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

+ CS(COMM) 1177/2018 & I.As.14229/2018 AND 14232/2018

FLIPKART INTERNET PRIVATE LIMITED Plaintiff

Through: Mr.Saurabh Srivastava with
Ms.Shilpa Gupta and Mr.Vaarish
K.Sawhani, Advocates.

versus

WWW.FLIPKARTWINNERS.COM & ORS Defendants

Through Mr.T.N.Durga Prasad with
Mr.Gagan Kumar and
Mr.Siddharth Jain, Advocates for
D-6.

Mr.A.C.Mishra with Ms.Pallavi
Dubey, Advocates for D-15 &
26.

Mr.Azhar, Advocate for D-22.

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Date of Decision: 26th February, 2019

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

JUDGMENT

MANMOHAN, J: (Oral)

1. Present suit has been filed for infringement of trademark, passing off, rendition of accounts, delivery up, damages etc. The prayer clause is reproduced hereinbelow:-

“42. In light of the foregoing, it is most respectfully prayed that this Hon’ble Court may be pleased to:

i. Pass an order and decree of permanent injunction restraining the Defendant Nos.1 to 5 (and such other websites/entities which are discovered during the course of the proceedings to have been engaging in infringing the Plaintiff’s trademark rights), their owners, partners, proprietors, officers, servants, employees, and all others in capacity of principal or agent acting for and on their behalf, or anyone claiming through, by or under it, 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 any other manner thereby amounting to infringement of Plaintiff’s trademark;

ii. Pass an order and decree of permanent injunction restraining the Defendant Nos.1 to 5 (and such other websites/entities which are discovered during the course of the proceedings to have been engaging in infringing the Plaintiff’s trademark rights), their owners, partners, proprietors, officers, servants, employees, and all others in capacity of principal or agent acting for and on their behalf, or anyone claiming through, by or under it, 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 any other manner thereby amounting to passing off the Plaintiff’s services;

iii. Pass an order and decree directing the Defendant Nos.6 to 27, their directors, partners, proprietors, officers, affiliates, servants, employees, and all others in capacity of principal or agent acting for and on their behalf, or anyone claiming through, by or under it, to block access to the various websites identified by the Plaintiff in the instant suit at S.No.2 of the Documents or such other websites that may subsequently be notified by the Plaintiff to be infringing of its exclusive rights.

iv. *Pass an order and decree directing the Defendant Nos.28 and 29 to issue a notification calling upon the various internet and telecom service providers registered under it to block access to the various websites identified by the Plaintiff in the instant suit at S.No2 of the list of Documents or such other websites that may subsequently be notified by the Plaintiff to be infringing of its exclusive rights.*

v. *An order for damages of Rs.2,00,01,000/- to be paid by the Defendant Nos.1 to 5 (and such other websites/entities which are discovered during the course of the proceedings to have been engaging in infringing the Plaintiff's trademark rights), to the Plaintiff on account of their illegal and infringing activities and a decree for the said amount be passed in favour of the Plaintiff (the Plaintiff reserve their right to claim additional damages and amend the pleadings accordingly once the magnitude of the Defendants' illegal/infringing activities and the revenues earned by the Defendants' in pursuance to such illegal/infringing activities is ascertained upon discovery in the instant action);*

vi. *An order for rendition of accounts of profits illegally earned by the Defendant Nos.1 to 5, (and such other websites/entities which are discovered during the course of the proceedings to have been engaging in infringing the Plaintiff's exclusive rights), on account of their illegal registration of domain names containing the Plaintiff's trademark "Flipkart" and hosting the website with such domain name representing that the services/lucky draw contests are being offered by the Plaintiff;*

vii. *An order for costs in the present proceedings in favour of the Plaintiff;"*

2. Vide order dated 12th October, 2018, this court granted an *ex parte ad interim* injunction in favour of the plaintiff. The relevant portion of the *ex-parte* injunction order is reproduced hereinbelow:-

“Consequently, till further orders, the defendant nos.1 to 5, 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 defendant nos.6 to 27, 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 defendant nos. 1 to 5 websites.

Defendant nos. 28 and 29 are directed to issue requisite Notifications calling upon the various internet and telecom service providers registered under it to block access to the defendant nos. 1 to 5 websites.”

