

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

% Decided on: 2nd December 2019

+ **CS(COMM) 224/2019**

BENNETT, COLEMAN & COMPANY LTD. & ANR. Plaintiff

Represented by: Ms. Vipul K. Tiwari, Ms. Shipra
Alisha Philip and Ms. Muskan Shikha,
Advocates.

versus

MR. MANOJ USDADIYA & ORS. Defendant

Represented by: None.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. Summons in the present suit were issued vide order dated 2nd May 2019. None appeared on behalf of the defendants. The right of the defendant to file written statement was closed vide order dated 15th October 2019. Defendants were proceeded ex-parte vide order dated 20th November 2019.

2. By the present suit the plaintiff, inter alia, prays for a decree of permanent injunction restraining the Defendant No. 1, its partners, proprietors, organizers, assigns in business, licensees and franchisees, and any other person or entity claiming rights through them from publishing any article/material/content and using plaintiff's trademark/ domain name/logo

IAMGUJARAT/iamgujarat.com/  on its website
www.iamgujarat.desi or through any platform/device including online
platform, that may be complete/substantial reproduction of plaintiff's

copyrighted work or through any platform/device, or dealing in any manner, directly or indirectly whatsoever or any other logo for any other goods or services that may be a colorable imitation or substantial reproduction of the plaintiffs' copyrighted work amounting to infringement of plaintiff's copyright and passing off of defendant no. 1's business/ services as that of plaintiff's besides a decree of mandatory injunction directing defendant nos. 2 and 3 to lock and transfer ownership of the domain name www.iamgujarat.desi in favour of plaintiffs, delivery up of all infringing electronic record or material as well as rendition of accounts and costs to the tune of ₹ 2,00,00,000.

3. The case of the plaintiff is that it is involved in the business of publishing newspapers, journals, magazines, books and periodicals. It entered into the field of digital innovation through Plaintiff No. 2, Times Internet Limited in the year 1999. Plaintiff No. 2, largest online group with over 450 million visitors per month, has led the internet revolution in India and has emerged as India's foremost web entity, running diverse portals and niche websites. Plaintiff No. 2 has expanded its portfolio to a wide range of online offerings spanning news, MVAS, email, blogs, music, video and location-based services. By providing interactive platforms for internet users worldwide, Plaintiff No. 2 seeks to provide its users with support, assistance and guidance throughout their life by covering everything from art to airlines, jobs, knowledge events to telecom and integrated marketing since 1995-1996 through various domain names.

4. The Times Group under the trade mark/tradename/house mark TIMES started 180 years ago and has more than 45 dailies and periodicals in 6 languages with 150 editions having 33 publishing centers and 37 printing

centers across the country providing a combined readership of over 40 million. Times Group has an extensive network of more than 7000 employees, around 100 offices and 45 dailies including two of the largest in the country with approximately 4.3 million copies circulated daily, 2 lead magazines reaching 2,468 cities and towns, 32 Radio Stations, 4 television news' channels, 8 non-news and current affairs television Channels and a combined annual turnover in excess of USD 700 million. The Times Group operates various websites to cater its business activities/services.

5. The Times of India, Plaintiff No. 1's newspaper is India's most widely circulated English daily and the group's premier mega-brand, the contents whereof are also available on www.timesofindia.com, www.indiatimes.com, the official website of the Plaintiffs.

6. Plaintiff No. 1 adopted a suggestive trade mark I AM GUJARAT and got the domain name www.iamgujarat.com registered on 01st September 2016 with an objective to target specific section of readers globally belonging to/originating from the state of Gujarat. In March 2017, Plaintiff No. 1 also devised and created a distinctive and unique logo for its trade

mark I AM GUJARAT i.e.  in the Gujarati language. On 27th March 2017 through their online publication website www.iamgujarat.com, the Plaintiffs began the use of the trade mark/ domain name I AM

GUJARAT/iamgujarat.com and the .

7. Plaintiffs website, www.iamgujarat.com as one of the best and leading news website, known for its accuracy, authenticity, originality and speedy upload of news articles both in India and all over the world and same

is evident from the fact that in such short span, the said website, www.iamgujarat.com has approx. 93 Lakhs visitors/users/readers globally out of which approx. 166,323(1.74%) visitors/users/readers are from Delhi. The popularity of the Plaintiffs website is also evident from the fact that the annual online readership/visitorship has approximately increased from 786 in financial year 2016-2017 to 5.1 Million in the years 2018-2019 and apart from huge online readership it has approx. 2.02 lakhs likes and 2.84 lakhs followers on its Facebook page and approx. 14.05 lakhs viewers of its YouTube channel. The Plaintiffs have also expanded its services through mobile application under the trade mark I AM GUJARAT/  available on Google Play Store. The Plaintiff No. 1 has applied for registration of the said trade mark in various classes and such applications are pending registration. The details of the trade mark applications for I AM GUJARAT/  in relevant classes are mentioned herein below:

