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

+ **CS(COMM) 633/2016**

M/S RX INFOTECH PVT. LTD. Plaintiff

Through: Ms Gunjan Arora, Advocate.

versus

GOPINATH T. AND ANR. Defendants

Through

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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22.12.2016

VIBHU BAKHRU, J

1. The present suit has been filed by the plaintiff, *inter alia*, seeking a decree of permanent injunction restraining the defendants from directly or indirectly doing business in any goods and services under the trademark/ trade name LAPCARE or any other mark which is deceptively similar to the plaintiff's trademark LAPCARE. The plaintiff also prays for an order for rendition of accounts and a decree of ₹20,05,000/- towards damages against the defendants.

2. This Court by an order dated 28.09.2012 granted an ex-parte *ad interim* injunction restraining the defendants from doing business, providing any service, manufacturing, selling, offering for sale, advertising, directly or indirectly doing business in any goods and services including but not limited

to laptop accessories and spare parts and providing back up services under the trade mark LAPCARE till further orders.

3. Although the defendants were served, however, after a few hearings, the defendants did not participate in further proceedings. By an order dated 27.09.2013, the right of the defendants to file the Written Statement stood closed. Thereafter, the defendants were proceeded ex parte on 11.12.2013.

4. Mr. Atul Gupta (PW1) has filed an affidavit on behalf of the plaintiff. Ex. PW 1/1 is the certified copy of the board resolution passed by the plaintiff, *inter alia*, authorizing PW1 to take any steps as necessary in furtherance of the final disposal of the present proceedings.

5. Briefly stated, the facts that emerge from the affidavit of PW1 are as follows:

5.1 The plaintiff is a partnership concern established in the year 1997 under the name and style: Rx Technologies which was later acquired by the plaintiff as a going concern in 2004. The plaintiff is engaged in the business of import, export and distribution of IT hardware and allied products. The plaintiff is stated to operate 30 branch offices with approximately 6000 distributors/channel partners covering more than 150 cities in India.

5.2 It is stated that the plaintiff has been continuously using the trademark LAPCARE since 2002. It is stated that the trademark LAPCARE has been extensively and continuously used by the plaintiff since its adoption. By virtue of such use, the trademark LAPCARE is synonymous with high quality laptop ad-ons and accessories as offered by the plaintiff.

5.3 The plaintiff is the registered proprietor of the trademark LAPCARE in India under registration no. 1123733 in class 09. The plaintiff's trademark LAPCARE is also registered in other countries including Singapore, Hong Kong and Taiwan. The plaintiff's sales turnover with respect to its products sold bearing the trademark LAPCARE in the year 2015-16 in India was ₹1,87,92,80,284/-.

5.4 It is stated that the plaintiff in the month of June 2011, became aware that the defendants were offering the same kind of goods and services as that of the plaintiff through the defendants' website with the domain name www.lapcareservices.com. This led the plaintiff to send an email dated 23.06.2011 asserting the plaintiff's rights in the trademark LAPCARE. However, the defendants did not acknowledge the plaintiff's rights in the mark LAPCARE and replied by an email dated 23.06.2011 stating that they have been using the trade name LAPCARE SERVICES for the past four years. The plaintiff tried to amicably settle the matter with the defendants, however, despite assurance given by the defendants, the defendants did not desist from using the trademark LAPCARE.

6. PW1 has duly proved that plaintiff is the registered proprietor of the mark LAPCARE in class 09 (computers and its parts and accessories) by producing the printout of the certificate of registration from the website of the Trade Marks Registry exhibited as Ex PW 1/10. PW1 has also duly proved that plaintiff is the registered proprietor of the mark LAPCARE in Hong Kong and Singapore by furnishing printouts of the certificate of registration granted by the Trade marks Registry in those countries as Ex. X-4.

7. Internet extracts from the defendants' website with domain name www.lapcareservices.com through which defendants advertise their goods and services has also been furnished as Ex PW1/19. Further PW1 has also produced a visiting card used by the defendants and photographs of the defendants' shop, exhibited as Ex PW1/24 and Ex PW1/26 respectively, both the said exhibits indicate the defendants' use of the mark LAPCARE.

8. It is evident that the mark LAPCARE has been used by the plaintiff for more than a decade and enjoys reputation and goodwill associated with the plaintiff.

9. In view of the above, it is apparent that defendants are also carrying on their business in the same field as that of the plaintiff and are infringing the registered mark of the plaintiff by using the trade name LAPCARE for similar goods and services and advertising the same through their website: www.lapcareservices.com. A perusal of the visiting card and the photographs of the defendants' shop further establishes that the defendants have adopted the mark LAPCARE only to take advantage of the goodwill/reputation of the plaintiff.

10. It is also apparent that the use of the trademark LAPCARE is not honest. In the aforesaid circumstances, the plaintiff is entitled to a decree of permanent injunction as prayed for by the plaintiff.

11. The plaintiff has been unable to establish the quantum of loss suffered by its and therefore, its claim for damages cannot be allowed. The plaintiff has submitted a bill of ₹93,000/- as legal costs. The same is reasonable and the plaintiff is entitled to the same.

12. In view of the above, the suit is decreed in terms of prayer (i), (ii) and (iii), that is, as under :-

“(i) An order for permanent injunction restraining Defendants, its partners, servants, agents, successors, assigns in business and representatives or any of them, from doing business, providing any service, manufacturing, selling, offering for sale, advertising, directly or indirectly doing business in any goods and services including but not limited to laptop accessories and spare parts thereof and providing back-up services under trademark/ trade name LAPCARE as a part of their trademark/ trade name or in any other manner as may lead to infringement of the Plaintiffs trademark LAPCARE registered under No. 1123733 in class 9.

(ii) An order for permanent injunction restraining the Defendants, their principal officers, partners, servants, representatives and agents or any of them, from doing business, providing any service, manufacturing, selling, offering for sale, advertising, directly or indirectly doing business under the mark LAPCARE including but not limited to laptop accessories and spare parts thereof and providing back-up services and/or and other goods and services thereunder, or in any other manner as may lead to passing off the Defendants' business as that of the Plaintiff or under authorization from the Plaintiff.

(iii) An order for permanent injunction restraining the Defendants their principal officers, partners, servants, representatives and agents or any of them, from using the impugned mark LAPCARE in any manner amounting to dilution of the distinctiveness of the said mark and tarnishing the reputation of the Plaintiff's thereunder;”

13. The plaintiff is also awarded costs of ₹93,000/- including court fees.
14. Decree sheet be drawn accordingly. Any pending application(s) also stands disposed of.

VIBHU BAKHRU, J

DECEMBER 22, 2016
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