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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 23.01.2019

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

C.S.No.735 of 2018
and O.A.No.977 of 2018

Flinto Learning Solutions Private Limited
a company duly incorporated under
the provisions of the Companies Act, 1956
Rep. by its Director Mr.D.Arunprasad
and having its office at
Bharani Flats, Flat - G-1, Block-2
No.1, S.M.Narayan Nagar
Anna Nagar West Extension
Chennai - 600 101, Tamil Nadu

.. Plaintiff

Vs.

1. Curiosi Learning Solutions Private Limited
a company existing and incorporated
under the Companies Act, 2013
of the address 25/30, 1st and 2nd Floor
Gear School Road, Off Sarjapur Road
& Outer Ring Road, Doddakannelli
Bangalore - 560 035, Karnataka

2. Google India Private Limited
a company incorporated
under the Companies Act, 1956
off the address No.3, RMZ Infinity-Tower E
Old Madras Road, 4th and 5th Floors
Bangalore- 560 016, Karnataka, India

3. Google LLC
a company existing under
the laws of the United States of America
of the address 1600 Amphitheatre Parkway
Mountain View, California 94043
United States of America

.. Defendants

This Civil Suit is preferred, under Order IV Rule - 1 of Original Side Rules, Sections 28, 29, 134 and 135 of the Trade Marks Act and Section 7 of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Court Act No.4 of 2016; Praying for

a) A permanent injunction restraining Defendant No.1, its men, agents, servants, licensees, franchisees, distributors, assigns and representatives or anyone claiming through or under them from infringing the plaintiff's registered trademark 'FLINTOBOX' by using it as Google Advertisement keyword or any other mark which is/are identical with and/or deceptively similar to the plaintiff's trademarks either per se or in combination with any other work/mark and English or Tamil or any other language, which is identical with and / or deceptively similar to plaintiff's registered trademark 'FLINTOBOX' or in any other manner whatsoever;

b) A Mandatory injunction directing Defendant No.1 to disclose the details of the website traffic received by their use of 'FLINTOBOX' as Google Advertisement keyword infringing the plaintiff's registered trademark;

c) The Defendant No.1 be ordered to pay to the plaintiff a sum of Rs.25,01,000/- as damages for the act of infringement of Trade Mark committed by Defendant No.1;

d) Directing the Defendant No.1 to render a true and faithful account of sales made by sale of products to the users visiting the website of the Defendant No.1 after search for the registered trademark, 'FLINTOBOX' of the plaintiff and the Defendant No.1 be further ordered and directed to pay to the plaintiff such amount as may be found due on such account being taken;

e) for costs of the suit; and

f) Pass such further or other orders as this Court may deem fit and proper in the facts and circumstances of the case and thus render justice.

For Plaintiff : Ms.Pavitra Venkateswaran

For Defendants : Mr.Leonard Arul Joseph Selvam for D1
Mr.R.S.Diwaagar
Mr.R.Bhardwaja Ramasubramaniam for D2

JUDGMENT

There is a sole plaintiff and there are three defendants in this suit.

2. Plaintiff is a private limited company. This Commercial Division is informed that plaintiff is incorporated in India and is therefore a juristic person. Plaintiff has been verified and signed by one Mr.D.Arunprasad, whom this Commercial Division is informed is Director in the plaintiff company. Today, Ms.Pavitra Venkateswaran, learned counsel on record for plaintiff is before this Commercial Division.

3. First and second defendant are also Private Limited Companies and this Commercial Division is informed that defendants 1 and 2 are also incorporated in India and therefore, defendants 1 and 2 are also juristic persons. With regard to defendant No.1, Mr.Leonard Arul Joseph Selvam is before this Commercial Division along with Mr.Vinod Abraham, whom this Commercial Division is informed is Director in first defendant company. With regard to defendant No.2 Mr.R.Bharadwajramasubramaniam has entered appearance and Mr.R.S.Diwaagar, learned counsel on record is before this Commercial Division. With regard to defendant No.3, which is an entity in United States of America (USA) Mr.G.Balasubramanian, learned counsel of M/s.Leela & Co [Law Firm] has entered appearance along with Mr.S.Anand, learned counsel on record, who is before this Commercial

Division. This completes the array of parties in this suit and their respective counsel.

4. It is submitted by learned counsel for plaintiff and first defendant that they have amicably settled this lis and have reduced the same to writing by way of a document captioned 'Settlement Agreement' dated 14.01.2019 (hereinafter referred to as 'said agreement' for brevity and clarity). Both learned counsel i.e., counsel for plaintiff and counsel for first defendant make a request, on instructions, from their respective clients that this Commercial Division may please pass a compromise decree in terms of said agreement.