S.No.	Trademark	Application No.	Class	Date of Application
1.	iamgujarat	3593209	41	17 th July 2017
2.	Iamgujarat logo (in Gujarati language) 	3593212	41	17 th July 2017
3.	iamgujarat	3593210	42	17 th July 2017
4.	iamgujarat logo (in Gujarati language) 	3593213	42	17 th July 2017

8. Further the plaintiffs also claim copyright in logo and contents available on its website www.iamgujarat.com. Plaintiffs submit that a huge amount of time and effort is utilised in finding themes and specific topics and collecting and collating latest developments in Gujarat as well as across India and the globe. Decision is then taken by the editor concerned after analysing the importance, interest of readers, originality of content with respect to such articles, the quality of the work/content is improved by the sub editor and the editorial staff through rewriting or by making smaller changes to ensure the highest standards of originality, creativity and authenticity of the contents. Accordingly, the work is edited and proof read to maintain a specific style of writing (house style) besides being grammatical correct. The Plaintiffs proceed to the design stage after editing the contents of the article and finalizing the text style of contents. After the design, presentation and layout of the articles and placement of advertisement is confirmed, such work is then published by the Plaintiffs and circulated to the readers through their website www.iamgujarat.com.

9. Plaintiffs further submits that the  reflected on the top of the plaintiffs website www.iamgujarat.com, the news articles and other contents prepared, uploaded and available on the Plaintiffs website including certain images, videos and depictions as well as manner of presentation forms part of “original artistic work” of the plaintiffs under the ambit of Section 2(c) of The Copyright Act and the plaintiffs are entitled to copyright protection under the provision of the Section 14 of the Copyright Act.

10. Defendant No. 1, Mr. Manoj Usdadiya is the registrant/ operator of the website www.iamgujarat.desi which was created on 15th December

2018. Defendant No. 2, FDR Ltd., doing business as (d/b/a) PublicDomainRegistry.com, is the registrar of the impugned domain name and is operating in India through Defendant No. 3, namely, Directi Web Technology Pvt. Ltd. Defendant No. 2 also operates the website www.webhostbox.net which is the current domain name server of the impugned domain/website. The Defendant No. 4, Mr. Parindra Das, trading as M/s. Tadka Host was the earlier domain name server of the impugned website/domain name.

11. In the month of February 2019, it came to the notice of the Plaintiffs that the Defendant No. 1 was using the domain name www.iamgujarat.desi, thereby infringing their trade mark/ domain name I AM GUJARAT/ iamgujarat.com. Apart from that, Defendant No. 1 is also using the Plaintiffs logo on the impugned website, www.iamgujarat.desi. The defendants were also plagiarizing the Plaintiffs original content/ material from the Plaintiffs website www.iamgujarat.com to the impugned website www.iamgujarat.desi.

12. Plaintiffs sent a legal notice dated 11th February 2019 to the Defendant No. 1 through its email id samiul42@gmail.com calling upon him to immediately discontinue any activity amounting to violation of intellectual property rights of the Plaintiffs. A cease and desist notice dated 13th February 2019 was also sent to the Defendant No. 4 calling upon the Defendant No. 4 to cease from providing domain services to Defendant No. 1. A reply from Defendant No. 4 was received by the plaintiffs via email dated 13th February 2019, thereby stating that they have deleted the domain from its server.

13. Plaintiffs in good faith believing that the impugned website www.iamgujarat.desi has been taken down did not take any action against Defendant No. 1. In the month of April 2019, it again came to the notice of the plaintiffs that the impugned website www.iamgujarat.desi was still operational under the same domain name. The contents belonging to the Plaintiffs are being hosted on the impugned website which has a link under the name "source link" and a click on the same redirects the reader/viewer/consumer to the Plaintiffs' website www.iamgujarat.com.

14. The tabular comparison of website of Defendant No.1 and Plaintiff is depicted below:

Defendant No. 1 Website	Plaintiffs Website
	
	
	

15. Further, the impugned website www.iamgujarat.desi also publishes job/recruitment postings in the English language, all over India including in New Delhi thereby enabling visitors to post their comments/ reviews from all places including Delhi. The infringing activities of Defendant No. 1 are causing huge monetary loss to the Plaintiffs as Defendant No. 1 is diverting the traffic from the Plaintiffs website www.iamgujarat.com to its own website www.iamgujarat.desi.

16. Evidence by way of an affidavit was tendered by Mr. Kumar Laxmikant vide Ex. PW-1/X. The contents of the plaint were reiterated in the affidavit. Copy of board resolution dated 18th December 2018 by the plaintiffs in favour of Mr. Kumar Laxmikant was proved as Ex. PW-1/1. Internet printout of whois details of plaintiff's domain name www.iamgujarat.com along with earlier whois details filed with user affidavit for the trademark application no. 3593208 dated 17th July 2017 registered in name of Plaintiff No. 1 was proved as Ex. PW-1/2. Internet printouts of online status of the trademarks along with the application for the trademark I AM GUJARAT, I AM GUJARAT/  bearing nos. 3593209 and No. 3593212 under class 41 and I AM GUJARAT, I AM GUJARAT/  bearing nos. 3593210 and No. 3593213 under class 42 all dated 17th July 2017 were proved as Ex. PW-1/3(Colly).

