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

DECIDED ON : NOVEMBER 16, 2017

+ **CS(COMM) 924/2016**

CABLE NEWS NETWORK, INC Plaintiff

Through : Mr.Dhruv Anand with Ms.Udita Patro and
Mr.S.Nooreyzahan, Advocates.

versus

MR ANSHU JAIN & ANR Defendants

Through : None.

**CORAM:
HON'BLE MR. JUSTICE S.P.GARG**

S.P.GARG, J. (Oral)

1. The plaintiff has instituted the instant suit for permanent injunction against the defendants restraining infringement of trademark CNN, passing off, damages and other miscellaneous reliefs.

2. As per the averments in the plaint, the plaintiff is a news channel which is a subsidiary of Turner Broadcasting System, Inc. established in the year 1980 for running a news channel in English under the brand CNN. It is averred that plaintiff's well known trademark is 'CNN' (which is an abbreviation of its trade name Cable

News Network). Internationally, CNN is the most widely distributed news channel reaching more than 250 million households, and the CNN Digital Network is consistently the No.1 current events and news destination on the web having official websites such as www.edition.cnn.com, www.cnnnewsources.com, www.money.cnn.com, www.commercial.cnn.com and www.travel.cnn.com. It is averred that in India, CNN channel has been available since 1989. The CNN International television service is extensively available in India and substantial sums of money are annually spent by the plaintiff on the advertising, marketing and promotion of the plaintiff's CNN trademark. It is averred that the distinctive nature of the plaintiff's CNN trademark has been recognized all over the world and the said trademarks have been registered in various countries. It is pleaded that plaintiff's trademark has been registered in various classes in India, including class-9 of the Trade Marks Act, 1999. It is averred that the CNN trademark and CNN formative trademarks come within the definition of well known marks as defined by Section 2(1)(zg) of the Trade Marks Act, 1999.

3. It is alleged that the plaintiff found about the defendants' infringing activities in November, 2015. The defendants registered a domain name <cnndigital.com> and were found using CNN DIGITAL as a brand for their internet marketing services. The plaintiff alleges that defendant no. 2 was running a separate marketing office under the brand name of CNN Digital at E-34, Jawhar Park, Laxmi Nagar (Near Heera Sweet) Delhi – 110092 and B-135, B Block, Sector 2, Noida,

Uttar Pradesh 201301. The Defendants also had a liaison office in UK at No.44 A, Hawthorne Avenue, Mittcham, Greater London CR4 3DN, United Kingdom. The defendants were found advertising on various online platforms like IndiaMart, offering services under the name CNN Digital. In April 2016, the plaintiff learnt that the defendants had made a cosmetic modification in their logo as used on their website which wholly incorporated the plaintiff's trademark 'CNN'. The defendants used both logos on the hoarding affixed outside their office premises and their promotional materials.

4. The defendants did not appear despite service by publication. They were proceeded ex-parte vide order dated 21.07.2017. To prove its case, the plaintiff has examined PW-1 Abhijeet Dhar.

5. I have heard the learned counsel for the plaintiff and have examined the file.

6. Mr. Abhijeet Dhar, in his evidence (Ex PW 1/A) proved the averments of the plaint and various documents (PW-1/1 to PW-1/13) without any variance. He specifically deposed that the 'CNN' family of marks have a long, established and widespread use in various countries of the world including India. (Ex PW -1/4) (colly.) is the printout of list of worldwide registrations of the plaintiff for the trademark CNN. Ex PW 1/7 (i) to Ex PW-1/7 (xxxi) have been collectively exhibited as the copies of the printouts showing the registration certificates in India. He deposes that CNN is the most

widely distributed news channel reaching more than 250 million households, and the CNN Digital Network is consistently No.1 current events and news destination on the web. Ex PW -1/3 (colly) exhibits printouts from official websites of the plaintiff like www.edition.cnn.com, www.cnnnewsources.com, www.money.cnn.com, www.commercial.cnn.com and www.travel.cnn.com. He further deposed that the defendants have been found to operate an infringing website www.cnndigital.com that squarely incorporates the plaintiff's well known trademark. A printout of the Whois result for the said domain is exhibited as PW-1/9. He deposed that the defendants registered a domain name <cnndigital.com> and were using CNN DIGITAL as a brand for its internet marketing services. Ex PW-1/10 (colly) exhibits printouts from the website www.cnndigital.com of the defendants. He further deposed that a private investigator appointed by the plaintiff ascertained that the defendant no. 2 was running a separate marketing office under the brand name of CNN Digital at E-34, Jawhar Park, Laxmi Nagar (Near Heera Sweet) Delhi – 110092 and B-135, B Block, Sector 2, Noida, Uttar Pradesh 201301. The defendants also had a liaison office in UK at No.44 A, Hawthorne Avenue, Mittcham, Greater London CR4 3DN, United Kingdom. Ex PW-1/11 (colly) exhibits collectively original business cards of defendants, photographs of premises annexed with original affidavit of investigator. Printouts from website of the defendant with changed logo incorporating plaintiff's mark 'CNN' and printouts from www.indiamart.com advertising defendants services were exhibited as Ex PW-1/12 (colly) and Ex PW-1/13 respectively. He deposed that

CNN Digital trademark/trading style and domain name used by defendants are identical to plaintiff's trademark CNN. He further deposes that due to dishonest use of the trademark 'CNN Digital' by the defendants for its marketing services, there is a threat of confusion and deception among relevant consuming public.

