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

\+ CS(COMM) 117/2019

FLIPKART INTERNET PRIVATE LIMITED ..... Plaintiff
Through: Mr. Saurabh Srivastava, Advocate with Mr. Sidharth Chopra, Mr. Vaarish K. Sawlani and Mr. Ranjeet Singh Sidha, Advocates.

versus

FLIPKARTWINNERDRAW.COM & ORS. ..... Defendants
Through: None.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

<u>O R D E R</u>
% **06.03.2019**

<u>I.A. 3269/2019 in CS(COMM) 117/2019</u>

Keeping in view the averments in the application, plaintiff is exempted from filing the certified /clear/proper and translated copies of the documents at this stage and is also permitted to file additional documents within thirty days.

Needless to say, this order is without prejudice to the rights and contentions of the parties.

Accordingly, present application stands disposed of.

<u>I.A. 3271/2019 in CS(COMM) 117/2019</u>

Present application has been filed seeking leave to file additional documents.

Keeping in view the averments in the application, the same is allowed and plaintiff is permitted to file additional documents within thirty days.

Accordingly, the application stands disposed of.

I.A. No.3270/2019 [U/s. 80 (2) CPC] in CS(COMM) 117/2019

Issue notice to the defendants No.26 and 27 by all modes including *dasti*, returnable for 12th April, 2019 before the Joint Registrar.

CS(COMM) 117/2019

Let the plaint be registered as a suit.

Issue summons to the defendants No.1 to 16 by e-mail/WhatsApp and SMS and upon other defendants by all modes including e-mail and *dasti*, returnable for 12th April, 2019 before the Joint Registrar.

The summons to the defendants shall indicate that a written statement to the plaint be positively filed within four weeks of the receipt of the summons. Liberty is given to the plaintiff to file a replication within two weeks of the receipt of the advance copy of the written statement.

The parties shall file all original documents in support of their respective claims along with their respective pleadings. In case parties are placing reliance on a document which is not in their power and possession, its detail and source shall be mentioned in the list of reliance which shall be also filed with the pleadings.

Admission/denial of documents shall be filed on affidavit by the parties in accordance with the Delhi High Court Rules.

List the matter before Court on 03rd May, 2019.

I.A.3268/2019 in CS(COMM) 117/2019

Issue notice to the defendants No.1 to 16 by e-mail/ WhatsApp and SMS and upon other defendants by all modes including email and dasti, returnable for 12th April, 2019 before the Joint Registrar.

It is pertinent to mention that present suit has been filed for infringement of trademark, passing off, rendition of accounts, delivery up, damages etc.

In the plaint, it is stated that the plaintiff is one of the leading online marketplaces in India and it owns, manages and provides access to its online e-commerce marketplace/platform, i.e. Flipkart, in India through the website www.flipkart.com. It is stated in the plaint that the plaintiff company's online platform offers products in various categories and offers for sale a variety of products from almost 11454 brands. It is stated in the plaint that the plaintiff has been operating the aforementioned website continuously since 2007 and also launched the mobile application – FLIPKART, in 2011.

It is averred in the plaint that the plaintiff is the proprietor of various FLIPKART trademarks, logos and devices in various classes under the Trade Marks Act, 1999 and the same are valid and subsisting. It is stated in the plaint that the FLIPKART brand has been extensively promoted and advertised by way of print, television, digital; and outdoor campaigns and the expenditure incurred by the plaintiff on advertising and promotion of its 'Flipkart' trademark in 2017-18 was Rs.7,313 million It is stated in the plaint that the annual turnover generated by the plaintiff in 2017-18 was Rs 30,602 million.

It is stated in the plaint that the plaintiff has adopted a unique and unusual font, get up, layout and colour combination for the trademark and logo of its e-commerce website and mobile application, i.e. Flipkart and its various formative marks, thereby making it a highly distinctive trademark and logo.

