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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(COMM) 404/2016, IA No.4981/2016 (u/O 39 R-1&2 CPC), IA 6305/2016 (u/O 39 R-3&4 CPC) & IA No.6306/2016 (u/O 39 R-3&4 CPC).

DELHI PUBLIC SCHOOL SOCIETY Plaintiff

Through: Mr. Puneet Mittal, Mr. Bhuwan
Gugnani & Ms. Vasudha Bajaj, Advs.

Versus

DELHI PUBLIC SCHOOL MANESAR & ORS Defendants

Through: Mr. B. Dass, Mr. Yogesh Dass & Ms. K.
Sharma, Advs. for D-1,6,7,9,12,14&15.
Mr. Sandeep Chaudhary, Adv. for D-2.
Mr. Sayantan Basu, Mr. Shantanu
Guchhait & Mr. Abhishek Jain, Advs.
for D-3,4&5.
Mr. Arpit Bhargava & Ms. Sania
Yusuf, Advs. for D-10.
Mr. Sandeep Mahapatra & Ms.
Madhurima Kapoor, Advs. for D-13.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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29.11.2016

1. The plaintiff has instituted this suit to restrain the 16 defendants from using the trade mark / name "DPS" and the logo of the plaintiff or any other mark identical or deceptively similar to the plaintiff's trade mark and logo and / or from using the name "Delhi Public School" and for ancillary reliefs.
2. The suit was entertained and vide *ex parte* ad-interim order dated 25th April, 2016, the defendants, except the defendant no.11, were restrained from using the trade mark "Delhi Public School" / "DPS" and "logo" or any other marks/logo identical or deceptively similar thereto.

3. The counsel for the plaintiff today states that the defendant no.8 PDR Ltd. still remains to be unserved.
4. The counsel for the defendants no.3 to 5 i.e. Delhi Public School Pvt. Ltd. and its Directors Mrs. Purabi Dutta & Mr. Deepak Kumar Pal states that he has filed an application under Order XXXIX Rule 4 of the CPC. The said application is not on record. A copy of the same has been handed over in the Court and taken on record.
5. The counsel for the defendants no.3 to 5 states that he has instructions from the Board of Directors of the defendant no.3 of which the defendants no.4 and 5 are the only members and from the defendants no.4&5 in their personal capacity to suffer an injunction order in terms of prayer paragraphs (a),(b)&(c) of the plaint but seeks some time to change the name and logo and further seeks time to allow the students of Classes Xth and XIIth to take their board exam under the same name.
6. On enquiry as to the school being run by the said defendants, attention is invited to para 17 of the application under Order XXXIX Rule 4 CPC copy of which is handed over in the Court in which it is *inter alia* stated that the defendant no.3 and / or its franchisees are running the schools in the said name and under the said logo all over India including the States of Karnataka, Bihar, Andhra Pradesh, Rajasthan, Haryana, Himachal Pradesh, Madhya Pradesh, Punjab, Uttarakhand, Uttar Pradesh, Jharkhand, Jammu & Kashmir, West Bengal and Odisha. On enquiry it is stated that in all 90 schools are being operated.

7. The counsel for the plaintiff, subject to the defendants also furnishing an undertaking, states that the plaintiff will not press for the other reliefs against the said defendants.
8. The counsel for the defendants no.3 to 5 states that he has instructions from the defendants no.4&5 to also give an undertaking to this Court and gives an undertaking to this Court to abide by the decree and not to act in contravention thereof save for the limited period. He also states that he has explained to the defendants no.4&5 the consequences of breach of undertaking given to the Court.
9. In view of the aforesaid, a decree is passed in favour of the plaintiff and against the defendants no.3 to 5 in terms of prayer paragraphs (a),(b)&(c) of the plaint and leaving the parties to bear their own costs.
10. The defendants no.3 to 5 are however permitted to use the old name and the old certificates impugning which this suit was filed only for the purposes of enabling the students in Classes Xth and XIIth of the 2016-17 academic session to take the examination of any education board and not for any other purpose.
11. The defendants no.4&5 further undertake to within 15 days hereof file in this Court an affidavit furnishing the name, address and particulars of all the schools / franchisees of the defendant no.3 with advance copy to the plaintiff.
12. The undertakings of the defendants no.4 &5 are accepted and they are ordered to be bound therewith.
13. Decree sheet be prepared.

