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

% *Date of decision : 13th October, 2014*

+ **CS(OS) 1774/2011**

INTEL CORPORATION

..... Plaintiff

Through: Mr.Manoj Kumar Singh and Mr Manav
Kumar, Advs,

versus

GAUTAM GUPTA & ANR

..... Defendants

Through:

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J. (ORAL)

1. Plaintiff has filed the present suit for restraining infringement of trademark, passing off, delivery up and damages.
2. Summons in the suit and notice in the application filed under order XXXIX Rule 1 & 2 CPC were issued on 29.07.2011. Counsel for the defendants entered appearance on 08.11.2011 and sought time to file the written statement. Vide order dated 01.03.2012, application filed under order XXXIX Rule 1 & 2 was disposed of whereby defendants, their directors, partners, officers, servants and agents were restrained from advertising, directly or indirectly running any company under the name 'Intel Land Developers Private Limited and/or any other mark deceptively similar to the plaintiff's trademark INTEL as part of its name for running any trade and business.
3. On 13.04.2012, right of the defendants to file the written statement was closed. None appeared for the defendants on 06.07.2012 and 12.09.2012,

consequently defendants were proceeded ex parte vide order dated 12.09.2012.

4. Plaintiff has filed affidavit by way of evidence of Mr. Rahul Sethi, (PW1), Constituted Attorney of the Plaintiff. Copy of Power of attorney in favour of PW1 has been exhibited as **Ex.PW1/1**. PW1 has deposed that the plaintiff company is known as the world's largest semiconductor chip maker and plaintiff through its subsidiaries is engaged worldwide in the business of developing advanced integrated digital technology platform for the computing and communication industries and that plaintiff's product include, microprocessors (the central processing units which acts as the "brains" of a computer); chipsets; motherboards; flash memory; wired and wireless connectivity products; communicators infrastructure component, including network processors; application and cellular based processors; and product for networked storage; that are sold under the name and mark inter alia containing the word INTEL, which is a coined word having a very high degree of inherent distinctiveness.
5. PW1 has also deposed that the plaintiff has been instrumental in bringing about the personal computer revolution around the world and has successfully, continuously, and dramatically improved the computing experience for Personal Computers (PC) users by providing more powerful microprocessors. Further, a wide range of products developed by the plaintiff have gained worldwide acceptance under the name and mark INTEL which is a world famous and globally respected trade mark, trade name, service mark, and brand name and signifies quality, reliability, and technologically superior products.
6. PW1 has further deposed that the plaintiff currently employs an estimated 82,000 people in its various subsidiary companies throughout the world and its global annual turnover for the year 2010 was in excess of US \$ 43 billion. Also the plaintiff has business operations in excess of 48

countries around the world covering the Americas, Japan, Europe, Africa, and Asia-Pacific, including India and the plaintiff's products and services, under the mark INTEL are sold in more than 100 countries including India through a wide network of subsidiaries, associates, distributors, stockiest, resellers, assemblers, and original equipment manufacturers (OEMs) etc.

7. PW1 has also deposed that the plaintiff has used the mark/name INTEL as its corporate name and on its products since 1968, the year it was incorporated and the use of the name and mark INTEL was first commenced in the United States of America and subsequently extended to other countries of the world. Further since its inception in 1968, the plaintiff has grown to be a truly global corporation and used the name and mark INTEL to market its products and services, and to conduct its business activities.
8. Rahul Sethi, PW1 has also deposed that the plaintiff though formally established its operations in India in 1988 with the opening of its branch office in Bangalore, it has been exporting products to India since 1972. Copies of the documents evidencing sale of the plaintiff's products in the year 1971-72 to the Ministry of Defence, India and other institutions have been exhibited as **Ex.PW1/2**. PW1 has further deposed that plaintiff's INTEL branded products are marketed and promoted by its branch office and wholly owned subsidiary in India, trading as Intel Asia Electronics Inc. and Intel Technology India Private Ltd., respectively with branch offices in Ahmadabad, Bangalore, Chandigarh, Chennai, Delhi, Hyderabad, Kochi, Kolkata, Mumbai, Pune and a network of dealers and distributors throughout India and the plaintiff's subsidiary company and branch offices have spent millions of rupees to popularize its INTEL branded products in India. Copies of print advertisements and news articles from newspapers and magazines are filed along with the plaint.

PW1 has next deposed that the INTEL mark has become a household name in India, even more so because of the large volume of computer software being developed and exported by Indian Companies.

