by placement percentages (Eg. : If 70 students are placed, the question arises, out of how many students – 6000 or 7000?)

7. The plaintiff stated that no other institute in the country including that of the defendant has real aircraft to provide training similar to that of the plaintiff. The plaintiff contended that the defendant’s claim to provide in-flight exposure to its students is misleading, in as much as, the students are taken on a flight just like any passenger and are not provided any practical training.

8. The plaintiff claims that the defendant by publishing false

and defamatory advertisement is trying to injure the reputation and goodwill of the plaintiff by adopting unfair and unethical trade practice and is trying to mislead the public at large. The impugned advertisement has injured the trade interest of the plaintiff and is likely to cause damage/grave injury to the plaintiff. On account of the damage caused to the reputation and goodwill on account of the impugned advertisement, the plaintiff has quantified damages at an approximate amount of Rs.1 crore.

9. The defendant filed the written statement contending that the plaintiff has not come before this court with clean hands as it has suppressed relevant and material facts from the court. It is stated that there is another suit bearing No.464/2004 which has been filed by the defendant against the plaintiff for a decree of permanent injunction, restraining the plaintiff from taking out and/or printing any advertisement with any reference to the Air Hostess Academy (AHA) in any form or manner by any newspapers, publications, banners and hand bills. There is also other suit CS (OS) No.1127/2003 which was filed by the defendant against the NGO set up by the plaintiff SAUVEUR for restraining it from taking out and publishing any defamatory statements against the defendant's institute AHA.

10. The defendant submits that in both the abovesaid suits, the plaintiff was restrained from taking out and publishing any defamatory advertisement in the newspapers using the name of the firm of the defendant.

11. The defendant further submits that its institute Air Hostess

Academy (in short 'AHA') is a reputed institute and a pioneer in the field of imparting training to students/personnel in the field of Aviation and Hospitality Industry. It is the first and only Academy of its kind in the Aviation and Hospitality Industry to have ISO9001 certification.

12. The plaintiff is the competitor of AHA and is running a training institute which also imparts training to students/personnel in the field of aviation industry.

13. It is contended that despite the restraint orders against the Plaintiff in the abovementioned suits, the plaintiff in contempt of this court's order continued publishing defamatory and derogatory reference of the defendant for which a CCP No.89/2005 has also been filed by the defendant.

14. The defendant denied of making any statement as allegedly stated in the plaint in the advertisement which are defamatory and/or have been published with a view to harm and/or injure the plaintiff's reputation and business interests and/or to mislead the public, especially the existing and prospective students and their parents.

15. The defendant admitted of publishing an advertisement in HT City of Hindustan Times (Delhi Edition) on 3rd August, 2005 but claimed that it only reflects the message that the institute of the defendant trains its students in real flying conditions and has tried to convey this fact in its advertisement.

16. The defendant also denied that it has made any defamatory and malicious remarks against any one, in particular the alleged Brand

Ambassador of the plaintiff. It submits that it has only highlighted the fact that it does not need to use high celebrities to sell its services and that it was proud of its record and that its students were its Brand Ambassador. The defendant contended that by the impugned advertisement it has only compared the basis of its services with those of the other institutes which make tall and false claims in their advertisements.

17. The plaintiff in its replication denied that the NGO SAUVEUR has been set up by the plaintiff or has any connection with it. It is submitted that by orders dated 4th May, 2004 and 24th May, 2004 in CS (OS) No.464/2004, no restraint orders were passed against the plaintiff. In fact, the plaintiff was granted leave to publish its advertisement as per specimen shown and approved by this court.

18. On the basis of the pleadings of the parties, the following issues were framed by the court on 24th March, 2006 :

- “1. Whether the plaintiff is entitled for a decree of injunction as prayed ? OPP
2. Whether the plaintiff is entitled for a decree for recovery of Rs.1 crore ? OPP
3. Whether the plaintiff is entitled for interest, if so, on what amount, for what period and at what rate ? OPP
4. Whether the advertisement dated 3rd August, 2005 Annexure P1, is defamatory, misleading and disparaging, if so, to what effect ? OPP
5. Relief.”

19. The plaintiff in support of its case examined three witnesses namely Mr. Arun Kumar, Mr. Rajesh Arora and Mr. Manish Singhal by

filing their evidence by way of affidavit.

20. Mr. Arun Kumar, PW-1 (Manager-Operations of the Plaintiff company) filed his evidence by way of affidavit exhibit PW 1/A. He has reaffirmed statements made in the plaint in his affidavit and quantified the damages at an approximate value of Rs.1 crore on account of loss to the plaintiff company.

