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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 15th May, 2017

Pronounced on: 26th May, 2017

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CS(OS) 1883/2014 & CCP (O) No.7/2015

M/S HT MEDIA LTD & ANR

..... Plaintiffs

Through : Ms.Sneha Jain & Mr.Ranjeet Singh,
Advocates.

versus

NAVNEET CHATURVEDI & ANR

..... Defendants

Through : None being *ex-parte*.

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

YOGESH KHANNA, J.

1. This a suit for permanent injunction, infringement of trademark, passing off, rendition of accounts and damages filed by the plaintiffs against the defendants.

2. The case of the plaintiffs is that they are one of the leading media houses in India engaged in print media, radio, internet etc. The plaintiffs claims to be the parent entity with its business extending in various dimensions, but per instant suit, they principally are engaged in the publication business of newspapers 'HINDUSTAN TIMES'. It is the case of the plaintiff that their newspaper is pioneer in the business with its editorial excellence and integrity. At present, HINDUSTAN TIMES has an increased readership of over 3.7 million

readers. The plaintiff No.2 has a prominent internet presence through its website www.hindustantimes.com amongst others, which is primarily a news website. The plaintiff No.2 is the owner of the same which was registered in August, 1996. The trade mark 'HINDUSTAN TIMES' has been continuously and uninterruptedly used by the plaintiffs since the year 1921 which has become extremely popular and well-known and is exclusively associated with the news publications published by the plaintiffs. The trade mark HINUSTAN TIMES is a unique combination/collocation of words in the English language thereby making the said trade mark distinctive one. The said trade mark has therefore become synonymous with the plaintiffs apart from having virtually become a household name in India. Thus, use of the trade mark HINDUSTAN TIMES in connection with any goods or services clearly leads the members of the public to infer that the source/origin of the said good/service is the plaintiffs only. It is also the case of the plaintiffs that Hindustan Times is the corporate name/trading style of the plaintiff No.2; 'The Hindustan Times Limited', was incorporated in the year 1924. In the year 2003, the Hindustan Times Limited transferred its media business including its news publication business to its subsidiary M/s HT Media Limited. Further, by virtue of agreement dated 15.08.2003, the plaintiff No.1 is the subsequent proprietor of all the intellectual property rights including in the trade mark 'HINDUSTAN TIMES'. The HT Logo is a registered trade mark owned by the plaintiff No.1. By virtue of distinctiveness and prior, continuous, extensive and significant use of the trade marks 'HT' and

HT Logo, in respect of any product or services are known and associated by members of the public to be used by the plaintiffs. The plaintiffs have established tremendous goodwill and reputation in respect of the trade marks 'HINDUSTAN TIMES' and HT on account of the high quality of news reporting.

3. The details of the registered trademarks have been mentioned in para 11 of the plaint. The details of the revenue turnover and expenses for last three years are incorporated in para 13 of the plaint. Further, the case of the plaintiffs against the defendants is that somewhere in first week of June, 2014, the plaintiffs came to know that a website providing news in Hindi is being operated from the web domain www.hindustantimesonline.com. It appears to have been started on 01.04.2014 and it boasts of having a daily traffic of over 1,00,000 users including readership from ministers, bureaucrats, business people, professionals, students, academicians and scholars among several others. Their website www.hindustantimesonline.com and its webpages are registered in the name of defendant No.1. The defendant No.1 claims to be the Chief Editor of the defendant website and he is also believed to be using an e-mail id as chiefeditor@hindustantimesonline.com by which he communicates with third parties as the Chief Editor.

4. As per assertion of plaintiffs, defendant No.2, Hindustan Times Online, is a privately owned company with 51-200 employees and defendants are joined as parties in the instant suit as a common cause of action arises against both the defendants and common reliefs are

claimed. The defendants are involved in the business of reporting news from India and abroad in Hindi.

