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

+ CS(OS) 1742/2007

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***Judgment dated 17.04.2012***

TIMES INTERNET LTD.

..... Plaintiff

Through : Mr.K.Datta and Mr.Atul Singh, Advs.

versus

JONATHAN S. AND ANOTHER

..... Defendants

Through

**CORAM:**

**HON'BLE MR. JUSTICE G.S.SISTANI**

**G.S.SISTANI, J (ORAL)**

1. Plaintiff has filed the present suit for permanent injunction, restraining infringement of trademark, domain name, copyright, passing off, damages, unfair trade practice and delivery up.
2. Summons were issued in the suit on 24.9.2008. Defendant no.2 entered appearance on 11.2.2008. Thereafter none has been appearing on behalf of defendant no.2 although written statement was filed on behalf of defendant no.2. The defendants were proceeded *ex parte* on 25.8.2011. Plaintiff has filed the affidavit by way of evidence of Mr.Ranbir Singh, Head Legal of the plaintiff company, which is exhibited as Ex.PW-1/A.
3. PW-1 has deposed that he is the Head Legal of the Plaintiff Company and Principal Officer and is authorized to institute any suit or other legal proceedings in any Court of law on behalf of the Plaintiff. Board Resolution dated 01.11.2010 is exhibited herewith as **Exhibit PW 1/1**. He has further deposed that the Plaintiff, M/s. Times Internet Ltd., is a company registered under the provisions of the Companies Act, 1956, He

next deposed that the plaintiff is a company of the well known and established Times of India Group of Companies.

4. PW-1 has further deposed that M/s. Bennett Coleman & Co. Ltd. is the promoter company of M/s. Times Internet Ltd., the plaintiff, entered the field of e-commerce about a decade back. He has further deposed that the e-commerce field was entered into by M/s. Bennett Coleman & Co. Ltd. under the Trade Name/Logo of “Indiatimes” and for this purpose the said company created a portal named “indiatimes.com”. PW-1 has also deposed that it developed an internet site “http.www.indiatimes.com” and through this site, the said company started offering to the public a large variety of goods and services and internet shopping, online games, internet options, shopping and gifts including inter-alia sale of fresh flowers, numerous gift items, e-cards etc. It is next deposed that the Trademark and Logo “Indiatimes” was coined by M/s. Bennett Coleman & Co. Ltd. as the said company is the owner of numerous publications such as the Times of India, The Economic Times, Navbharat Times, Delhi Times, Bombay Times etc. popularly known as the Times Group publications, and its name is associated with the said Trademark/Logo. He has also deposed that M/s. Bennett Coleman & Co. Ltd., therefore, became the legal and beneficial owner throughout the world of all copyrights, intellectual property rights, design rights and trademarks in the said mark and logo “Indiatimes”. Internet printout of Domain name registration through ‘Whois Lookup’ showing ‘indiatimes.com’ creation date as 22.11.1999 has been exhibited as **Exhibit PW 1/2**.
5. This witness has further deposed that in course of time the website “Indiatimes.com” acquired an extensive reputation amongst the people at large and numerous persons started availing of the services and purchasing goods through the said website for a variety of goods,

including, flowers, gifts, sweets, cakes etc. He has also deposed that the e-commerce business run through the website/portal [www.indiatimes.com](http://www.indiatimes.com) acquired a place of prestige in the market and developed a huge reputation that has multiplied manifold and generates huge revenues. It is next deposed that the millions of people started visiting the website for availing of various services namely, internet shopping, email etc. It is also deposed that the plaintiff receives more than 30,000,000 (Thirty Million) SMS's a month, 1,000,000,000 (one Billion) eyeballs a month, and does a business of Rs. 60,000,000 (Sixty Million) worth of online shopping every month at the said website and has 13,000,000 (Thirteen Million) registered users. It is further deposed that the Plaintiff Group (The Times of India Group) has also ventured into television and initiated a TV Channel under the trade name 'Zoom'.

