

\$~25 (original)

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

+ **CS(COMM) 88/2020**

ELEMENTIA WELLNESS PRIVATE LIMITED Plaintiff

**Through: Ms. Nancy Roy and Ms.
Sharanya J, Advs.**

versus

TES BEAUTY SERVICES PRIVATE LIMITED & ANR.

..... Defendants

Through: None

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

J U D G M E N T (O R A L)

% 15.12.2021

1. Summons were issued in the suit and notice was issued in I.A. 2625/2020, under Order XXXIX Rules 1 and 2 of the CPC on 25th February, 2020.

2. The only date on which appearance was forthcoming, for any of the defendants, was on 17th July, 2020, when Defendant 2 was represented. Prior thereto and thereafter, there has been no appearance on behalf of the defendants. Written statement has also not been filed.

3. Clearly, therefore, this suit is not being contested.

4. The plaintiff claims to have established in 2009 and to be providing spa services under the name and style “TATTVA SPA” and to be operating under the domain name www.tattvaspa.com, registered in 2009. The plaintiff further avers that services of the plaintiff are available in Agra, Aurangabad, Bengaluru, Chennai, Faridabad, Goa, Gurgaon, Guwahati, Haridwar, Hyderabad, Jaipur, Jaisalmer, Jim Corbett, Khajuraho, Kandla, Kodaikanal, Kochi, Lonavala, Mumbai, Mysore, Nainital, Noida, Ooty, Patna, Pune, Raipur, Rishikesh, Udaipur and Yercaud. The defendants are stated to be operating in Goa where, too, therefore, the plaintiff’s services are available.

5. The plaintiff holds the following registrations:

Trade Mark	Registration Number	Registration Date	Class
	1879286	November 03, 2009	44
Services: Spa and Salon services			
TATTVA SPA	2462008	January 17, 2013	44
Services: Spa and Salon services			

6. These registrations are stated to be valid and subsisting as on date. By virtue of Section 31 of the Trademarks Act, they are, therefore, accorded *prima facie* validity.

7. The aforesaid registrations had originally been granted to Mr. Karan Goyal, and were assigned to the plaintiff *vide* Assignment Agreement dated 15th July, 2014. The plaintiff asserts that, over a period of time, by dint of continuous and uninterrupted use, it has amassed a formidable reputation within the spa sector and that the aforesaid marks, registered in the plaintiff's favour, are invariably associated with the spa services provided by the plaintiff in the perception of the public.

8. The plaint also provides figures of the steady increase in earnings from the services provided by the plaintiff which, from a figure of ₹ 37,66,868/- in 2012, have increased to ₹ 10,98,33,570/- in 2019. Figures of the advertising and promotional expenses incurred by the plaintiff are also provided in the plaint in a tabular format thus:

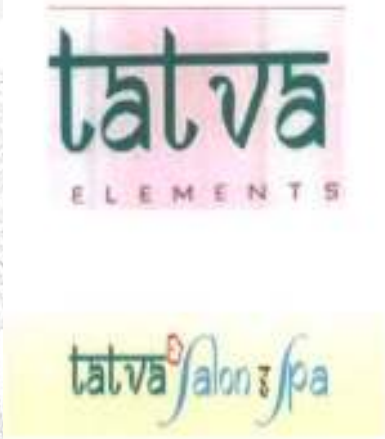
Year	Net Revenue (in INR)
2012	37,66,868
2013	93,43,064
2014	1,06,31,256
2015	1,51,84,536
2016	3,29,17,380
2017	4,88,16,307
2018	7,84,75,413

2019	10,98,33,570
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9. Learned Counsel for the plaintiff submits that, therefore, the plaintiff's mark is a "well known mark" within the meaning of Section 2(1)(zg) of the Trademarks Act.

