

(2018) 11 DEL CK 0079

In the Delhi High Court

Case No : Civi Suit (COMM) 990 Of 2016

Living Media India Limited & Anr

APPELLANT

Vs

Mandeep Kaur & Anr

RESPONDENT

Date of Decision : 16-11-2018

Acts Referred:

Trade marks Act, 1999 — Section 2(zg)

Citation : (2018) 11 DEL CK 0079

Hon'ble Judges : Jayant Nath, J

Bench : Single Bench

Advocate : Chander Lall, Sajad Sultan

Final Decision : Disposed Off

Judgement

Jayant Nath, J

1. Arguments have been heard in the suit. Despite service none has appeared on behalf of Defendants. Since, Defendants did not appear, they were

proceeded ex parte vide order dated 17.09.2014.

2. The present suit is filed by the Plaintiffs for permanent injunction restraining the Defendants from infringement and passing off trademark "AAJ

TAK" or any other trademark deceptively similar to the Plaintiffs' registered trademark "AAJ TAK" in relation to magazine, newspaper,

journal etc.

3. It is the contention of the Plaintiffs that Plaintiff no.1 is a company incorporated under the Companies Act, 1956 which is one of the major media

corporations in India with enormous commercial interests in both print and electronic media. They are engaged in diverse business activities ranging

from printing and publishing of Magazines, Journals, Periodicals and Newspapers,

to the running of News Channels, Infotainment programmes, holding of Conferences, Seminars, etc. Plaintiff no.2 is a company incorporated under the Companies Act, 1956 which is a subsidiary of Plaintiff no. 1, running various electronic news channels which are popular among the masses.

4. It is the contention of the Plaintiff no.1 that they are the registered owner of immensely popular trademark 'AAJ TAK' which has been licensed to Plaintiff no.2 for running a 24 hour Hindi news channel vide license agreement dated 01.10.2003. Plaintiff no.2 is the permitted user of the registered trademark 'AAJ TAK'.

5. It is contended by the Plaintiffs that the Defendant no.1 is an individual who claims to own, print and publish fortnightly magazine 'AAJ TAK

AAMNE SAAMNE'. Defendant no.2 claims to be the Chief MD of the said magazine and owner/ registrant of the domain name

'aajtakaamnaamne.com' as per Whois database. It is stated that the said domain name was created on 22.01.2014

6. It is the contention of the Plaintiffs that they recently came to know of the infringement and violation of their trademark by the Defendants when a

email was sent to an employee of Plaintiff no.2 on 08.04.2014 by Defendant no.2. It is also stated that the Defendants are using various other email

ids similar to 7. It is the contention of the Plaintiffs that the said act of Defendant is not only dishonest, illegal and malafide but clearly infringes upon

the Intellectual Property Rights of the plaintiffs.

8. Plaintiffs further contented that the Plaintiff no.1 has been in media business for over 4 decades and has earned huge and unparalleled reputation not

only in India but across the world. Plaintiff no.1 has been using the trademark 'AAJ TAK' since 1995 and has since then continuously and

uninterruptedly used the said trademark. Plaintiff no.1 is the registered proprietor of the trademark 'AAJ TAK' alongwith various other

composites in various classes which are mentioned in the plaint within the meaning of Section 2(zg) of the Trade marks Act, 1999. The said

trademark, 'AAJ TAK' news channel has been voted the best Hindi channel continuously since 2001 by the Indian Television Academy. It has

also earned many accolades and awards for its content and consistent world class broadcasting. The said channel has its operations run not only in

India but it is broadcasted in foreign countries like USA, UK, Canada, France,

Japan, Dubai, etc. Plaintiffs also run various other news channels including AAJ TAK TEZ and DILLI AAJ TAK.

9. It is the contention of the Plaintiffs that they have spent considerable amounts of money on advertising and promoting the said trademark AAJ

TAK breakup of which is mentioned in para 21 of the plaint. The said trademark has generated huge business for the Plaintiffs as reflected in the yearly sales figures of the Plaintiff no.2 breakup of which is mentioned in para 22 of the plaint.

10. It is also stated that Plaintiffs have developed a website www.aajtak.com which not only gives information about the

Plaintiffs and their services but also disseminates news and headlines online. It is stated that the said website has been accessed by approximately

5,21,60,92,547 users between 01.12.2012 till 12.04.2015.

11. It is the contention of the Plaintiffs that the said trademark AAJ TAK has earned the status of a Well- Known Trademark and

commands the highest level protection irrespective of the class they have been applied for or used.

12. It is also contended that the impugned trademark AAJ TAK AAMNE SAAMNE is deceptively similar to the Plaintiffs' registered

trademark AAJ TAK. It is further stated that the Defendants are using the said trademark for similar goods, services and business as that of

the Plaintiffs. It is stated that the Defendants are clearly trying to ride and encash the goodwill earned by the Plaintiffs over a long period of use.