5. With regard to defendants 2 and 3, both learned counsel submit that no relief has been claimed against defendants 2 and 3 in the main suit and they are only formal parties. In this view of the matter, both learned counsel i.e., counsel for defendants 2 and 3 submit that they are completely neutral qua the said agreement and they will remain bound by the compromise decree which is passed by this Court.

6. With regard to third defendant, as mentioned supra, which is a Limited Liability company (LLC) incorporated in United States of America, Mr.S.Ananad, learned counsel of M/s.Leela & Co [Law Firm] submits, on instructions, that the power in favour of natural person qua execution of the vakalatnama for the third defendant is still in force and it is operating.

Learned counsel undertakes to file an affidavit to this effect within 10 working days from today in the required format in the Registry. This is recorded. Be that as it may, vakaltnama of the third defendant is directed to be taken on file by the Registry subject of course to this undertaking.

7. As mentioned supra, Mr.Vinod Abraham, son of Mr.Abraham Kochuperekal Anthony, whom this Commercial Division is informed is Director in first defendant Company, who is present in Court, confirms that he has understood the covenants and recitals of the said agreement and the first defendant company shall remain bound by the same. Mr.Vinod Abraham, reiterates the request that this Commercial Division may please pass a compromise decree in the main suit itself in terms of said agreement and he has produced an extract of Board Resolution of the first defendant company dated 14.01.2019 authorizing him to sign the said agreement and also represent the first defendant company before this Commercial Division. Besides this, he has also produced his photo identity card being Aadhar Card together with a photo copy of the photo identity card, which has been self attested.

8. With regard to plaintiff company Ms.Pavitra Venkateswaran submits that aforesaid Mr.D.Arunprasad has some personal difficulty in being present before this Commercial Division as he is traveling. A request is made that his presence may please be dispensed with for recording said agreement and passing a compromise decree. It is also submitted that the

said agreement was signed by both parties i.e., plaintiff and first defendant and more particularly by Mr.D.Arunprasad and Mr.Vinod Abraham in the presence of each other representing their respective companies. On this ground also, a request to dispense with the presence of Mr.D.Arunprasad is made. This request is acceded to.

9. To be noted, said agreement reads as follows:

'This Settlement Agreement has been entered into this 14th day of January 2019, by and between Flinto Learning Solutions Private Limited (which shall include its subsidiary and group companies) a company duly incorporated under the provisions of the Companies Act, 1956, having its office at Bharani Flats, Flat G1, Block 2, No.1, S.M.Narayan Nagar, Anna Nagar West Extension, Chennai - 600 001, Tamil Nadu also office at G2, No.36, Chandrasekaran Avenue, 2nd Main Road, Thoraipakkam, Chennai - 600 097, Tamil Nadu (hereinafter referred to as "FLINTO", which expression shall, unless repugnant to the meaning or context thereof, be deemed to include its successors and assigns) as the FIRST PARTY

And

Curiositi Learning Solutions Private Limited (which shall include its subsidiary and group companies) a company duly incorporated under the provisions of the Companies Act, 2013, having its registered office of the address 25/30, 1st and 2nd Floor, Gear School Road, Off Sarjapur Road & Outer Ring Road, Doddakannelli, Bangalore- 560 035 Karnataka (hereinafter referred to as "Curiositi" which expression shall, unless repugnant to the meaning or contest thereof be deemed to include his successors and assigns) as the SECOND PARTY.

WHEREAS, the First Party is the registered user of the mark "FLINTOBOX", "FLINTOBOX" & "FLINTO".

WHEREAS, the Second Party inadvertently used the mark

"FLINTOBOX" as the keyword on google for promotion of their website and products;

WHEREAS, the First Party has obtained an injunction against the Second Party in the High Court of Judicature at Madras under C.S.No.735 of 2018 for infringement of Trademark;

WHEREAS, the Second Party has approached the First Party to settle the matter amicably and resolve the issue.

WHEREAS, each party has been represented by counsel, has been apprised of its rights regarding the settlement, and enters into the settlement freely and voluntarily.