10. The defendant is also providing spa services under the name "TATVA". It operates under the domain name www.tatvaspa.com. A comparison of the marks of the plaintiff and the defendant is provided in the plaint thus:

Plaintiff's Trade Marks	Defendants' Impugned Marks
<u>Word Mark / Trade Name</u>	<u>Impugned Word Mark / Trade Name</u>
TATTVA SPA	TATVA SPA

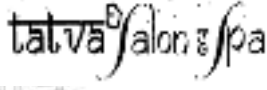
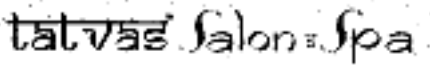
<u>Logo Marks</u>	<u>Impugned Logo Marks</u>
	
<u>Domain Name</u>	<u>Impugned Domain Name</u>
www.tattvaspa.com	www.tatvaspa.com

11. There can be no gainsaying the fact that the words “TATTVA” and “TATVA” are, phonetically, not merely similar, but identical. As the defendant is providing services identical to those provided by the plaintiff, there is every possibility of the public being misled regarding the services provided by the defendant as those of the plaintiff or at least to draw an association between them. The marks being phonetically identical, rendered in respect of identical services and the customer base of the plaintiff and the defendant being the same, the triple test of identity as laid down by this Court in *Telecare Network India Pvt. Ltd. vs. Asus Technology Pvt Ltd¹*, *Ahmed Oomerbhoy v.*

¹ 262 (2019) DLT 101

*Gautam Tank*², *Lalsons Machines v. Sachar Electric & Machine Store*³ and *Bihar Tubes Ltd v. Garg Ispat Ltd*⁴ which would justify the prayer of the plaintiff for grant of an injunction, is also satisfied in the present case.

12. It is further averred in the plaint that the defendant had applied for registration of its mark  on 1st January, 2013, for providing medical services, veterinary services, *hygienic and beauty care for human beings or animals*, agriculture, horticulture and forestry services, but that the application was refused by the Registry of Trademarks on 30th January, 2018. According to the plaint, this refusal has not been challenged by the defendant before any forum in any manner known to law.

13. On 27th December, 2019, a cease and desist notice was issued by the plaintiff to the defendants, calling upon the defendants to cease and desist from using the mark . The defendants, in response, merely added a letter “s” after “TATVA”, to read “TATVAS” . This according to the plaintiff amounts to an acknowledgement by the defendants that the defendants’ mark is deceptively similar to that of the plaintiff.

² 146 (2008) DLT 174

³ 1986 PTC 41

⁴ 166 (2010) DLT 109

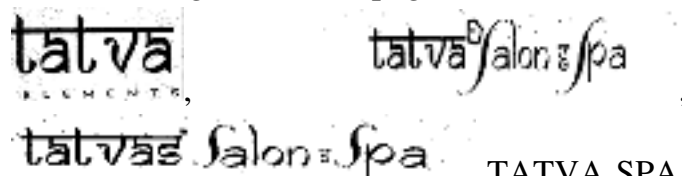
14. This Court had, in the circumstances, *vide* order dated 6th August, 2020 noted that there was a *prima facie* case of infringement and passing off by the defendants, of the registered mark of the plaintiff and of the services provided by the defendants as associated with those provided by the plaintiff. As such, an interim injunction was granted which continues to remain in force.

15. The prayer clause in the plaint reads thus:

“59. In the premises stated above, it is therefore, most respectfully prayed that, this hon’ble court may be pleased to:

A. Pass a decree of permanent injunction against the Defendants, their partners, directors, principals, proprietors, officers, employees, agents, distributors, companies and assigns thereby restraining by a decree of permanent injunction from:

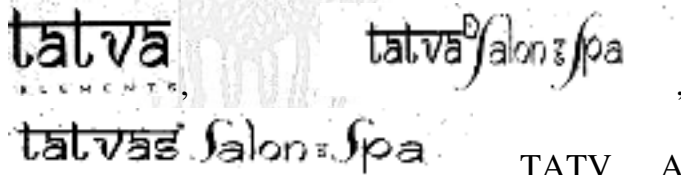
i. The Defendants, its directors, employees, servants, agents, distributors, partners, franchises, representatives, suppliers, affiliates, subsidiaries, franchisees, licensees, representatives, group companies and assigns be restrained by a decree of permanent injunction from: using the impugned marks i.e.


