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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CS(COMM) 180/2016

SIEMENS AKTIENGESELLSCHAFT Plaintiff
Through: Ms. Anju Aggarwal, Advocate.

versus

SIEMENS CONSULTANCY
SERVICES PVT LTD Defendant
Through: None

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Date of Decision: 28th November, 2017

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J (Oral):

1. Present suit has been filed for permanent injunction restraining infringement of trademark, misuse of the trademark SIEMENS as a trading name, rendition of accounts etc. against the defendant. The prayer clause in the suit is reproduced hereinbelow:-

“(a) a decree for permanent injunction restraining the defendant, by themselves, their servants, agents, etc. from manufacturing, selling offering for sale, advertising, directly or indirectly dealing in products or goods and offering services under the trademark SIEMENS or any other trademark deceptively and/or confusingly similar to the trademark SIEMENS of the Plaintiffs, so as to infringe plaintiff’s registered trademark Siemens And/Or

(b) a decree for permanent injunction restraining the defendant, by themselves, their servants, agents, etc. from manufacturing, selling, offering for sale, advertising, directly or indirectly dealing in products or goods and offering services under the trading name/corporate name SIEMENS or any other trademark and trading name deceptively and/or confusingly similar to the trademark SIEMENS of the plaintiffs, so as to infringe plaintiff's registered Trademark Siemens And/Or.

(c) a decree for permanent injunction restraining the defendant, by themselves, their servants, agents, etc. from using website www.siemensconsultancy.com and domain name www.siemensconsultancy.com and/or any other website and domain name having name Siemens, so as to infringe plaintiff's registered trademark Siemens And/Or.

(d) A decree of damages of Rs.20,00,500/- on account of Infringement by the use of the trademark enumerated herein of the Plaintiff in favour of the Plaintiff and against the Defendant, And/Or

(e) A decree for delivery up of all the infringing goods as complained of herein and all blocks, dies and all such articles employed by Defendant in applying the trademark SIEMENS to the offending goods to an authorized representative of the plaintiffs for destruction/erasure. And/Or.

(f) Award costs of the proceeding in favour of the Plaintiff and against the Defendants; And/Or

(g) Grant such other or further reliefs as this Hon'ble Court may deem fit and proper in the facts and circumstances and in the interests of justice."

2. At the outset, learned counsel for the plaintiffs gives up prayers (d) and (e) of the prayer clause to the suit. The statement made by learned counsel for plaintiffs is accepted by this Court and plaintiffs'

are held bound by the same.

3. Vide order dated 09th October, 2015 this Court granted an ex-parte ad interim injunction in favour of the plaintiffs and against the defendant, which was modified and confirmed vide order dated 27th April, 2017.

4. Since the defendant did not appear despite service, it was proceeded ex-parte vide order dated 27th April, 2017.

5. In the plaint, it has been averred that the plaintiff no.1, is one of the leading electrical, electronic and industrial engineering company with about 750 subsidiaries and associated companies around the globe and that the plaintiff no.2 being the subsidiary of the plaintiff no.1 has the permission to use the impugned trademark SIEMENS in India.

6. It is stated in the plaint that the trademark SIEMENS was first adopted by plaintiff no.1 in the year 1847 in Germany by the predecessors-in-title of the plaintiff no.1 and has been continuously used since then by its successors-in-title. The word SIEMENS also constitutes an important feature of the trading name of the plaintiffs.

7. It is stated in the plaint that the plaintiff no.1 is the registered proprietor of the trademark SIEMENS in India under various classes, including under classes 1, 5, 7, 9, 10 and 11 of the Trade Marks Act, 1999 and the aforesaid registrations are valid and subsisting.

8. It is averred in the plaint, that the approximate worldwide sales figure of the goods of the plaintiff no.1 bearing the trademark SIEMENS for the year 2014 was seventy two (72) billion euros and the sales figure of the plaintiff no.1's goods and services for the same

period in India was 1,27,081 million rupees. It is also stated that the plaintiff no.2 has spent 115 million rupees on advertising and marketing the trademark SIEMENS in India.

9. It is stated in the plaint that the plaintiffs have also registered the domain names www.siemens.com and www.siemens.co.in, since 1986 and 2009 respectively. It is stated that the plaintiffs advertise and promote their products under the registered trademark SIEMENS on their websites and a large number of prospective customers visit the aforementioned websites of the plaintiffs.

10. It is further stated that the plaintiffs have gained tremendous goodwill and reputation in the trade and the purchasing public / customers associate the trademark SIEMENS with the products of the plaintiffs alone.

11. Learned counsel for the plaintiffs states that in the month of September, 2015, it came to the plaintiffs' knowledge that the defendant was using the website www.siemensconsultancy.com. She states that the defendant is infringing the plaintiffs' trademark SIEMENS by using the trademark and trade name SIEMENS in relation to identical services.

12. She states that defendant by adopting the mark SIEMENS *qua* its goods/services; and for its domain name www.siemensconsultancy.com, has sought to mislead, deceive and confuse the relevant purchasing public and advertisers into believing that there is an association and/or nexus between the plaintiffs and the defendant. She states that the defendant is attempting to trade upon the reputation and goodwill associated with the trademark SIEMENS of

the plaintiffs and unjustly enrich itself. She states that the defendant's use of the domain name www.siemensconsultancy.com also dilutes the distinctive quality of the impugned mark of the plaintiffs and the use of the trade name Siemens Consultancy Private Limited results in tarnishing the plaintiffs' reputation and monetary loss.

