

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:16.03.2018

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

C.S.(Comm.Div) No.126 of 2018

Microsense Private Limited
Represented by its Director
Mr.Sujit Singh
5C, 1st Main Road
Kalaimagal Nagar
Ekkattuthangal
Chennai – 600 032

... Plaintiff

Vs

Bharti Airtel Limited
Bharti Crescent, 1, Nelson Mandela Road
Vasantkunj, Phase II
New Delhi- 110 070

... Defendant

Plaint filed under Order IV Rule 1 of Original Side Rules and Order VII Rule 1 CPC read with Sections 134 and 135 of the Trademarks Act, 1999 and Section 7 of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Court Acts (Act No.4 of 2016) to declare that the Defendant is infringing the plaintiff's registered Trademark Number 1819723 in respect of its wireline networking infrastructure and wireless LAN Solution business carried under the name "MiFi"; to grant permanent injunction restraining the Defendant, their men, agents or person acting on their behalf, from in any manner infringing the plaintiffs' right in trademark bearing Registration No.1819723 in respect of its business under the name 'Mi-Fi' by using an identical name or any name similar to the Trademark of the plaintiff; to direct the defendant to furnish true and faithful account of its profits made by using the trademark 'Mi-Fi' and direct the Defendant to pay the plaintiff, the amount or mesne profits as may be determined by this Hon'ble Court; to direct the defendant to pay the costs of the suit.

For Plaintiffs : Mr.K.Harishankar

For Defendants : Mr.S.Karthic

COMMON JUDGMENT

Mr.K.Harishankar, learned counsel on record is before this Commercial Division on behalf of the plaintiff. Mr.S.Karthic, learned counsel on record for the sole defendant is before this Commercial Division.

2.This suit pertains to alleged infringement of a registered Trademark. The nucleus of the suit is a registered Trademark bearing Registration No.1819723. The mark is 'Mi-Fi' . I shall refer to this mark and say more about it infra in this judgment.

3. It is the case of the plaintiff that it provides wide range of mobile computing and telecommunication services, specializing in wire line networking infrastructure and wireless LAN solutions in India. It is also the case of the plaintiff that its business commenced in the year 1982. The claims of the plaintiff are articulated in Paragraphs 5 and 6 of the plaint, which read as follows:

"5. The Plaintiff Company provides wide range of mobile computing and telecommunication services, specializing in wire line networking infrastructure and wireless LAN solutions in India. The plaintiff's business commenced in the year 1982. The plaintiff is having an industrial presence of more than three decades and has acquired rich experience in delivering quality software and wireless products/solutions in various technologies. The plaintiff apart from being a leading wireless provider in India offers its services in many other countries all

over the world like USA, UAE, Sri Lanka and Maldives.

6. It is humbly submitted that the plaintiff offers high speed internet, data and entertainment connectivity to various sectors such as Hospitality Industry, Shopping Malls, Health Clinics & Restaurants, Salons and Spas, Cafes & Ice Cream parlours, Shops & Boutiques, Clubs and Restaurants. Service Centers etc. The plaintiff's clientele includes industry leaders in luxury hotels like Taj Group of Hotels i.e, Meridien Hotels, Hyatt Regency, leaders in luxury hotels like Taj Group of Hotels i.e., Meridien Hotels, Hyatt Regency, The Park, ITC Group of Hotels etc., The Plaintiff also provides its services for many airports, educational institutions etc., and caters to a wide range of wireless applications for various other industry segments in the name of "Mi-Fi".

4. The plaintiff claims that it has obtained registration for its trademark "Mi-Fi" vide Trademark No. 1819723 in Class 42. The date of registration is 19.05.2009 and the registration is valid upto 19.05.2019. The goods and descriptions are as follows:

"Trading of computer, computer hardware, computer consultancy, computer software, computer programming, computer software design, computer systems analysis, computer data, telecommunication communication services with products, computer net working products, computer law and Wlan products and services, video projection services, data recovery, leasing / rental and other computer related services."

5. Depiction of the aforesaid mark by the plaintiff is as follows:



6. Depiction of the alleged offending mark of the defendant (as placed before me in suit file by the plaintiff) is as follows:



7. It is the case of the plaintiff that they have applied for three

more registrations and the details are as follows:

S.No	Trademark	Type of Mark & Date of application	Application No.
1	Mi-Fi	Word Mark 14-Dec-12	2442642
2	Mi-Fi	Word Mark 14-Dec-12	2442643
3	Mi-Fi	Word Mark 14-Dec-12	2442644

8. It is the case of the plaintiff that they recently came to know that the defendant is using a deceptively similar mark and is infringing the plaintiff's aforesaid registered trademark. It is also the case of the plaintiff that the line of activity is the same. There is an overlap with regard to channel of business also is plaintiff's further say. It is the further case of the plaintiff that immediately on coming to know about the aforesaid alleged infringement, plaintiff caused a legal notice (cease and desist notice) dated 20.12.2017 to be issued to the defendant. A copy of the said legal notice was placed before me as plaint Document No.3 along with postal acknowledgement by way of Track Consignment, which showed that the cease and desist notice had been duly served on the sole defendant on 22.12.2017. It is the positive assertion of the plaintiff that the defendant having received the notice had neither replied nor responded.