TATVA SPA,

or any other mark which is deceptively and confusing similar to the Plaintiff's Earlier Well-Known Trade Mark TATTVA SPA and TATTVA SPA formatives and/or part of the

Plaintiff's corporate / trade name ELEMENTS either as a trade mark or part of a trade mark, trade name or part of a trade name, corporate name, electronic-mail, domain name or part of a domain name, or in any manner which would amount to infringement of the registered trade mark of the Plaintiff;

ii. using the Impugned Marks i.e.



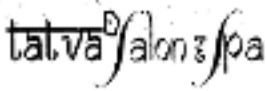
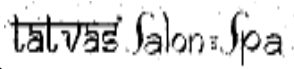
TATVA A SPA, or any other mark which is deceptively and confusing similar to the Plaintiff's Earlier Well-Known Trade Mark TATTVA SPA and TATTVA SPA formatives and/or part of the Plaintiff's corporate / trade name ELEMENTS either as a trade mark or part of a trade mark, trade name or part of a trade name, corporate name, electronic-mail, domain name, or part of a domain name or in any manner which would amount to passing off their services as and for the services of the Plaintiff;

iii. disposing off or dealing with its assets, including the properties mentioned in the cause title of the Plaint, in a manner which may adversely affect the Plaintiff's ability to recover damages, costs or other pecuniary remedies that may be finally awarded to the Plaintiff;

B. The Defendants, its directors, employees, servants, agents, distributors, partners, franchises, representatives, suppliers, affiliates, subsidiaries, franchisees, licensees, representatives, group

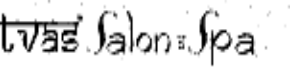
companies and assigns be directed by a decree of mandatory injunction:

- (i) to hand over to the Plaintiff or its nominated representative all promotional material, catalogues, stationery and any other material whatsoever bearing the Impugned

Marks i.e. 
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, TATVA SPA, or any other mark/name which contains a mark/name identical or deceptively and confusingly similar to the Plaintiff's Earlier Well-Known Trade Mark TATTVA SPA and TATTY A SPA formatives and/or part of the Plaintiff's corporate / trade name ELEMENTS;

- (ii) to recall all marketing, promotional and advertising materials bearing the Impugned

Marks i.e. 
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TATVA SPA, or any other mark/name which contains a mark/name identical or deceptively and confusingly similar to the Plaintiff's Earlier Well-Known Trade Marks TATTCA SPA and TATTV A SPA formatives and/or part of the Plaintiff's corporate / trade name ELEMENTS and forward the same to the attorneys or representatives of the Plaintiff;

- (iii) to make a full and fair disclosure of any trade mark application(s)/copyright applications filed for registration(s) obtained for the

Impugned Marks i.e.



tatva salon:spa

tatva salon:spa

TATVA SPA, or any other mark which contains a mark which is identical or deceptively and confusingly similar to the Plaintiff's Earlier Well-Known Trade Mark TATTVA SPA and TATTVA SPA formatives and/or part of the Plaintiff's corporate / trade name ELEMENTS, and immediately withdraw the same under intimation to the Plaintiff's Counsels;

(iv) to change the Trade Name of the Defendant No.1, TATVA SPA, to any other name which does not contain the Plaintiff's Earlier Well-Known Trade Mark TATTVA SPA, or any other mark which is deceptively and confusingly similar to the Plaintiff's Earlier Well-Known Trade Mark TATTVA SPA, or in alternative cancel the same;

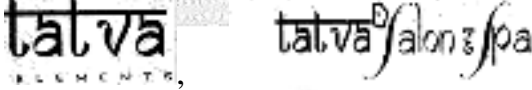
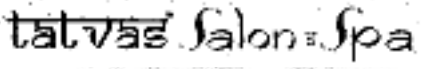
(v) to make a full and fair disclosure of any company name/trade name which contains the Plaintiff's Earlier Well-Known Trade Mark TATTVA SPA and take steps to change the same;

