

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

% Decided on: 13th October, 2017

+ **CS(OS) 344/2010**

TATA SONS LTD. & ANR. Plaintiffs
Represented by: Mr. Karan Kamra, Advocate.

versus

LOKESH SHARMA & ORS.Defendants
Represented by: None

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA
MUKTA GUPTA, J. (ORAL)

1. In the present suit plaintiffs pray for the following reliefs:
 - i. *An order for permanent injunction restraining the Defendants, their partners or proprietors, as the case may be, their officers, servants and agents from selling, offering for sale, advertising, directly or indirectly dealing in services of any description bearing the trademarks of the Plaintiffs collectively known as TATA house marks and/or any mark/s /logo/trade name deceptively similar to the Plaintiff's registered trademarks, amounting to infringing of the registered trade marks of the Plaintiffs including but not limited to registration No. 838432 in class 16, No. 1247045 in Class 35, No. 1247046 in Class 36, No. 1632278 in Class 37, No. 1247048 in Class 38, No. 1247049 in Class 39, No. 1247050 in Class 40 , No. 1247051 in Class 41 and No. 1247052 in Class 42;*
 - ii. *An order for permanent injunction restraining the Defendants, their partners or proprietors, as the case may be, their officers, servants and agents from selling, offering for sale, advertising, directly or indirectly*

dealing in services of any description bearing the trademarks of the Plaintiffs collective known as the TATA house marks and/or any mark/s/logo/trade name deceptively similar to the Plaintiffs' trademarks, amounting to passing off of the Defendants' services/goods as that of the plaintiffs;

- iii. *An order in the nature of directions to the proforma Defendants namely Defendant Nos. 7,8,9,10 and 11 to freeze the bank accounts of the Defendants including that of the Defendant Nos. 1,2,3,4,5 and 6 where monies of the various candidates making applications for employment with the Plaintiffs have been deposited across various branches all over India.*
- iv. *An order also in the nature of directions to the proforma Defendants namely Defendant Nos. 7,8,9,10 and 11 to disclose the details of the transactions and other information pertaining to the accounts of the Defendants including those of Defendant Nos. 1,2,3,4,5 and 6.*
- v. *An order for delivery up of all the goods including but not limited to the stationery/letter heads bearing the impugned marks/logos, dies, blocks, cartons, labels, and any other infringing material to the authorized representatives of the Plaintiffs for the purposes of destruction;*
- vi. *An order for rendition of accounts of profits illegally earned by the Defendants on account of the use of the Plaintiffs' marks and/or any mark/s/logo deceptively similar to the Plaintiffs' various trade marks collectively known as TATA house marks and a decree for the amount so found be passed in favour of the Plaintiffs;*

- vii. *An order for damages in the sum of ₹ 20.05,000/- in favour of the Plaintiffs and against the Defendants on account of the unauthorized use of the impugned marks of the Plaintiffs collectively known as TATA house marks/ name TATA and a decree for the said amount be passed in favour of the Plaintiffs;*
- viii. *An order for costs of the proceedings.*

2. Summons in the suit were issued to the defendants vide order dated 26th February, 2010 and an interim order was also granted in favour of the plaintiffs, restraining the defendant Nos. 1 to 6 from offering their services by using the trademark TATA or any other trademark which is deceptively similar to the trademark of the plaintiffs. It was also directed that defendant No. 7 to 11 shall freeze the operation of the accounts of defendant Nos. 1 to 6. Defendant No. 8 was served on 1st July, 2010, defendant Nos. 2, 5, 7, 9 and 10 were served on 31st May, 2010 and counsel on behalf of defendant No. 11 appeared on 4th June, 2010. However, since no written statement was filed on behalf of the aforesaid defendants, their right to file written statement was closed vide order dated 6th September, 2010. Defendant No. 4 and 5 were served by means of publication in "The Statesman" dated 9th January, 2013. Since no one appeared on defendant No. 4 and 5 they were proceeded ex-parte vide order dated 15th April, 2014 where defendant Nos. 2, 5, 7, 9 and 11 were also proceeded as ex-parte. Defendant No. 12 and defendant Nos. 1, 8 and 10 were also deleted from the array of parties vide order dated 15th April 2014 and dated 16th December, 2014 respectively. Defendant Nos. 3 and 6 were served by publication in newspapers. Since

none appeared on their behalf they were also proceeded ex-parte vide order dated 18th January, 2016.