6. PW-1 has further deposed that in view of the huge expansion of the e-commerce business M/s. Bennett Coleman & Co. Ltd. assigned its internet business including its website/portal "indiatimes.com" to the plaintiff Company. PW-1 has also deposed that only for the said purposes, under an agreement dated 01.04.2000, the management of M/s. Bennett Coleman & Co. Ltd., got incorporated the "Times Internet Limited," as a going concern, whereby the plaintiff company became the owner/proprietor of the entire internet/e-commerce business, inter alia, under the name "indiatimes.com" previously belonging to M/s. Bennett Coleman & Co. Ltd. Resolution dated 21.12.1999 of M/s. Bennett Coleman & Co. for transfer of Company's internet business as a 'going concern' to Times Internet Ltd. and the Agreement dated 01.04.2000 between M/s. Bennett Coleman & Co. and Times Internet Ltd. have been exhibited as **Exhibit PW 1/3 & PW 1/4**.

7. This witness has next deposed that the plaintiff has and continues to incur

huge costs for development, designing and maintenance of the website/portal and on the advertisement etc. of the website/portal and the products and services offered through it. It is also deposed that by way of illustration it may be stated that the plaintiff has incurred the following, amongst others, costs/expenditure in this respect.

**Development and designing and indulgence costs**

|                           |                    |
|---------------------------|--------------------|
| August 1998 to July 1999  | Rs. 25,592,111.00  |
| August 1999 to March 2000 | Rs. 43,579,103.00  |
| April 2000 to March 2001  | Rs. 84,912,968.00  |
| April 2001 to March 2002  | Rs. 84,267,854.00  |
| April 2002 to March 2003  | Rs. 60,733,278.00  |
| April 2003 to March 2004  | Rs. 105,480,748.00 |
| April 2004 to March 2005  | Rs. 151,314,105.00 |
| April 2005 to March 2006  | Rs. 260,355,373.00 |

8. PW-1 has deposed that the Logo of the plaintiff “indiatimes” is written in a unique and distinctive style, and it also has a unique layout, colour scheme and arrangement of features and it constitutes an original artistic work. PW-1 has further deposed that the plaintiff is the first person to use the said artistic work within the meaning of section 2 (c) of the Copyright Act and, therefore, the plaintiff is the owner of the said artistic work and has got exclusive rights to reproduce the same. It is also deposed that the plaintiff has now refurbished the entire service package with a new look and feel to make it contemporary which is more user friendly and more

appealing to the 'generation next'. It is next deposed that the plaintiff has also re-launched its email services with the state of art technological features and a much easier user interface with unlimited space and have ever since its inception managed/continued to be a leader in all its endeavors. Internet printout of illustrative art works pertaining to 'indiatimes' have been exhibited as **Exhibit PW 1/5 to PW 1/10**.

9. PW-1 has further deposed that the name/mark "indiatimes" has been associated with the plaintiff exclusively and the mere mention of "indiatimes" immediately signifies the services and products marketed by the plaintiff through its e-commerce website. The name/mark "indiatimes" belongs to the plaintiff and no one else has the right to use the said name/mark or any deceptively similar and misleading variation thereof in relation to any product or services whatsoever. PW-1 has also deposed that since this name/mark is completely identified with the plaintiff and in view of the fact that products/services marketed under this mark stand for the highest quality, best prices/bargains and authenticity, and the adoption of this mark for any purpose by any other party is illegal and unlawful. PW-1 further goes on to state that on the home page of the plaintiff there is a link "myindiatimes" which provides the user with a unique feature of making his customized page by adding contents of his choice and removing contents not required by him and in this way the utility and value of the site can be enhanced by the user to suit his needs. Internet printout of 'indiatimes.com' home page with 'myindiatimes' pages have been exhibited as **Exhibit PW 1/11 & PW 1/12**. Internet printout of 'indiatimes.com' (US EDITION) home page has been exhibited as **Exhibit PW 1/13**.

