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

+ **CS(COMM) 16/2019 & I.A.No.443/2019**

TIME INC.

..... Plaintiff

Through Ms.Nancy Roy, Advocate.

Versus

MR. ANAND NADAR & ANR.

..... Defendants

Through None

%

Date of Decision: 29th March, 2019

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 and mandatory injunction for infringement registered trademark, passing off, unfair competition, delivery up and damages. The prayer clause is reproduced hereinbelow:-

A. The defendants, their directors, affiliates, employees, agents, distributors, franchisees, licensees, representatives and assigns be restrained by a permanent injunction from:

- (i) *Using the impugned mark/name FORTUNE ASIA/ FORTUNE and the impugned domain name www.fortuneasiaevent. Com and/or iterations of the plaintiff's trade mark FORTUNE as a trade mark or part of a trade mark, a trade name or corporate name or as part of a trade or corporate name, as a domain name or part of a*

domain name, as the name of a conference or part of name of a conference, as a metatag or otherwise on the internet or the world wide web, or in any other manner whatsoever so as to infringe the registered trade mark of the plaintiff;

- (ii) *Using the impugned mark/name FORTUNE ASIA/ FORTUNE and the impugned domain name www.fortuneasiaevent. Com and/or iterations of the plaintiff's trade mark FORTUNE as a trade mark or part of a trade mark, a trade name or corporate name or as part of a trade or corporate name, as a domain name or part of a domain name, as the name of a conference or part of name of a conference, as a metatag or otherwise on the internet or the world wide web, or in any other manner whatsoever so as to pass off their services as that of the plaintiff;*

B. *The defendants, their directors, affiliates, employees, agents, distributors, franchisees, licensees, representatives and assigns be directed by a decree of mandatory injunction to hand over to the plaintiff all goods, including but not restricting to all printed material, letterheads, stickers and other stationary, billboards and advertising material or any other material whatsoever bearing the impugned mark/name FORTUNE ASIA/ FORTUNE and/or any other mark which is deceptively or confusingly similar to the plaintiff's registered trade mark FORTUNE;*

C. *The defendants be ordered by a decree of mandatory injunction to disclose to the plaintiff any other trade / service mark applications and/ or domain name application filed for any other trade / service mark application which are deceptively or confusingly similar to the plaintiff's mark FORTUNE;*

D. *The defendants be ordered by a decree of mandatory injunction to voluntary cancel its registration for the domain name of the impugned website www.fortuneasiaevent.com and/or transfer at the plaintiff's election the same to the plaintiff and a direction be issued to GO Daddy Operating Company, LLC of*

the address 14455 N Hayden Rd Suite 219, Scottsdale, Arizona-85260, U.S.A (Email: compaynynames@godaddy.com) that the said domain name be transferred to the plaintiff;

- E. The defendants be ordered to disclose on oath details of all or any use of FORTUNE ASIA/ FORUTNE, either as a trademark/ name, part of trade mark or name, or as a domain name or part of a domain name or in any other manner whatsoever;*
- F. The defendants be called upon to allow inspection of their accounts to assist in ascertaining profits made by the defendants by their unauthorized use of the trade mark/ name/ domain name containing FORTUNE and a decree be accordingly passed in favour of the plaintiff for the amount found due. In addition to this, the plaintiff be awarded punitive damages for the illegal acts of the defendants;*
- G. A decree of declaration that the plaintiff's trademark FORTUNE is well-known as defined by Section 2(1) (zg) of the Trade Marks Act, 1999;*
- H. Costs of the suit be awarded to the plaintiff; and*
- I. Any other relief which the Hon'ble Court deems and proper in the facts and circumstances of the case be allowed in favour of the plaintiff and against the defendants.*

2. Vide order dated 14th January, 2019, this Court had granted an *ex parte ad interim* injunction in favour of the plaintiff and against the defendants. The relevant portion of the ex-parte injunction order is reproduced hereinbelow:-

“Consequently, till further orders, the defendants, their directors, affiliates, employees, agents, distributors, licencees,

representatives and assigns are restrained from using the impugned mark/name FORTUNE ASIA/ FORTUNE and the impugned domain name www.fortuneasiaevent.com and/or the plaintiff's trade name FORTUNE as a trade mark or part of a trade mark, trade name or corporate name or as part of a trade or corporate name as domain name or as part of domain name, as name of the conference or part of a conference, as a meta tag or otherwise on the internet or in any manner whatsoever. Further, Go Daddy Operating Company, LLC being the Registrar is directed to block the domain name www.fortuneasiaevent.com”.