3. It is the case of the plaintiffs that plaintiff No. 1, Tata Sons Limited is the principal holding company of the TATA Group and is duly incorporated under the Indian Companies Act, 1913. Plaintiff No. 2, Tata Technologies limited was incorporated in 1994 and is a part of the Tata Group. Plaintiff No. 1 is one of the India's most trusted business houses and the name/trademark/TATA, is derived from the surname of the founder Jamsetji Nusserwanji Tata and is a household name synonymous with excellence in almost every field of business activity. Plaintiff No. 2 is an automotive-focused engineering and design (E&D) company which provides services to leading automotive and aerospace companies.

4. The use of the trademark and name TATA by the predecessors in business of plaintiff No. 1 dates back to 1868. On account of the highly distinctive nature and pioneering activities of its founder, the name TATA has acquired an excellent reputation from the very beginning and down the decades, the said name has consistently been associated with, and exclusively denotes the conglomeration of companies forming the TATA Group, colloquially also referred to as the "House of TATA". Plaintiff No. 2 uses the mark "TATA" under permission granted to it by the Plaintiff No. 1 under the Brand Equity and Business Promotion Agreement executed with the Plaintiff No. 2.

5. Plaintiff No. 1 being the proprietor of the trademark TATA enjoys exclusive right in the said trademark. In addition to the common law rights that have accrued to the Plaintiffs by virtue of the facts noted above, they are also the registered proprietor of several TATA-formative trademarks in

relation to various goods in several classes including registrations in Classes 35 to 42 of the Fourth Schedule of the Trade Marks Rules, 2002 pertaining to services. The plaintiffs also own trademark registrations for the word TATA or TATA formative marks in over 50 countries besides India.

6. On 11th February, 2010, the Plaintiff No. 1 received credible information from the Plaintiff No. 2 that the defendants No. 1 to 6 were involved in a false job racket by sending out mass emails on behalf of Plaintiff No. 2 and other group companies of the Plaintiff No. 1 to various aspiring candidates who had registered their names online with the job portal “Naukri. Com”. Furthermore, on 14th February, 2010, the Ethics Cell of the Plaintiff No. 2 received a query from one of the candidates, namely Mr. Deepak Chandrakar, asking Plaintiff No. 2 about the authenticity/credibility of an email from defendant No. 1 which stated that the candidate’s resume submitted to Naukri. Com had been short listed and that he had been called to the final round of the interview for a position in the Plaintiff No. 2 company. The said email led to further investigation.

7. The modus operandi adopted by the defendant Nos. 1 to 6 was that they would open an account with a bank in some fictitious name or in the name of any third party and thereafter collected the various email addresses from the data base of a portal like “Naukri.Com” which had email addresses of the job aspirants. Thereafter the defendants created counterfeit documents by reproducing the logo TATA on fake letter heads to make them appear as those of the plaintiffs. Thereafter, emails were sent to the job aspirants stating that their resume has been selected for the final round of selection at one of the offices of the plaintiffs. Thereafter, defendant No. 1 used to ask the candidate to deposit a certain amount of money in the names inter alia

defendant Nos. 1 to 6 who falsely held out to be authorized representative of the plaintiffs. The defendants Nos. 1 to 6 had opened a certain number of accounts with defendant Nos. 7 to 11 the details of which were mentioned below:

NAME OF THE BANK	NAME OF ACCOUNT HOLDER	ACCOUNT NO.
Kotak Mahindra Bank	Sudesh	0180001000230
SBI Bank	Joginder Singh	30882605260
IDBI Bank	Arpit Sehgal	170104000032799
Union Bank of India	Asha Chauhan	344602010084713
PNB	Sanjeev Kumar	370300010223562

8. On 11th February, 2010 the Plaintiff No. 2 lodged a complaint with the Cyber Crime Cell in Pune whereby it complained about the misrepresentative and fraudulent activities of defendants Nos. 1 to 6 (later defendant Nos. 1 to 5 as defendant No. 1 was given as a party). Vide the said complaint, the plaintiff also requested the concerned police authorities to take cognizance of the matter and take appropriate action against the guilty.