5. It is the case of the plaintiffs that the defendants not only use a trade mark that is identical to the trade mark 'HINDUSTAN TIMES' which is registered trade mark of the plaintiff but also makes use of a mark identical to the plaintiffs trade mark 'HT' and the HT Logo. They have used the trade marks identical to the plaintiffs' trade mark without the permission of the plaintiffs and the defendant have extended the illegal use of the plaintiffs' trademarks over various other social networking platforms, viz Facebook, Twitter and LinkedIn and thus have caused substantial harm to the plaintiffs by misrepresenting to the target audience that the defendants' business is related to that of the plaintiffs. It is also alleged that the defendants are violating the plaintiffs trademark rights under Section 29 of the Trade Marks Act, 1999. The unauthorized use of the plaintiffs' trademarks 'HINDUSTAN TIMES', HT Logo and HT by the defendants amounts to infringement of the plaintiffs' registered trademarks and passing off its website/business as having a connection/affiliation with the plaintiffs. Extracted below is a comparison of plaintiffs' trademarks used by the defendants:-

Plaintiffs' Trademarks	Defendants' Infringing Marks
	
www.hindustantimes.com	www.hindustantimesonline.com



6. It is argued that the activities of the defendants are causing irreparable harm and injury to the plaintiffs. They have adopted the trade name HINDUSTAN TIMES ONLINE and website namely www.hindustantimesonline.com, in order to ride upon the immense goodwill and transitional reputation enjoyed by the plaintiffs and are confusing the members of the public and taking unfair advantage of the repute of the plaintiffs' registered trade mark. On these averments plaintiffs have filed this suit against them.

7. On filing of this suit, ad interim injunction was granted in favour of the plaintiffs and against the defendants in terms of order dated 02.07.2014.

8. The defendants did not appear despite various efforts made by the plaintiffs to serve them and also despite the defendant No.1 being served through email. On 27.01.2015, in view of consent given by the defendants, the plaintiff were permitted to take full and absolute possession and control of domain used by the defendants viz www.hindustantimeonline.com, its control panel, its user and login

password to the plaintiff – M/s.HT Media Limited etc. The defendants were proceeded against ex parte vide order dated 27.01.2015 and the plaintiffs were directed to file *ex parte* evidence by way of affidavit.

9. The plaintiffs proved its case through its witnesses. PW1-Manoj Bhargava and PW2-V.K.Charoria unanimously deposed through their affidavits Ex.PW1/A and Ex.PW2/A that the plaintiffs have been engaged in the business of publication of newspapers for almost a century and are registered proprietor of the wordmarks 'HINDUSTAN TIMES' over various classes including logos and labels; they also deposed about the transfer of its media business and its news publication business to its subsidiary plaintiff No.1 and that the defendants have been infringing the same. Both the witnesses have reiterated about the sales of the plaintiffs news publication and how the defendant No.1 have been using the website www.hindustantimesonline.com and user of email ID as chiefeditor@hindustantimesonline.com. It was deposed that the defendant's website is a web domain providing news from India and across the world, similar to the plaintiff's official website i.e. www.hindustantimes.com and the defendant boast of having the daily traffic of over one lakh users and thus are infringing the plaintiff's trademark without authorisation in the same business.

10. It was also deposed that the defendant's use of identical mark in the same nature of business as of the plaintiff's may suggest inappropriately to the users, that the defendants website is

associated/affiliated/connected with the plaintiffs and therefore the defendant is deceiving the existing, the prospective readers, advertisers, customers, employees and the public at large into believing that there exists a connection or association between the plaintiffs and the defendants. The illegal use of the wordmark, logo, labels of the plaintiffs injured the selling power, distinctiveness, quality and value of the plaintiff's trademark and threaten to dilute and erode its reputation. It is stated that despite the knowledge of the order of this court the defendant has neither appeared nor have restrained from its illegal activities and in December, 2014 the defendant No.1 had misrepresented himself as editor-in-chief of Hindustan Times at hotel Alaska in Delhi and absconded from the hotel without payment of its bills.