9. On the basis of the above averments, the instant suit was

filed/presented on 21.02.2018. When the interlocutory application being O.A.No.172 of 2018 with a prayer for injunction against infringement of Trademark was brought up before me, vide order dated 23.02.2018, an *ex parte* interim injunction was granted. Order XXXIX Rule 3 of Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC' for brevity) has since been complied with. The defendant is now before this Commercial Division.

10. Mr.S.Karthic, learned counsel appearing for the defendant has filed an affidavit dated 16.03.2018 sworn to by one Ms.A.Aruna, who I am informed is authorized signatory of the defendant company. To be noted, the deponent has also been described as Manager-Legal in the defendant company. In the affidavit, the defendant has stated that they have not sold any mobile portable hotspot devices under the above said Trademark 'Mi-Fi' . They have also said they have withdrawn all devices from the market and they don't intend to sell the products under the mark 'Mi-Fi'. I shall refer to the affidavit in greater detail infra. In the light of the stand taken by the defendant, I am of the view that the defendant has no real prospect of successfully defending the claim and there is no other compelling reason why the claim of the plaintiff should not be disposed of before recording of oral evidence. In other words, in the light of the stand taken by the sole defendant in the affidavit dated 16.03.2018, I am of the view that this is a fit case for summary judgment under Rule 3 of Order XIII-A of the Code of Civil Procedure ('CPC' for brevity). To be

noted, this is CPC as amended by the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 (hereinafter referred to as 'Act 4 of 2016') . Section 16 of Act 4 of 2016 read with the schedule would give an enumeration of the amendments brought about to CPC by Act 4 of 2016. I deem it appropriate to extract Rule 3 of Order XIII-A of amended CPC, which reads as follows:

"3. Grounds for summary judgment.--The Court may give a summary judgment against a plaintiff or defendant on a claim if it considers that -

(a) the plaintiff has no real prospect of succeeding on the claim or the defendant has no real prospect of successfully defending the claim as the case may be; and

(b) there is no other compelling reason why the claim should not be disposed of before recording of oral evidence."

11. Both the learned counsel have no dispute or disagreement that in the light of the stand taken by the defendant, this is a fit case for summary judgment under Order XIII-A of CPC, as amended by Act 4 of 2016.

12. In the aforesaid affidavit dated 16.03.2018, the aforesaid aspects regarding not selling, withdrawing from the market and not intending to sell, have been articulated by the defendant in Paragraphs 3, 4 and 5. I deem it appropriate to extract paragraphs 3, 4 and 5, which read as follows:

"3. Respondent states that during their course of business, they honestly adopted the mark Mifi for their

mobile portable hotspot devices. The Respondent states that the impugned mark "Mifi" being common to trade was adopted by the Respondent for their mobile portable hotspots. However, the Respondent states that till date they have not sold any mobile portable hotspot devices under the impugned trademark "Mifi".

4. In compliance with the order of this Hon'ble Court, we have recalled and withdrawn all the mobile portable hotspot devices from the market and there are no products or devices of the Respondent that are available in the market with the impugned trademark "Mifi".

5. Nevertheless, in order to put quietus to the issue, the Respondent confirms that it shall not sell any product bearing the impugned trademark "Mifi". It is reiterated that the Respondent has not sold any product under impugned trademark "Mifi". This is without prejudice to the rights of the Respondent to defend the suit and file appropriate application, if deemed necessary.

13. I now turn to the prayer paragraph in the plaint. Paragraph 24 of the plaint is the prayer paragraph. To be noted, there are five sub-paragraphs i.e., paragraphs (a) to (e) in paragraph 24 of the plaint. In other words, there are 5 limbs of plaint prayers. I deem it appropriate to extract the entire plaint prayer paragraph for the sake of convenience and clarity. Paragraph 24 of the plaint reads as follows:

" 24. The plaintiff therefore prays for a judgment and decree against the defendant as follows:

a) to declare that the Defendant is infringing the plaintiff's registered Trademark Number 1819723 in respect of its wireline networking infrastructure and wireless LAN Solution business

carried under the name "MiFi";

b) to grant permanent injunction restraining the Defendant, their men, agents or person acting on their behalf, from in any manner infringing the plaintiffs' right in trademark bearing Registration No.1819723 in respect of its business under the name 'Mi-Fi' by using an identical name or any name similar to the Trademark of the plaintiff;

c) to direct the defendant to furnish true and faithful account of its profits made by using the trademark 'Mi-Fi' and direct the Defendant to pay the plaintiff, the amount or mesne profits as may be determined by this Hon'ble Court;

d) to direct the defendant to pay the costs of the suit; and

e) pass such further or other reliefs as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice."

