



\$~2 (2020)

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

Date of Decision: 6th April, 2022

+ **CS (COMM) 66/2020 & I.A. 2120/2020**

NATIONAL INSURANCE AND INDEMNITY

CORPORATION & ANR.

..... Plaintiffs

Through: Ms. Perna Mehta, Mr. Vishal
Malhotra and Ms. Sukanya Basu,
Advocates. (M:9811346756)

versus

M/S VIRAT TRAVELS & ANR.

..... Defendants

Through: None.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. The Plaintiffs - National Insurance and Indemnity Corporation & Greyhound Lines, Inc., are both US companies, which have filed the present suit in respect of their trademarks

‘BOLTBUS/  /  ’ used on buses and bus related services. The said mark is stated to have been adopted by the Plaintiffs in the year 2007, as a premium brand of bus services with state-of-the-art motor coaches fitted with numerous design features for the comfort and safety of its passengers etc., As averred in the plaint, the ‘BOLTBUS’ service is operated across United States, Canada, and Mexico between various cities including several major cities in the USA.

3. The trademark ‘BOLTBUS’ bearing Registration No.3551526, was first registered in the USA in the year 2008, in respect of transportation of passengers by bus, in Class 39. Thereafter, the mark has also been registered on ‘proposed to be used’ basis in India by Plaintiff No.1 vide Registration



No.3194753 for Class 39 in respect of transportation of passengers by bus, granted on 24th February, 2016.

4. The case of the Plaintiffs is that the mark ‘BOLTBUS’ is written in a distinctive logo style with the device of a thunderbolt within the letter ‘O’. For the sake of ready reference, the said logo is set out below:



5. The various features of the said logo are explained in the Plaint as containing the following elements:

“7. The Plaintiffs, in order to differentiate their business from those of others, also adopted a unique bus design / livery predominantly comprising of its Marks, as represented below:



More specifically:

(i) The bus is black and red in colour in a certain proportion, i.e., black covering front and red covering remaining part of bus);

(ii) The Mark , i.e., the stylized representation of the registered trademark, BOLTBUS, with the term ‘BOLT’ in solid white and the suffix ‘BUS’



in white outline, all in the same font, is imprinted on the side of the bus;

(iii) There is a 'lightning bolt' design uniquely placed right at the front door of the bus, drawn from bottom to top of the bus;



(iv) The Mark  is a 'lightning bolt' design drawn inside the letter 'O' in the Mark BOLTBUS on the side of the bus as well as imprinted on the front hood of the bus. Each of the above elements / features of the Plaintiffs' bus livery are unique and conveniently recognizable, and when put together, emit a distinctive look and feel to the end result that is associated with none, but the Plaintiffs. This unique livery is hereinafter referred to as the 'Plaintiffs' Trade Dress' / 'Trade Dress'. To strengthen their proprietary rights in this Trade Dress, the Plaintiff No. 1 acquired registration in the artistic work



in India under the Copyright Act (hereinafter the 'Copyrighted Work'). Original Certified Copy of the Registration Certificate is being filed in the present proceedings. The Plaintiffs' Marks, Trade Dress and Copyrighted Work are hereinafter together referred to as the 'Plaintiffs' Ips' / 'Ips').

6. The rights, title and interests in and to a number of brands and trademarks, including the mark 'BOLTBUS', together with the goodwill in the business was transferred and assigned to Plaintiff No.1 by the Plaintiff No.2, together with the goodwill of the business, vide Assignment Deed dated 31st December, 2010.

7. The Plaintiffs also own the domain name www.boltbus.com which was registered in the year 2007 as per the *Whois* data placed on record. The Plaintiffs also claim that the mark 'BOLTBUS' has been extensively advertised in mainstream advertising as also on various online platforms such as Twitter, Facebook, Instagram, Flickr, YouTube, including through



its own website www.boltbus.com. Various articles are stated to have been published in magazines and newspapers such as 'The Washington Times, Boston Magazine, USA Today, Consumerist, Washington Business Journal, and other travel-related magazines.