14. The counsel for the defendant no.10 Siliconhouse.Net Pvt. Ltd. states that the defendant no.10 is only the Registrar of domain names and will abide by all future orders of the Court and will not allow transfer of the domain name info@dpsbalasore.com to any other person. It is also stated that the said domain name has already been suspended. It is further stated that the registration of the said domain name is expiring on 20th December, 2016 and if it is not renewed, it will automatically be put up for sale and someone else may acquire the same. It is stated that to prevent the same, the same will have to be renewed.

15. The domain name info@dpsbalasore.com belongs to the defendant no.9 Delhi Public School, Balasore. The counsel for the defendant no.9 states that he has no objection to transfer of the said domain name i.e. www.info@dpsbalasore.com to the plaintiff.

16. The counsel for the plaintiff is agreeable thereto.

17. Accordingly, subject to the plaintiff complying with the requisite formalities, the defendant no.10 to transfer the domain name www.info@dpsbalasore.com to the plaintiff.

18. It is ordered accordingly and the plaintiff, defendant no.10 and defendant no.9 are bound by their statements aforesaid.

19. The counsel for the defendant no.9 states that he also appears for defendants no.1,6,7,9,12,14&15 viz. Delhi Public School Manesar, Ratanjyot Solutions, Vipul Mittal, Delhi Public School, Balasore, Delhi Public School Surat, DPS Kids, Gobindgarh, Punjab and DPS Medchal Highway. He states that all the said defendants are franchisees of defendant

no.3 Delhi Public School Pvt. Ltd. and have no objection to the suit against the said defendants also being disposed of on the same terms.

20. The counsel for the defendants no.1,6,7,9,12,14&15 further states that he has authorization from the Principals / Managers of the said defendants to give similar undertaking and furnishes the undertaking.

21. The said undertakings are also accepted and the said defendants are ordered to be bound therewith.

22. In view of the aforesaid, a decree is passed in favour of the plaintiff and against the defendants no.1,6,7,9,12,14&15 viz. Delhi Public School Manesar, Ratanjyot Solutions, Vipul Mittal, Delhi Public School, Balasore, Delhi Public School Surat, DPS Kids, Gobindgarh, Punjab and DPS Medchal Highway in terms of prayer paragraphs (a),(b)&(c) of the plaint, leaving the parties to bear their own costs.

23. Decree sheet be prepared.

24. The counsel for the defendant no.13 Parthforweb states that defendant no.13 is in the business of web development and had been commissioned by the defendant no.12 Delhi Public School Surat to develop a website viz. “www.dpsservice.org” and otherwise has nothing to do with the dispute.

25. The counsel for the defendant no.13 and the counsel for the defendant no.12 states that the website “www.dpsservice.org” can be transferred to the plaintiff.

26. Subject to the plaintiff complying with the requisite formalities, the said website be transferred from the name of the defendant no.12 to the name of the plaintiff.

27. The suit insofar as against the defendant no.13 is disposed of in above terms.
28. None appears for the defendants no.2,11&16.
29. The counsel for the plaintiff states that the defendant no.8 PDR Ltd. had in fact been served and had sent an e-mail dated 11th July, 2016 to the plaintiff as annexed to IA No.9633/2016 and though the plaintiff by the said application had sought exemption from service of defendant no.8 but the same was not allowed by the Joint Registrar vide order dated 21st November, 2016.
30. I have perused the said application as well as the Annexure-A thereto and therefrom it is evident that the defendant no.8 PDR Ltd. which is also a domain name registry has been served and has in fact complied with the interim order in the suit. Thus the defendant no.8 PDR Ltd. is also treated as served.
31. None appears for the defendant no.8 PDR Ltd. also.
32. The defendants no.2,8,11&16 are proceeded against *ex parte*.
33. For the reasons stated by me in ***Satya Infrastructure Ltd. Vs. Satya Infra & Estate Pvt. Ltd.*** (2013) 54 PTC 419 (Del), need for the plaintiff to lead *ex parte* evidence against the said defendants is not felt.
34. The counsel for the plaintiff states that subject to a decree for permanent injunction being passed, the plaintiff will not press for damages against the said defendants also.

35. Accordingly, a decree for permanent injunction is passed in favour of the plaintiff and against the defendant no.2,8,11&16 in terms of prayer paragraphs (a),(b)&(c) of the plaint, leaving the parties to bear their own costs.

36. Decree sheet be prepared.

37. The defendant no.8 is also directed to, upon the plaintiff complying with the requisite formalities, transfer the website “www.delhipublicschoolindia.net” and “www.dps11dfaridabad.com” in favour of the plaintiff.

RAJIV SAHAI ENDLAW, J

NOVEMBER 29, 2016

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