

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
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+ **CS (OS) No. 488 of 2010 & IA No. 3448 of 2010 (u/O XXXIX
Rules 1 & 2 CPC)**

LIVING MEDIA INDIA LTD & ANR Plaintiffs
Through: Ms. Shilpa Singh, Advocate.

versus

M. HUSSAIN & ORS Defendants
Through: None.

CORAM: JUSTICE S. MURALIDHAR

% **ORDER**
26.07.2013

1. The Plaintiff No.1, Living Media India Limited, and Plaintiff No. 2, T.V. Today Network Limited, have filed the present suit against Mr. M. Hussain, Defendant No. 1, M/s. Aman Graphics Printers, Defendant No. 2 and Mr. Uday Kapoor, Defendant No. 3 seeking permanent injunction restraining the Defendants from infringing the trade mark/service mark using the word “SPEED AAJTAK” as well as for restraining the Defendants from infringing the copyright of the Plaintiff in the artistic representation of the words “AAJ TAK”, directing transfer of the domain name/website located at the URL www.speedaajtak.com in favour of the Plaintiff. The further reliefs sought are for a decree for delivery up of infringing material in the possession and/or custody of the Defendants, damages in the sum of Rs. 20,00,200 and costs of the suit.

2. Summons in the suit and notice in the application, IA No. 3450 of 2010, under Order XXXIX Rules 1 & 2 CPC were directed to be issued on 17th March 2010. On 25th March 2010, while granting time to the Defendants to file written statement, the Court recorded the statement of learned counsel for the Defendants that the logo of 'Aaj Tak' News Channel "will not be used by the Defendants till the next date of hearing."

3. On the next date of hearing, 22nd April 2010, the Court noted that no written statement or reply was filed. The Defendants were also not present. Therefore, the Defendants were proceeded *ex parte*. The Defendants were restrained "from using the logo 'Aaj Tak' News Channel, or infringing the said trademark, till further orders."

4. Ms. Divisha Bopana, Assistant Manager – Legal and Secretarial and authorized representative of the Plaintiff has filed an affidavit dated 2nd November 2012 by way of evidence. The said affidavit has been proved and marked as Ex.PW-1/A. The relevant documents have been exhibited as Exhibits PW-2 to PW-12.

5. The Plaintiff has been able to prove that the Plaintiff No. 1 is the publisher of several well-known publications including 'India Today', 'Business Today', 'Computers Today', 'Readers Digest' and is engaged in the business of producing television news programmes since 1987.

Earlier Plaintiff was producing an English language news programme 'News Track' and commenced a Hindi news programme 'AAJ TAK' in 1995 on Doordarshan channel. Plaintiff No.1 is the proprietor and registered owner of the trademark 'AAJ TAK' in Classes 9, 16, 38 and 41.

6. Plaintiff holds registrations of the following registered trademarks:

Registration Number	Date of Registration	Trademark	Class
680926	September 20, 1995	AAJ TAK (Label)	09
1081233	February 18, 2002	AAJ TAK (Label)	16
1242922	October 13, 2003	AAJ TAK	38
1242921	October 13, 2003	AAJ TAK	41

7. Plaintiff No.1 has also acquired trademark registrations in respect of the marks 'Subah Aaj Tak', 'Kehl Aaj Tak', 'Gaon Aaj Tak', 'Mumbai Aaj Tak', 'Cinema Aaj Tak' and 'Saptahik Aaj Tak'. Copies of the trademark registration certificates have been exhibited as Exhibits P-2 to P-7. The Plaintiffs have further been able to prove that they have been continuously and uninterruptedly using the above trade/service marks since 1995; that Plaintiff No.1 promoted a new corporate entity as its subsidiary, Plaintiff no.2 to manage and administer the 'AAJ TAK' news channel a 24-hour News Channel that has won several awards and

citations; the ORG survey rated it as the top news channel in the country and that the trademark/service mark 'AAJ TAK' is an arbitrary, unique, combination/collocation of two words in the Hindi language thereby marking the mark a highly distinctive one.