8. The annual sales figures of the Plaintiffs are over Rs.31 million dollars in 2018-19 with advertising figures around Rs.100,000 dollars in the year 2018-19. The annual global turnover from services provided under the Plaintiffs' marks is stated to be as under:

<i>Financial Year</i>	<i>Amount in USD (in thousands))</i>
2008-2009	6801.3
2009-2010	13,769.9
2010-2011	16,223.3
2011-2012	18,783.4
2012-2013	22,125.5
2013-2014	24,178.0
2014-2015	26,233.9
2015-2016	25,677.0
2016-2017	25,685.9
2017-2018	30,225.8
2018-2019	31,110.6

9. The claim of the Plaintiff is that the mark has become a well-known mark under Section 2(1)(zg) and Section 11(6) & 11(7) of the Trademarks Act, 1999.

10. Sometime in August, 2015, the Plaintiffs came across the websites www.bolttbus.com and www.bolttbus.in which were hosted by the Defendant No.1-M/s Virat Travels, based out of Paschim Vihar, Delhi and Defendant No.2-M/s. The Bullet Bus, was based out of Sri Ganga Nagar, Rajasthan. Upon further enquires, the Plaintiffs realised that the same two domain names were registered by the Defendants, in order to provide bus services and the logo was also almost identical to that of the Plaintiffs. The



said logo used by the Defendants is set out below:



11. Upon learning of the misuse of the Plaintiffs' marks by the Defendants, the Plaintiffs issued a cease and desist notice on 5th October, 2015, which was delivered to Defendant No.1. However, since there was no reply, a second cease and desist notice was also issued on 22nd December, 2015, and enquires were also conducted, which revealed a continued use of infringing marks and infringing trade dress by the Defendants. The reply was received from the Defendants on 25th January, 2016. The case of the Defendants in its reply to the legal notice was that the marks were being used in different geographical boundaries and the section of persons who are the consumers of the Defendants would have no association or correlation with the Plaintiffs, who is plying the buses in foreign countries. The Defendants averred that the Plaintiffs mark does not have any spillover goodwill or reputation in India and since the Defendants were using 'BOLTTEBUS', the addition of the extra 'T' made the marks of the Defendants different from that of the Plaintiffs'. The Defendants further argued that the mark 'BOLTT' and 'BUS' are generic in nature. However, after having set out the above defences, the Defendants, as a way to resolve the disputes, also stated in paragraph 8 of the reply dated 25th January, 2016, as under:

"8. To give an opportunity for this whole matter to be given a silent and decent burial that it deserves, my Client is ready and willing for amicable settlement of the dispute in question once and for all. Without prejudice to the rights and contention, my Client further proposes to



change the mark from “BOLTTBUS” to “VOLTBUS” as ‘VOL’ stands for VOLVO being the maker of the Bus, ‘T’ implies to TRANSPORT and BUS is a generic and descriptive word. Further the style and the font of the mark can be changed subject to further discussion in this regard”

12. The Defendants’ proposal to change the mark from ‘BOLTTBUS’ to ‘VOLTBUS’ was not acceded to by the Plaintiffs, as per the communication dated 26th April, 2016. The Defendants, thereafter, continued to use the mark ‘BOLTTBUS’. Sometime after the correspondence between the parties, the Defendants changed from the mark ‘BOLTTBUS’ to the mark ‘BULLETBUS’ but with the logo on red coloured buses, similar to the Plaintiffs. A visual comparison of the Plaintiffs’ and the Defendants’ buses and marks/logos is represented below:

Plaintiffs’ Trade Dress & Mark	Defendants’ Infringing Trade Dress & Amended Mark
	
	

The logo form, thus, continued to remain the same with the word ‘BULLET’ in red and white colour combination, and the word ‘BUS’ in an outline combination of red and white colours. Further, the Defendants also added the caption “from Bolt bus family” in their usage of the mark. A perusal of the Facebook profiles of the Defendants shows that in one profile, the



Defendants used the expression –

***“#The bullet bus”_from bolt bus family...//
at baglore manufacturing plant coming soon this month...!!”.***

13. Hence, the Plaintiffs preferred the present suit seeking, *inter alia*, permanent injunction and damages to the tune of Rs.2 crores. The grievance of the Plaintiffs is that Defendants are continuing to misuse the logo of the Plaintiffs and also wrongly portray to the customers that they are, in some manner, connected with the Plaintiffs.

