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

RESERVED ON : November 10, 2014

DECIDED ON : January 29 , 2015

+ CS(OS) 2004/2006 & IA Nos.2620/2007 (u/O 6 R 17) &
11806/2006 (u/O 39 R 1 & 2)

TIMES INTERNET LTD.

..... Plaintiff

Through : Mr.Abhinav Hansaria, Advocate.

versus

TIME BROADBAND SERVICES PVT.LTD.

..... Defendant

Through : None.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. The instant suit for permanent injunction restraining passing off/infringement of trademark, domain name, copyright and damages has been preferred by the plaintiff against the defendant. It is averred that the plaintiff M/s Times Internet Ltd. (hereinafter referred to 'TIL') is a company registered under the Companies Act, 1956. M/s Bennett Coleman & Co.Ltd. (hereinafter referred to 'BCCL') is its promoter company. BCCL entered the field of e-commerce about a decade back, under the Trade Name/Logo 'indiatimes' and a portal 'indiatimes.com'

was created. Its internet site/website 'http://www.indiatimes.com' was registered as a domain name with the Registrars 'Network Solutions Inc.'. Through this site, BCCL started offering a large variety of goods and services to the public at large. The trademark and logo of 'indiatimes' were coined by BCCL as the said company is the owner of numerous publications including Times of India, The Economic Times, Navbharat Times etc. popularly known as the Times Group Publications, and its name is associated with the said trademark/logo. BCCL became the legal and beneficial owner of copyrights, intellectual property rights, design rights and trademarks in the said mark and logo 'indiatimes' as well as the domain name 'indiatimes.com'. Further case of the plaintiff is that BCCL assigned its internet business including its website/portal 'indiatimes.com' to the plaintiff company vide agreement dated 1st April, 2000. In furtherance of its earlier e-commerce business, the plaintiff widened its services by stepping into the field of television and radio broadcasting and started to offer broad-band service to the public at large through its flagship portal 'www.indiatimes.com'. The said service is marketed and displayed through a radio button on the abovementioned portal which leads to <http://broadband.indiatimes.com>. The plaintiff also registered two domain names i.e. 'indiatimesbroadband.com and 'indiatimesbb.com'

dedicated for providing the broadband service in addition to its portal 'indiatimes.com' with the Registrars 'Network Solution Inc.' on 19.04.2004. It is averred that the plaintiff incurred huge cost and made investment for development and designing of the aforesaid websites/portals as detailed in para 8 of the plaint. Millions of people started visiting the plaintiff's website for availing various services/internet shopping. The plaintiff received more than thirty million SMSs and a hundred billion eyeballs in a month and does a business of eighty million worth of online shopping every month and has ten million registered users. Various applications for registration of the said names and trademarks/logos of 'indiatimesbroadband' and 'indiatimesbb' besides others were made for registration under the Trade and Merchandise Marks Act, 1999. The application for registration of the trademarks 'indiatimesbroadband' and 'indiatimesbb' are pending since 07.10.2004.

2. Further case of the plaintiff is that these trademarks/logos have come to be associated with it exclusively and no one else has the right to use them to cause confusion to the public at large regarding its products or services. These marks are completely identified with the plaintiff and stand for the highest quality, authenticity and best prices.

These marks have no dictionary meaning and were created, invented and

developed by the plaintiff and are original artistic marks. The domain name works as an identity card for a trade name of an organization.

3. Further case of the plaintiff is that it was taken by surprise when it recently found that the defendant has unlawfully and with mala fide intention got itself registered as a company in the name of M/s Time Broadband Services Pvt. Ltd. on 11th January, 2005 at Mumbai which on the face of it, is deceptively similar to the name of the plaintiff company. The defendant has also got a domain name 'timebroadbandindia.com' registered on 15.11.2005 with M/s Network Solutions Inc. and has put up a website www.timebroadbandindia.com on the internet. The defendant not only used the same name as that of the plaintiff but also the services to be offered by the defendant under the said name were similar to the plaintiff's services. The defendant intends to take advantage of the reputation of the plaintiff company. Registration of the defendant is not only illegal, unauthorized but will also create confusion in the public and affect the business and reputation of the plaintiff.

4. The suit was contested by the defendant. In the written statement, the defendant controverted the allegations of the plaintiff. It is stated that the plaintiff has not come to the court with clean hands and has suppressed true material facts. The plaintiff is not sure about its own case;

has given vague information and leveled vague, evasive and baseless allegations. The plaintiff intends to extort money from its progressing rival party and also to capture its business. The brand name of the defendant in no way is an infringement of any brand name of the plaintiff. The plaintiff has no locus standi to interfere with the business run by the defendant. The plaintiff has not explained as to why the applications for registrations since 7th October, 2004 are pending. The site/logo of the defendant in no way causes any confusion or conflict. The names suggested or alleged for processing since 07th October, 2004 are not primary sites but secondary ones and are accessory services. Both the parties have their own separate, entirely different and independent properties. The defendant has throughout been a bona fide, fair, legal and lawful in proceedings and conducted its business under the said name over which, no one can interfere. So far as the property of the plaintiff is concerned, the defendant has never interfered nor is going to interfere in future.

5. In the replication, the plaintiff reiterated its stand in the plaint.

6. Perusal of the record reveals that the attempt was made to explore settlement through mediation. However, the dispute could not be

resolved. It appears that subsequently the defendant opted not to contest the suit. None appeared on his behalf on several dates and by an order dated 07.07.2011, the defendant was proceeded ex-parte. The plaintiff examined PW-1 (Mahesh Chand Gupta) in its ex-parte evidence.