8. The Plaintiffs have been able to prove that by virtue of a permitted user arrangement in its favour from the Plaintiff No. 1, predecessor-in-interest to the 'AAJ TAK' mark, the Plaintiff No. 2 became the exclusive perpetual licensee of the trade mark/logo 'AAJ TAK' and that the trade mark/service mark is a well-known trade mark within the meaning of Section 2 (1) (zg) of the Trade Marks Act, 1999 ('TM Act'). The amounts spent by the Plaintiff No. 1 on promotion of the trade mark/service mark have been set out in the affidavit and exhibited as Ex P-8. For the financial year 2008-09 a sum of Rs. 6753 lakhs was spent. The annual turnover of the Plaintiff No. 1 for the financial year 2004-05 was Rs. 13907 lakhs which has increased from Rs. 1181.82 lakhs for the financial year 2000-01.

9. The Plaintiffs have also been able to prove that the Plaintiffs' trade mark/service mark 'AAJ TAK' is depicted in a unique, stylized, original and artistic manner thereby making the same an original artistic work within the meaning of Section 2 (c) of the Copyright Act, 1957. The

artistic work comprises the logo of the Plaintiffs' company and is found on the promotional material of the company including at the top right-hand corner of the television screen at all times the news programmes of the Plaintiffs are broadcast. The Plaintiffs also impart news through a website bearing the domain name 'aajtak.com' and located at the URL (Uniform Resource Locator) www.aajtak.com. The distinctive trade mark and logo 'AAJ TAK' of the Plaintiffs is prominently depicted on the website along with the slogan 'Sabze Tez' which is supposed to convey the speed at which the Plaintiffs report news. The Plaintiffs also possess further domain name registrations, in the 'in' format, all of which involve the Plaintiffs' trade mark/service mark 'AAJ TAK' i.e. www.aajtak.in, www.aajtak.co.in, www.aajtak/firm.in, www.aajtak.gen.in, www.aajtak.org.in, www.aajtak.net.in, and www.aajtak.ind.in.

10. The printouts of the website of the Defendant No. 1 located at the URL www.speedaajtak.com reflecting the mark and logo 'Speed Aajtak' have been exhibited as P-10. The trademark of the Plaintiffs as appearing on their website and that of the Defendants as appearing on <http://speedaajtak.com> are as under:

Plaintiff



Defendants



11. The documents exhibited by the Plaintiffs further shows that the Defendants have been issuing fake press membership cards to persons to make it appear that they are reporters of AAJ TAK and, therefore, associated with the Plaintiffs. A copy of a specimen membership card

issued by the Defendants bearing the identical mark and logo AAJ TAK of the Plaintiffs is exhibited as Exhibit P-12.

12. Ex P-11 is the document that shows that Defendant No.1 is the registrant of the website located at the URL www.speedaajtak.com. Defendant is a sole proprietorship concern, of which Defendant No.1 is sole proprietor, and is engaged in booking and placing advertisements on the above website. The Plaintiffs have, therefore, been able to demonstrate that Defendants have with a dishonest and malafide intention been depicting the infringing mark 'SPEED AAJ TAK'/ 'Speed Aajtak' in a manner and style identical to that of the Plaintiffs' registered trade mark 'AAJ TAK', thereby creating an impression that the Defendants' product is associated with/affiliated to/or licensed by the Plaintiff. The Defendants have slavishly imitated the Plaintiffs' registered trade mark 'AAJ TAK' and are commercially exploiting it as can be seen from the advertisements on their website, the screen shot of which has been exhibited as Ex P-10.

13. The Court is satisfied that the Defendants' online news service under the mark 'Speed Aajtak' is intended to cause confusion and deception in the minds of the consumers, who would inevitably assume a connection with the Plaintiff. Also the sponsors of the advertisements placed on the

website of the Plaintiffs located at the URL www.aajtak.com are also likely to become victims of the Defendants' deception as they would be induced to place advertisements on the Defendants' website in the belief that they are dealing with the Plaintiff. The adoption and use by the Defendants of the identical word mark, the manner in which it is written and depicted in the same manner and style as that of the Plaintiffs is an instrument of fraud and deception which is causing and will continue to cause considerable damage to the Plaintiffs' business interests in addition to substantially damaging public interest.

