

\$~

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

+ **CS(COMM) 284/2017**

HT MEDIA LIMITED & ANR Plaintiffs

Through **Ms. Julien George with
Mr. Dhavish Chitkara,
Advocates**

versus

SANDEEP SINGH & ORS Defendants

Through **None**

% **Date of Decision: 23rd 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, copyright, passing off, unfair business practice, rendition of accounts, damages, etc. The prayer clause in the suit is reproduced hereinbelow:-

"30. It is therefore most respectfully prayed that this Hon'ble Court may please grant the following reliefs in favour of the Plaintiffs and against the Defendants:

- a) Pass a decree of permanent injunction restraining the Defendants, their Directors, principal Officers, Partners, Proprietors, financiers, Domain keepers, Publishers, editors, employees, reporters, servants, agents and/or any one claiming under them from in any manner whatsoever, using the mark*

‘SHINE.COM’ or any deceptive variant thereof which is identical and/or similar to the Plaintiffs trademark “SHINE” and “SHINE.COM”, in respect of their services or any other products or services thereby amounting to infringement of trademark and/or passing off;

- b) Pass a decree of permanent injunction restraining the Defendants, their Directors, principal Officers, Partners, Proprietors, financiers, Domain keepers, Publishers, editors, employees, reporters, servants, agents and/or any one claiming under them from directly or indirectly using the proprietary data and information, in any manner, and reproducing the same, thereby amounting to infringement of the copyright of the Plaintiff, residing in the literary work.*
- c) An order of permanent injunction directing the Defendants to transfer the email accounts shinedocumnets@outlook.com and shine.urdreams@outlook.com and any other email account bearing the trademark SHINE being operated by the Defendants, in favour of the Plaintiffs;*
- d) An order of Rendition of Accounts of profits illegally earned by the Defendants by reason of Passing off their online job portal services and/or business/services as those of the Plaintiff’s and a decree be passed against the Defendants in the exact sum of the amount so ascertained;*
- e) An order for delivery up of all infringing materials including letter heads, seals etc. bearing the impugned marks, labels, patches, tags etc. and of blocks, dies, stationery and any other printed matter bearing the trademark SHINE.com to the authorised representative of the Plaintiffs.*

f) An order of Decree of Damages of Rs.20,00,000/- be passed in favour of the Plaintiff and against the Defendants, running from such date as this Hon'ble Court may deem fit and proper.

g) An order of legal costs and costs of the present proceedings be awarded in favour of the Plaintiff and against the Defendants.”

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

3. Vide order dated 20th March, 2015 this Court granted an ex-parte ad interim injunction in favour of the plaintiffs and against the defendants, which was confirmed vide order dated 9th August, 2016 till disposal of the suit. This Court further appointed three Local Commissioners to visit the premises of the defendants. The relevant portion of the order dated 20th March, 2015 is reproduced hereinbelow:-

“...Accordingly till the next date of hearing, the defendants, their directors, principal officers, partners, employees, agents and etc. are restrained from using the mark “SHINE.COM” or any other deceptive variant identical or similar to that of the plaintiff’s mark “SHINE” and “SHINE.COM” in relation o the services offered by plaintiff amounting to infringement/passing off of the trademark of the plaintiff”

4. Since the defendants neither appeared despite service nor filed the written statement, defendant nos. 1 and 3 were proceeded *ex parte* on 09th August, 2016 and defendant no.2 was proceeded *ex-parte* on

10th January, 2017.

5. In the plaint, it has been averred that the plaintiff no.1 is the leading media house of the country engaged in print media, radio, internet etc., and that the plaintiff no.2 is a subsidiary of the plaintiff no.1. It is stated that the plaintiff no.2 acquired the domain name “SHINE.COM” in the year 2007 and formally launched the website in 2008, and has since continued to use the trademark “SHINE” with respect to recruitment services. It is stated that the trademarks “SHINE.COM” and “SHINE” have been registered under various classes with the registrar of trademarks. It is further stated that within five years of the launch of the website www.shine.com by the plaintiff, it has crossed 10 million registered candidates.

6. It is stated that the trademark “SHINE” is an arbitrary trademark with regard to recruitment services thereby making the aforesaid trademark a distinctive one. It is stated that by the virtue of the extensive use, the trademark “SHINE” is exclusively associated with the plaintiffs.

7. It is stated in the plaint that the plaintiffs’ computer database on its website www.shine.com, contains original content and was prepared with independent skill and labour, thereby making it an ‘original literary work’ within the meaning of Section 2(o) of the Copyright Act, 1957.

8. It is averred in the plaint that the plaintiffs had a turnover of Rs. 2,405 lacs for the year 2013-14. It is further stated that the plaintiffs have been continuously advertising and promoting its said trademark and the expenditure on advertising and promotion for the year 2013-14

was Rs. 2,168 Lacs.

9. Learned counsel for the plaintiffs states that in November, 2014, the plaintiffs, through few of their subscribers, came to know that the defendants were using the plaintiffs' trademark and passing off their services as that of the plaintiffs. He states that the plaintiffs received complaints stating that the defendants approached subscribers, portraying themselves to be representatives of the plaintiffs and made false promises of confirmed job opportunities in exchange for money. He further states that the defendants were communicating to the subscribers on false letter heads bearing the plaintiffs' mark "SHINE.COM" and were making communications from email accounts i.e., shinedocuments@outlook.com and shine.urdreams@outlook.com, in view to mislead subscribers into believing that the defendants were acting on the plaintiffs' behalf.

10. Learned counsel for the plaintiff states that upon further investigation, the plaintiffs found that the defendant no.3 is a subscriber of SHINE.COM database. He states that the defendants subscribed to the services of the plaintiffs, to gain access to the plaintiffs' database containing contact details of various candidates and other proprietary information of the plaintiffs.

11. Learned counsel for the plaintiffs states that the defendants have misused the computer database and proprietary data of the plaintiffs. He further states that the defendants have caused confusion and deception in the minds of the users, who have assumed a connection between the plaintiffs and the defendants and deposited money with the defendants.

12. The plaintiffs have filed their ex-parte evidence by way of affidavit of Mr. Anup Sharma (PW1), to prove the facts in the plaint.

13. The PW1 has proved the registration certificates/applications of the plaintiffs' trademarks as Ex.PW1/7(Colly).The PW1 has proved documents reflecting use of the trademark "SHINE" and "SHINE.COM" as Ex PW1/9. The PW1 has also proved complaints forwarded to the plaintiffs by its subscribers as Ex. PW1/11(Colly).

14. Having heard learned counsel for plaintiffs as well as having perused the papers, this Court is of the opinion that in view of the registrations of the plaintiffs' mark as well as extensive use over substantial period of time of the said marks, the plaintiffs' have acquired reputation and goodwill in the marks in India.

15. From the evidence on record, it is apparent that without any explicit permission or authorisation to use the plaintiffs' trademark, the defendants have malafidely infringed the trademarks "SHINE" and "SHINE.COM" of the plaintiffs.

16. 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 plaint 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."

17. Consequently, the use of that the trademarks "SHINE" and "SHINE.COM" by defendants amounts to infringement of copyright as well as passing off of plaintiffs' trademark. The use of the impugned mark by the defendants has caused loss and injury to the plaintiffs and immense public harm.

18. Accordingly, present suit is decreed in accordance with the paragraph 30(a), (b), (c) and (g). The cost shall amongst others include the lawyers' fees, local commissioner's fee, publication charges as well as the amounts spent on purchasing the court fees. Registry is directed to prepare a decree sheet accordingly.

MARCH 23, 2018

sp/js

MANMOHAN, J