

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION**

SUIT NO.403 OF 2014

M/s. Netcore Solutions Pvt. Ltd.)
A private limited company incorporated)
under the Companies Act, 1956, having)
its registered office at 304,)
Tulsiani Chambers, Free Press Journal)
Marg, 212 Nariman Point, Mumbai)
400 021 and also having its Corporate)
office at 8th Floor, Peninsula Towers,)
Peninsula Corporate Park, G.K. Marg,)
Lower Parel (West), Mumbai 400 013.) .. Plaintiff

Versus

1. Empro Digital Communication)
Pvt. Ltd., a private limited company)
incorporated under the Companies)
Act, 1956, having its office at)
544A, Sector 1, Vasundhara)
Ghaziabad, Uttar Pradesh 201 010.)
2. Rajendra Kumar Nangia)
Adult, Indian Inhabitant, having)

his office at 544A, Sector 1,)
Vasundhara, Ghaziabad,)
Uttar Pradesh 201 010.).. Defendants

Ms. Pooja Kshirsagar a/w. Ms. Cheryl Fernandes i/b. M/s. ALMT Legal,
Advocates for the Plaintiff.
None for the Defendants

CORAM : S.J. KATHAWALLA, J.
DATE : JULY 22, 2015

ORAL JUDGMENT -

1. The present suit is filed under Section 106 of the Indian Patents Act, 1970 (**“the Patent Act”**) and Section 60 of the Indian Copyright Act, 1967 (**“the Copyright Act”**) against the groundless threats of proceedings issued by the Defendants through notices dated 15th August 2013 and two notices dated 17th February 2014 annexed at Sr. Nos. 47 to 49 to the Compilation of Documents of the Plaintiff respectively.

2. The Plaintiff is a private limited company engaged in the business of providing innovative technology-based solutions in mailing and mobility domains through mobile marketing such as SMS based solutions, mobile coupons, SMS competitions and polls, integration to back-end systems like ERP, CRM or Loyalty solutions as well as voice solutions on IVR etc. The services provided by the Plaintiff are set out in detail in paragraph 2 of the Plaint. Defendant No.1 is a company which claims to provide similar services as those of the Plaintiff. It is

averred in the Complaint that the Plaintiff has reason to believe that Defendant No.2 somehow is connected and/or associated with Defendant No.1. The master data of Defendant No.1 on the website of the Registrar of Companies provides the email address of Defendant No.2 as the email address for correspondence.

3. The Chief Financial Officer of the Plaintiff one Mr. Vishwanath Pai has led the evidence by filing Affidavit in lieu of examination –in- chief and Additional Affidavit in lieu of examination – in – chief. He confirms the correctness of the contents of the Affidavits. The Affidavits, *inter alia*, reiterate what is stated in the Complaint. Through the evidence, the Compilation of Documents is tendered in the Court which is taken on record and marked as Exhibit – X.

4. It is averred in the Complaint that sometime in the year 2004, the cellular/mobile phone became very popular in the developing countries including India. It is also averred in the Complaint that sometime prior to 2005 a system/service popularly known as “missed call service” was developed for brand promotions, customer care and other purposes where the companies desired to reach out to the masses. The missed call service became very popular as it was hassle free and it involves no cost for the caller so that the caller was free to try as many times as he is interested. It is quick and effective which takes a few seconds to convey interest and/or participation, etc. Unlike services like SMSs, missed calls had flexibility to be used from mobile phone or landline phone.

5. The Plaintiff has averred in the Plaint and in the affidavit of its witness in lieu of examination in chief that various companies are providing the miss call services since the year 2006. The Plaintiff has produced newspaper articles dated 24th March 2006 which is Sr. No.19, 9th August 2006 at Sr. No.20, 7th July 2009 at Sr. No.21, report published in March 2011 at Sr. No.22 and a report dated 7th September 2011 at Sr. No.23. Relying upon the said news paper reports, it is submitted that the said reports suggest that various companies including one Zip Dial Mobile Services Pvt. Ltd. has been providing the missed call services to various customers whereby the marketing campaign are being carried out. It is submitted that vide the missed call service, any person and/or customer interested in obtaining information relating to the products, and/or services and/or any other information can obtain desired information by merely giving a missed call on specified number.