14. The Court is of the view that the Plaintiffs have been able to establish that the Defendants have infringed the registered mark of the Plaintiffs and also that their deliberate dishonest use of the logo and service mark/trade mark 'AAJ TAK' is likely to lead potential customers into believing that the Defendants have some connection, association or relation with the Plaintiffs. In the circumstances, the continued use of the said mark by the Defendants is likely to cause irreparable harm and injury to the Plaintiffs and diminish and tarnish the valuable goodwill in the Plaintiffs trade mark 'AAJ TAK'. The Plaintiffs have been able to prove that they are entitled to a decree of permanent injunction to restrain the Defendants from infringing the Plaintiffs' trade mark and copyright under 'AAJ TAK'.

15. The Plaintiffs are also entitled to a decree for punitive damages against the Defendants. In *Time Incorporated v. Lokesh Srivastava 2005 (30) PTC 3 (Del)* the Court observed as under in the context of the need to award punitive damages against a defendant flagrantly infringing a registered trademark with impunity:

“Coming to the claim of Rs. 5 lacs as punitive and exemplary damages for the flagrant infringement of the plaintiff's trade mark, this Court is of the considered view that a distinction has to be drawn between compensatory damages and punitive damages. 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. Whenever an action has criminal propensity also the punitive damages are clearly called for so that the tendency to violate the laws and infringe the rights of others with a view to make money is curbed. The punitive damages are founded on the philosophy of corrective justice and as such, in appropriate cases these must be awarded to give a signal to the wrong doers that law does not take a breach merely as a matter between rival parties but feels concerned about those also who are not party to the list but suffer on account of the breach. In the case in hand itself, it is not only the plaintiff, who has suffered on account of the infringement of its trade mark and Magazine design but a large number of readers of the defendants' Magazine 'TIME ASIA SANSKARAN' also have suffered by purchasing the defendants' Magazines under an impression that the same are from the reputed publishing house of the plaintiff company.”

16. In the present case it is seen that the Defendants have been blatantly infringing the registered trademark and the copyright of the Plaintiffs' mark 'AAJ TAK' and commercially exploiting the goodwill and

reputation attached to such mark. The Defendants are also involved in a fraud by issuing press membership cards with the trademark and logo 'AAJ TAK' of the Plaintiffs and thereby cheating the general public and authorities into thinking that the holder of such pass is in fact a journalist associated with the Plaintiffs. Therefore apart from the need to stop such infringement on the ground that it causes irreparable damage to the Plaintiffs' reputation, it is also essential to do so in public interest and to deter such a brazen infringement of the Plaintiffs' trademark.

17. For the aforementioned reasons, the suit is decreed in terms of prayers as set out in Para 25 (a) to (e) of the plaint as under:

(i) a decree order of permanent injunction is passed restraining the Defendants, their Directors, Partners or as the case may be, employees, servants, agents, and/or any one claiming under or through them, from, in any manner using the word 'SPEED AAJTAK' and/or any other deceptive variant(s) thereof, in respect of their online news service or any other news service thereby amounting to infringement of Trade mark and/or passing off;

(b) a decree order of permanent injunction is passed restraining the Defendants, their Directors, Partners, or as the case may be, employees, servants, agents and/or any one claiming under or through them, from reproducing the work 'SPEED AAJTAK' in

any manner amounting to infringement of the copyright of the Plaintiff, residing in the artistic representation of the words 'AAJ TAK';

(c) a decree is passed directing transfer of the domain name/website located at the URL www.speedaajtak.com in favour of the Plaintiffs;

(d) a decree is passed directing the Defendants to pay to the Plaintiffs a sum of Rs. 10 lakhs as damages;

(e) a decree is passed against the Defendants for delivery up to the Plaintiff of the infringing material in the possession and/or custody of the Defendants.

18. The suit and pending application are disposed of. The suit is decreed in the above terms together with costs of Rs. 10,000. Decree sheet be drawn up accordingly.

S. MURALIDHAR, J.

JULY 26, 2013

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