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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CS(OS) 605/2008

% ***Judgment Delivered on: 05.07.2011***

TATA SONS LIMITED Plaintiff
Through : Mr. Dhruv Anand, Mr. Achuthan
Sreekumar and Mr. Reuben Cheriyan,
Advs.

versus

T. JAVED AHMED Defendant
Through : None.

CORAM:
HON'BLE MR. JUSTICE G.S.SISTANI

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

G.S.SISTANI, J. (ORAL)

1. The plaintiff has filed the present suit for permanent injunction to restrain the infringement of their trademark 'TATA' by the defendants who are operating under the trade name/mark, 'TATA MONEY' and for passing off, damages, rendition of accounts and delivery up.
2. Despite service none appeared on behalf of the defendant and, accordingly, the defendant was proceeded *ex parte* on 18.8.2008. The plaintiff has filed an affidavit by way of evidence of Mr. V. Gurumoorthi, PW-1. Mr. V. Gurumoorthi has identified his signatures at points A and B on the affidavit and also tendered in

evidence documents i.e. Exhibits PW-1/1 to PW-1/17 filed along with the affidavit. Mr. V. Gurumoorthi has exhibited the certified true copy of the Power of Attorney as Ex.PW-1/1.

3. As per the plaint, the plaintiff company, established itself in the year 1917 as a body corporate, is the principal investment holding company of the TATA Group, which is India's oldest, largest and best known conglomerate, with a turnover of over Rs.2,51,543/- crores for the financial year 2007-2008. The TATA Group has been ranked 6th in the list of World's 50 Most Innovative Companies by Business Week for the year 2008. Further, TATA brand has also been ranked 57th amongst top 100 brands worldwide, listed by Brand Finance, an independent company focused on the management and valuation of brands.
4. The following documents pertaining to the "well known" status, reputation and goodwill enjoyed by the plaintiff company have already been exhibited along with the evidence by way of affidavit of Mr. V. Gurumoorthi, the Constituted Attorney of the plaintiff company:
 - (a) Ex.PW-1/3 – Message dated 18th July, 1998 from the then Hon'ble Prime Minister of India, Shri. A.B. Vajpayee on the 93rd Birth Anniversary of Late Shri J.R.D. Tata.
 - (b) Ex.PW-1/4 – Certificate of the Padma Bhushan conferred on Shri Ratan Tata by His Excellency, the President of India in March 2000.

- (c) Ex.PW-1/5 – Brochure pertaining to write-up on a postage stamp commissioned in Honour of Late Shri J.R.D. Tata in 1994.
- (d) Ex.PW-1/6 – A copy of a ‘brief note’ on activities of various group companies belonging to the House of TATA
- (e) Ex.PW-1/7 – Extracts from newspaper, articles and magazine write-ups pertaining to the House of TATA.
- (f) Ex.PW-1/8 – Group brochure of TATA along with financial highlights.
- (g) Ex.PW-1/10 – Order passed by this Hon’ble Court in Tata Sons Ltd. v. Mr. Suresh Jain & Ors.; CS(OS)No.1922 of 2003 recognizing TATA as a well-known trademark.
- (h) Ex.PW-1/11 – Order dated 26th September, 2005 passed by the Hon’ble High Court of Sind at Karachi protecting the trademark TATA
- (i) Ex.PW-1/12 – Pamphlet issued by the Trademarks Registry showing TATA as a well-known trademark.

5. Learned counsel for the plaintiff while relying on the documents submits that the trademark of the plaintiff TATA is a “well known” mark enjoying a high reputation and goodwill and has acquired pre eminent excellence, expansive reputation and goodwill without boundaries of classification. Counsel has drawn the attention of the Court to the judgment dated 6.4.2009 passed in CS(OS)No.842/2002 titled as **Tata Sons Ltd. v. A.K. Chaudhary & Ors.**, by virtue of which, this Court was pleased to pass a decree awarding damages to the tune of Rs.10.00 lakhs in favour of the plaintiff. Learned

counsel for the plaintiff has also relied upon a copy of write-up dated 24.5.2009 titled "T for trust" appearing in "The Week" magazine acknowledging the plaintiff as the world's Eleventh most reputed company.

6. Learned counsel for the plaintiff submits that since inception in the year 1917 the plaintiff company has been continuously and consistently using the trademark and trade name TATA, which is a rare patronymic name possessing the distinctiveness of an invented word, for its own business activities and those of companies promoted by it. The use of the trademark and name TATA by the plaintiff's predecessors in business dates back to 1868. The name TATA has consistently been associated with, and exclusively denotes the conglomeration of companies forming the TATA group, colloquially also referred to as the "House of TATA". The trademark TATA has become highly distinctive in character and the plaintiff is its proprietor by virtue of priority in adoption, long, continuous and extensive use and advertising and its consequent reputation. Counsel submits that the House of TATA consists of over 100 companies of which over 50 companies use TATA as a key and essential part of their corporate name.
7. Learned counsel for the plaintiff submits that in addition to the common law rights that have accrued to the plaintiff it is also the registered proprietor of several TATA-formative trademarks in relation to various goods across various classes. Certified true

copies of the 'Certificates of Registrations' and a copy of extracts from the 'Trade Marks Journal' of the plaintiff's trademarks in Class 36 have already been exhibited as Ex.PW-1/9. Further, original certificate for use in legal proceedings for the registered trademark numbers 1236891, 1247046, 1269212, 1466072, 1425192, 1502952, 1425190 and 1425191 in Class 36 have been filed on 12th January, 2009.