6. It is averred in the plaint that the Plaintiff has been openly and extensively providing missed call services to various companies/corporations/banks etc. A list of the Plaintiff's customers is set out in paragraph 8.7 of the Plaint. A perusal of the said list reveals that the Plaintiff has various companies/banks/corporations as its customers which include Standard Chartered Bank, Bank of India, IDFC, Madhya Pradesh Stock Exchange, Anjali Health Services, STAR TV, Sankar TV, Tata, Sharekhan, shine.com, Vas Data Services Pvt. Ltd. (Yepme.com), Muvi, Movies Now, Opera software, Future generali, j9, BJP MP, Relianceada, Shaadi.com, Mission Protect India, Reliance Commodities, Jumpstart Industries Consultant

Ltd., Ponds, Forbes India, Kellogg India Pvt. Ltd., TTK Prestige Bangalore, Ezeego, Iac, BJP-Amit, Ease my trip, Bajaj Finserv, ONEXSOL, HDFC, Kotak, Bajaj alliance, JOY, NSDL, SBI Life Insurance, Career 360 degree, Bayer, Apeejay Education Society, Simply marry, Heinz Glucon D, Seventy mm, A2zsol, Hindustan Times and Indiaimmunology.

7. The Plaintiff has set out the component of working of missed call services in paragraph 11 of the affidavit in lieu of examination in chief of its witness and at paragraph 8.4 of the Plaint. It is averred in the Plaint that these services are offered by the Plaintiff for brand promotion i.e. when a company is interested in promoting its product via missed call services, the company contacts the Plaintiff for missed call service and advertises its product along with a toll free number with a request to give a missed call to that number. Pursuant to which, when a consumer gives a call, the same is received at the Plaintiff's system/server which automatically rejects the call after one ring and records the information about the caller viz. telephone/mobile number of the caller, time, location and the mobile operator etc. Thereafter the Plaintiff or an independent agency sends a text message relating to the promotion/ advertisement of the brand of the company and thus the consumer gets information about the brand/product that he desires to without incurring any cost. Similarly the services are provided in relation to contests, web authentication, bank products and various other purposes as set out in paragraph 8.5 of the Plaint.

8. The Plaintiff has produced invoices issued by its customers such as ICICI Bank Ltd. which is at Sr. Nos. 31 and 32 in the compilation of documents, Ease My Trip at Sr. No.33 and the Purchase Order of Bank of India at Sr. No.34. The Plaintiff has also produced various articles published in the newspapers, magazines and/or internet where it is stated that the Plaintiff has been providing the missed call services. One such report is an article published in DNA Indication on 7th January 2011 regarding the missed call services provided by the Plaintiff in relation to Anna Hazare campaign. It is stated in the report that over 76,00,000 people from across the country had given missed call on certain numbers to show their support. The said report/Article is at Sr. No.35 of the compilation of documents.

9. It is stated in the Plaint that sometime in June 2013, Defendant No.2 approached Bank of India, which is one of the customers of the Plaintiff and represented that he is the owner of missed call technology and that the Plaintiff was allegedly infringing the copyright of Defendant No.2 while providing the missed call services to Bank of India. Pursuant to the same, Bank of India called upon the Plaintiff to sign a letter of indemnity indemnifying the bank against any loss and/or damage with respect to any claim made by any party relating the services provided by the Plaintiff. A photocopy of the letter of indemnity is produced at Sr. No.44 in the compilation.

10. It is averred in the Plaint that sometime in June 2013, Defendant No.2 approached the Plaintiff and represented that he is the inventor of various

softwares including softwares which are used for providing missed call services and has registered various patents and copyright. He further informed he was desirous of having business relations with the Plaintiff. Pursuant thereto, a conference call was arranged between the representative of the Plaintiff and Defendant No.2. The Plaintiff decided to execute a non-disclosure agreement with Defendant No.2 before sharing any confidential information with Defendant No.2. However, as the terms of the non-disclosure agreement as amended by the Plaintiff were not agreeable by the Defendant No. 2, the said non-disclosure agreement was not signed. It is stated in the affidavit in lieu of examination of chief of the Plaintiff's witness that Defendant No.2 approached the Plaintiff once again stating that he was still desirous of working in partnership with the Plaintiff. Pursuant thereto, a meeting was held between the representative of the Plaintiff and Defendant No.2. In the said meeting it was realised that the claims made by Defendant No.2 regarding the copyright and patents were bogus and the copyright registrations were obtained by Defendant No.2 by giving false and misleading information to the authorities. In view thereof, the Plaintiff refused to have any business relationship with Defendant No.2.

11. It is averred in the Plaint that since the Plaintiff realized the falsity in Defendant No.2's case and refused to agree to his proposal, with a view to harass and pressurise the Plaintiff, the Defendants through their Advocates issued false and bogus notice dated 15th August 2013 which is annexed at Sr. No.47 and further false and bogus Legal Notices both dated 17th February 2014 which are Sr. Nos.48 and 49. The contents of these letters are complained to

be groundless threats in the present proceedings. On this premise, the Plaintiff has filed the present Suit.

