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

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Date of Decision: 23.02.2015

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CS(OS) 936 of 2010

M/S IACM SMART LEARN LIMITED & ANR Plaintiffs

Through: Mr. Ashish Bhagat, Mr. Abdhesh
Chaudhary, Ms. Manisha S. & Mr. Brajesh
Kumar, Advs.

versus

M/S GLOBAL THINK COMPUTER Defendant

Through: None.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. This suit seeks a permanent injunction, restraining infringement of the trade mark; passing off; damages; delivery up, etc. against the defendant apropos the plaintiffs' trade mark IACM. This trade mark is used by the plaintiffs for running their business of hardware and networking education. The plaintiffs claim to have received awards, one such award is called the Golden Peacock Award, which is considered prestigious in their industry. It has been won twice over by the plaintiffs: once for smart learning teaching methodology in the year 2002 and the other for excellence in the education and training sector in the year 2004. It is stated that IACM was also selected as the Resource Provider for Manipal IT Education for development of its hardware and networking programmes under the umbrella of Sikkim Manipal University, for designing the entire course contents and developing and conducting the most successful train-the-trainer program for more than

150 study centres across India. The plaintiffs claim that IACM is an institutional member of the Indian Society for Technical Education and that they have been using the IACM trademark, continuously and extensively for the past 13 years to the full knowledge of the defendant and the public at large. The plaintiffs claim to have achieved the following:

“(i) “IACM” was awarded the National Golden Peacock Innovative Product/Services Award, in 2002, for its unique SMART Learning teaching methodology.

(ii) “IACM” has attained ISO 9001:2000 Quality Management System certification for conducting quality IT programs, in 2003.

(iii) Shri Ravinder Goyal, Director of IACM awarded the Gem of India Award, in 2002, in recognition of outstanding service to society and excellence in education sector.

(iv) “IACM” was chosen as a Resource Provider for Manipal It Education to launch programs in Hardware and Networking under the umbrella of Sikkim Manipal University in the year, 2002.

(v) Shri Rajesh Goyal, a Director of IACM was felicitated by India International friendship Society with the prestigious Bharat Jyoti Award, 2004.

(vi) “IACM” was recognized as “No.1 Network Training Institute” by India today, in 2004.

(vii) “IACM” won the Golden Peacock National Training Award in 2004.

(viii) “IACM” was recognized as “Most Preferred Hardware and Network Training Institute” By India Today, in 2005.

(ix) "IACM" ranked 1st all over India, in Microsoft Resource Directory.

(x) "IACM" has received the Avaya Global Connect Customer Responsiveness Awards-2007 scorecard which gave 100% to IACM in meeting student's requirements and 80% to IACM's placement cell Performance.

(xi) "IACM" won the Rashtriya Shiksha Siromani Award in 2008.

(xii) "IACM" was recognized among the Top 100 Business Opportunities across India for the year 2009."

2. The trade mark IACM was registered on 27th January, 1998 vide certificate of Registration of Trade mark No.789092 issued under Class 16. It is exhibited as Ex.P-5. It is stated that the defendants have infringed the IACM trade mark by projecting that they are the franchisees of the plaintiffs. A Local Commissioner was appointed by this Court whose report confirms that the defendant is indeed infringing the said trade mark. The defendant is a company which has its offices and training centres at various places, including at 7 & 9, Second Floor, Gole Complex, Gole Colony, Ashok Stambh, Nasik-422001. The report in this respect of the Local Commissioner is as under:

"1. Vide order dated 14.05.2010, the undersigned was appointed as a Court Commissioner by this Hon'ble Court to visit the site of the defendant in the suit at 7 & 9, Second Floor, Gole Complex, Gole Colony, Ashok Stambh, Nasik 422 001, and to execute the commission in the following manner:-

i) If on visiting the site, the undersigned would come across any sort of material, literature, books, packaging or bill boards etc., which would bear the plaintiff's registered

trade mark 'IACM' the same would be seized; and

ii) On seizure of the material indicated in the preceding clause, an inventory would be prepared and the same would be released to the defendant on superdari.

2. The undersigned, assisted by Shri Sandeep Gupta and Shri Nilesh Patil, the representatives of the plaintiffs, visited the above referred site of the defendant on 07.07.2010. Mr. Krishan Sanap, who stated himself to be the proprietor of the defendant, was present at the site. He was given a photo copy of the order dated 14.05.2010 passed by this Hon'ble Court.

3. While climbing up to the second floor to reach the site of the defendant, it was seen that the words 'IACM' were written at five different places on the walls of the staircase. Five other big name boards with the name of the defendant and mark 'IACM' were also seen affixed on the exterior walls of the building in reference which the institute of the defendant herein was situated.

4. The undersigned also noticed that the words 'IACM' in plastic material were screwed on the name board at the entrance of the institute of the defendant at the second floor of the building in reference, as also the glass fixed at the reception of the defendant's premises was itched with the words 'IACM'.

