

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

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Date of Judgment :19.05.2015

CS(OS) 1501/2011

MICROSOFT CORPORATION AND ANR.Plaintiffs
Through: Ms.Krutika Vijay and Mr.Aasish
Somasi, Advocates.

Versus

KETAN AND ANR.Defendants
Through: None.

CORAM:
HON'BLE MS. JUSTICEINDERMEET KAUR

INDERMEET KAUR, J. (oral)

1. The present suit has been filed by the plaintiff seeking permanent injunction restraining infringement of copyrights, delivery up, rendition of accounts of profits as also damages.

2. The plaint discloses that the plaintiff no.1 Microsoft Corporation is registered in the USA. Plaintiff no.2 is the wholly owned and subsidiary of plaintiff no.1 having its registered office at Nehru Place, Delhi. The business activities of the company are software publishing for personal and business accounts. The plaintiff no.1 has a worldwide

and global reputation. The software of the plaintiff includes used operating, systems software, MICROFOST WINDOWS (various versions) and application software such as MICROFOST OFFICE (various versions) and VISUAL STUDIO (various versions). Apart from these software programs the plaintiffs also manufacture a large range of computer peripherals (hardware). The software developed and manufactured by the plaintiff are “computer programs” within the meaning of Section 2(ffc) of the Copyright Act, 1957. They are “works” and are entitled to be protected.

3. The defendant no.2 is a shop at Dr. Bhadkamkar Marg, opposite Lamington Road Police Station, Mumbai which is engaged in marketing and selling of computer hardware including branded computers and peripherals. Defendant no.1 is the proprietor of defendant no.2.

4. In May, 2011 the plaintiffs received information that the defendants were infringing the plaintiffs copyright and his other intellectual property rights by carrying on the business of unauthorized Hard Disk Loading of the plaintiffs’ software programs on to the branded computers sold by them to their customers. The said unlicensed software programs were not accompanied by any original certificate of

Authenticity label, Holographic Software Installation. The defendants are guilty of infringing the plaintiffs' rights and accordingly the present suit was filed.

5. On 03.06.2011, a local commissioner had been appointed to visit the premises of the defendants at Mumbai he has since filed his report. The laptop purchased by the decoy customer from the shop of defendant was inspected by the technical expert of the plaintiff. He found that the same was loaded with the unauthorized software of the plaintiffs. The local commissioner had prima facie concluded that the defendant was guilty of infringing the intellectual rights of the plaintiffs. The laptop and the CD were seized and thereafter were handed over to the defendants on superdari.

6. The defendants in spite of service did not appear. They were proceeded ex parte on 24.09.2012.

7. Ex parte evidence by way of affidavit of PW-1 (constituted attorney of the plaintiffs) and PW-2 (Chartered Accountant of plaintiff) has been filed. PW-1 has reiterated all the averments made in the plaint and has proved various documents delineated as Ex.PW1/1 to Ex.PW-1/26. PW-2 has also reiterated the averments made in plaint.

8. The plaintiff has established and proved his case.

9. Accordingly, the suit of the plaintiff is decreed and by way of the permanent injunction, the defendants, their directors, officers, servants and agents and all others acting for and on their behalf are restrained from using or otherwise copying, selling, offering for sale, distributing, hard-disk loading, issuing to the public, counterfeit/unlicensed versions of Microsoft Office 2007, Microsoft Windows 7 or any other software program of the plaintiffs in any manner which amounts to infringement of the plaintiffs' copyright. The defendants are also directed to destroy all the plaintiffs' software programs including the hard disk, diskettes, packaging and advertising material, labels, stationery articles and all other infringing materials. The plaintiffs are also awarded damages which are quantified at Rs.1,00,000/-. Decree sheet be prepared accordingly.

10. Suit of the plaintiff is disposed of.

INDERMEET KAUR, J

MAY 19, 2015

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