8. Learned counsel for the plaintiff submits that sometime during March, 2008, the plaintiff was informed by one Mr. Jayakumar, a resident of Chennai, about defendant's recruitment advertisement in "Deccan Chronicle", one of the leading local dailies in Chennai under the name TATA MONEY. The plaintiff subsequently authorized a quick investigation of the defendant which confirmed the involvement of the defendant in infringing/illegal activities. Counsel for the plaintiff has further averred that the defendant's trademark is phonetically and visually identical to the plaintiff's trade mark. Counsel also submits that thereafter the plaintiff instituted the present suit against the defendant, who was operating in services related to life insurance and credit cards under the name TATA MONEY and an order of *ex parte ad interim injunction* was passed by this Court in favour of the plaintiff on 4.4.2008. On 4.4.2008, this Court also appointed a Local Commissioner to visit the premises of the defendant. As per the report of the Local Commissioner, which has been exhibited as DW-

1/17, the following articles were found in the premises of the defendant:

- (a) Approximately 40 business cards of the defendant bearing the name TATA MONEY;
- (b) Approximately 110 letter heads of the defendant bearing the name TATA MONEY;
- (c) Approximately 400 single sided literature on the insurance awareness programmes offered by the defendant bearing the name TATA MONEY;
- (d) A seal bearing the TATA MONEY mark;
- (e) Various client profile forms; and
- (f) Two bill books.

9. Learned counsel for the plaintiff has also relied upon the extracts of original newspaper containing defendant's advertisement bearing the trade mark/name TATA MONEY (Ex.PW-1/13); printout of e-mails that the plaintiff company received from Mr. Jayakumar informing about defendant's advertisement in the "Deccan Chronicle" under the trademark/name TATA MONEY (Ex.PW-1/14); photographs of defendant's premises carrying the billboard bearing the trademark/name TATA MONEY (Ex.PW-1/15); and original business card as received from the defendant (Ex.PW-1/16). Plaintiff has prayed that the present suit be decided.

10. I have heard learned counsel for the plaintiff, perused the evidence of Mr. V. Gurumoorthi, PW-1, and the documents, which have been

exhibited. The suit has been instituted by the duly constituted Attorney of the plaintiff. A copy of the Power of Attorney has been exhibited as PW-1/1, thus, the suit has been filed by duly authorized person.

11.Learned counsel for the plaintiff relied upon the judgment dated 6.4.2009 titled as **Tata Sons Ltd.** (supra) whereby the Hon'ble Court was pleased to acknowledge TATA as a 'well known' trademark. I have carefully gone through the judgment of the learned Single Judge and respectfully agree with the same. The use of the trade mark TATA by the defendant amounts to infringement under section 29 of the Trade Marks Act, 1977 as the said trade mark cannot be appropriated by any party in relation to any merchandise goods/ services /trade name.

12.I am also satisfied that the trade mark TATA of the plaintiff is a well known mark enjoying a high reputation and goodwill all over the world and TATA companies are engaged in a wide spectrum of activities using the trademark TATA and the said trademark has come about to be exclusively recognized as a source indicator of the goods and business of the plaintiff and the use of an identical trade name by the defendant will create confusion and deception in the minds of the purchasing public and members of the trade who will be misled into hiring the services of the defendant.

13.The defendant's mark wholly contains the plaintiff's trade mark and is phonetically and visually similar and can cause damage to the

plaintiff's well known trade mark by not only causing confusion but also by taking advantage of the good will of the legendary name TATA and reducing or diluting the power of the plaintiff's trade mark to indicate the source.

14.I am satisfied that the adoption and use of the impugned trade mark or name TATA Money by the defendant is deceptively similar to the plaintiff's 'well known' trade mark 'TATA' and is a blatantly dishonest and mala fide attempt by the defendant to derive unfair advantage by creating an impression that its products emanate from the plaintiff or have some connection, nexus, association, affiliation with or endorsement from the plaintiff.

15.I am also satisfied that the use of plaintiff's trademark or name TATA by the defendant amounts to false trade description under sections 101 and 103 of the Trade Marks Act, as it is likely to lead persons to the mistaken belief that the services that are provided by the defendant are actually being provided by the plaintiff.

16.In the case of ***Time Incorporated v. Lokesh Srivastava***, reported at 2005 (30) PTC 3 (Del), the Court has recognized third type of damages as punitive damages apart from compensatory and nominal damages. The Court has held that:

"The award of compensatory damages to a plaintiff is aimed at compensating him for the loss suffered by him whereas punitive damages are aimed at deterring a wrong doer and the like minded from indulging in such unlawful activities..."

"This Court has no hesitation in saying that the time has come when the Courts dealing actions for

infringement of trademark, copy rights, patents etc. should not only grant compensatory damages but award punitive damages also with a view to discourage and dishearten law breakers who indulge in violations with impunity out of lust for money so that they realize that in case they are caught, they would be liable not only to reimburse the aggrieved party but would be liable to pay punitive damages also, which may spell financial disaster for them."

17. In view of the fact that the evidence of the plaintiff is unrebutted and having regard to the loss of business reputation and goodwill of the plaintiff in the market, this Court is of the view that Rs.5.00 lakhs can be reasonably awarded to the plaintiff as compensatory damages, besides another sum of Rs.5.00 lakhs as punitive/exemplary damages as well as damages on account of loss of reputation and damages to the goodwill. The suit of the plaintiff is accordingly decreed in terms of para 21 (i), (ii) and (v) of the plaint. The defendant is directed to destroy the goods/blocks/dies/stationery/print out material bearing the trade mark TATA within eight weeks from today. Let decree sheet be drawn up accordingly.

IA NOS.4051/2008 (O 39 R 1 & 2).

18. Application stands disposed of in view of the order passed in the suit.

JULY 05, 2011
'msr'

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