3. On 30th January, 2019, the defendants were served. Despite advocates entering appearance on behalf of the defendants on 20th February 2019, no one is present even at the Passover stage today; furthermore no written statement has been filed till date. The statutory period for filing the written statement has expired. Consequently the defendants are proceeded *ex parte*.

4. At this stage, learned counsel for the plaintiff gives up prayers (B), (E), (F) and (G) of the prayer to the suit. The statement made by learned counsel for plaintiff is accepted by this Court and plaintiff is held bound by the same.

5. This Court is also of the view that the present suit can be disposed of without any further delay. A Coordinate Bench of this Court in ***Satya Infrastructure Ltd. and Ors. Vs. Satya Infra & Estates Pvt. Ltd., 2013 SCC OnLine Del 508*** has held as under:-

“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.”

6. The relevant facts of the present case as pointed out by learned counsel for the plaintiff are as under:-

- (i) The plaintiff, including its affiliate companies, is a mass media powerhouse and a renowned printer and publisher of international repute *inter alia* in printed periodicals and publications, newspapers, books etc. The trademark FORTUNE was first used by the plaintiff as early as January, 1930 in the United States of America. The plaintiff published its first magazine in India in 2010.
- (ii) The Fortune Magazine is the world's leading tri-weekly business magazine and is known for its unrivalled access to industry leaders. The plaintiff's publication FORTUNE annually ranks the 500 largest corporations in the world and this ranking is considered as a benchmark of business success.
- (iii) The plaintiff is the registered proprietor of the mark FORTUNE under various classes of the Trade Marks Act, 1999, with its first registration for the mark FORTUNE in India dating back to 1978.

- (iv) The said mark is also extensively used over the internet through its website www.fortune.com and massive social media platforms like Facebook and Twitter
- (v) In November, 2018, the plaintiff first came across the defendants' website www.fortuneasiaevent.com.
- (vi) The defendant has dishonestly adopted and misused the plaintiff's trade mark FORTUNE by using "Fortune Asia 2018 & CIO awards" as the name for its upcoming conference as well as domain name www.fortuneasiaevent.com on blockchain technology and the marketplace.
- (vii) The defendants have also published a report titled "Fortune Asia Report" on their website which mentions a Delhi edition of the conference being held at the Leela Ambience, Gurugram.
- (viii) The defendants are using a device mark containing the word/mark FORTUNE. The word/mark FORTUNE is written in an identical font as that of the plaintiff. A comparative chart of plaintiff and defendants manner of use is shown hereinbelow:-

Plaintiff's mark	Defendant's mark
	
	

- (ix) The WhoIs database of the website revealed that the said website was registered on 15th October, 2018 in the name of the defendant no.1. The information available on the website makes it clear that it is under the management and control of the defendant no.2.
- (x) The defendants seek participation in the upcoming conference as well as other conferences upon payment of an upfront registration fee in advance. A representative of the plaintiff registered for the said conference under the mark FORTUNE ASIA 2018 from Delhi.
- (xi) The defendants are using the impugned mark/name FORTUNE in relation to services which overlap with the services of the plaintiff.
- (xii) The defendants have dishonestly adopted the trademark FORTUNE to cause confusion amongst the consumers. The use of the trademark FORTUNE ASIA EVENT, FORTUNE ASIA REPORT, FORTUNE ASIA 2018/2019 and domain name www.fortuneasiaevent.com by the defendants are bound to confuse the participating businesses into believing that the said symposium is being organised by the plaintiff.
- (xiii) The mark FORTUNE comes within the definition of well-known marks as defined by Section 2(1)(zg) of the Trade Marks Act, 1999.

13. Having heard the learned counsel for the plaintiff, this court is of the view that the defendants have no real prospect of defending the

claim, as despite service, they have neither entered appearance nor filed their written statement.

14. Further, as the plaintiff is the registered owner of the mark in question, this Court is of the opinion that the action of the defendants constitutes infringement under Section 29 of the Trade Marks Act, 1999 apart from constituting a violation of the statutory and common law rights of the plaintiff.

15. Consequently, the present suit is decreed in favour of the plaintiff and against the defendants in accordance with prayer A (i),(ii), C, D of the present plaint along with actual costs. The costs shall amongst others include lawyers' fees as well as the amounts spent on purchasing the Court fees. The plaintiff is given liberty to file on record the exact cost incurred by them in adjudication of the present suit, if not already filed. Registry is directed to prepare a decree sheet accordingly. With the aforesaid observations, present suit and pending application stand disposed of.

MARCH 29, 2019
KA/sp

MANMOHAN, J