9. PW1 has also deposed that plaintiff uses its INTEL mark on products beyond computers and the plaintiff's microprocessors and other INTEL branded products are being increasingly used in many consumer electronic products, including set-top boxes, MP3 players, media centers, digital cameras, high-definition television (HDTV) sets, digital audio and video devices, and household appliances such as microwave ovens and in light of the plaintiff's 43 year history and the popularity of its broad range of products and services that are sold extensively worldwide under the INTEL trade mark, the mark/name INTEL has become one of the most valuable brands in the world and has been ranked among the top 10 brands by leading independent publications since as early as 1993, which speaks volumes for the goodwill and recognition enjoyed by the plaintiff's trade mark INTEL. Copies of the advertisement and newspaper clippings of magazines have been exhibited as **Ex. PW1/3**.
10. PW1 has next deposed that the plaintiff has invested and continues to invest substantial amounts of money and effort in advertising and promoting the INTEL mark and a multitude of computer peripherals and services under the INTEL mark. PW1 has also deposed that by virtue of prior adoption, prior use, and registration, as well as extensive publicity and promotion, the trade mark INTEL has earned significant goodwill and reputation among members of the trade and public who associate the mark/name INTEL with the plaintiff and no one else and the INTEL mark serves as the exclusive designation of origin of plaintiff's products and services. Plaintiff's approximate annual revenue and approximate annual global advertising expenditure, including reimbursements for cooperative

advertising and expenditure towards R&D (research and Development)
for the period 1998–2008 are as follow:

Year	Revenue (in at least \$US Million)	R&D Expenditure (in at least \$US Million)	Worldwide Advertising & Promotional Expenditure (in at least \$US Million)
1998	\$26,200	\$2,500	\$1,300
1999	\$29,300	\$3,100	\$1,700
2000	\$33,700	\$3,800	\$2,000
2001	\$26,500	\$3,700	\$1,600
2002	\$26,700	\$4,000	\$1,700
2003	\$30,000	\$4,300	\$1,800
2004	\$34,200	\$4,700	\$2,100
2005	\$38,800	\$5,100	\$2,600
2006	\$35,300	\$5,800	\$2,300
2007	\$38,300	\$5,700	\$1,900
2008	\$37,500	\$5,700	\$1,800

2009	\$35,100	\$5600	\$1,390
2010	\$43,623	\$6,576	\$1,800

11. PW1 has also deposed that the consistent superior quality and the plaintiff's efforts to continuously design, redesign, develop, and upgrade its products with the changing requirements of industry and the public have contributed in building enduring public trust and demand for its INTEL branded products and services. Thus, the reputation and goodwill in the INTEL trade mark is well earned and a result of continuous effort and huge monetary investment.
12. Rahul Sethi, PW1, has also deposed that the plaintiff has an estimated 2000 trade mark registrations world-wide consisting of or incorporating the word INTEL, in respect of computers, computing devices, microprocessors and various parts thereof as well as in respect of software to be used with computers and other computer related products and services. A list of the countries in which the plaintiff's trade mark containing the word INTEL is registered and/or pending for registration has been exhibited as **Ex.PW1/4**.
13. PW1 has also deposed that the plaintiff has obtained registrations for the INTEL trade mark in respect of goods covering Classes, 9, 16, 38, 42 02, 03, 04, 05, 06, 07, 08, 10, 11, 12, 13, 14, 15, 17, 18, 19, 21, 22, 23, 24, 25, 26, 27, 28, 30, 31, 32, 33, 34, 36, 37, 39, 40, 41 and for the mark INTEL MMX in Class 9 and INTEL INSIDE in Class 14. The legal proceedings certificates bearing nos. 1240068 in class 99, 803796 in class 16 and 678000 in class 9 have been exhibited as **Ex.PW1/5**, **Ex.PW1/6** and **Ex.PW1/7** respectively. PW1 has further deposed that the registrations are valid and subsisting on the Register and are in full legal force thus

conferring on the plaintiff the right to its exclusive use and the right to stop use of any identical or deceptively similar mark by unauthorized persons. Further as per the Trade Mark Registry, India the plaintiff's mark INTEL comes under the category of Well Known Trademarks. The list of the registered trademarks under the category of Well Known Marks of the Trade Mark Registry wherein the plaintiff's mark INTEL is also mentioned has been exhibited as **Ex.PW1/8**.

14.PW1 has next deposed that defendants are engaged in the business of acquiring, dealing and developing properties and are trading under the name Intel Land Developers Private Limited and Mrs. Madhu Sushil Gupta and Mr. Gautam Gupta are the Directors of the Defendant Company.

15.PW1 has also deposed that around first week of July, 2007, the plaintiff during the course of search into Registrar of Companies (ROC) record came across the defendant's company, 'Intel Land Developers private Limited' and the enquiries conducted by the plaintiff revealed that the defendants were not conducting any active business, the company exists on paper and was incorporated to effect land purchase transactions and is a loss making company. Copy of the certificate of incorporation of the defendant company has been exhibited as **Ex.PW1/9**.