21. PW-2 Mr. Rajesh Arora s/o Sh. D.N. Arora R/o 8/49 Ramesh Nagar, New Delhi and PW-3 Mr. Manish Singhal, s/o late Sh. M.K. Singhal, r/o C 502 Prince Apartments, I.P. Extension, New Delhi-92 who are franchisee of the plaintiff company also in their affidavit supported the case of the plaintiff.

22. To deal with the rival contentions of the parties, I shall first deal with issue No.4 which relates to the question whether the advertisement dated 3rd August, 2005 published in the HT City of Hindustan Times is defamatory, misleading and disparaging to the plaintiff's institute.

23. There are various decisions of this Court wherein the test of comparative advertisement on the law of disparagement has been discussed and proved holding that a promoter of a product is not entitled to defame the goods of another manufacturer in the garb of comparative advertising. It was held in **Reckit & Colman of India Ltd. Vs. Kiwi T.T.K. Ltd.; 1996 PTC (16)** that :

- “I) A tradesman is entitled to declare his goods to be best in the world, even though the declaration is untrue.
- II) He can also say that my goods are better than his competitors' goods even though such statement is untrue.

- III) For the purpose of saying that his goods are the best in the world or his goods are better than his competitors' he can even compare the advantages of his goods over the goods of others.
- IV) He, however, cannot while saying his goods are better than his competitors', say that his competitors' goods are bad. If he says so, he really slanders the goods of his competitors. In other words he defames his competitors and their goods, which is not permissible.
- V) If there is no defamation to the goods or to the manufacturer of such goods no action lies, but if there is such defamation an action lies and if an action lies for recovery of damages for defamation, then the court is also competent to grant an order of injunction restraining repetition of such defamation."

24. In view of settled law that though a manufacturer/tradesman is entitled to declare that his goods are best in the world and may also compare his goods with his competitors elaborating the advantages of his goods over the goods of others, he cannot defame or disparage the goods of another manufacturer/trader and if he does so, the aggrieved trader would be entitled to seek relief including the relief of damages for defamation and a prohibitory injunction.

25. It cannot be denied that the defendant by the impugned advertisement has, while comparing his services, to some extent has declared his competitor's services i.e. the plaintiff, in bad light. The defendant has used the words "useless" for training provided in a stationed aircraft while showing the benefit of its in-flight and airport exposure. The plaintiff trains the student in stationed aircraft and has also leased a real Airbus A-300 for the said purpose, therefore, the defendant by using the words 'useless' for providing training in stationed aircraft has clearly defamed the plaintiff's services.

26. Similarly, the defendant has used the words ‘no real successes’ while comparing the training provided by other competitor’s and referring to brand ambassadors endorsed by them. This also defames plaintiff as the institute of the plaintiff is endorsed by Ms. Soha Ali Khan who is its brand ambassador and a well known celebrity. Although, the defendant has not mentioned the name of the plaintiff directly, however, the way the said advertisement is given, makes it clear that the same relates to the plaintiff and no one else. Therefore, the defendant cannot wash away his hands by saying that it does pertain to the plaintiff. Similar point has been decided in the case of **Karamchand Appliances (P) Ltd. Vs. Sh. Adhikari Brothers & Ors. 2005(31)PTC 1.**

27. In view of settled law, I am of the considered opinion that the advertisement dated 3rd August, 2005 by the defendant is defamatory and disparaging to the plaintiff’s services to the extent when it contains the words ‘useless’ and ‘ no real successes’. The defendant can not in any way be allowed to use the same while comparing/stating the advantages of its services and disparaging the services of the plaintiff. The issue No.4 is decided accordingly.

Issue No. 1

28. In the above circumstances, the plaintiff, is entitled for the decree of injunction. The defendant is permanently restrained from using the words ‘useless’ and ‘ no real successes’ and/or any other words in its advertisement which in any way disparages or defames the products of the plaintiff or injure the goodwill and reputation of the

plaintiff.

Issue No. 3 & 4

29. As the defendant is permanently restrained from using any statement in the advertisement which are defamatory and/or harm the plaintiff's reputation and goodwill, the prayers of the plaintiff with regard to recovery of Rs 1 crore and interest for quantified damages is rejected being not proved.

30. The suit is accordingly disposed of. The plaintiff is entitled to costs. Decree sheet be drawn accordingly.

MANMOHAN SINGH, J

DECEMBER 22, 2009

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