14. To be noted, with regard to sub-paragraphs (a) to (e) in plaintiff paragraph 24 extracted and reproduced supra, I shall refer to the sub-paragraphs (a) to (e) as limbs 1 to 5 in that order. With regard to first limb of the prayer pertaining to declaration, in the light of the stand taken by the defendant that they have not sold any mobile portable hotspot devices under the impugned trademark "Mi-Fi" and in the light of the specific stand that they have recalled and withdrawn all portable hotspot devices from the market and their emphatic assertion that no product or devices of the defendants are available in the market with the aforesaid registered Trademark, which is the subject matter of this suit, I am of the view that the first limb of the prayer being a declaratory relief, becomes unnecessary.

15. With regard to the second limb of the prayer, the same pertains to permanent injunction qua infringement of aforesaid suit registered Trademark i.e., Trademark No.1819723, the details of which have been alluded to supra.

16. In the light of the affidavit and particularly Paragraphs 3 to 5 of the affidavit filed by the defendant, the plaintiff will be entitled to have the second limb of the prayer decreed as prayed for.

17. From the narrative supra, it unfurls that the defendant has taken a very fair stand. In the light of the fair stand taken by the defendant, learned counsel for plaintiff submits, on instructions, that 3rd, 4th and 5th limbs of the prayer are given up.

18. In other words, the prayers for accounts, costs and the residuary limb are given up.

19. In sum and substance, for the sake of absolute clarity it is set out precisely that with regard to plaint prayers contained in Paragraph 24 of the plaint, sub-paragraph (a) is closed as unnecessary. Sub-paragraph (b) is decreed as prayed for and sub-paragraphs (c) to (e) are given up.

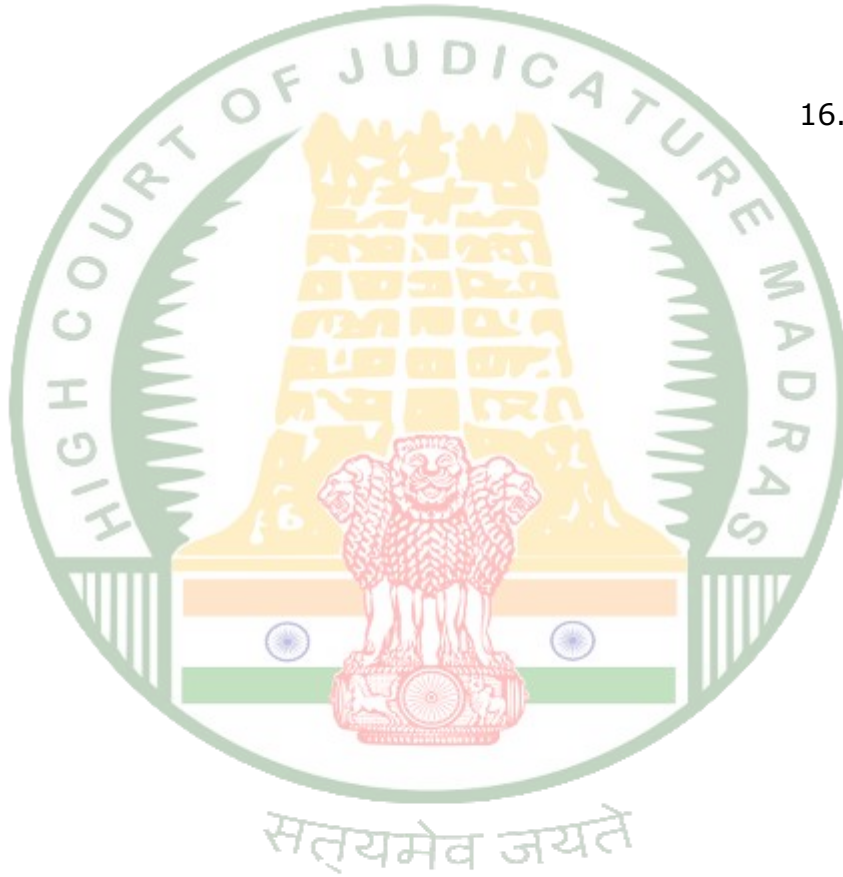
20. In the light of sub-paragraph (d) being given up, the question of examining the costs does not arise.

21. This is a summary judgment under Order XIII-A of CPC as amended by Act 4 of 2016.

Suit decreed on above terms.

16.03.2018

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M.SUNDAR.J.,

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