3. Today, learned counsel for defendant nos.6, 15 & 26 and 22 state that the injunction order dated 12th October, 2018 has been duly complied with. Since none appears for the defendant nos.1 to 5, 7 to 14, 16 to 21, 23 to 25 and 27 to 50, they are proceeded *ex parte*.

4. At the outset, learned counsel for plaintiff gives up prayers in para 42(v) and (vi) of the plaint. The statement made by learned counsel for plaintiff is accepted by this Court and the plaintiff is held bound by the same.

5. This Court is of the view that the present suit can be disposed of without any further delay as none of the defendants is contesting the suit. A Coordinate Bench of this Court in ***Satya Infrastructure Ltd. and Ors.***

Vs. Satya Infra & Estates Pvt. Ltd., 2013 SCC OnLine Del 508 has held as under:-

“I am of the opinion that no purpose will be served in such cases by directing the plaintiffs to lead ex parte evidence in the form of affidavit by way of examination-in-chief and which invariably is a repetition of the contents of the plaint. The plaint otherwise, as per the amended CPC, besides being verified, is also supported by affidavits of the plaintiffs. I fail to fathom any reason for according any additional sanctity to the affidavit by way of examination-in-chief than to the affidavit in support of the plaint or to any exhibit marks being put on the documents which have been filed by the plaintiffs and are already on record. I have therefore heard the counsel for the plaintiffs on merits qua the relief of injunction.”

6. The contentions and submissions advanced by the learned counsel for the plaintiff are as under:-

- i. 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. The plaintiff company's online platform offers products in various categories and offers for sale a variety of products from almost 11454 brands. The plaintiff has been operating the aforementioned website continuously since 2007 and also launched the mobile application – FLIPKART, in 2011.
- ii. 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. 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 2016-17 was Rs.7,211,184,598/-. The annual turnover generated by the plaintiff in 2016-17 was Rs.22,535,427,156/-.

- iii. 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.
- iv. In the fourth week of September, 2018, it came to the plaintiff's knowledge that the defendant nos. 1 to 5, in disregard to the plaintiff's statutory and common law rights, had incorporated the plaintiff's trademark 'Flipkart' as part of their domain names and are conducting fake lucky draw contests through the impugned websites. Such infringing websites are being used to give false representation/impression to the innocent public that such websites emanates from and/or are associated with the plaintiff.
- v. The defendant nos.1 to 5 websites are not only using the FLIPKART trademark in their domain name, but are also extensively using the FLIPKART trademarks in the website itself in order to falsely represent that the lucky draw contests are being conducted by the FLIPKART. 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.

- vi. The plaintiff, through its counsel, issued takedown notices to the defendant no.1 and 2 websites on 29th September, 2018 and to the defendant nos.3 and 4 websites on 5th October, 2018. However, no response has been received from any of the defendant-websites.
- vii. 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. 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.

7. Learned counsel for the plaintiff 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 defendant Nos. 6 to 27 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. 28, Department of Telecommunication (DoT) and defendant No. 29, Ministry of Electronics and Information Technology (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.

8. In view of the above, this Court is of the opinion that the defendant nos. 1 to 5 have no real prospect of defending the claim, as

they have neither entered appearance nor filed their written statement. Further, the plaintiff is the registered and prior user of the trade marks in question.

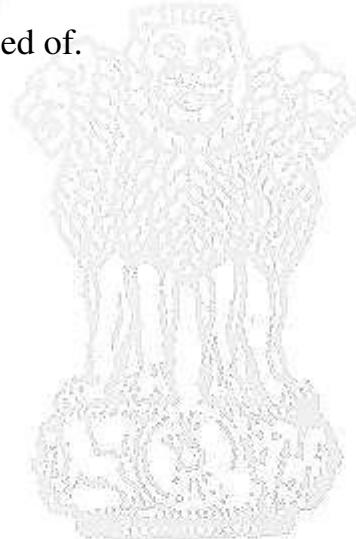
9. Consequently, the present suit is decreed in favour of the plaintiff and against the defendants in accordance with paragraph 42 (i) to (iv) of the prayer clause of the plaint along with actual cost. The cost shall amongst others include the lawyers' fees, as well as the amounts spent on purchasing the court fees.

10. With the aforesaid observations, present suit and pending applications stand disposed of.

FEBRUARY 26, 2019

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MANMOHAN, J



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