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

+ **CS(OS) 2080/2011 & I.A. 13582/2011**

THE COCA COLA COMPANY AND ANR. Plaintiffs
Through: Ms. Nancy Roy, Advocate.

versus

RAJESH Defendant
Through: None.

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Date of Decision: 08th May, 2013

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J (Oral):

1. Present suit has been filed for injunction and damages for infringement of trade mark, passing off and unfair competition.

2. The prayer clause in the plaint is reproduced hereinbelow:-

“A. The Defendant be restrained by a permanent injunction from using the trade marks COKE and/or COKE STUDIO of the Plaintiff No.1 as a domain name or part of the domain name, as a trade mark or part of a trade mark, a trade name or corporate name or as part of a trade or corporate name, as a metatag or otherwise on the internet or the world wide web, or in any other manner whatsoever so as to infringe the registered trade marks of the Plaintiff No.1 or pass off their business as and for the business of the Plaintiffs.

B. The Defendant be ordered by a decree of mandatory injunction to transfer the domain name “cokestudio.in” to the Plaintiff No.1 and a direction be issued to the National Internet Exchange of India c/o ISPAI (Internet Service Provider Association of India) 612-A, Chiranjiv Tower, 43, Nehru Place, New Delhi-110019 as also to the Registrar of the domain name M/s A to Z Domains Solutions Pvt. Ltd. to transfer the said domain name to the Plaintiff No.1.

C. The Defendant be called upon to allow inspection of its accounts to assist in ascertaining profits made by the Defendant by its unauthorized use of the domain name “cokestudio.in” and a decree be accordingly passed in favour of the Plaintiff No.1 for the amount found due.

D. Plaintiffs further pray that costs of the suit be awarded to the Plaintiffs; and

E. Any other relief which the Hon’ble Court thinks fit and proper in the circumstances of the case is allowed in favour of the Plaintiffs and against the Defendant.”

3. However, at the outset, learned counsel for plaintiffs states that she does not wish to press prayer ‘C’. The said statement is accepted by this Court and plaintiffs are held bound by the same.

4. The relevant facts of the present case are that plaintiff No.1 is the registered proprietor of the well-known trade marks COKE and COKE STUDIO.

5. In 2008, plaintiff No.1 launched a Television Series in Pakistan called ‘COKE STUDIO’ featuring live musical performances. The program focuses on a fusion of the diverse musical influences in Pakistan including eastern classical, folk and contemporary popular music.

6. In the plaint, it is stated that the series COKE STUDIO is extremely popular in India as well and the plaintiff No.1 in order to promote its aforesaid series, regularly uploads video and MP3 files of each song.
7. It is the plaintiff's case that in and around April, 2011, while preparing for the launch of COKE STUDIO in India, plaintiffs found that the defendant had registered the domain name www.cokestudio.in. However, upon typing the domain name "cokestudio.in", no webpage was found.
8. Upon further investigation, the plaintiffs found that the said domain name had been registered by the defendant since 05th June, 2010. However, the defendant had failed to launch any website even though substantial period of time had expired since its registration. It is the plaintiffs case that defendant had only registered the website for the purposes of squatting on it.
9. On 26th August, 2011, plaintiffs filed the present suit against the defendant. On 29th August, 2011, this Court passed an ex parte ad interim injunction order against the defendant.
10. Since the defendant failed to enter appearance, this Court set down the defendant ex parte vide order dated 11th January, 2012.
11. The plaintiffs filed their ex parte evidence by way of affidavits and exhibited amongst others the registration certificate of the trade marks COKE, COKE STUDIO as well as the comments of music fans on Facebook, website and also proved the printouts of plaintiffs and defendant's website.
12. Having heard learned counsel for the plaintiffs and having perused the ex parte evidence as well as documents placed on record, this Court is of the opinion that plaintiffs have proved the facts stated in the plaint and have also

exhibited the relevant documents in support of their case. Since the plaintiffs' evidence has gone un rebutted, said evidence is accepted as true and correct.

13. This Court is further of the opinion that defendant's act of adopting and registering of domain name www.cokestudio.in infringes the plaintiff No.1's registered trade marks COKE and COKE STUDIO.

14. In fact, in ***Kaviraj Pandit Durga Dutt Vs. Navaratna Pharmaceutical, AIR 1965 SC 980*** the Apex Court has held, "*The action for infringement is a statutory remedy conferred on the registered proprietor of a registered trade mark for the vindication of the exclusive right to the use of the trade mark in relation to those goods..... In an action for infringement, the plaintiff must, no doubt, make out that use of the defendant's mark is likely to deceive, but were the similarity between the plaintiff's and the defendant's mark is so close either visually, phonetically or otherwise and the court reaches the conclusion that there is an imitation, no further evidence is required to establish that the plaintiff's rights are violated.*"

15. Further, this Court in ***Info Edge (India) Pvt. Ltd. & Anr. vs. Shailesh Gupta & Anr., 98 (2002) DLT 499*** has held "*Both the domain names "Naukri.com" of the plaintiff and "Naukari.com" of the defendant, depicting the nature and type of business activity they carry on are identical or confusingly similar trade mark or service marks. It is also a possibility for an internet user while searching for the website of the plaintiff to enter into the website of the defendant through only a small mis-spelling of the domain name and, in fact, such incident has occurred in the case of the plaintiff itself vis-a-vis the defendant in proof of which a document is also*

placed on record. Such diversion of traffic with the sole intention of ulterior gain in the similar business activity by a competitor, requires protection. A Court discharging equitable justice should come in aid and for protection of the honest user as opposed to a dishonest user acting on bad faith.”

16. This Court is also of the opinion that defendant’s adoption and registration of the domain name www.cokestudio.in being identical to plaintiff No.1’s registered trade marks COKE and COKE STUDIO is dishonest. In *M/s. Satyam Infoway Ltd. vs. M/s. Sifynet Solutions Pvt. Ltd.*, AIR 2004 SC 3540, the Supreme Court has held as under:-

“16. The use of the same or similar domain name may lead to a diversion of users which could result from such users mistakenly accessing one domain name instead of another. This may occur in e-commerce with its rapid progress and instant (and theoretically limitless) accessibility to users and potential customers and particularly so in areas of specific overlap. Ordinary consumers/users seeking to locate the functions available under one domain name may be confused if they accidentally arrived at a different but similar web site which offers no such services. Such users could well conclude that the first domain name owner had misrepresented its goods or services through its promotional activities and the first domain owner would thereby lose their custom. It is apparent therefore that a domain name may have all the characteristics of a trademark and could found an action for passing off.....

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31. The appellant is the prior user and has the right to debar the respondent from eating into the goodwill it may have built up in connection with the name.....”

17. Consequently, the present suit and application are decreed in terms of prayers 'A' and 'B' of the plaint along with costs. A direction is also issued to the National Internet Exchange of India c/o ISPAI (Internet Service Providers Association of India) 612-A, Chiranjiv Tower, 43, Nehru Place, New Delhi-110019 as also to the Registrar of domain name M/s A to Z Domains Solutions Pvt. Ltd. to transfer the domain name cokestudio.in to plaintiff No.1.

18. Registry is directed to prepare a decree sheet accordingly.

MANMOHAN, J

MAY 08, 2013

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