14. In the present suit, initially, the Court had issued notice to the Defendants, vide order dated 14th February, 2020. The Defendants had appeared on caveat and a submission was made by Id. counsel appearing for the Defendants that they wish to amicably resolve the matter. However, Id. counsel for the Plaintiffs submits that settlement talks have not been fruitful and the matter has been placed before the Court again. Since none appeared for the Defendants, fresh notice was issued to the Defendants on 7th January, 2021. Even today, none appears for the Defendants.

15. It is clear that the Defendants have adequate knowledge of the institution as also the pendency of the present suit, and have deliberately chosen not to appear in the matter. A perusal of the record reveals that the adoption of the impugned mark by the Defendants is completely dishonest and *mala fide* inasmuch as they have not merely copied the Plaintiffs’ mark ‘BOLTBUS’ but have also copied the logo, the writing style and the trade dress / get up of the buses itself. The Defendants have had knowledge of the Plaintiffs grievances against them, since the year 2015. After having, suggested an amicable resolution of the disputes initially, the Defendants have gone on and started using the mark ‘BULLETBUS’.



16. The Plaintiffs do not have any objections to the use of the word/mark 'BULLETBUS'. However, the Plaintiffs are aggrieved by the fact that the word 'BULLETBUS' is written in a logo form, writing style and trade dress similar to that of the Plaintiffs.

17. The Plaintiffs are also aggrieved by the promotion on social media platforms by the Defendants giving the impression that they are associated to the Plaintiffs. The documents placed on record clearly show that the Plaintiffs enjoy enormous goodwill and reputation in the USA, Canada and other countries where they are operating. The nature of service is such that the tourists from India are bound to have seen or availed of the bus services of the Plaintiffs, which is quite prevalent in the USA. The goodwill and reputation enjoyed by the Plaintiffs is evident from the various articles and the user documents which are placed on record. Some articles and user documents are set out herein below:

The Washington Times:

BoltBus offers early bookers \$1 bus fares

By - The Washington Times - Friday, March 7, 2008

A new bus service between Washington and New York City advertises fares as low as \$1.

BoltBus, a division of Greyhound Lines of Dallas, sells seats through a unique online-auction system that adjusts ticket prices according to supply and demand.

The earlier a ticket is purchased, the lower the fare will be. BoltBus recommends customers place their orders two weeks in advance for the cheapest seats. A 50-cent booking fee is applied to each reservation.



NEUTRAL CITATION NO: 2022/DHC/001280

Mercury News:

News

Travel Briefs: \$1 'Boltbus' to run between N.Y., Boston

By COMPILED FROM MERCURY NEWS WIRE REPORTS and MERCURY NEWS STAFF | March 11, 2008 at 7:00 am

UNITED STATES

Train in St. Louis Arch finally moving again

The train that was out of service for eight months in the famed Gateway Arch in St. Louis is working again.

A snapped cable had shut down the train in the south leg of the arch last July 21, leaving only one route up to the 630-foot-tall monument on the banks of the Mississippi River.

In a typical year, about 1 million visitors make the trek to the top. Details: [enr.com goes left](#) (that's left as in Jefferson National Expansion Memorial).

\$1 'Boltbus' to run between N.Y., Boston

Travelers between Boston and New York will soon have another low-cost option.

Boston Magazine:

BoltBus Shocks Fung Wah

by AMY DERJUE • 3/10/2008, 1:10 p.m.

Get a compelling long read and must-have lifestyle tips in your inbox every Sunday morning — great with coffee!

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Every one who's ever ridden a discount bus line to New York has a story. Last summer, I was happy to be [1205172253](#) alive after riding a foul-smelling and malfunctioning *Lucky Star* bus on my return trip from New York. Not only do *Lucky Star* and it's more popular competitor, *Fung Wah*, give us the gift of appreciating the fragility of life, but they're the cheapest way to get to New York.

That is, until now.

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How This Innovative School's MIT and Juilliard Collaborations Make of the Most Sought After Schools in Boston

Boston.com reports that Greyhound is starting its low-cost *BoltBus* service between Boston and New York next month. And if we were Fung Wah, we'd be sleeping with one eye open because the service will offer tickets for as low as \$1.

