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

+ **CS(COMM) 1107/2018**

LIVING MEDIA INDIA LIMITED & ANR. Plaintiffs

**Through Mr. Surinder Kaul, Advocates
versus**

VIJAYAN MADHAVAN PRAVEEN & ANR. Defendants

Through: None.

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Date of Decision: 16th April, 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 injunction restraining infringement and passing off of trade mark and copyright and rendition of accounts against the defendants. The prayer clause is reproduced hereinbelow:-

“53. Thus in these circumstances and in the larger interest of justice it is most humbly prayed that this Hon’ble Court may be pleased to grant:

(a) a decree of permanent injunction against the Defendants, their representatives, heirs, promoters, shareholders, directors, its agents, servants, employees, successors, assignees, licensees etc or any other person claiming through or under the

- Defendants from using the trade mark “INDIA TODAY”, indiatoday24x7.com; Twitter Handle @indiatodaywebtv and/or any other word/mark deceptively/confusingly/phonetically similar to the Plaintiffs’ trade mark ‘INDIA TODAY’, “TODAY” as part of their trade mark, trade name and/or services especially for telecasting, broadcasting or relaying media channels, or in any manner whatsoever, which may or may not be in the knowledge of the Plaintiff;*
- (b) a decree mandatory injunction directing the Defendants to transfer the domain name indiatoday24x7.com and twitter handle @indiatodaywebtv and You Tube channel <https://www.youtube.com/channel/UCI1Ls81Zk308pZVo9w9YVxA> or any other online/offline platform using impugned trademark to the Plaintiffs.*
 - (c) an order directing the Defendants to render to the Plaintiffs an account of profits made by the Defendants by using the impugned trade mark ‘India Today’, indiatoday24x7.com and/or twitter handle @indiatodaywebtv as part of its trade mark, trade name and/or domain name;*
 - (d) a decree directing the Defendants to pay the amount thus found due, after rendering its account of profits made;*
 - (e) an order directing the Defendants to deliver to the Plaintiffs for destruction all infringing goods whatsoever including but not limited to printing, material, stationery, signage having the trade mark ‘India Today’, indiatoday24x7.com and/or twitter handle @indiatodaywebtv or any mark similar to INDIA TODAY, or ‘TODAY’;*
 - (f) costs of the suit to the Plaintiffs;*
 - (g) any further order(s) which this Hon’ble Court deems fit and proper in facts and circumstances of the present case.”*

2. Vide order dated 11th September, 2018, this Court had granted an *ex parte ad interim* injunction in favour of the plaintiffs and against the defendants. The relevant portion of the ex-parte injunction order is reproduced hereinbelow:-

“Consequently, till further orders, the defendants, their representatives, heirs, promoters, shareholders, directors, its agents, servants, employees, successors, assignees, licensees etc or any other person claiming through or under the defendants are restrained from using the trade mark “INDIA TODAY”, indiatoday24x7.com, twitter handle @indiatodaywebtv or YouTube channel or any other social media handle containing the word/mark deceptively/confusingly/phonetically similar to the plaintiffs’ trade mark “INDIA TODAY”, “TODAY” as part of their trade mark, trade name and/or domain name/email in relation to their business, goods and/or services especially for telecasting, broadcasting or relaying media channel or in any manner whatsoever. The defendants are also restrained from creating any third party right in the impugned domain name indiatoday24x7.com”

3. Since despite service none had entered appearance on behalf of the defendants, vide order dated 15th April 2019, they were proceeded *ex parte*.

4. Today, learned counsel for the plaintiffs states that he is confining his relief to prayer 53 (a) and (b) of the prayer clause to the suit. The statement made by learned counsel for plaintiffs is accepted by this Court and plaintiffs are 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. In the plaint it is stated that the plaintiff together with their affiliates is one of the major media corporations in India having an enormous presence in both print and electronic media. It is stated that the plaintiffs together form a part of the media conglomerate popularly known as INDIA TODAY GROUP (ITG). It is stated that the plaintiffs are engaged in diverse business activities ranging from printing and publishing of magazines, journals, periodicals, newspapers to broadcasting of News Channels etc.

7. It is averred in the plaint that the plaintiff no.1 is the owner and publisher of the weekly news magazine “INDIA TODAY” which has been published continuously since 1975. It is further averred that the plaintiff no.1 also owns and publishes “MAIL TODAY”, “BUSINESS TODAY”, “DESIGN TODAY”, “INDIA TODAY TRAVEL PLUS”, “AUTO TODAY” etc.

8. It is stated in the plaint that the plaintiff no.2 under licence of the plaintiff no.1 broadcasts the news channels “AAJ TAK”, “AAJ TAK TEZ”, “DILLI AAJ TAK” in Hindi and “INDIA TODAY” in English.

9. It is stated in the plaint that the plaintiffs’ are the registered proprietor of the trade mark “TODAY” and other TODAY composite marks under numerous classes of the Trademarks Act, 1999. It is further stated that the trade mark “TODAY” and other TODAY composite marks have formidable presence on the internet through its websites indiatoday.com, headlinestoday.com, aajtak.com, indiatoday.today.in etc.

10. It is the case of the plaintiffs that the total revenue generated by the plaintiffs with respect of goods and services under the mark “TODAY” in the financial year 2016-2017 was INR 295.37 Crores.

11. Learned counsel for the plaintiffs states that around Mid-April, 2018, the plaintiffs became aware that the defendants are using “INDIATODAY24X7.COM” to publish and disseminate Tamil news. He states that upon verification the plaintiffs learnt that the defendants have also copied the design, logo and colour scheme of the plaintiff. He further states that the defendants also run a twitter handle @indiatodaywebtv, and run a You Tube channel using the impugned domain name. A comparative chart showing the plaintiff’s and defendants logo, mark and colour scheme is reproduced herein below:

Plaintiff's Mark	Defendant's Mark
	
	

12. Learned counsel for the plaintiffs states that further verification and search on the WHOIS database revealed that the said domain name is registered in the name of the defendant no.1 and was created on 22nd March, 2018.

13. Learned counsel for the plaintiffs states the plaintiffs issued a cease and desist notice on 30th April, 2018 and subsequently on 17th May, 2018. He states that the defendant no.1 replied vide email dated 20th May, 2018 stating “Contact person A Robert Raj, +919751086668” the defendant no.2 herein. He states that thereafter the plaintiff issued another cease and desist notice on 29th May, 2018 to the defendant no.2. However, the defendants have neither replied to the said notice nor shut down their website or transferred the impugned domain name.

14. Learned counsel for the plaintiff states that the malafide of the defendants are glaring and blatant as the defendants have adopted the impugned trademark, its logo/design and colour scheme for exactly same goods/services as that of the plaintiffs.

15. Learned counsel for the plaintiffs states that the dishonest, wrong, malafide and illegal acts of the defendants are aimed at enriching themselves at the expense of the plaintiff and are detrimental to the distinctive character, reputation and goodwill of the plaintiff.

16. In the opinion of this Court, the defendants have no real prospect of defending the claim, as they have neither entered appearance nor have filed written statements. Further, the plaintiffs are the registered owner of the trade mark in question.

17. the triple identity test is satisfied as the defendants have made use of identical/deceptively similar trademark in relation to identical services having an identical trade/distribution channel

18. In view of the above, the present suit is decreed in favour of the plaintiffs and against the defendants in accordance with prayer 53 (a) and (b) 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 plaintiffs are 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.

MANMOHAN, J

APRIL 16, 2019

rn/sp