11. Both the witnesses deposed that the punitive damages to the extent of ₹20,00,200/- be imposed upon the defendants since they have injured the immense reputation and goodwill associated with the plaintiff's brand. The witnesses also proved documents viz Ex.PW1/1-the power of attorney in favour of Manoj Bhargava, who had instituted this suit, Ex.PW1/2 (Colly) - the registration certificates of dated 15.01.2011; of dated 13.03.2008; of dated 15.06.2011; of dated 19.01.2006; of dated 16.01.2008; of dated 15.01.2011; of dated 31.03.2010 qua word marks – Hindustan Times.com;

HINDUSTANTIMES; hindustantimes;

WWW.HINDUSTANTIMES.IN; Hindustan Times Ltd.; HT; HT (LOGO); HT (LABEL) etc. Further the certified true copy of Board Resolution is proved as Ex.P2/1; and the registration certificate dated

10.05.2005 of the mark 'HINDUSTAN TIMES.COM (LABEL)' as Ex.P2/3.

12. PW3-Sandeep Kumar Gupta is a Microsoft Certified Systems Engineer Professional who had proved the documents Ex.PW3/1 to PW3/16 by taking out its prints in the regular course of business and gave his affidavit Ex.PW3/A while confirming the conditions laid down in Section 65 (A) and (B) of Indian Evidence Act, 1872.

13. This witness has proved the printout of the WHOIS details of the plaintiff Nos.2's website available at :

<http://whois.net/whois/hindustantimes.com> as Ex.P3/1; printout of the news article titled "Breaking news" dated 30th march, 2014 from www.hindustantimesonline.com available at:

<http://hindustantimesonline.com/index/news/HindustanTimes> Online as Ex.P3/2; printout of the WHOIS details of the defendant website available at: <http://whois.net/whois/hindustantimesonline.com> as

Ex.P3/3; Printouts of the home pages from defendants' online social profiles at Facebook, Twitter and LinkedIn available at: <http://in.linkedin.com/pub/navneetchaturvedi/3a/584/717>,

<http://www.linkedin.com/company/hindustantimes-online>,
www.twitter.com/HTonlinenews,

<https://www.facebook.com/hindustaintimesonline> as Ex.P3/4;

printout of the "Terms and Conditions" from www.hindustantimesonline.com available at

<http://hindustantimesonline.com/index/terms> as Ex.P3/5; printout of the contact page from www.hindustantimesonline.com available at:

<http://hindustantimesonline.com/index/contact> as Ex.P3/6; Printout of the webpage providing advertising information from www.hindustantimesonline.com available at <http://hindustantimesonline.com/index/advertising> as Ex.P3/7; Printout of the homepage of the defendant website www.hindustantimesonline.com as Ex.P3/8; Printout of mail communication from defendant No.1 received by the plaintiff No.1 as Ex.P3/9; Print outs of the relevant extracts of the plaintiff's trade marks from the official Website of the Trade Mark Registry available at : <http://ipindiaservices.gov.in/eregister/eregister.aspx> as Ex.P3/10 (Colly) and printout of the "Privacy Policy" from www.hindustantimesonline.com available at: <http://hindustantimesonline.com/index/privacypolicy> as Ex.P3/11.

This witness also proved e-mail communications between the defendants and plaintiff as Ex.P3/12; printouts of the articles published by the defendants in disrespect of the injunction order dated 02.07.2014 as Ex.P3/13; online case history as updated on the official website of the Delhi High Court for C.S.(OS) No.1883 of 2014 as Ex.P3/14; emails received by the plaintiffs from hotels and the ID card provided to the plaintiff by the said hotel and printout of proof of the defendants' URL and web domains, restricted by the injunction Order, still accessible on the internet even after date of order along with screenshots of the defendants' website as Ex.P3/16.

14. The plaintiffs have also relied upon two letters sent by defendant No.1 received by registry of this Court on 20.08.2014 and

17.09.2014 which portrait the defendant No.1 as an owner/Director of www.hindustantimesonline.com and wherein he had shown his inclination to surrender the website of his company wholly in favour of the plaintiff No.1 and has sought sincere apology for the mistake done by him. In his letter dated 15.09.2014 the defendant No.1 has stated that all user and control of his company namely 'www.hindustantimesonline.com' is with the plaintiff w.e.f. 05.09.2014 and he has no control over it and that the plaintiffs may decide as to how to operate and control the website 'www.hindustantimesonline.com'.

