

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

+ C.S. (OS) No.393 of 2008

Judgment pronounced on 16.05.2011

TATA SONS LIMITED Plaintiff
Through: Mr. Achuthan Sreekumar, Advocate.

Versus

D. SHARMA & ANR. Defendants
Through: NEMO

CORAM:-

HON'BLE MR JUSTICE MANMOHAN SINGH

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

MANMOHAN SINGH, J (Oral)

1. The plaintiff has filed the present suit for permanent injunction restraining the defendants from infringement of trademark, passing off, damages rendition of accounts and delivery up.

2. Along with the suit the plaintiff has also filed the application for interim injunction being I.A. No. 2672/2008 under Order 39 Rule 1 and 2. The suit as well as the application was firstly listed before the court on

29.02.2008 and the court passed the interim order relevant portion of which reads as under:

“that the defendant No.1 shall not use the domain name TATAHIRE.COM or any other domain name which includes the plaintiff’s registered mark TATA. The defendant No.1 is also restrained from using any email address which incorporates the word TATA in respect of any goods or services that the defendant No.1 may be providing to his customers. The defendant No.2 is directed to freeze the domain name TATAHIRE.COM and prevent it from being transferred and/or sold to a third party pending adjudication till further orders from this court.”

3. The defendants were served however no one appeared on behalf of the defendants and they were proceeded ex parte vide order dated 01.08.2008. The plaintiff was given time to adduce the ex parte evidence by way of affidavit. The plaintiff adduced the ex parte evidence by way of two affidavits. One of them was that of Mr V. Gurumoorthi (exhibit PW-1/A). The Board Resolution in his favour is filed as exhibit PW-1/1.

4. The case of the plaintiff is that the plaintiff company is duly incorporated under the Companies Act, 1913, and has its registered office at Bombay House, 24 Homi Mody Street, Mumbai 400001. A copy of the Certificate of Incorporation of the company has been filed which is marked as exhibit PW-1/2.

5. The first TATA Enterprise was founded by Jamshedji Tata over 100 years ago with a textile mill in Central India. Over the years, TATA enterprises entered various fields of commercial activities as can be seen from the list of various incorporated companies. A copy of the TATA Compendium for the year 2002-2003 showing the financial performance and activities of the various group companies of the TATA Group is filed and the same is marked as exhibit PW-1/3.

6. The details of the enterprises promoted by the plaintiff company as part of the TATA Group are given in the TATA Group Corporate Profile, copy of which has been filed on record as exhibit P-1/4.

7. The fame and reputation of the TATA trademark in India has further been recognized by the then Prime Minister of India, Shri Atal Behari Vajpayee in his letter wherein he states:

“It was the legendary late JRD Tata who brought in the concept of ‘brand name’ in the Indian mindset and the very word ‘Tata’ inspired confidence in any product or service offered to the consumer”.

8. In addition to the reputation and goodwill, the plaintiff company is also the proprietor of several trademarks comprising or containing the word TATA in Class 35, the relevant class for the purpose of the present suit. A table detailing its registrations in India in class 35 is given below:

Trademark	Reg./App. No.	Date	Class	Description of goods
TATA [®]	1236890	16.09.2003	35	Advertising, Business and online retail services, business information, Direct mail, Advertising, organization of exhibitions for commercial or advertising purposes, publication of publicity texts, public relations, opinion polling, business administration, business management
TATA & Device [®]	1247045	31.10.2003	35	Advertising, Business and On-Line retain services, Business information, Direct Mail, Advertising, Organization of exhibitions for commercial or advertising purposes, publication of publicity texts, Public relations, opinion polling, Business administration, business management and office functions falling in Class 35

9. The certified photocopies of the certificate of registration of the plaintiff's trademarks in Class 35 have been filed and marked as exhibit PW-1/5.

10. Another affidavit of evidence filed on behalf of the plaintiff company to adduce the evidence is that of Mr Gurjot Singh wherein he has stated that he is the head of the I.T. Department and he has downloaded various extracts from the websites from the internet.