Yes. One American dollar. But it gets even better for riders.

BoltBus coaches will have extra legroom by having 51 seats per vehicle, (Greyhound spokesman Dustin Clark said, compared to the industry average of 54 seats, and will have WiFi access and bathrooms.

It's cheaper and roomier and comes with WiFi? Fung Wah will have to break the time-space continuum and get us to Chinatown in two hours to beat that.

Boston Daily: The best of the city delivered every morning

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USA Today:

The screenshot shows the USA Today website interface. At the top, there's a navigation bar with links for Home, News, Travel, World, Sports, Life, Tech, and Weather. Below this, the 'Travel' section is highlighted, leading to 'Travel News'. The main headline is 'Greyhound appeals to Web-savvy travelers with BoltBus'. The article is by Daniel Sord for The Associated Press. The text describes a travel experience on a BoltBus from New York to Philadelphia, mentioning a \$2.50 round-trip fare and Wi-Fi service. A photo of a red BoltBus is included on the left side of the article.

18. After having seen the Defendants' use of the identical and deceptively similar mark 'BOLTTBUS' and 'BULLETBUS', as also the initial adoption of the 'bolt logo', the identical colour combination and the promotion on social media, this Court is convinced that the Defendants' adoption and use of the said mark 'BULLETBUS' logo and writing style as also BOLTTBUS' would be contrary to law and violative of the Plaintiffs rights in the mark 'BOLTBUS'. Such blatant infringement of the mark, even though belonging to a foreign proprietor, cannot be condoned, especially when the Court is convinced that the same has been adopted with a dishonest and *mala fide* intention.

19. None appears for the Defendants. This a case where the Defendants have chosen not to file the written statement or resolve the matter amicably. Since the Defendants have chosen have not file any defence, this Court deems it appropriate to decree the present suit.



20. Under these circumstances, following the rationale of the judgment of a Id. Single of this Court in *Disney Enterprises Inc. & Anr. v. Balraj Muttneja & Ors.* [CS (OS) 3466/2012 decided on 20th February, 2014], no *ex parte* evidence would be required in this matter. The same has been reiterated by the Court in *S. Oliver Bernd Freier GMBH & CO. KG v. Jaikara Apparels and Ors.* [210 (2014) DLT 381], as also, in *United Coffee House v. Raghav Kalra and Ors.* [2013 (55) PTC 414 (Del)]. The relevant observations from the judgment in *Disney Enterprises Inc. (supra)*, are as under:

“3. Though the defendants entered appearance through their counsel on 01.02.2013 but remained unrepresented thereafter and failed to file a written statement as well. The defendants were thus directed to be proceeded ex-parte vide order dated 04.10.2013 and the plaintiffs permitted to file affidavits by way of ex-parte evidence. 4. The plaintiffs, despite having been granted sufficient time and several opportunities, have failed to get their affidavits for leading ex-parte evidence on record. However, it is not deemed expedient to further await the same and allow this matter to languish, for the reason that I have in Indian Performing Rights Society Ltd. Vs. Gauhati Town Club MANU/DE/0582/2013 held that where the defendant is ex parte and the material before the Court is sufficient to allow the claim of the plaintiff, the time of the Court should not be wasted in directing ex parte evidence to be recorded and which mostly is nothing but a repetition of the contents of the plaint.”

21. Accordingly, on the basis of the material placed on record as also the global registrations of the Plaintiffs’ mark and the registration in India, this Court is convinced that the Defendants cannot be permitted to use the mark ‘BOLTTBUS’. Thus, the Defendants are restrained from using the mark ‘BOLTTBUS’ or ‘BOLTTBUS’ in respect of bus services, in any logo, style



or artistic form, which is identical or a colourable imitation of the Plaintiffs' 'BOLTBUS' logo as extracted hereinabove. A permanent injunction is granted in favour of the Plaintiffs, in terms of the reliefs as sought in paragraphs 40(a) and (b) of the Plaint. In addition, the usage of 'BULLET BUS' in an identical writing style, colour combination and artistic representation would not be permitted. It is made clear that if the Defendants wish to use the mark 'BULLETBUS' in a completely different logo, writing style, artistic form and colour combination, the Defendants shall be permitted to do so.