10. PW-1 further deposed that the name/mark "indiatimes" has no dictionary meaning in India or elsewhere and is a coined name/word/mark created,

invented and developed by the Bennett Coleman & Co. Ltd. in view of the unique position of the Times of India Group of companies and its various publications/trademarks such as the Times of India, Economic Times, New Bharat Times, etc. which use combination of words, prominent therein being “Times” & “India” being an invented mark and is entitled to the highest level of protection just like any other invented mark or rare name etc. He further deposed that the group has a history of such brand names comprising of conjoined words of daily use though their continuous and regular use.

11. It further deposed by PW-1 that the website of the plaintiff [www.indiatimes.com](http://www.indiatimes.com) offers the visitors to the website a large variety of services like e-mail, business solutions for both B2B and B2C modes and internet shopping, online games, internet options, shopping and gifts including express delivery of flowers, gifts etc. The e-mail service is known as “indiatimes e-mail” and also holds internet polls on matters of daily importance known as “indiatimes” polls, “my times my voice” etc. which are very popular across all genres and the website also has complete details of all the services i.e. rules of the programmes that could be down loaded by the person(s) visiting the website. He next deposed that the plaintiff has made various applications for registration of its trade marks, such as, “indiatimes.com”, “8888” (short code), “indiatimes.Meramail”, “indiatimes.Chat”, “indiatimes.Astrospeak”, “indiatimes.Movies”, “indiatimes.Egreetings”, “indiatimes.Hotspot(s)”, etc. to name a few, for registration under the Trade and Merchandise Marks Act as per details filed and exhibited as **Exhibit PW 1/14**. The plaintiff has adopted the name/mark “indiatimes” as a trade Mark, and also a domain name on the internet. Mr. Ranbir Singh has also deposed that with the rapid advancement in technology and with the advent of the

internet, the traditional methods of doing business have changed, the manufactures, traders and service providers today advertise their products and services on the internet in order to sell their wares/services.

12.PW-1 further deposed that in order to be able to have easy access for the consumers, each and every manufacturer, trader or service provider is allotted one or more names by which the consumer can access the information relating to the said manufacturer or service provider and such a name is called “Domain Name” and it works as the ‘identity card’ for a trade name of an organization. He next deposed that a domain name is nothing but the name which is registered with a domain name registering authority and there are several domain names registering authorities in the world, out of which, one such registering authority is Network Solutions Inc. I further state that the plaintiff has registered its domain name as “indiatimes.com”, effective from 22/11/1996. He also deposed that there are several series of domain names that are registerable today on the internet, of which each of the series ends with a different suffix namely “.com, .org, .net, .co, .tv”, etc. being the TLDs (top level domains) and likes of “.in, .pak, .au” as CCLDs (country code level domains). It further deposed that any user on the internet in order to find information in relation to any company product or service prefixes the mark or corporate name with any, one of the suffixes and attempts to obtain information relating to the said product/service. For example, if one wishes to obtain information regarding the house of Tatas, any user will type in any of the following combination i.e. TATA.com, TATA etc.

13.PW-1 has deposed that predominantly, the trade mark or service mark of any entity is the same as its domain name which ensures that there is no confusion between what is advertised on the internet and the name/mark used in the market place. In view of this every

registering authority has framed its own rules and regulations by which they take a declaration from the person registering the domain name that the said name does not conflict or impinge upon anyone else's rights on the said mark. It is next deposed that inspite of such declaration in recent times there are a number of cases wherein well-known trade mark and famous marks have been illegally registered as domain names with ulterior motives. Few examples of illegally registered domain names which have been enjoined by Courts in India and abroad are "*Yahooindia.com*, *Citibankindia.com*, *JRDTata.com*, *RatanTata.com*, *Britishtelecom.co.uk*, *marksandspencer.co.uk*, *EscortsIndia.com*", etc. It next deposed that it is now well established by various judicial pronouncements in India and abroad that the illegal, unauthorized registration of any mark not belonging to the applicant as a domain name with a view to merely create confusion or with a view to attract business and/or with a view to hoard/traffic/cyber squat is completely illegal and unlawful and is liable to be enjoined.