NOW THEREFORE, in consideration of the premises and mutual promises contained herein, the parties agree as follows:

- 1.The Second Party agrees and undertakes to immediately cease using the First Party's registered mark "FLINTOBOX" or any other such variations belonging to the First Party;*
- 2.The Second Party agrees and undertakes to not bid and / or use the keyword "FLINTOBOX" the registered mark of the First Party or any other such variation belonging to the first on, including but not limited to "Google search engine", or any other such platform, whatsoever;*
- 3.The Second Party agrees and undertake to not involve in any unethical, unfair and unhealthy competition against the First Party, at any manner whatsoever;*
- 4.The Second Party agrees not to challenge or contest the legal rights of the First Party in its trademarks in any Court of law;*
- 5.The First Party reserves the rights to take any and all appropriate legal action against the Second Party, in case of any future breach of any terms and conditions by the Second Party, as laid down hereinabove;*
- 6.Each person signing this Settlement Agreement hereby represents and warrants that he or she has the authority to bind the entity on behalf of which he or*

she has signed;

7.Each of the parties has participated in the drafting and negotiation of this Settlement Agreement. Accordingly, for all purposes, this Settlement Agreement shall be deemed to have been drafted jointly by the parties;

8.This Settlement Agreement may be executed in duplicate, each of which shall be deemed to be a counterpart original;

9.If any portions of this Settlement Agreement are held invalid and unenforceable, all remaining portions shall nevertheless remain valid and enforceable to the extent they can be given effect without the invalid portions;

10.This Settlement Agreement shall be binding upon and inure to the benefit of the parties' respective heirs, successors, assigns and personal representatives;

11.This Agreement shall be governed by the laws of India and shall be subject to jurisdiction of Courts in Chennai.

12.Both parties herein agree that this settlement agreement would be filed with the High Court of Judicature at Madras on the next date of hearing i.e., January 23, 2019 and recorded with the Court;

13.First Party as a goodwill gesture agrees to not press for damages, expenses, claims or costs from the Second Party in view of the above undertaking and covenants of the Second Party.

IN WITNESS WHEREOF, the parties hereto have executed the Settlement Agreement on the date written above

**For Flinto Learning Solutions
Curiositi Learning
Private Limited
Private Limited**

**For
Solutions**

Sd/-
Director

Sd/-
Director'

10. In the light of the narrative supra, the main suit itself is disposed of by way of a compromise decree in terms of the aforementioned said agreement. Said agreement dated 14.01.2019, Board Resolution of the first defendant company, self attested photo copy of the photo identity card of Mr.Vinod Abraham shall all form part of the compromise decree.

11. Suit is decreed on above terms. Consequently, connected Miscellaneous Petition is closed. There shall be no order as to costs.

23.01.2019

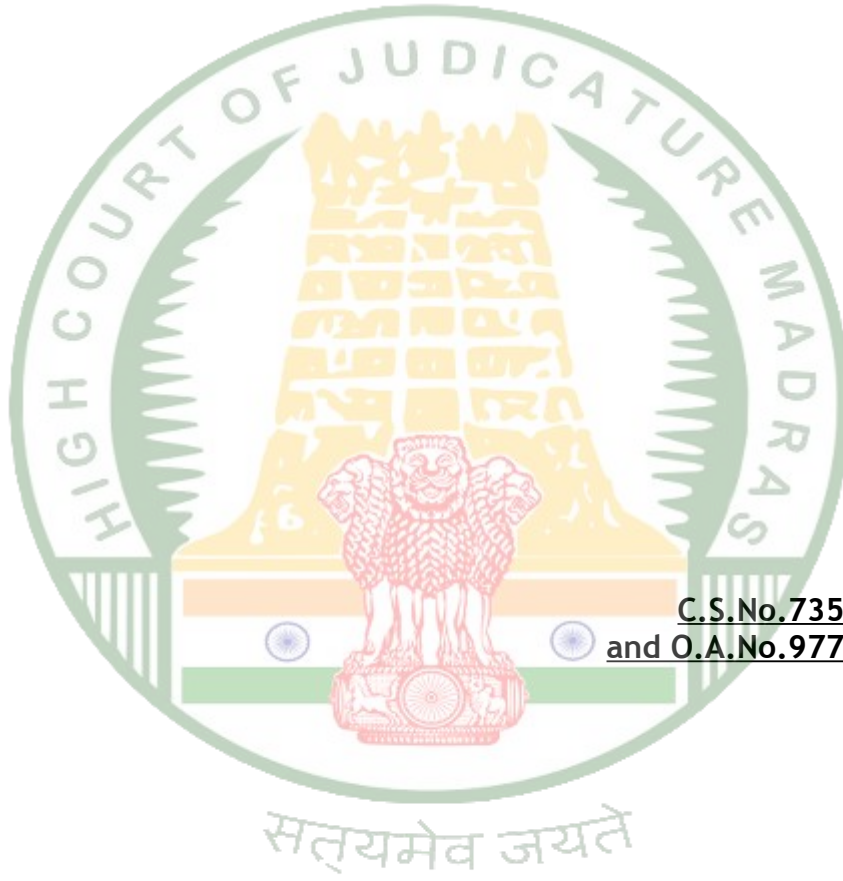
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