22. Insofar as the relief of damages and costs as sought in paragraphs 40(c), is concerned, the Defendants have had notice of the Plaintiffs' mark since the year 2015. In fact, the Defendants replied to the cease and desist notice and agreed to change the mark. However, the illegal conduct of the Defendants in the continued use of the infringing writing style, logo, artistic form, colour combination and the trade dress of the buses itself. Thus, over the last seven years, the Defendants have moved from one mark/name to another and have continued to infringe upon the rights of the Plaintiffs.

23. On the issue of costs to be awarded in commercial matters, the judgement of the Supreme Court in *Uflex Ltd. v. Government of Tamil Nadu & Ors. [Civil Appeal Nos.4862-4863 of 2021, decided on 17th September, 2021]*, has held as under:

"51. The costs following cause is a principle which is followed in most countries. There seems to be often a hesitancy in our judicial system to impose costs, presuming as if it is a reflection on the counsel. This is not the correct approach. In a tussle for enforcement of rights against a State different principle apply but in commercial matters costs must follow the cause."



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53. We may note that the common thread running through all these three cases is the reiteration of salutary principles: (i) costs should ordinarily follow the event; (ii) realistic costs ought to be awarded keeping in view the ever increasing litigation expenses; and (iii) the cost should serve the purpose of curbing frivolous and vexatious litigation.

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56. We have set forth the aforesaid so that there is appreciation of the principles that in carrying on commercial litigation, parties must weigh the commercial interests, which would include the consequences of the matter not receiving favourable consideration by the courts. Mindless appeals should not be the rule. We are conscious that in the given facts of the case the respondents have succeeded before the Division Bench though they failed before the learned single Judge. Suffice to say that all the parties before us are financially strong and took a commercial decision to carry this legal battle right up to this Court. They must, thus, face the consequences and costs of success or failure in the present proceedings.

57. The best reflection of what costs have been incurred is what the parties have paid towards the counsel fee and out of pocket expenses. The present proceedings do arise from a writ proceeding under Article 226 of the Constitution but it is really a commercial dispute. Thus, the failing party cannot hide behind the veneer of the present dispute being in the nature of a writ proceeding. The tender jurisdiction was created for scrutiny of commercial matters and, thus, where continuously parties seek to challenge award of tenders, we are of the view that the succeeding party must get costs and the party which loses must pay costs. This was really a battle between two commercial entities on one side seeking to get set aside an award of a tender to two other entities. What else would be commercial interest!

58. It is with the aforesaid objective that we had asked the parties to file their bill of costs vide order dated



17.08.2021. The objective was to bring forth this principle into force by quantifying actual costs for the succeeding party.

59. We have scrutinised the bill of fee and costs. We are inclined to allow actual costs. However, we have modulated the costs insofar as appellant is concerned to the extent of the indicated amount of the Advocate-on-Record and allow 50% of the same. The total costs, thus, payable to the petitioner/appellant would be Rs.23,25,750/- (Rupees twenty three lakh twenty five thousand seven hundred fifty only). The State Government cannot be left behind so far as their compensation of costs in defending such a litigation is concerned and we, thus, allow the costs of Rs.7,58,000/- (Rupees seven lakh fifty eight thousand only)."

24. A perusal of the above judgment shows that the settled legal position is that in commercial matters, actual costs ought to be awarded, keeping in mind the bill of costs, including counsel fees. Thus, in the fact and circumstances of this case, this Court is of the opinion that the Plaintiff is entitled to actual costs. The Plaintiffs have submitted their cost statement stating that the total monetary costs incurred is to the tune of Rs.12,85,000/-. The said cost statement is taken on record.

25. Accordingly, the suit is decreed in the above terms along with actual costs for a sum of Rs.12,85,000/- in terms of the statement of costs which has been filed by the Plaintiffs. The Defendants shall pay the said amount within eight weeks, failing which, the Plaintiffs are permitted to execute the decree in accordance with law.

26. All pending applications are disposed of in the above terms. Decree sheet be drawn in the above terms.

PRATHIBA M. SINGH
JUDGE

APRIL 6, 2022/dj/ad (corrected & released on 11th April, 2022)