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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CS(COMM) 114/2018 & I.As. 12227/2015 AND 831/2018

TODAY MERCHANDISE

PRIVATE LIMITED & ANR.

.....Plaintiffs

Through: Mr. Setu Niket, Advocate with
Ms. Esha Mazumdar, Advocate.

versus

WWW.INDIATODAYS.COM & ORS

..... Defendants

Through: Ms. Geetanjali Vishwanathan,
Advocate with Ms. Asavari Jain,
Advocate for defendant No.3.

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Date of Decision: 05th March, 2018.

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, passing off, transfer of domain name, unfair competition, rendition of accounts, damages, delivery-up etc against the defendants. The prayer clause in the present suit is reproduced hereinbelow:-

“38. In view of the statements and submissions made hereinabove, it is most respectfully prayed that this Hon’ble Court may be pleased to grant the following reliefs in favour of the plaintiffs;

(a) A decree of permanent injunction restraining the Defendants, their principal officers, servants, agents, dealers, distributors, retailers, assignees, licensees and anyone claiming through, by or under the Defendants, from infringing the registered trade mark of the Plaintiffs, India Today, or any other mark/title/name identical to or deceptively similar to the Plaintiffs well-known registered trade mark(s), in any manner, or to use the same as a domain name and from using the Impugned Website for business or in any other manner so as to result in infringement of the Plaintiffs registered trade mark; AND

(b) A decree of permanent injunction restraining the Defendants, their principal officers, servants, agents, dealers, distributors, retailers, assignees, licensees and anyone claiming through, by or under the Defendants, exploiting the registered trade mark of the Plaintiffs, India Today, or any other mark/title/name identical to or deceptively similar to the Plaintiffs well-known registered trade mark(s), in any manner, or to use the same as a domain name and from using the Impugned Website for business or in any other manner so as to result in passing off of the Plaintiffs goodwill and reputation in the mark India Today and causing dilution thereof in any manner; AND

(c) A decree for damages/rendition of accounts in the amount of Rs. 20,00,100/- be passed against the Defendants and in favour of the Plaintiffs; AND

(d) An order directing Defendant No. 2 to forthwith block the Impugned Domain Name; AND

(e) An order directing the Defendant No. 2 to transfer the Impugned Domain Name to the Plaintiffs; AND

(f) Costs of the present proceedings in favour of the Plaintiffs; AND

(g) Pass such further orders as this Hon'ble Court may deem fit in the facts and circumstances of the present case."

2. On 29th May, 2015, this Court granted an ex parte ad interim injunction in favour of the plaintiffs and against the defendants. The relevant portion of the said order is reproduced hereinbelow:-

“Accordingly, till further orders, defendants are restrained from using the domain name ‘www.indiatodayers.com’ or any other deceptively similar domain name.

Defendant no.2 is directed to block the site of defendant no. 1 ‘www.indiatodayers.com’.

3. Learned counsel for the plaintiffs states that he has instructions not to press for any relief other than the reliefs prayed for in prayer 38(a), (b) and (f) of the plaint. The statement made by learned counsel for plaintiffs is accepted by this Court and plaintiffs are held bound by the same.

4. Since none appears for the defendants No. 1 and 2 despite service, they are proceeded *ex parte*.

5. The defendant No.3 has filed an affidavit stating as under:-

“5. E-billing Solutions Private Limited does not wish to contest the present suit on merits and hereby gives an undertaking that E-billing Solutions Private Limited and Defendant No.3 will not provide payment gateway services to www.indiatodayer.com unless the said website is allowed to operate by this Hon’ble Court.”

6. Learned counsel for the plaintiffs states that in view of the judgment of this Court in **Satya Infrastructure Ltd. & Ors. Vs. Satya Infra & Estates Pvt. Ltd.**, the present suit should be decreed qua the reliefs in paragraph 38(a), (b) and (f) of the plaint. The relevant portion of the

judgment in **Satya Infrastructure Ltd. & Ors.** (Supra) relied upon by learned counsel for the plaintiffs is reproduced hereinbelow:-

“I am of the opinion that no purpose will be served in such cases by directing the plaintiffs to lead ex parte evidence in the form of affidavit by way of examination-in-chief and which invariably is a repetition of the contents of the plaint. The plaint otherwise, as per the amended CPC, besides being verified, is also supported by affidavits of the plaintiffs. I fail to fathom any reason for according any additional sanctity to the affidavit by way of examination-in-chief than to the affidavit in support of the plaint or to any exhibit marks being put on the documents which have been filed by the plaintiffs and are already on record. I have therefore heard the counsel for the plaintiffs on merits qua the relief of injunction.”

7. The relevant facts of the present case as pointed out by the learned counsel of the plaintiffs are as under:-

(i) The Plaintiff No. 2, Living Media India Limited, is a media conglomerate founded in 1975 and plaintiff No.1 is a part of plaintiff No.2. Plaintiff's magazines include India Today, India Today Hindi, Business Today, Money Today, Travel Plus, etc. The Plaintiffs were the first to adopt the trademark INDIA TODAY in 1975 and since then the mark has become synonymous with the Plaintiffs and the subscribers; trade competitors and the general public have come to associate the same with the plaintiffs.

(ii) The word mark INDIA TODAY is registered in several countries including but not limited to India. In India plaintiffs enjoy statutory protection of the trade mark "INDIA TODAY" in Class 7 of the Trade Marks Act, 1999. By virtue of the abovementioned registrations the plaintiffs enjoy the exclusive statutory right to use

the trademark INDIA TODAY and other related registered trade marks including but not limited to BUSINESS TODAY, DESIGN TODAY, MONEY TODAY HEADLINES TODAY etc.

(iii) The electronic versions of the plaintiffs' publications are available on website www.indiatodaygroup.com. The said website, which is accessible from anywhere in the world, receives millions of hits every day. Additionally, the plaintiffs also own and operate multiple websites like www.bagittoday.com, www.intoday.in, www.indiatoday.intoday.in, www.indiatodayshopping.com, and www.indiatodayshopping.in. The plaintiffs further submit that the word INDIA TODAY has acquired a secondary significance and is a source identifier.

(iv) The defendants have wilfully and unlawfully registered the domain name www.indiatodayers.com, for online shopping, which is identical to the registered trademark of the plaintiff INDIA TODAY.

(v) The defendants are doing a similar business to that of the plaintiffs i.e. offering variety of products inclusive but not exhaustive of electronics, apparels, accessories, home products, mobile handsets etc. In fact, the plaintiffs also own and operate, www.bagittoday.com, a website which provides services similar to the services provided by the defendants.

(vi) The impugned action in bad faith by the defendants not only creates confusion amongst the general public who may think that the plaintiffs are expanding their online retail business but also dilutes the reputation and the registered trade mark of the plaintiffs as they

have no knowledge or control over the quality of products being sold by the defendants.

8. In the opinion of this Court, the defendants No.1 and 2 have no real prospect of defending the claim as they have neither entered appearance nor filed their written statement or denied the documents of the plaintiffs. Further, the plaintiffs are the prior registered user of the trade mark and domain name www.indiatodaygroup.com.

9. In view of the above, the suit is decreed in favour of the plaintiffs and against defendants No.1 and 2 in terms of paragraph 38(a), (b) and (f) of the plaint along with the actual costs. The costs shall amongst others include the lawyer's fees as well as the amount spent on Court-fees. The statement made by defendant No.3 in para 5 of its affidavit is accepted by this Court and the said defendant is held bound by the same. Registry is directed to prepare a decree sheet accordingly.

10. Consequently, the present suit and applications stand disposed of.

MANMOHAN, J

MARCH 05, 2018

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