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

+ CS(OS) 242/2015

% ***Judgment dated 4th October, 2016***

THE BRITISH BROADCASTING
CORPORATION (BBC)

..... Plaintiff

Through : Mr.Neeraj Grover, Mr.Naqeeb Nawab
and Mr.Himanshu Dera, Advs.

versus

SANJEEV SIWANI & ORS

..... 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, passing off, delivery up, damages and rendition of accounts against the defendants.
2. Summons in the suit and notice in the application were issued on 29.1.2015, when an *ex parte ad interim injunction* was also granted in favour of the plaintiff restraining the defendants from using the plaintiff's trademark and/or logo 'BBC' either as prefix or suffix with the name of its educational institutions. During the pendency of the suit, the plaintiff and defendant no.2 entered into an amicable settlement and they jointly filed an application, being IA 5613/2015, for recording the terms of settlement. Accordingly, the present suit was decreed, vide order dated 18.3.2015, in favour of the plaintiff and against defendant no.2 in terms of the settlement arrived at between the

parties. Subsequently, defendants no.1, 3 and 5 have also settled the matter with the plaintiff before the Delhi High Court Mediation and Conciliation Centre. The report of the Mediator was accepted and a decree was passed in favour of the plaintiff and against defendants no.1, 3 and 5 on 28.4.2016. On the same date, as despite service, none had appeared for defendant no.4, he was proceeded *ex parte*.

3. Learned counsel for the plaintiff prays for passing of a decree under Order VIII Rule 10 CPC against the defendant No.4.
4. As per the plaint, plaintiff, popularly known as BBC, is a Corporation incorporated under Royal Charter organized and existing under the laws of England and Wales and having its registered office at Broadcasting House, Portland Place, London, W1A 1AA, United Kingdom. The plaintiff carries on the business of, *inter alia*, radio and television production and broadcasting, the provision of online content via internet, the production of films and the publication of books, magazines, instructional and teaching material, and other printed matter. The plaintiff also carries on its activities through various divisions such as World Service, which is responsible for international radio coverage. In India the plaintiff operates from its office at Saket, New Delhi.
5. Further, as per the plaint, the plaintiff has since its inception is using the mark BBC in respect of goods and services. The plaintiff, in order to protect its rights in the mark BBC, has acquired trademark registrations in India, details of which have been extracted in para 6 of the plaint. According to the plaintiff, the trademark registrations have been renewed from time to time and are valid and subsisting. The plaintiff has also acquired trademark registrations for the mark BBC in various countries such as Albania, Algeria, Antigua, France, Denmark,

Hong Kong, Mexico, etc. The plaintiff has placed on record the Registration Certificates with respect to the mark BBC obtained by it in the said countries.

6. As per the plaint, the plaintiff is also the registered owner of BBC domain names, under both the generic top-level domain (gTLD) ‘.com’ (in English language and vernacular) and under the respective country code top-level domains in as many as 68 countries all over the world, details of some of which have been mentioned in para 8 of the plaint. The plaintiff also claims to be the owner of the domain name www.bbc.in. In addition, the plaintiff also claims to own the other available gTLDs namely bbc.biz, bbc.info, bbc.mobi.
7. The plaintiff has further claimed its involvement and interest in India for more than seven decades and on account of the quality and consistency in services being provided by the plaintiff; therefore the plaintiff enjoys a strong reputation in the Indian subcontinent. The plaintiff also claims that it covered all major milestones in Indian history citing one of the examples of the message given by late Pandit Jawaharlal Nehru, the first Prime Minister of India, recorded a message for the BBC Home Service and Overseas Services at the conclusion of the Commonwealth Prime Ministers Conference held in London.
8. In India the plaintiff has multiple subsidiaries, its direct radio broadcasts have been available and followed in India ever since the plaintiff started overseas broadcasts in English language. The plaintiff’s ‘World Service’, a radio service, has an audience of more than 19.2 million in India, with an estimated weekly audience of more than 14.6 million. In the early nineties, with the launch of satellite television in India, a 24-hour BBC channel was made available on Star Television, however, this arrangement was discontinued in March,

1996 when it was replaced by the television channel BBC World.

9. As per the plaint, the plaintiff has licensed various popular BBC programmes to several channels in India including Doordarshan, Star TV, Discovery, etc. The plaintiff also claims to have launched various campaigns, the details of few have been extracted in paragraph 17 of the plaint. On account of its aforstated activities, the plaintiff c laims that the trademark and service mark ‘BBC’ of the plaintiff has a recognition factor of over 75 in India. The plaintiff also claims to be actively involved in publication of English teaching courses supported by audio and visual aids under the trademark and service mark BBC, besides the publisher of works of fiction and non-fiction for all age groups. The plaintiff, through BBC Worldwide, has also entered into a joint venture with The Times of India group to form worldwide media, one of India’s largest magazine publishing groups. The popularity of the plaintiff has further increased when a *Meghdoot* post card with an advertisement of BBC Hindi service was released by the postal department of India. For internet users in India, apart from English, Hindi and Urdu language websites were launched in mid-2002. The plaintiff has extracted in para 27 the figures with regard to annual sales in South Asia including India from the years 2010 to 2012.
10. The plaintiff also claims to have commenced use of the BBC Academy mark in the year 2009 for imparting training of journalism, production, leadership and the centre of technology etc. The plaintiff has also offered free educational content, from programmes to lesson plans and interactive features on its websites, but its interest in teaching users to compute can be traced since 1980s.
11. Prior to November 2011, BBC Worldwide, through its subsidiary BBC Magazines Limited, has operated the magazine publishing arm of the