15. Thus the evidence so led by the plaintiff's witnesses duly proved the contents of the plaint and the case set forth by the plaintiffs. The letters written by the defendant No.1 sealed the fate of defendants. Hence, I am of the considered opinion that the plaintiff's have proved its case against the defendants for grant of decree of permanent injunction in favour of the plaintiffs and against the defendants restraining the defendants, its principle officers, directors, agents, franchisees, servants and all other acting for and on its behalf directly or indirectly using plaintiff's registered trademarks 'HINDUSTAN TIMES', 'HT', HT logo and/or any deceptive variant thereof including the plaintiff's domain name hindustimes.com, www.hindustantimes.in, in any manner whatsoever, including but not limited to (i) In its domain name, www.hindustantimesonline.com; and (ii) in or as part of its Facebook Profile, named Hindustan Online.com, located at the URL at

www.facebook.com/hindustantimesonline and/or any other URL; and (iii) in or as part of its Twitter handle, @HTONLINENEWS located at the URL at www.twitter.com/HTonlinenews and/or any other URL; (iv) and in or as part of its LinkedIn Profile HINDUSTANTIMESONLINE, located at the URL www.linkedin.com/company/hindustantimes-online and/or any other URL; and (v) in or as part of its business e-mail Ids, including but not limited to chiefeditor@hindustantimesonline.com, press.release@hindustantimesonline.com, rti.support@hindustantimesonline.com, crime.reporter@hindustanonline.com, feedback@hindustantimesonline.com; and (vi) as part of its news publications' and/or doing any other act that is likely to lead to infringement of the plaintiff's trademark. Hence, the suit is decreed in favour of the plaintiffs and against the defendants in terms of the above.

16. Further, the plaintiffs have also proved its case for a decree of permanent injunction in favour of the plaintiffs and against the defendants restraining the defendants, its principal officers, directors, agents, franchisees, servants and all others acting for and on its behalf, from directly or indirectly using the plaintiff's trademarks 'Hindustan Times', 'HT', the HT Logo and/or any deceptive variant thereof including the plaintiff's domain name hindustantimes.com, www.hindustantimes.in, in any manner whatsoever, including but not limited to, (i) in its domain name, www.hindustantimesonline.com;

and (ii) in or as part of its Facebook Profile, named Hindustantimes Online.com, located at the URL at www.facebook.com/hindustantimesonline and/or any other URL; and (iii) in or as part of its Twitter handle, @HTONLINENEWS located at the URL at www.twitter.com/HTonlinenews and/or any other URL; and (iv) in or as part of its LinkedIn Profile HINDUSTANTIMES ONLINE, located at the URL www.linkedin.com/company/hindustantimes-online and/or any other URL; and (v) in or as part of its business e-mail Ids, including but not limited to chiefeditor@hindustantimesonline.com, press.release@hindustantimesonline.com, rti.support@hindustantimesonline.com, crime.reporter@hindustanonline.com, feedback@hindustantimesonline.com; and (vi) as part of its news publications' and/or in any manner representing that the defendants are connected or affiliated with the plaintiff so as to amount to passing off. Hence, the suit of the plaintiffs is decreed against the defendants in terms of the above.

17. Besides the above two prayers the plaintiffs have argued the damages to the extent of ₹20,00,200/- be also awarded. The plaintiffs are more concerned with the punitive damages and rely upon *Time Incorporated vs. Lokesh Srivastava & Anr* 116 (2005) DLT 599 wherein it was held:-