14. In the affidavit, PW-1 has deposed that in July 2007, it came to the knowledge of the plaintiff that the defendant No. 1 has illegally and unlawfully, got registered the domain name <http://www.myindiatimes.com> in their own name and on making a search on the internet it was found that the registrar of the impugned domain is defendant no. 2 and the administrative, technical and billing contact is defendant no. 1. It is further deposed that the defendants being Indian residents and knowing the far reach and credibility of the Times group in the market has, with mala fide intentions blocked and squatted over the domain trade name "myindiatimes" by registering it in the name of the

defendant no. 1, with the sole intention of deceiving and defrauding the public at large and making big money, besides diluting the mark of the plaintiff. It is also deposed that on visiting the impugned website, it was found that it only says “site is under construction”. Internet printout of Domain name registration through ‘Whois Lookup’ showing ‘myindiatimes’ of Defendant No.1 is exhibited has been **Exhibit PW 1/15**. Internet printout of home page of ‘myindiatimes’ of Defendant No.1 has been exhibited as **Exhibit PW 1/16**.

15.PW-1 has further deposed that the plaintiff was shocked to find that the defendant no.1 had registered the said domain name without any authorization, permission or license by the plaintiff, whereas, the mark “indiatimes” is the property of the plaintiff and no one else, however, the registration whereof, has been granted unscrupulously by defendant no. 2. It is also deposed that the Defendants are seemingly hand in glove with each other and it is clear that the defendant no.1 does not have any legal right or locus with respect to the mark “indiatimes” or any mark deceptively similar thereto. The defendants being Indian are well aware of the reputation and the goodwill of the plaintiff’s “indiatimes” mark, and defendant No.1 obviously wishes to illegally, fraudulently and with ulterior motive encash upon the reputation of the said mark and it appears that defendant no.1 wishes to merely sell the domain name and make a profit. Internet printout of ‘whois search’ record of Defendant No.2 has been exhibited as **Exhibit PW 1/17**.

16.PW-1 has next deposed that the confusion is bound to take place in view of the fact that any user on the internet who wishes to gather information about the plaintiff’s product will invariably type in the words “indiatimes” for searching it on the internet and any person who comes across the domain name ‘myindiatimes.com’ would automatically believe that the

said domain name belongs to the plaintiff and thus causing confusion in the mind of the user. The defendant no.1 is only squatting on the said domain name deceptively similar to that of the plaintiff, and has got it registered only with ulterior motive and in bad faith, as has been the international trend of adding “my” to all popular websites, including Google and like many other websites. It is further deposed that the defendants are trying to cash in on this trend which is evident further from the fact that the link “my indiatimes” has been on the website of the plaintiff’s homepage and by copying the domain name of the plaintiff, the defendant no. 1 has ensured that confusion is created in the mind of the user that the defendants website is the website belonging to the plaintiff, which conduct of the defendants is malafide, clearly in bad faith and the only intention for the same could be to cash the reputation of the plaintiff. It is next deposed that immediately on coming to know of the said illegal activities of the defendants, the plaintiff through its advocates, got issued a legal notice dated 09.08.2007, calling upon defendant no.1 to refrain from the act of cyber squatting on the domain name of the plaintiff ‘indiatimes.com’ and transfer the domain name ‘myindiatimes.com’ in plaintiff’s favour. It is also deposed that the notice was served by E-mail as the registered notice has been received back with endorsement which is not legible, indicating that defendant no.1 has evaded its receipt, dummy name. Legal notice dated 09.08.2007 issued by the Plaintiff to Defendant No.1 alongwith postal record have been exhibited herewith as **Exhibit PW 1/18 to PW 1/21**.