9. It is further pleaded that the defendants' act of mala fide using the trade mark TATA and TATA logo (house mark) of the Plaintiffs as a part of their trading name/style is a clear attempt to pass off their business/trading activities as having some sort of connection/association/affiliation with the Plaintiffs or having been authorized by the Plaintiffs in some manner The

said acts of the defendants have created actual confusion in the minds of consumers who have been deceived into paying monies for employment opportunities with the plaintiffs.

10. It is claimed that the misrepresentation by the Defendants has been done inter alia in the following manner:

- a) *By copying the TATA house mark of the Plaintiffs on stationary/letter heads which makes the candidates believe that the same is the letter head of the Plaintiffs;*
- b) *By presenting Defendant Nos. 2 to 6 as representatives of the Plaintiff No. 2.*
- c) *The use of the Plaintiff's mark/name TATA by the Defendants also amounts to false trade description as defined under the provisions of the Trade Marks Acts, 1999, inasmuch as it induces the consumers and members of trade to falsely believe that:*
 - i. *The Defendants have a direct nexus or affiliation with the Plaintiffs or the House of TATA: or*
 - ii. *The Defendants have been granted a license to use the trademark/logo TATA in relation to this class of products; or*
 - iii. *The business of the Defendants have been endorsed by the plaintiffs.*

11. Evidence by way of affidavit of Mr. V. Gurumoorthi (PW-1) was tendered. The certified true copy of the power of attorney issued by plaintiff No. 1 in favour of Mr. V. Gurumoorthi was proved as Ex. PW-1/1 and certified true copy of the board resolution in his favour as Ex. PW-1/2. The original certificate for the use in legal proceedings for several trademarks

comprising/containing the word TATA, “T within a Circle device” as well as several “TATA- formative trademarks” and various permutations/combinations thereon under various classes under the Trademarks Act 1999 was proved as Ex. PW-1/17. The emails received by the plaintiff with respect to queries received from various candidates who had received emails from the defendant Nos. 1 to 5 were proved as Ex. PW-1/18. The aforesaid emails are supported by certificate under Section 65B of the Indian Evidence Act, 1872.

12. Supreme Court in the decision reported as (2012) 2 SCC 196 Rasiklal Manikchand Dhariwal v. M.S.S. Food Products, while dealing with the issue whether the presence of witness is necessary to tender his evidence by way of an affidavit, observed:

78. In our view, there is no requirement in Order 18 Rule 5 that in appealable cases, the witness must enter the witness box for production of his affidavit and formally prove the affidavit. As it is such witness is required to enter the witness box in his cross-examination and, if necessary, re-examination. Since a witness who has given his examination-in-chief in the form of affidavit has to make himself available for cross-examination in the witness box, unless the defendant's right to cross-examine him has been closed, such evidence (examination-in-chief) does not cease to be legal evidence.

13. Similar view was impressed by the co-ordinate bench of this Court in *CS(OS) 3325/2015 Prudential IP Services Limited v. Prudential Prosperitas Company Pvt. Ltd and Ors* decided on 5th September, 2017.

14. On the basis of affidavit and material placed on record which has gone unrebutted, the plaintiffs are entitled to a decree in their favour and

against the defendant Nos. 1 to 5 as per the amended memo of parties dated 6th February, 2015 in terms of prayer (i) and (ii) of the suit. Plaintiff has led no evidence to prove the amount so collected from the job aspirants deposited in the accounts of defendant Nos. 1 to 5 hence no relief in terms of prayer (iii) can be granted. Suit is accordingly decreed in terms of prayer (i) and (ii) in favour of the plaintiffs and against the defendant Nos. 1 to 5.

15. No order as to costs.

I.A. No. 2454/2010 (under Order XXXIX Rule 1 and 2 CPC)

Application is dismissed as infructuous.

OCTOBER 13, 2017
‘anu’/‘yo’

(MUKTA GUPTA)
JUDGE

भारतमेव जयते