5. The above mentioned premises of the defendant was thoroughly searched.

6. During the course of search, it was found that the defendant had been using the words 'IACM' on different materials, used not only for imparting education and training to its students but also for advertising the institute of the defendant.

7. The printing material with the words 'IACM' included the following:-

i) Attendance Sheets of the students of the defendant;

- ii) *Project Submission Forms of the students of the defendant;*
- iii) *Marks Sheets of the students of the defendant;*
- iv) *Placement Feedback Forms duly filled by the students of the defendant;*
- v) *Question Papers set by defendant for its students;*
- vi) *Answer Sheets of the students of the defendant;*
- vii) *Letter Pads of the defendant;*
- viii) *Notices and Circulars issued by the defendant from time to time;*
- ix) *Admission Forms of the students;*
- x) *Charts prepared for issuing identity cards to the students of the defendant;*
- xi) *Visiting Cards (including a picture chart thereof) of Mrs. Mohini Sanap;*
- xii) *Data Collection Forms of the defendant;*
- xiii) *Visiting Cards of the defendant;*
- xiv) *Prospectus of the defendant;*
- xv) *Details of the Notes and Syllabus of the defendant in a booklet form;*
- xvi) *Invitation Cards issued by the defendant for celebrating its first anniversary in 2010;*
- xvii) *Posters pasted at different places in the aforementioned*

premises of the defendant;

- xviii) Receipt of Admission Fee issued by the defendant to its one of the students;*
- xix) Publicity and Distribution Material including leaflets of the defendant;*
- xx) General Feed Back Forms of the students of the defendant;*
- xxi) Inquiry Forms by the student of the defendant on the basis of which the admissions were granted by the defendant to its students;*
- xxii) Newspaper Advertisements;*
- xxiii) Rubber Stamp of the defendant;*
- xxiv) (Bound copy of the) Course Curriculum Book of the defendant which contained the address of the plaintiff at its last page;*
- xxv) Envelopes of the defendant;*
- xxvi) Project Covers of the defendant.*

8. All the aforesaid described materials noticed at the aforementioned site of the defendant were collected. The same was kept in nine different files. Since some posters were also noticed pasted at different places of the aforementioned premises of the defendant bearing the words 'IACM', the same were removed therefrom.

9. The glass at the reception counter of the defendant itched with the words 'IACM' was removed by a person engaged by Mr. Krishan Sanap of the defendant. However, the said glass broke while it was being removed by the said person engaged by the defendant.

10. As already stated by me, there was five name boards at the exterior of the building in reference with the name of the defendant and words 'IACM'. On closer look thereof, it was noticed that the boards were pasted with the flex sheets. The flex sheets with the name of the defendant and the words 'IACM' were removed from the three boards. However, the same could not be removed from the other two boards due to the location of their placement in the building in reference.

11. The materials seized, as described herein before including flex sheets were kept in a card board carton. The same was duly sealed and counter signed by the representatives of the plaintiffs and the defendant. Thereafter, the same was handed over, albeit on superdari, to Mr. Krishna Sanap, who stated himself to be the proprietor of the defendant. He also executed a Superdarinama in this regard.

12. The words 'IACM' written at five different places on the walls of the staircase leading to the second floor, where the premises of the defendant were located, was painted with white colour by the painter made available by Mr. Krishna Sanap of the defendant.

13. A photographer was also arranged by the plaintiffs to observe the aforesaid, who also video-graphed the proceedings. However, till the time, the present report is being filed, the same have not been made available by the plaintiffs to the undersigned despite his requests to Mr. Sandeep Gutpa, the representative of the plaintiffs and/or to the counsel for the plaintiffs.

14. The original 'on the site proceedings', including the superdarinama executed by Mr. Krishna Sanap, are annexed hereto and may kindly be read as part of the present report.

15. The report is submitted accordingly for the perusal and further directions, if any, by this Hon'ble Court."

3. The additional report of the Local Commissioner has annexed photographs of the defendant's site where the trade mark IACM was being used inside its premises as well as on the staircase/passage, with directional arrows leading to the office of the defendant.

4. The plaintiffs have led one witness, Mr. Ravinder Goyal, Authorised Representative of the plaintiffs (PW-1). In his evidence the PW-1 has deposed that the plaintiffs are engaged in the business of providing Information Technology related education and training to individuals and corporate entities, either by itself or through franchisees and has acquired a distinct and unique reputation in the said field for more than 13 years; that the plaintiffs have spent huge sums of money in advertising the said IACM mark in the print media and has been continuously doing so to popularize its name and its business. The advertisement in The Times of India on 9th March, 1998 is exhibited as PW -1/4. Other promotional advertisements have been exhibited as PW-1/5, PW-1/6, PW-1/7 and PW-1/8. The plaintiffs claim to have become aware about the infringement of their trade mark when the defendant advertised in the newspapers, i.e., Lokmat in Ahmednagar on 10th March, 2010, in Maharashtra Times on 19th March, 2010 and again on 2nd and 9th April, 2010 claiming the IACM trade mark to be owned by the defendants. It is stated that in these advertisements, the defendant had sought faculty members for its educational Institute.