17.PW-1 has also deposed that the defendant no.1 has not responded to the legal notice and the result is that the defendant no.1 has not made any change in the name of his website/domain name, which is the essential address/internet identification. It is further deposed that the Defendant

no.1 is merely using the domain name registration of “indiatimes.com” in order to trade in it and encash the same, which is obviously mala fide and it is obvious that defendant no.1 merely want to earn huge money/goodwill by using the domain name of the plaintiff, which in blatant violation of the plaintiff’s rights. It is next deposed that the defendants are fraudulent, dishonest, malafide and unlawful and are squatting upon the trade name of the plaintiff in bad faith and the Defendant no.1 has no right or locus standi, either to get registration under the domain name “http://www.myindiatimes.com” which is identical with and deceptively similar to that of the plaintiff’s domain name, or any other domain name which consists of the plaintiff’s mark or copyright name. It is also deposed that in fact, Defendant no.1 does not have any right or locus to use the mark “indiatimes” as part of their name in relation to any domain name, products, goods or services whatsoever. It is also deposed that the registration of the impugned domain name by defendant no.1 is only with a view to hoard/traffic/cyber squat in the internet which is completely unlawful and is clearly a “bad Faith” registration as defined in the ‘Uniform Domain Name Dispute Resolution Policy’ framed and adopted by the ICANN (Internet Corporation for Assigned Names and Numbers).

18.PW-1 has further deposed that the above policy under clause 4 (b) sets out the various circumstances in which the registration of a domain name is a bad faith registration, which are as under:

- a. Any circumstances which indicates that the applicant has registered or has acquired the domain name primarily for the purpose of selling, renting or otherwise transferring the domain name registration to the owner of the trade mark or service mark or to a competitor of the said owner for valuable consideration.*

- b. That the applicant has registered the domain name in order to prevent the owner of the trade mark or the service mark from reflecting the mark in a corresponding domain name.*
- c. That the applicant has registered the domain name primarily for the purpose of disrupting the business of a competitor*

*OR*

- d. By using the said domain name the applicant intentionally attempted to attract, for commercial gain, internet user to the applicant's website or any other online location by creating a likelihood of confusion with the owner's mark as to the source, sponsorship, affiliation or endorsement of the applicant's website or location or of a product or of a service on the applicant's website/location.*

19. It is also deposed by PW-1 that in the present case it is clear that the registration of the impugned domain name by the defendant is a bad faith registration as the defendant has manifested their fraudulent intentions to earn huge sums of money by merely using domain name of the plaintiff as per clause (d) above, thus, the registration of the defendant being in bad faith, disentitles of any right in law to remain as owners of the said domain name. It is further deposed that the Defendant's no.1 act apart from constituting infringement of the plaintiff's rights and further constituting passing off and infringement of copyright, are likely to result in dilution of the plaintiff's mark "indiatimes". It is next deposed that the defendants' illegal and unauthorized adoption of the impugned domain is also likely to result in dilution of the "indiatimes" mark as the plaintiff has no control over the use of the said domain name. PW-1 has further deposed that the defendants' use of the impugned domain name for any activity with which the plaintiff is not connected would result in blurring and tarnishing of the plaintiff's brand name, thus, such acts of dilution are also liable to be curbed immediately by an order of injunction by this Hon'ble Court. PW-1 has also deposed that the intentions of defendants

are fraudulent and malafide and are not willing to comply with the just and fair requisitions of the plaintiff and are further not willing to transfer the said domain name in the name of the plaintiff. It is also deposed the plaintiff has attempted to amicably resolve this dispute but defendants have no intention of complying with the just and fair requisitions of the plaintiff, the fact which is clearly evident from their conduct as explained above, thus the plaintiff is, therefore, constrained to approach this Hon'ble Court. PW-1 has also deposed that the Defendant no.1 by his illegal, dishonest and fraudulent actions has caused enormous harm and prejudice to the plaintiff and the illegal hoarding by the defendant of the domain name "myindiatimes" has resulted in huge pecuniary and other losses and has also impinged upon the reputation and goodwill of the plaintiff, for which Defendant no.1 is liable to pay exemplary damages, including but not limiting to Rs.10 lacs as compensatory damages and Rs.10 lacs as penal damages from defendant no. 1.