(vi) to shut down the website www.tataspa.com and transfer the said Impugned Domains to the Plaintiff;

(vii) To provide a full and fair disclosure of any other web sites/domain names registered and/or operated by or on behalf of the Defendants which contains a mark/name identical or deceptively and confusingly similar

to the Plaintiff's Earlier Well-Known Trade Mark TATTVA SPA and TATTVA SPA formatives and immediately take steps to transfer the same to the Plaintiff;

(viii) to shut down the Facebook page @ <https://www.facebook.com/Tatva-Salon-Spa-33047986900312/>, YouTube page @' <https://www.youtube.com/watch?v=40YOnogUPlk>. Instagram page @ <https://www.instagram.com/tatvasalonandspa/> effective immediately, and provide a full and fair disclosure of any other social media pages, operated by or on behalf of the Defendants, bearing and/or advertising the Impugned Marks

i.e. ,
, TATVA SPA, or any other mark which contains a mark which is identical or deceptively and confusingly similar to the Plaintiff's Earlier Well-Known Trade Mark TATTYA SPA and TATTVA SPA formatives and immediately take steps to shut down the same.

(ix) to remove its advertisement and listing from third party website including but not limited to www.massagespaindia.com and immediately make a full and fair disclosure of any other online advertisement of its hotel on any other website;

C. The Defendants be required to render an account of all transactions under the Impugned Mark/ Name / Domains as and beyond those set out in the plaint, and the Plaintiff be then given the option of

choosing either award of damages (including penal damages) or accounts for profits for the amount found due. The Plaintiff undertakes to pay the deficiency in Court Fee after an award for damages/accounts for profits is made in favor of the Plaintiff;

D. Costs of the suit be awarded to the Plaintiff; and

E. Any other relief which the Hon'ble Court deems proper in the facts and circumstances of the case be allowed in favor of the Plaintiff and against the Defendants.”

16. On the face of it, there is a clear case of infringement by the defendants of the registered mark of the plaintiff. As the defendants' services are in the same sector as the services provided by the plaintiff and the defendants cater to the same customer base as the plaintiff, there is every likelihood of a customer confusing the services of the defendants with those of the plaintiff. There is also substance in the contention of Ms. Roy, learned Counsel for the plaintiff, that, by modifying their mark by adding a letter “s” consequent to the cease and desist notice of the plaintiff, the defendants have tacitly acknowledged the infringing nature of their mark.

17. A clear case of infringement as well as passing off exists. The fact that the defendant has not chosen to even respond to this plaint indicates that they have nothing substantial to urge, by way of a response to the allegations in the plaint.

18. In view thereof, following the precedents laid down by the decisions of this Court in *Satya Infrastructure Ltd. v. Satya Infra & Estates Pvt. Ltd.*⁵ and *Monsanto Holdings Pvt. Ltd. v. M/s U.K. Agri Seeds*⁶, I am of the opinion that no justification exists to allow this suit to remain pending on the record of this Court. The plaintiff, clearly is entitled to a decree in terms of the prayers contained in the suit. Ms. Roy submits that, though the plaintiff is not pressing for damages, the plaintiff does press for costs at actuals, in respect of which she would be filing a bill of costs with the Registry. She is permitted to do so within a week from today.

19. Accordingly, the suit stands decreed in terms of prayers 'A (i), (ii), (iii), and B (i), (ii), (iii), (iv), (vi), (viii) and (ix)' and D in the suit.

20. The Registry is directed to draw up a decree sheet accordingly.

21. List the suit before the Joint Registrar for working out the costs on the basis of the bill of costs to be provided by the plaintiff on 9th February, 2022.

C. HARI SHANKAR, J

DECEMBER 15, 2021/kr

⁵ (2013) 54 PTC 419

⁶ 2017 SCC OnLine Del 11337