“This Court has no hesitation in saying that the time has come when the Courts dealing actions for infringement of trade marks, copy rights, 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. In Mathias v. Accor Economy Lodging, Inc. reported in 347 F.3d 672 (7th Cir. 2003) the factors underlying the grant of punitive damages were discussed and it was observed that one function of punitive damages is to relieve the pressure on an overloaded system of criminal justice by providing a civil alternative to criminal prosecution of minor crimes. It was further observed that the award of punitive damages serves the additional purpose of limiting the defendant's ability to profit from its fraud by escaping detection and prosecution. If a tortfeasor is caught only half the time he commits torts, then when he is caught he should be punished twice as heavily in order to make up for the times he gets away. This Court feels that this approach is necessitated further for the reason that it is very difficult for a plaintiff to give proof of actual damages suffered by him as the defendants who indulge in such activities never maintain proper accounts of their transactions since they know that the same are objectionable and unlawful. In the present case, the claim of punitive damages is of Rs. 5 lacs only which can be safely awarded. Had it been higher even, this court would not have hesitated in awarding the same. This Court is of the view that the punitive damages should be really punitive and not flee bite and quantum thereof should depend upon the flagrancy of infringement.”

18. The decision in *Time Incorporated* (supra) was relied upon by a Co-ordinate Bench of this Court in *Jockey International Inc & Anr vs. R. Chandra Mohan & Ors* 211 (2014) DLT 757 which read as under:-

“43. I am in agreement with the aforesaid submission of learned counsel for the plaintiff 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. Any view to the contrary would result in a situation where a defendant who appears in Court and submits its account books would be liable for damages, while another defendant who, chooses to stay away from court proceedings would escape the liability on account of failure of the availability of account books. A party who chooses not to participate in court proceedings and stays away must, thus, suffer the consequences of damages as stated and set out by the plaintiffs. There is a larger public purpose involved to discourage such parties from indulging in such acts of deception and, thus, even if the same has a punitive element, it must be granted. R.C. Chopra, J. has very succinctly set out in Time Incorporated's case (supra) that punitive damages are founded on the philosophy of corrective justice.”

19. The witnesses of plaintiffs have deposed that damages ought to be imposed upon the defendants on account of infringement and passing off its marks, label, logo etc by the defendants and such damages should be exemplary, compensatory and punitive. They also have deposed that plaintiffs hold names in the field of the news reportage, print and electronic media and that the monetary value of

the immense reputation and goodwill associated with these brands is though incalculable, however they claim ₹20,00,200/- so as to serve as a deterrent to the defendants and to discourage further infringement of the plaintiffs trademark.

20. The plaintiffs have proved their allegations set out in the plaint against the defendants. The letter dated 18.08.2014 received from defendant No.1 portrays him as an owner / director of www.hindustantimesonline.com wherein he had showed his inclination to surrender his website of the company wholly in favour of the plaintiff No.1 to close the case and have sought sincere apology for the mistake done by him. Similar is his letter dated 15.09.2014 wherein he has stated that all user and control of his company namely 'hindustantimesonline' is with the plaintiffs from 05.09.2014 and he has no control over it and that the plaintiffs may decide as to how operate or close the website www.hindustantimesonline.com. However, despite sending the letters, the defendant No.1 failed to appear in the case and rather went on infringing the plaintiffs' mark. The facts do show that despite a restraint order - defendant No.1 has been using the name of the plaintiffs and its mark for ulterior benefits.

21. Thus, given the facts and circumstances of this case where the defendant No.1 reclused himself from the proceedings, cannot be permitted to enjoy the benefits of evasion or covert priorities as despite restraint order given, the defendants have been infringing the plaintiff's mark, logo, label, certainly make defendant No.1 liable to pay the punitive damages to the plaintiffs. Hence, a decree for a sum

of ₹5,00,000/- in favour of the plaintiffs and against defendants, jointly and severally, is passed on account of infringing the registered marks, logo, label etc of the plaintiffs despite the restraint order. The plaintiff shall also be entitled to interest @ 12% pa on the damages so awarded from the date of filing of the suit till the date of realisation. Costs of the suit is also awarded to the plaintiffs. Decree Sheet be drawn.

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22. Since damages have been awarded in favour of the plaintiffs, the contempt petition stands disposed of in terms of the same.

YOGESH KHANNA, J

MAY 26, 2017

M/VLD