20. PW-1 has further deposed that the plaintiff is the owner of the trademark and the copyright in the "indiatimes" mark and logo; the plaintiff has and continues to expend huge sums of money over the last decade on the "indiatimes" mark; the plaintiff has made it one of the most famous marks today; it is number one in the country today and, thus, no one has the right to usurp the plaintiff's rights in the "indiatimes" mark and the Defendant no.2 cannot be allowed to maintain the registration of the impugned domain name in favour of defendant no.1 and is required to transfer it to plaintiff. He also deposed that the defendants' manner and approach has clearly revealed that the registration of the domain name of the defendant no.1, namely, "myindiatimes.com" is a bad faith registration made only to earn illegally and enormous prejudice would be caused to the plaintiff if an order of injunction is not granted against the defendants. It is also

deposed that the plaintiff has established a prima facie case, the balance of convenience is also in favour of the plaintiff and irreparable harm and injury would be caused if the defendants are not enjoined by an order of injunction.

21. I have heard learned counsel for the plaintiff and also perused the plaint, the accompanying documents and the evidence led by the plaintiff. The evidence of the plaintiff remained unrebutted. Defendant no.1 could not be served despite service through publication, citation and affixation. Defendant no.2 entered appearance on 11.2.2008 and filed his written statement, however, since none had been appearing on behalf of defendant no.2 since 24.11.2008, defendant no.2 was proceeded *ex parte*.

22. Learned counsel for the plaintiff has drawn the attention of the Court to exhibit PW-1/14 to show that the plaintiff has made various applications for registration of its trade marks such as , indiatimes.com, indiatimes.Chat, indiatimes.Astrospeak, indiatimes.Movies, indiatimes.Egreetings, indiatimes.music and others. The plaintiff has been able to establish that their website receives more than 30,000,000 SMS's a month; 1,000,000,000 eyeballs a month; does a business of Rs.60,000,000 worth of online shopping every month at the said website; and has 13,000,000 (Thirteen Million) registered users. The plaintiff has extracted in the plaint the amounts incurred in developing, designing and indulgence costs for the period 1998-2006. Plaintiff has also established that plaintiff is the first to use its logo indiatimes, which is written in a unique and distinctive style, it has a unique layout, colour scheme and arrangement of features and, thus, the said work is within the meaning of section 2 (c) of the Copyright Act and the plaintiff has got exclusive rights to reproduce the same. The evidence on record would also show that the name/trade mark indiatimes has been associated with the plaintiff

exclusively on account of its user, reputation, goodwill, product services and marketing and mere mentioning of indiatimes immediately signifies the services and products marketed by the plaintiff through its e-commerce website [www.indiatimes.com](http://www.indiatimes.com) and accordingly, none else has the right to use the said name/mark indiatimes which is completely identified with the plaintiff. Even otherwise the name/mark indiatimes has no dictionary meaning, it is a coined word, created invented and developed by M/s. Bennett Coleman & Co. Ltd. and, thus, it is entitled to the highest level of protection. It seems that the registration of domain name by defendant no.1 is without any authorisation, permission or license from the plaintiff and the registration is illegal without ulterior motives with a view to encash upon the reputation of the plaintiff.

23. Plaintiff has also claimed damages for loss of reputation, business and cost of proceedings. It is trite to say that the defendant has deliberately stayed away from the present proceedings with the result that an enquiry into the accounts of the defendant for determination of damages cannot take place. The infringement of the trademark of the plaintiff is not in dispute. Counsel for the plaintiff in support of his case has drawn attention of this court to a number of judgments [*M/s L.T. Overseas Ltd. v. M/s Guruji Trading Co. and Anr.* [CS (OS) No. 2711/1999; and *Relaxo Rubber Limited and Anr. v. Selection Footwear and Anr.*, 1999 PTC 578. Counsel has also placed reliance on *Time Incorporated v. Lokesh Srivastava and Anr.*, 2005 (30) PTC 3 (Del) where apart from compensatory damages of Rs.5 lakhs, punitive damages have also been awarded. Justice R.C. Chopra, has set out in *Time Incorporated's case (supra)* that punitive damages are founded on the philosophy of corrective justice.

24. Accordingly, present suit is decreed in terms of para 29 (a), (b), (d) and (e) of the plaint. Plaintiff would be entitled to damages to the tune of Rs.5.00 lakhs. Decree-sheet be drawn up accordingly.

**G.S.SISTANI, J**

**APRIL 17, 2012**

msr