12. It is submitted on behalf of the Plaintiff that the missed call system is not an invention as contemplated under the Patent Act. The said service has been provided by various companies including the Plaintiff since past several years. The Plaintiff has filed an Application for registration of patent in the year 2009. However, various companies are providing this service since year 2006. It is further submitted that in any case the Plaintiff is providing the said services by interalia using such as PRI server which is designed and customized for and on behalf of the Plaintiff and Custom Application Software which is built , developed and owned by the Plaintiff.

13. It is submitted on behalf of the Plaintiff that under the Copyright Law, the copyright subsist only in the original work. It is submitted that there is no novelty or originality in the said service. It is available in public domain since past several years, even before Defendant No.2's filed Application for registration under Patent Act and/or Copyright Act. It was further submitted that Defendant No.2 has falsely claimed in the copyright Application that the work is "UNPUBLISHED". However, the newspaper articles and reports annexed at Sr Nos. 19 to 21 clearly show that the said service was being offered way back in the year 2006 i.e much prior to Defendant No.2's Application.

14. It is submitted that Defendant No.1 although claims to be the owner of the Patent and the owner of the Copyright, bare perusal of the Patent

Application will show that it is Defendant No.2 who has claimed to be the inventor of the software. Defendant No.1 in the impugned notices has not mentioned about any assignment or license granted by Defendant No.2 to Defendant No.1 in this regard. There is no mention about any authorization from Defendant No.2 to Defendant No.1 to initiate any action for infringement. In the said circumstances, the impugned Notices are not only false and groundless but also without any authorization.

15. The learned counsel for the Plaintiff further submitted that, without admitting the claims of the Defendants, it was submitted that the Defendants have also acquiesced in the use of the softwares for providing the services. It was submitted that the Plaintiff and other companies are prominently and openly advertising the said services and providing the same to the customers. It is submitted on behalf of the Defendants that it is impossible for a company (who claims to be in the same business) to not notice that the said services are being provided by the Plaintiff and various companies for several years. It was thus submitted that the Defendants by their conduct has acquiesced in the use of the said software by the Plaintiff and the other companies.

16. It was submitted that Section 11 A proviso to sub section 7, of the Patents Act categorically states that Applicant of the Patent shall not be entitled to institute proceedings for infringement of Patent unless the patent has been granted. The Defendants have not been granted patent in respect of the said

services. It is submitted that the threats given by the Defendants are not only false, bogus and meritless but also contrary to provisions of Patent Act.

17. It is submitted that the Plaintiff is one of the leading companies providing the said services and has a huge turnover. Defendant No.2 through Defendant No.1 is thus giving the false and groundless threats to extort monies from the Plaintiff and blackmail so that the Plaintiff succumbs to the illegal and untenable demands of the Defendant No.2.

18. I have perused the Plaint, the exhibits to the Plaint, the affidavits filed in lieu of examination in chief of the Plaintiff's witness and the documents tendered in the compilation of documents on behalf of the Plaintiffs. I have also considered the submissions made on behalf of the Plaintiff.

19. It appears that various companies are providing the missed call services since 2006 as per the reports produced at Sr. Nos.19 to 21. Defendant No.2 has filed an application for patent in respect of missed call services on 2nd June 2009 and another application on 18th July 2011. A perusal of the reports at Sr. Nos.19 to 21 makes it apparent that the other companies were already providing the said services prior to the application of Defendant No.2. The Defendants have not filed their Written Statement despite giving sufficient opportunities. The evidence of the Plaintiffs' witness is uncontroverted.

20. In the circumstances, suit is decreed in terms of prayer clauses (a) (b) and (c) with modification as set out hereinafter. Cost to be quantified as per rules.

21. I therefore pass the following order:-

a) It is declared that the threats given by Defendant No.1 in notice and letters at Exhibit 'D' (Colly.) to the Plaintiff are groundless, false and/or bogus.

b) The Defendants, their employees, servants, Directors, Associates, nominees and any person and/or entity claiming through or under them are restrained from a permanent mandatory injunction from in any manner continuing and/or giving any threats on the basis of the false claims made in the said Notice at Exhibit D to the plaintiff.

c) The Defendants their employees, servants, Directors, Associates, nominees and any person and/or entity claiming through or under them are restrained from a permanent mandatory injunction from in any manner approaching any of the Plaintiffs customers henceforth making allegations as set out in the Notices at Exhibit – D to the plaintiff.

22. The office shall return the original documents to the Advocates for the Plaintiffs upon the Advocate for the Plaintiffs handing over Photostat copies of the said documents duly certified by him as true copies.

The Suit as well as Notice of Motion No. 733 of 2014 are accordingly disposed of.

(S. J. KATHAWALLA, J.)