17. Evidence by way of an affidavit was tendered by Ms. Sanwli Sirohi vide Ex. PW-2/X. Copy of Letter of Authorization dated 01st June 2018 issued by Plaintiff No. 2 in favour of Ms. Sanwli Sirohi, authorised by Board Resolution in favour of Mr. Joy Basu was proved as Ex. PW-2/1. The

contents of the plaint were admitted in the affidavit. Screenshot of the website www.iamgujarat.com showing use of trade mark as domain name and use of logo  on the Plaintiffs' website was proved as Ex. PW-2/2. Screenshots of the Plaintiffs' website, www.iamgujarat.com showing use of trade mark/logo I AM GUJARAT/  since March, 2017 as reflected on the internet archive were proved as Ex. PW2/3. Screenshots of the user database of the Plaintiff's website www.iamgujarat.com were proved as Ex. PW2/4. Internet screenshots of the social media web pages operated by the Plaintiffs pertaining to the trade mark/logo I AM GUJARAT and  were proved as Ex. PW-2/5. Internet printouts of Plaintiff No. 2's mobile application under the trade mark/logo I AM GUJARAT and  was proved as Ex. PW-2/6. Screenshots and Internet printouts of the third-party reviews/feedback pertaining to Plaintiffs' website/application under trade mark /logo I AM GUJARAT and  were proved as Ex. PW-2/7. Internet printout of the who. is details of the Defendant No. 1's domain name www.iamgujarat.desi was proved as Ex. PW-2/8. Internet printout of the Terms of Service of Defendant No. 2 operating under P.D.R. Solutions (U.S.) LLC, on its website www.publicdomainregistry.com along with internet printout of whois details of the said website and MCA details of Defendant No. 3 as available on the official website of the Ministry of Corporate Affairs were proved as Ex. PW-2/9. Internet printout of the whois details of the domain name www.webhostbox.net reflecting P.D.R.

Solutions (U.S.) LLC as its registrant was proved as Ex. PW-2/10. Internet printout of domain name server information of the impugned domain www.iamgujarat.desi as on 11th February 2019 was proved as Ex. PW-2/11. Internet printout of whois details of Defendant No. 4's www.tadkahost.com showing the name and contact details of Defendant No. 2 was proved as Ex. PW-2/12. Relevant internet printout and screenshot of the impugned website/domain reflecting the use of the Plaintiffs trade mark/domain name I

AM GUJARAT and  were proved as Ex. PW2/13. Printout of the cease and desist notice dated 11th February 2019 addressed to Defendant No. 1 at the email ID samiul42@gmail.com were proved as Ex. PW- 2/14. Comparative screenshots and internet printouts of the Plaintiffs trade mark I

AM GUJARAT and logo  as reflected on the Plaintiffs website and Defendant No. 1's website along with other internet printouts of the Plaintiffs' articles on the Plaintiffs' website www.iamgujarat.com and on the Defendant No. 1's website were proved as Ex. PW-2/16 (colly). Screenshot of the impugned website inviting visitors to post their comments was proved as Ex. PW-2/18. The printouts of the cease and desist notice dated 13th February 2019 addressed to Defendant No. 4 along with reply received from Defendant No. 4 were proved as Ex. PW-2/15(colly). Internet printouts of job/recruitment postings as well as examination notifications of third-party entities in the English language on the Defendant No. 1's website www.iamgujarat.desi along with the office location of such entities were proved as Ex. PW-2/17(colly).

18. From the pleadings of the plaintiffs in the plaint as also the documents exhibited along with the necessary certificate, the plaintiffs have clearly made out a case for grant of injunction in terms of prayer (a), (b), (c) and (d) as the Defendant No. 1 is violating the rights of the plaintiff in its trademark as well as copyright. Plaintiff does not press the prayers (e) and (f). Hence no decree in terms of prayer (e) and (f) can be passed.

19. As regards cost in terms of prayer (g), the plaintiffs have filed a bill indicating the cost incurred by the plaintiffs including Court fees, miscellaneous expenses and the fees of the lawyers which amounts to total sum of ₹5,34,000/-.

20. Suit is accordingly decreed in terms of prayer (a), (b), (c), (d) and (g) of para 37 of the plaint in favour of the plaintiffs and against the defendants. Cost of ₹5,34,000 is awarded in favour of the plaintiffs and against the Defendant No. 1

I.A. 6237/2019 (u/O XXXIX R 1&2 CPC by P)

Disposed of as infructuous.

**(MUKTA GUPTA)
JUDGE**

DECEMBER 2, 2019
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