5. The legal notice by the plaintiff to the defendants went unheeded. Hence, this suit was filed seeking permanent injunction. The defendant has been proceeded *ex parte*. The submissions and contentions of the plaintiffs are not rebutted. The learned counsel for the plaintiffs has handed over in Court today, a certificate of fee, costs and litigation expenses totalling to

Rs.6,62,800/-. The same is taken on record.

6. The learned counsel for the plaintiffs relies upon ***Time Incorporated v. Lokesh Srivastava & Anr.* 116 (2005) DLT 599**, wherein this Court held as under:

“8. This Court has no hesitation in saying that the time has come when the Courts dealing actions for infringement of trade marks, copy rights, patents etc. should not only grant compensatory damages but award punitive damages also with a view to discouraged dishearten law breakers who indulge in violations with impunity out of lust for money so that they realize that in case they are caught, they would be liable not only to reimburse the aggrieved party but would be liable to pay punitive damages also, which may spell financial disaster for them. In Mathias v. Accor Economy Lodging, Inc. reported in 347 F.3d 672 (7th Cir. 2003) the factors underlying the grant of punitive damages were discussed and it was observed that one function of punitive damages is to relieve the pressure on an overloaded system of criminal justice by providing a civil alternative to criminal prosecution of minor crimes. It was further observed that the award of punitive damages serves the additional purpose of limiting the defendant's ability to profit from its fraud by escaping detection and prosecution. If a tortfeasor is caught only half the time he commits torts, then when he is caught he should be punished twice as heavily in order to make up for the times he gets away This Court feels that this approach is necessitated further for the reason that it is very difficult for a plaintiff to give proof of actual damages suffered by him as the defendants who indulge in such activities never maintain proper accounts of their transactions since they know that the same are objectionable and unlawful. In the present case, the claim of punitive damages is of Rs. 5 lacs only which can be safely awarded. Had it been higher even, this court would not have hesitated in awarding the same. This Court is of the view that the punitive damages should be really punitive and not flee bite and quantum thereof should depend upon the flagrancy of infringement.”

7. The learned counsel further relies upon *Sap Aktiengesellschaft & Anr. v. Rohit Sharma & Anr.* 2014 (60) PTC 395 (Del), wherein this Court held as under:

“32. In *Microsoft Corporation v. Deepak Raval* reported at 2007 (1) 72 : 2006 (33) PTC 122(Del), this Court observed that in our country the Courts are becoming sensitive to the growing menace of piracy and have started granting punitive damages even in cases where due to absence of Defendant, the exact figures of sale made by them under the infringing copyright and/or trademark, exact damages are not available. The justification given by the Court for award of compulsory damages was to make up for the loss suffered by the plaintiff and deter a wrong doer and like-minded from indulging in such unlawful activities.

33. In *Larsen and Toubro Limited v. Chagan Bhai Patel* reported at 2009 (1) 194 : 2009 (39) PTC 538 (Del), this Court has observed that it would be encouraging the violators of intellectual property, if the Defendants notwithstanding having not contested the suit are not burdened with punitive damages.

34. In case of *Time Incorporated v. Lokesh Srivastava and Ann*, reported at 2005 (30) PTC 3 (Del), the court has recognized third type of damages as punitive damages apart from compensatory and nominal damages. The court has held that:

"The award of compensatory damages are aimed at deterring a wrong doer and the like minded from indulging in such unlawful activities."

"This Court has no hesitation in saying that the time has come when the Courts dealing actions infringement of trademark, copy rights, patents etc. should not only grant compensatory damages but award punitive damages also with a view to discourage and dishearten law breakers who indulge in

violations with impunity out of lust for money so that they realize that in case they are caught, they would be liable not only to reimburse the aggrieved party but would be liable to pay punitive damages also, which may spell financial disaster for them."

35. Based on the report of the Local Commissioner and the investigator, leaves no room for doubt that the computers were installed at the premises of the defendants with the SAP Software, various students were enrolled and fees were being charged from them. This is a fit case where the plaintiff is entitled to damages of Rs. 5.00 lakhs."

8. In view of the aforesaid discussion and precedents on punitive damages this Court deems it appropriate to grant an amount of Rs.5.00 lacs as punitive damages to the plaintiffs as not doing so would encourage further infringement of Intellectual Property with impunity. The element of deterrence intrinsic in punitive damages needs to be emphasised. The claims and evidence of the plaintiffs is unrebutted. A case for decree is made out. Accordingly, the suit is decreed in terms of prayers (a), (b) and (c) of the plaint. Costs of Rs.6,62,800/- as calculated in para 5 hereinabove, is also awarded in favour of the plaintiffs. The learned counsel for the plaintiffs does not press for compensatory damages as prayed under prayer (d) of the plaint.

9. The suit is disposed off in the above terms. Let a decree sheet be drawn up accordingly.

FEBRUARY 23, 2015
ak/b'nesh

NAJMI WAZIRI, J.