Learned counsel for the plaintiff states that in the fourth week of January, 2019, it came to the plaintiff's knowledge that the defendants No.1 to 16 except (defendant No.8) have incorporated the plaintiff's trademark 'Flipkart' as part of their domain names. He states that the defendants No.1 to 16 are engaged in the business of conducting fake/fraudulent lucky draw contest through their websites and inducing the public to believe that such websites emanates from and/or in some way associated with the plaintiff and its website.

Learned counsel for the plaintiff states that the said websites are deceiving the general public into providing their personal information and also asking the public to part with their hard earned monies in order to participate in the lucky draw contests, which are in no way connected with the plaintiff. He states that the defendants are also extensively using the trademarks "FLIPKART" in the website in order to falsely represent that lucky draw contests are being conducted by Flipkart.

Learned counsel for the plaintiff states that the plaintiff, through its counsel, issued takedown notices to the defendants No.1 to 7 websites on 30th January, 2019 and to the defendant No.8 website on 01st February, 2019. However, no response has been received by any of the defendant-websites. He states that along with sending notices to the rogue websites, the plaintiff sent a copy of the cease and desist notices to the respective registrars of the defendant websites, ISPs, Department of Telecommunication (for short 'DoT') and Ministry of Electronics and Information Technology (for short 'MEITY'). He states that the registrar Godaddy.com, LLC., only provided an automated response in respect of notices sent to defendants No.1, 2, 3, 5, 7 and 8, but no action was taken to disable/takedown access to the said defendant websites.

Learned counsel for the plaintiff states that the plaintiff also sent notices to the defendants No.9 to 14 through WhatsApp on 06thFebruary, 2019 as these defendants did not provide any email address and have provided Mobile numbers on their websites. He states that the defendant no.12 only responded to the notice received on WhatsApp. However, no steps have been taken to disable or take down the infringing activities.

Learned counsel for the plaintiff states that one of the ISPs i.e. defendant No.25 responded to the cease and desist notice whereby it wrongly read the notice and stated that it has nothing to do with the websites. He states that the notices were sent to the ISP only for their information.

Learned counsel for the plaintiff states that the defendant-websites are anonymous in nature and the information provided in the public domain regarding the owner of the website is incomplete, incorrect and/or protected behind a veil of secrecy. He states that the defendant-websites hide behind domain privacy services offered by various domain name Registrars, which enable a website owner to hide behind a veil and not disclose any contact details publicly, to protect his privacy. He, therefore, states that it is virtually impossible to bring the owners of the websites before this Court in order to ensure that the orders of this Court are complied with. In order to overcome this, the plaintiff has arrayed Internet Service Providers (ISPs) as defendants No.17 to 25 to ensure the effective implementation of any relief that this Court may grant in favour of the plaintiff. The plaintiff has also arrayed the defendant No.26-DoT and defendant No.27-MEITY to assist in enforcing/ensuring compliance with any order of injunction that this Court may grant in favour of the plaintiff and to protect its rights from being infringed by the defendant-websites within the territory of India.

Keeping in view the aforesaid, this Court is of the opinion that a *prima facie* case is made out in favour of the plaintiff and balance of convenience is also in its favour. Further, irreparable harm or injury would be caused to the plaintiff if an interim injunction order is not passed.

Consequently, till further orders, the defendants No.1 to 16, their owners, partners, proprietors, officer, servants, employees, and all other in capacity of principal or agent acting for and on their behalf, are restrained from using the mark Flipkart or any deceptive variant thereof which is identical and/or similar to the plaintiff's trademark Flipkart in respect of domain name, lucky draw contest or in any other manner.

The defendants No.17 to 25, their directors, owners, partners, proprietors, officers, affiliates, servants, employees and all others in capacity of principal or agent acting for and/or on their behalf or anyone claiming through, by or under it are directed to block access to the defendants No.1 to 16 websites.

Defendants No.26 and 27 are directed to issue requisite Notifications calling upon the various internet and telecom service providers registered under it to block access to the defendants No.1 to 16 websites.

Let provisions of Order XXXIX Rule 3 be made by way of e-mail/ WhatsApp and SMS within two weeks.

Order *dasti* under the signature of Court Master.

MANMOHAN, J

MARCH 06, 2019

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