16.PW1 has further deposed that plaintiff sent a cease and desist letter dated 09.07.2007 to the defendant putting them on notice of the plaintiff's rights in the mark INTEL and providing them with an opportunity to amicably resolve the matter and subsequently sent a number of reminder notices to the defendant. Copy of the legal notice dated 09.07.2007 is exhibited as **Ex.PW/10** and copy of the reminder notices dated 31.07.2007, 10.06.2008 and 2.08.2010 sent by the plaintiff to the defendants have been exhibited as **Ex.PW1/11**, **Ex.PW1/12** and **Ex.PW1/13**. PW1 has next deposed that the defendant's throughout the

negotiations have been giving assurances and promises that they would change the trading name and settle the matter amicably but despite a lapse of more than three years the defendants have not changed their trade name and/or amicably settled the matter.

17. Rahul Sethi, PW1, has also deposed that plaintiff is aggrieved by such continued use of its well-known name/mark by the defendants as a part of their trading style which constitutes a grave encroachment of their statutory and common law rights and that defendant's adoption of the Intel Land Developers Private Limited name in respect of their business is in bad faith and mere addition of the common words Land and Developers by the Defendant to the word INTEL does not help to distinguish it from the plaintiff's INTEL mark which is well recognized the world over including in India as associated with the plaintiff and no one else.
18. PW1 has further deposed that defendants have copied the well-known/mark INTEL in its entirety as a part of their trade name and such use and adoption of the plaintiff's name/mark by the defendant's amounts to wilful infringement of plaintiff's registration for the mark INTEL in particular registration Nos. 678000, 803796 and 1240068.
19. PW1 has next deposed that plaintiff is in no way associated with the defendant and has neither authorised nor licensed use of the mark/name INTEL and the trade name Intel Land Developers Private Limited has been clearly adopted by the defendant's to ride on the goodwill and reputation built by the plaintiff in mark INTEL and passing off their business as and for plaintiff's business as given the long and consistent use of the domain name (www.intel.com), trade name/mark INTEL and the extensive promotional campaigns undertaken by the plaintiff, it is incompressible that the defendants were not aware of use and reputation of the plaintiff's name/mark INTEL.

20. PW1 has also deposed that the defendant's trade name Intel Land Developers Private Limited imports an obvious reference to the plaintiff's well-known INTEL name/mark and the purchasing public, web viewers and the members of the trade are likely to assume that the defendants are somehow related to or approved of or licensed by the plaintiff to use its name/mark which is completely false and would inevitably lead to confusion and deception amongst the public and members of the trade for the reasons that the mark INTEL is exclusively identified with the plaintiff irrespective of the goods or services for which they are used in view of extensive promotional and marketing activities undertaken by the plaintiff in India as well as overseas and the growing use of computers in all walks of life and the unprecedented growth of IT sector in India have made INTEL a household name and such misuse of the Intel name can create an unmistakable impression of defendant's associate with the plaintiff in the minds of the public and members of the trade.

21. PW1 has further deposed that the plaintiff will suffer incalculable harm and injury to its goodwill, reputation and business in general if the defendants are allowed to carry on their aforesaid unlawful activities in complete disregard to the statutory and common law rights of the plaintiff.

22. I have heard counsel for the plaintiff and carefully perused the plaint along with the documents which have been placed on record and affidavit by way of evidence filed by the plaintiff. The evidence of plaintiff has gone unrebutted and unchallenged. Plaintiff has proved that plaintiff is the owner of trade mark "INTEL". A list of countries in which the plaintiff's trademark containing the word INTEL is registered and/or pending registration has been exhibited as **Ex.PW1/4**. Plaintiff has also obtained registrations for the INTEL trade mark in respect of goods covering

Classes,	02,	03,	04,
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05,06,07,08,10,11,12,13,14,15,17,18,19,21,22,23,24, 25, 26, 27, 28, 30,31, 32, 33, 34, 36, 37, 39, 40, 41. The legal proceedings certificates bearing nos. 1240068 in class 99, 803796 in class 16 and 678000 in class 9 are exhibited as **Ex.PW1/5**, **Ex.PW1/6** and **Ex.PW1/7** respectively. The list of the registered trademarks under the category of Well Known Marks of the Trade Mark Registry wherein the plaintiff's mark INTEL is also mentioned has been exhibited as **Ex.PW1/8**. A legal notice dated 09.07.2007 was sent to the defendants which is exhibited as **Ex.PW1/9**. Despite being served and reminder letters dated 31.07.2007, 10.06.2008 and 2.08.2010 sent by the plaintiff to the defendants exhibited as **Ex.PW1/11**, **Ex.PW1/12** and **Ex.PW1/13** respectively, the defendants failed to change their trade name. Copy of the certificate of incorporation of the defendant company Intel Land Developers Private Limited is exhibited as **Ex.PW1/9**.