7. I have heard the learned counsel for the plaintiff and have examined various judgments placed on record along with the written notes. PW-1 (Mahesh Chand Gupta) tendered his affidavit of evidence in examination-in-chief (Ex.PW-1/A). He also relied upon numerous documents (Ex.PW-1/1 to Ex.PW-1/66). Averments in the plaint have been proved without any deviation. Statement given by PW-1 has remained unchallenged and unrebutted. Adverse inference is to be drawn against the defendant for not appearing on the adjourned hearings and contesting the suit.

8. Earlier also the plaintiff had instituted CS(OS) No.1289/2008 *Times Internet Ltd.vs.Belize Domain Whois Services Ltd and Ors* [2011 (45) PTC 96 (Del)] decided by this Court on 10.11.2010. This Court held that the right to use the word 'indiatimes' vests only with the plaintiff and the Registrar of domain name (defendant No.2 therein) was obliged to transfer the domain name adopted and got registered with it by defendant No.1 to the plaintiff. Similarly in *Times Internet Ltd. vs.M/s Just Flowers CS(OS)2004/2006*

2007 IX AD (Del) 779, relief to the plaintiff was granted with respect to the mark ‘indiatimes’. In *Times Internet Ltd. vs. Jonathan S. & Anr.* [2012 (51) PTC 195 (Del)], injunction protecting the trademark of the plaintiff was issued. In *Time Incorporated vs. Lokesh Srivastava* 116 (2005) DLT 599, the plaintiff was found entitled to restrain the defendant from printing, publishing, issuing and advertising their magazine under the trade name of ‘TIME ASIA SANSKARAN’ and/or using the component of ‘TIME’ and damages of ₹ 5 lacs. This judgment was followed in *Societe Des produits Nestle vs. Prayag Nutri Products Pvt. Ltd.* 2011 (48) PTC 152 (Del).

9. In the recent case *Times Internet Ltd. vs. M/s Indiatimes.Com & Anr.* [CS(OS)1426/2006] decided on 04.04.2013, this Court passed a decree in favour of the plaintiff and against defendant No.1 therein in terms of prayers (a) and (b) of para 43 of the plaint and against defendant No.2 therein in terms of para 43(c) of the plaint.

10. In *Times Internet Ltd. vs. Belize Domain Whois Services Ltd and Ors.* (supra) this Court held as follows:

“It is, therefore, difficult to dispute the contention of the plaintiff that the domain name adopted and got registered by defendant No.1 being identical to the coined trademark of the plaintiff on account of use of the words

‘indiatimes’ in it, it is a clear case of passing off and defendant No.1 is not entitled to continue suing the domain name ‘indiatimestravel.com’. Since the right to use the words ‘indiatimes’ vests only with the plaintiff, defendant No.2 is obliged to transfer the domain name adopted and got registered with it by defendant No.1 to the plaintiff.”

11. In his testimony, the plaintiff has proved that the suit has been instituted by a duly authorized person on behalf of the plaintiff company; BCCL is its promoter and in 1996 it had entered into the field of e-commerce under the brand name ‘indiatimes’ and for the said purpose had created a portal in the name of ‘indiatimes.com’; developed a website known as ‘www.indiatimes.com’ and got the same registered as a domain name with the Registrars ‘Network Solutions Inc.’ on 22.11.1996. It has further established that the trademark ‘indiatimes’ was coined by BCCL in 1996 and has been in use since then. BCCL vide agreement dated 1st April, 2000 assigned its internet business including its website/portal ‘indiatimes.com’ to the plaintiff company and since then the plaintiff company has been carrying on its internet business under the trademark/brand name of ‘indiatimes.com’ The plaintiff has incurred huge expenditure in setting up and operation of the said business. The plaintiff has applied for and secured registration in the mark ‘indiatimes’ and ‘indiatimes.com’. On account of priority in adoption of the coined

trademark 'indiatimes.com', the plaintiff trademark 'indiatimes' for e-commerce and domain name have acquired extensive reputation. The plaintiff has further proved that the defendant has no right or interest in the mark exclusively belonging to the plaintiff. It also established that the adoption and registration of the defendant's domain name 'timebroadbandindia.com' and a website www.timebroadbandindia.com on the internet amounts to infringement of plaintiff's registered trademark and amounts to passing off. There can be no scope to doubt that the name 'timebroadbandindia.com' adopted by the defendant is deceptively similar to the name of 'indiatimesbroadband.com' and 'indiatimesbb.com' of the plaintiff. The possibility of confusion definitely exists.

12. On the basis of the ex-parte evidence of the plaintiff and the judgments cited above, I am satisfied that the suit is entitled to be decreed. Accordingly a decree is passed in favour of the plaintiff and against the defendant for permanent injunction in terms of prayers (a), (b) and (c) of para 44 of the plaint. Following the dicta in the judgments cited above, the plaintiff is awarded punitive damages in the sum of ₹ 1 lac to be paid by the defendant. The plaintiff shall also be entitled to the costs of the suit as per schedule. Terms and conditions of prayers (a), (b) and (c) of para

44 shall form part of the decree sheet. Decree sheet be prepared accordingly.

13. The suit and all pending IAs stand disposed of accordingly.

(S.P.GARG)
JUDGE

January 29, 2014
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