plaintiff and was the third-largest publisher of consumer magazines in the United Kingdom. Many of the magazines now also have associated with dedicated websites, for example www.topgear.com, www.gardenersworld.com, and www.bbcgoodfood.com, containing a wealth of information to complement the printed magazine. These websites can be accessed throughout the world. The annual turnover of BBC Worldwide Limited from the year 1994 till 2012 is given in paragraph 33(d) of the plaint. The enormous goodwill and reputation, and increasing popularity of the Plaintiff are evident from the findings of the BBC Global Audience Estimate 2014.

12. The plaintiff claims that in order to protect and secure its trademark registrations, the plaintiff has spent a large amount of money. The Plaintiff, in pursuance of guarding its intellectual property rights in and to the mark BBC, has successfully enforced actions against third parties worldwide. In one such action against a third party in South Korea, the Korean Intellectual Property Office recognised the mark BBC as “well-known” and held a third party mark “*BBC by vivien*” confusingly similar to the mark **BBC**.
13. Learned counsel for the plaintiff submits that in and around the second week of December, 2013, the Plaintiff, while conducting a due diligence search on the database of the Registrar of Trade Marks, came across defendant’s trademark application for the mark “BBC KIDS



PLAY CUM MISSION SCHOOL” / under number 2060893 in Class 41. The impugned mark consisted of the term BBC along with the word “KIDS PLAY CUM MISSION PUBLIC SCHOOL”, the device of an eye and the tagline “*Edu. Third Eyes of*

Man”. Enquiries revealed that defendant no.2 is the owner of the said school. The Plaintiff thereafter filed CS(OS) 68 of 2014 in the Delhi High Court wherein interim injunction was granted against defendant no. 2, however, the said matter was decreed in terms of the settlement arrived at between the plaintiff and defendant no. 2 herein. In the said suit, defendant no.2 herein had undertaken to the Court that he would not use the well-known mark BBC and also agreed to give up the use of



mark and also to withdrew all applications for registration of



mark under application no.2060893 in Class 41. A copy of the settlement agreement is on record. Despite the settlement, the defendants were found to be operating an entire chain of schools and English speaking coaching centres at various locations in Bihar using the well-known mark BBC of the Plaintiff herein. Plaintiff's representative made enquires and it was revealed that defendants were running education institutes in 8 locations under the name and description of BBC. Details of such institutes have been extracted in para 47 of the plaint.

14. Learned counsel for the plaintiff submits that defendant No. 1, 2, 3 & 4 are the owners of BBC Mission Public School cum kids play, Madhopur, Gopalganj, Bihar.
15. The plaintiff seeks a permanent injunction to restrain the defendant No. 4 from infringement of trade mark, passing off and damages.
16. I have heard learned counsel for the plaintiff. It may be noticed that the present suit has already decreed in favour of the plaintiff and against defendant no.1, 2, 3 and 5 in terms of the settlement arrived at between the parties. Since none appeared for defendant no.4 despite service, he

was proceeded *ex parte*. Neither any written statement was filed by defendant no.4.

17. In the case of ***Relaxo Rubber Limited & Anr. v. Selection Footwear & Anr.***, AIR 2000 Del 60, injunction and damages were granted under Order VIII Rule 10 in a case for infringement of copyright and trade mark.
18. Having regard to the submissions made and in the absence of any written statement, the averments made in the plaint is taken to be correct. In view of above, I am of the view that it is a fit case to pass a decree under Order VIII Rule 10 CPC and I am also view that damages in such cases must be awarded and a defendant, who chooses to stay away from the proceedings of the Court, should not be permitted to enjoy the benefits of evasion of court proceedings.
19. Accordingly, the present suit is decreed in favour of the plaintiff and against the defendant No.4 in terms of paras 78 (a) (b) and (d) of the plaint along with punitive damages of Rs. 50,000/- in terms of the judgment in ***Time Incorporated v. Lokesh Srivastava & Anr.***, 2005 (30) PTC 3 (Del); and ***Microsoft Corporation v. Rajendra Pawar & Anr.***, 2008 (36) PTC 697 (Del.). Let a decree sheet be drawn accordingly.

I.A. 1973/2015 (O XXXIX R 1 & 2 CPC)

20. Interim order dated 29.1.2015 is made absolute.
21. Application stands disposed of.

I.A. 1974/2015 (O XIII R 1 CPC) & I.A. 15931/2015 (O VIII R 1 CPC)

22. Applications stand dismissed in view of the order passed in the suit.

G.S.SISTANI, J

OCTOBER 04, 2016 //msr