23. On the basis of documents placed on record Plaintiff has been able to establish that plaintiff has used the mark/name INTEL as its corporate name and on its products since 1968 and has an exclusive right to use the same. Plaintiff has also established that on account of enormous amount spent on advertisement during the past many years, the plaintiff has built up an unparalleled reputation and goodwill with respect to their trade mark/trade name INTEL which has been ranked in the top 10 most valuable brands in magazines and newspapers. Plaintiff has further established that prior use of trade mark INTEL and superior quality of goods provided by plaintiff under the trade mark INTEL, same is associated solely and exclusively with the plaintiff by the members of trade and public. Plaintiff has also established that the trade mark INTEL has been recognized as a well known trade mark by the trade mark registry of India. Plaintiff has further been able to establish that

defendants by adopting plaintiff's mark as their trading name are guilty of infringement and passing off.

24. In the case of ***Bloomberg Finance LP Vs. Prafull Saklecha & Ors.*** reported at 2013(56) PTC 243[Del], it was observed that:

61.” The fact that the Plaintiff and the Defendants are operating in different lines of businesses is not a good defence in an action brought by the proprietor of a well-known mark. Even if the fields of operation are different, it is possible that the average consumer makes a link with the prominent well-known mark. The well-known mark comes to signify certain qualities that transcend the goods and services for which it is registered. Increasingly, with the free flow of goods and services offered under well-known brands internationally, the possibility of confusion being caused in the minds of the average consumer in countries other than the country of origin has to be acknowledged.”

25. Similarly in the case of ***Laxmikant V. Patel Vs. Chetanbhai Shah And Another***, reported at (2002) 3 SCC 65, Apex court made following observation:

“.....The law does not permit any one to carry on his business in such a way as would persuade the customers or clients in believing that his goods or services belonging to someone else are his or are associated therewith. It does not matter whether the latter person does so fraudulently or otherwise. The reasons are two. Firstly, honesty and fair play are, and ought to be, the basic policies in the world of business. Secondly, when a person adopts or intends to adopt a name in connection with his business or services which already belongs to someone else it results in confusion and has propensity of diverting the customers and clients of someone else to himself and thereby resulting in injury.”

26. In another case of ***Montari Overseas Limited Vs. Montari Industries Limited*** reported at 1997 ILR Delhi 64, it was observed that:

13.....”It is well settled that no company is entitled to carry on business in a manner so as to generate a belief that it is connected with the business of another company, firm or an

individual. The same principle of law which applies to an action for passing off of a trade mark will apply more strongly to the passing off of a trade or corporate name of one for the other. Likelihood of deception of an unwary and ordinary person in the street is the real test and the matter must be considered from the point of view of that person. Copying of a trade name amounts to making a false representation to the public from which they have to be protected. Besides the name of the company acquires reputation and goodwill, and the company has a right too to protect the same. A competitor cannot usurp the goodwill and reputation of another. One of the pernicious effects of adopting the corporate name of another is that it can injure the reputation and business of that person”.

27. For the reasons stated above I am of the view that the defendants have copied the well known mark INTEL in its entirety as a part of their trade name ‘Intel Land Developers Private Limited’ and such unauthorized and illegitimate use and adoption of the plaintiff’s trademark INTEL by the defendants is in bad faith and amounts to willful infringement of plaintiff’s registration of the mark INTEL in particular registration nos. 678000, 803796 and 1240068. Also mere addition of the common words Land and Developers by the defendants to the mark INTEL does not help to distinguish it from the plaintiff’s mark INTEL which is well recognized the world over including India as associated with plaintiff and no one else. Hence the dishonest adoption of the mark INTEL by the defendant is to ride on the goodwill and reputation built by the plaintiff in mark INTEL and to pass off their business as and for plaintiff’s business thus inevitably leading to confusion and deception amongst the public and members of the trade that defendants are somehow related to the plaintiff and licensed by the plaintiff to use its name/mark or to give an impression that defendant company is a subsidiary company of the plaintiff.

28. The defendants have chosen not to contest the matter and thus the plaintiff is also entitled to the benefit of damages with a view to ensure that such litigants desist from indulging into such activities and they are not given benefit of the acts, which resulted to the loss to the plaintiff. It would be useful to refer to the judgment in the case of *Time Incorporated v. Lokesh Srivastava and Anr.*, reported at 116(2005) DLT 599 wherein this court has observed as under:

“This court has no hesitation on saying that the time has come when the courts dealing actions for infringement of trademarks, copyrights, 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”.

29. For the reasons stated above, the plaintiff has made out a case for grant of decree as prayed in the plaint. Accordingly, the order dated 13.10.2014 is confirmed and the suit is decreed in favour of the plaintiff and against the defendants. Plaintiff is also entitled to damages to the tune of Rs.2.00 lacs.

30. Decree sheet be drawn up accordingly.

(G.S.SISTANI)
JUDGE

OCTOBER 13, 2014 /pdf