13. Learned counsel for the plaintiffs lastly states that at present the website of the defendant stands closed and the domain name has also not been renewed.

14. The plaintiffs have filed their ex-parte evidence by way of affidavit of Ms. Vandana Prabhu (PW1), who has exhibited and marked the following documents:-

- i) Exhibit PW1/5- Original Legal Certificate of
PW1/9 Trademark Registration Nos. 153597,
(Collectively) 153598, 153599, 153600 and 159675
registered in the name of Plaintiff no.1.
(Page no.1-13 filed along with list of
documents dated 01.07.2017).
- ii) Exhibit Original Invoices of the Plaintiff No.2.
PW1/13
(Collectively)

15. Since Exhibits No.PW-1/15 (Collectively) to Exhibit PW-1/19 (Collectively) of PW1 evidence were de-exhibited and marked as Mark E (Collectively), Mark F (Collectively), Mark G (Collectively) and Mark I (Collectively) because the affidavit under Section 65A and B of Evidence Act (in support of the said exhibits) of Mrs. Laxmi Bisht was submitted on record instead of Ms. Vandana Prabhu (PW-1), the plaintiffs, with the permission of the Registrar vide order dated

04th September, 2017, filed evidence by way of affidavit of Mrs. Laxmi Bisht as PW2.

16. Subsequently, the plaintiffs filed an I.A. No.11790/2017 under Section 151 CPC seeking permission to withdraw previous affidavit under Section 65A and B filed with diary No.416489 dated 29th August, 2017 to amend the affidavit of Mrs. Laxmi Bisht in order to specify name/number of exhibits of print out of web pages of websites, Link/URL etc. The said I.A. was duly allowed by the Registrar vide order dated 12th October, 2017.

17. On 09th November, 2017, the evidence by way of affidavit of Mrs. Laxmi Bisht (PW-2) was tendered who has exhibited following documents:-

- i) Exhibit PW2/1 (Collectively) Printout of website www.siemens.com owned by Plaintiff no.1. (Page no.309-315 filed along with list of document along with plaint).
- ii) Exhibit PW2/2 (Collectively) Printout of website www.siemens.co.in owned by Plaintiff no.2. (Page no.316-559 filed along with list of documents along with plaint).
- iii) Exhibit PW2/3 Printout of whois record showing details of domain name www.seimensconsultancy.com. (Page no.290-291 filed along with list of document along with plaint).
- iv) Exhibit PW2/4 (Collectively) Printout of website of defendant www.seimensconsultancy.com (Page no.292-305 filed along with list of

document along with plaint).

- v) Exhibit PW2/5 (Collectively) Printout of links/URL advertised jobs under the name Siemens consultancy Private Ltd. <http://www.naukri.com/recruiters/abhinav-2286106>. (Page no.306-308 filed along with list of document along with plaint).
- vi) Exhibit PW2/6 (Collectively) Print out of judgment in CS(OS) 1986/2013 titled as Siemens Aktiengesellschaft and one another vs. Siemens Solutions as well as order dated 08.12.2014 in CS(OS) No.3785/2014 titled as Siemens Aktiengesellschaft and one another vs. Siemens Project India Pvt. Ltd. downloaded from the website of Delhi High Court.

18. The PW1 has proved the legal certificates of the plaintiffs' trademarks as Ex.PW1/5(Colly) to Ex.PW1/9(Colly). The PW1 has proved the invoices as Ex.PW1/13(Colly). The PW2 has proved various order passed in favour of the plaintiffs as Ex.PW2/6(Colly).

19. Having heard learned counsel for plaintiffs as well as having perused the documents on record, this Court is of the view that due to extensive worldwide use over substantial period of time, the plaintiffs' SIEMENS trademark has acquired immense reputation and goodwill in the mark in India.

20. From the evidence on record, it is apparent that without any explicit permission or authorisation to use the plaintiffs' trademark

and trade name, the defendant had malafidely infringed the trademark SIEMENS of the plaintiffs and was providing identical services under the mark/trade name/domain name.

21. Further, as the plaintiffs' evidence has gone unrebutted, said evidence is accepted as true and correct. The Supreme Court in ***Ramesh Chand Ardawatiya Vs. Anil Panjwani, AIR 2003 SC 2508*** has held as under:-

"33. In the absence of denial of plaintiff averments the burden of proof on the plaintiff is not very heavy. A prima facie proof of the relevant facts constituting the cause of action would suffice and the court would grant the plaintiff such relief as to which he may in law be found entitled. In a case which has proceeded ex parte the court is not bound to frame issues under Order 14 and deliver the judgment on every issue as required by Order 20 Rule 5. Yet the trial court should scrutinize the available pleadings and documents, consider the evidence adduced, and would do well to frame the "points for determination" and proceed to construct the ex parte judgment dealing with the points at issue one by one. Merely because the defendant is absent the court shall not admit evidence the admissibility whereof is excluded by law nor permit its decision being influenced by irrelevant or inadmissible evidence."

22. Consequently, the allegation that the trademark, trade name and domain name used by defendant amounts to infringement of plaintiffs' trademark, is correct. The use of the impugned mark by the defendant was bound to cause harm and injury to the plaintiffs and immense public harm.

23. Accordingly, present suit is decreed in accordance with the prayer clauses (a), (b) and (c) of the plaint along with the actual costs

incurred by the plaintiffs. The cost shall amongst others include the lawyers' fees as well as the amounts spent on purchasing the court fees. Registry is directed to prepare a decree sheet accordingly.

MANMOHAN, J

NOVEMBER 28, 2017

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