7. Testimony of PW-1 (Abhijeet Dhar) has remained unchallenged and unrebutted. There are no sound reasons to disbelieve the positive uncontroverted testimony of PW-1. The defendants did not bother to put forth their stand; the averments are deemed to be not disputed.

8. On perusal of the plaint and documents on record, it reveals that the plaintiff is the registered user of the mark CNN. The plaintiff has placed on record number of documents showing that plaintiff has been running its well known news channel with presence in several countries and territories worldwide. Various printouts show that the defendants have been using the domain name www.cnndigital.com. This Court is of the view that the plaintiff's trademark CNN is a well known trademark as defined under Section 2(1) (zg) and other provisions of the Trade Marks Act, 1999.

9. Well settled position is that potentiality of harm on the internet is much higher as compared to the "brick and mortar" i.e. physical world, due to anonymity and ubiquity of the internet. In '*Yahoo! Inc v. Akash Arora & Ors.*', 78 (1999) DLT 285 it was held:-

"12. ...In an Internet service, a particular Internet site could be reached by anyone anywhere in the world who proposes to visit the said Internet site. With the advancement and progress in technology, services rendered in the Internet has also come to be recognised and accepted and are being given protection so as to protect such provider of service from passing off the services rendered by others as that of the Plaintiff. As a matter of fact in a matter where services rendered through the domain name in the Internet, a very alert vigil is necessary and a strict view is to be taken for its easy access and reach by anyone from any corner of the globe."

10. In *Brookfield Communications Inc v. West Coast Entertainment Corporation* (174, F. 3d 1036), it was held:

"In the Internet context, in particular, entering a web site takes little effort-usually one click from a linked site or a search engine's list; thus, Web surfers are more likely to be confused as to the ownership of a web site than traditional patrons of a brick-and-mortar store would be of a store's ownership".

11. There is no denial that the defendants are using the mark CNN as part of their domain name. The plaintiff's concern is that defendant's website www.cnndigital.com can misdirect internet users who are looking for the legitimate CNN sites and lead to confusion making them believe that the defendants have some affiliation, nexus or license from the plaintiff. I find merit in the plea of the learned

counsel for the plaintiff. Undisputedly, defendant's mark CNN as part of their domain name incorporates plaintiff's mark CNN and thus, a possibility of customers/users being misled or confused cannot be ruled out.

12. It is well settled law that where the mark is identical, the court will not enquire whether the infringement is such as is likely to deceive or cause confusion. In Kavi Raj Pandit Durga Dutt Sharma v. Navaratna Pharmaceutical Laboratories, AIR 1965 SC 980, it was held :

“28..... The action for infringement is a statutory remedy conferred on the registered proprietor of a registered trade mark for the vindication of the exclusive right to the use of the trade mark in relation to those goods (Vide [s. 21](#) of the Act). ... In an action for infringement, the plaintiff must, no doubt, make out that the use of the defendant's mark is likely to deceive, but where the similarity between the plaintiff's and the defendant's mark is so close either visually, phonetically or otherwise and the court reaches the conclusion that there is an imitation, no further evidence is required to establish that the plaintiff's rights are violated.”

13. In B.K. Engineering Co. v. Ubhi Enterprises (Registered), 27 (1985) DLT 120, it was held:

“23. The crux of the matter is not the intention of the defendant in taking a certain name, but the

probable affect of such action on the minds of the public. However innocent may be his intentions, he will be restrained from trading under name so much like that under which the plaintiff who was first in the field trades, that the public are very likely to be deceived into systematic, and not merely occasional, confusion.

50. A fair and honest trader will not give misleading name to his product to the continuing detriment of a plaintiff who has built up his goodwill in the business after years of hard work. ... It is this intangible right to property which the law seeks to protect."

14. In the light of the above discussion, the suit of the plaintiff is decreed with costs in terms of prayer (a) to (f) of the plaint which shall form part of decree sheet. Since the defendants opted to stay away from suit proceedings despite service, the plaintiff is awarded punitive damages to the tune of Rs.5 lakhs.

15. Decree sheet be prepared accordingly.

(S.P.GARG)
JUDGE

NOVEMBER 16, 2017
LR