13. It is further stated that the Plaintiffs are also registered owners of TODAY, INDIA TODAY, TELEVISION TODAY,

BUSINESS TODAY, etc, implying the importance of TODAY (AAJ) for the Plaintiffs.

14. It is also stated that the Plaintiffs have issued a notice to the Defendants for using deceptively similar trademark for absolutely similar services.

Consequently a Cease and Desist notice dated 09.04.2014 was issued by the Plaintiffs vide email and Registered AD to which the Defendants replied

on 10.04.2014 and asked them to get in touch. The Plaintiffs informed the Defendants about their trademark and its illegal use by the Defendants but

the Defendants failed to act upon the notice and continued to use the impugned trademark.

15. Dr. Puneet Jain, Head (Legal & Compliance & CS) & Vice- President-Internal Audit with the Plaintiff no.2 company, has led evidence on behalf

of the plaintiffs as PW1/X. He has stated that the Plaintiff no.1 has been into the media business for over three decades and has acquired huge and

unparallel reputation not only in India but across the world. He states that the Plaintiff no.1 is the prior and honest adopter of the immensely popular

and established trademark 'AAJ TAK' since 1995 and has since then continuously and uninterruptedly used the said trademark. He states that

Plaintiff no.1 is the registered proprietor of 'AAJ TAK' alongwith various composites. Copy of the legal proceeding certificates of few

registrations are placed on record as Ex. PW-1/4 (Colly). He further states that the said trademarks have been licensed by Plaintiff no.1 to Plaintiff

no.2 for running a 24 hour Hindi news channel vide license agreement dated 01.10.2003 which is exhibited as Ex.PW-1/5. It is further stated that the

'AAJ TAK' news channel has been voted 'Best News Channel' continuously since 2001 by the Indian Television Academy. Copy of few

certificates is exhibited as Ex.PW-1/8. Similarly, it is also stated in the affidavit that 'AAJ TAK' has also earned various accolades and awards;

copy of few awards and felicitations are placed on record as Ex.PW-1/9. It is further stated that the Plaintiffs have spent considerable amounts of

money on advertising and promoting the said 'AAJ TAK' name. It is also stated that 'AAJ TAK' has generated huge business for the

Plaintiffs. The annual reports for the years 2004-05 to 2012-13 and the annual reports reflecting the sales figures for the years 2009-10 to 2012-13 are

placed on record as Ex.PW-1/10 (Colly). It is stated that the Plaintiffs have successfully obtained various orders/ decrees against parties for using

'AAJ TAK' or similar trademark. Copy of few injunction orders passed by various courts is exhibited as Ex.PW-1/11(colly). Copy of the Cease

and Desist Notice dated 09.04.2014 sent by the Plaintiffs alongwith the postal receipt and the email are also placed on record as Ex.PW-1/12(Colly).

16. Ms. Himani, d/o Sh. Vinod Kumar, working as Data entry Operator, Trade Mark Registry, Dwarka has been cross examined on 24.11.2016. She

states that she has brought 11 trade mark legal proceeding certificates exhibited as Ex. PW-2/1 (colly), PW-2/2 and PW-2/3.

17. In view of the averments made in the plaint and the un-rebutted evidence filed by the Plaintiffs, the Plaintiffs have established that they are the

registered proprietor of the said trade mark 'AAJ TAK', thus they have a statutory right to the exclusive use of the same. The mark 'AAJ

TAK AAMNE SAAMNE' used by the Defendants is structurally, visually and phonetically identical to the registered trade mark of the Plaintiffs

'AAJ TAK'. There is a clear violation of the rights of the Plaintiffs. It is also clear that the plaintiffs have been using their mark since 1995. The

act of the Defendants lacks bonafide. The goods and services are sold under the deceptively similar trade mark will also lead to passing off the goods

and services of Defendants as that of the Plaintiffs.

18. Accordingly, a decree of permanent injunction is passed in favour of the Plaintiffs and against the Defendants restraining the Defendants, its heirs,

representatives, directors, employees, agents from using the trademark 'AAJ TAK AAMNE SAAMNE'; 'AAJ TAK';

'aajtakaamnesaamne.com' or any other trademark deceptively or phonetically similar to the Plaintiffs' registered trademark 'AAJ

TAK' in relation to magazine, newspaper, journal, news or any other media related services. Plaintiffs shall also be entitled to damages of Rs.1 lac.

A decree for Rs.1 lac is accordingly passed in favour of the Plaintiffs and against the Defendants. The Plaintiffs shall also be entitled to interest @ 8

per cent per annum simple from the date of decree till payment is received.

19. The Plaintiffs shall be entitled to costs of the suit. Suit stands disposed of accordingly.