11. The defendant No.1 is the Registrant of the impugned domain name <TATAHIRE.COM> and is engaged in the services of a personnel recruitment agency. The defendant No.2, Melbourne IT Ltd. to be the Sponsoring Registrar of the impugned domain name. Printouts from the defendants' website <TATAHIRE.COM> has been filed on record and the same are marked as PW-1/6.

12. In the month of February 2008 the plaintiff company was informed by one of its group companies about the receipt of e-mails from various job seekers informing about the activities of defendant no.1. The defendant No.1 had sent these job seekers mails through its email: resume@tatahire.com. A copy of the search result showing the defendant

no.2 to be the registrant of the domain name is filed herein and marked as exhibit PW-1/7.

13. The additional affidavit of Mr. V. Gurumoorthi, constituted power of attorney of plaintiff company has also been filed.

14. The certified true copy of the power of attorney in favour of Mr V. Gurumoorthi, constituted Attorney of the plaintiff company, filed in *Tata Sons Ltd. v. Shri Vimal Kumar Sharma & Ors. (Suit No. 388 of 2001)* is marked as exhibit PW-1/8.

15. The documents evidencing the business activities of the plaintiff carried out in New Delhi are marked as exhibit PW1/9. The copy of the certificate of details of sharing of expenses of the New Delhi office of Tata Services Ltd. is marked as exhibit PW-1/10. The certificates of the details of the property owned by the plaintiff company within the territorial jurisdiction of the Delhi High Court are marked as exhibit PW-1/11.

16. The copy of the pass book entries indicating existence of a bank account of the plaintiff in the State Bank of India, Parliament Street, New Delhi is proved as exhibit PW-1/12.

17. The copies of the TATA Brand Equity and Business Promotion Agreement entered between the plaintiff company and Tata Teleservices

and Statements certifying the existence of other such agreements between the plaintiff company and other companies of the TATA Group Companies are collectively exhibit as PW-1/13.

18. In order to support his submissions, the plaintiff has filed various judgments passed by this court on similar circumstances wherein the defendants are restrained from using the mark TATA in any manner. The list of those cases is as under:

1. CS(OS) No. 842/2002, judgment dated 06.04.2009
2. CS(OS) No. 1836/2006, judgment dated 27.10.2009
3. CS(OS) No. 1837/2006, judgment dated 19.11.2009
4. CS(OS) No. 232/2009, judgment dated 28.03.2011

19. The plaintiff has also filed list of well known trademarks issued by the Trade Mark Registry in the year 2011 wherein the plaintiff's trade mark TATA as well as the letter 'T' in CIRCLE house mark have been mentioned as well known trade mark within the meaning of Section 22(b) of the Trade Mark Act.

20. In view of the judgments passed by this court in various cases referred by the learned counsel for the plaintiff, no doubt, it is clear that the TATA is a well known trade mark and the defendant No.1 has intentionally,

deliberately and with mala fide intention adopted and used the mark TATA in relation to their business. It further appears that the defendant No.1 was aware about the goodwill and reputation of the trade mark of the plaintiff. There is no other explanation given by the defendant to adopt the trade mark TATA. The defendant did not even appear after the service and no written statement was filed by the defendant. Even the plaintiff witnesses were not cross-examined by the defendant, therefore, the evidence produced by the plaintiff by affidavit of Mr V. Gurumoorthi and Mr Gurjyot Singh have gone un rebutted.

21. Under these circumstances, in the absence of anything contrary to the statement made in the plaint, the suit of the plaintiff is decreed. The plaintiff is entitled for permanent injunctin as prayed in para 22 of the plaint. The suit of the plaintiff is accordingly decreed in terms of para 22 (a), (b) and (c) of the plaint. The decree sheet be drawn accordingly. The plaintiff would also be entitled for costs as well as the punitive damages amounting to Rs. 2 lacs awarded in favour of the plaintiff and against the defendant.

MANMOHAN SINGH, J

MAY 16, 2011

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