

(2014) 02 DEL CK 0200

In the Delhi High Court

Case No : I.A. No. 21490 of 2012 in CS (OS) 3350 of 2012

Living Media India Ltd. and Another

APPELLANT

Vs

Alpha Dealcom Pvt. Ltd. and Others

RESPONDENT

Date of Decision : 19-02-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2
Trade Marks Act, 1999 — Section 124 28(1) 29 30 9

Citation : (2014) 4 AD 462 : (2014) 208 DLT 145 : (2014) 58 PTC 589

Hon'ble Judges : P.K. Bhasin, J

Bench : Single Bench

Advocate : Chander Lal, Mr. Sajad Sultan and Ms. Nancy Roy, for the Appellant;
Tanmaya Dhari Sinha, Ms. Kanika Sinha and Mr. Ankit Bhatnagar, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Bhasin, J.—The two plaintiff Companies, out of whom plaintiff No. 2 Company is the subsidiary and sister concern of plaintiff No. 1 Company, have filed this suit against the defendants for infringement of their trade marks and passing off action. The averments made by the plaintiffs in different paragraphs of their plaint and which only are relevant for deciding this application under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908 and in respect of which only arguments were advanced at the time of hearing of this application are re-produced below:

3. That the Plaintiffs together with their affiliates are one of the major media corporations in India having enormous commercial presence in both print and electronic media. The Plaintiffs are engaged in diverse business activities ranging from printing and publishing of magazines, journals, periodicals, newspapers to broadcasting of news channels, infotainment programmes, conferences, seminars, music shows, music albums and running an FM radio channel and other related activities...

7. That Plaintiff No. 1 herein is the owner and publisher of the immensely popular weekly news magazine "INDIA TODAY" which is considered as the number one news magazine in India continuously since its launch in 1975. The said News magazine is published in various regional languages as well. Furthermore "India Today" is also published in international edition in various countries like USA, Canada, UK, Doha etc.

8. That in addition to the above news magazine, Plaintiff No. 1 owns and publishes a business magazine under the trade mark "Business Today", a travel magazine under the trade mark "India Today Travel Plus", an architecture and design magazine under the trade mark "Design Today", and other magazines under the trade mark "Spice Today" and "Money Today" etc.

9. That the Plaintiff No. 1 also publishes daily newspaper "MAIL TODAY" through its associate in collaboration with the prestigious Daily Mail of the United Kingdom. The Plaintiff No. 1 used to run a daily afternoon newspaper under the trade mark "TODAY".

10. That Plaintiff No. 1 also manufactures and markets music cassettes, CDs, VCDs and DVDs under the trade mark "MUSIC TODAY" and conducts music shows, concerts, live shows under the said trade mark.

12. That the Plaintiff No. 1 conducts and incredibly famous yearly conference/ colloquiums/seminar under the mark "INDIA TODAY CONCLAVE", wherein world leaders and eminent personalities converge and debate important and pressing issues on varied subjects.

14. That the Plaintiff No. 1 under a license through the Plaintiff No. 2 broadcasts immensely popular news channels namely, "AAJ TAK" (Till Today) in Hindi and "HEADLINES TODAY" in English besides few other media channels like "AAJ TAK TEZ" and "DILLI AAJ TAK".

15. That the Plaintiff No. 1 is the registered proprietor of the trade mark "TODAY" and its variations not only in India but also in various foreign countries.

18. Following are the sales figures in INR for the last five years arising out of the sale of goods/services under the trade mark "TODAY" and its various variations for Plaintiff No. 1:

Sales figures of Plaintiff No. 2 with respect to services rendered under the trademarks Aaj Tak and Headlines Today;

22. That the Plaintiffs have been using the said mark "TODAY" and its variants continuously since 1975 and have spent sufficient resources in terms of money, time and creativity to promote and publicise the said brands. It won't be out of place to mention here that the Plaintiffs' brand has earned the status of a "Well Known Trademark" and commands the highest level of protection irrespective of the class they have been applied for or used in. The goodwill accrued to the said mark extends beyond the actual use of the mark. The wide use and publicity of

the Plaintiffs" brand and its variants has earned it an enviable reputation and the said brand has become a household name. That it is a matter of utmost pride that the said mark of the Plaintiffs" "TODAY" and its variants have become distinctive of the Plaintiffs" goods/services and business and any goods or services branded under any similar or deceptively or confusingly or phonetically similar marks thereto in relation to identical goods or services and/or for goods or services which are of an allied and cognate description or for that matter goods or services of any kind...

24. ... Further the trademark "TODAY" has assumed and acquired a secondary meaning owing to its long, continuous and honest use by the Plaintiffs and its affiliates, and has come to be associated with the Plaintiffs and its affiliates only.

28. Recently around late October 2012, during a routine search of the official website of the Registrar of Trade Marks conducted on behalf of the Plaintiff(s), it was found that the Defendant No. 1 has applied for registration of the trade mark "Nation Today" in Class 38 allegedly claiming user in respect of broadcasting and telecommunication services since June 23, 2010. The Defendant No. 1, as found on the official website of the Registrar of Trade Marks, has filed 3 applications for registration of the said trade mark which are numbered as 2243158, 2286420 and 2322140 in Class 38...

32. That the Defendant No. 2 as already stated was a senior employee of Plaintiff No. 2 till 21.12.2011 and thereafter Defendant No. 2 has apparently joined Defendant No. 1 as CEO and the applications for trademark registrations for "Nation Today" have been filed after his appointment as CEO and he has apparently influenced Defendants in applying and adopting the impugned trademark "Nation Today" as the Defendant No. 2 is aware of the tremendous brand value, reputation, popularity and goodwill associated with "TODAY" and its variants for Plaintiffs. Defendants have adopted the impugned trademark dishonestly with clear knowledge and with mala fide intention to reap upon the benefits of established reputation and goodwill of plaintiffs trademarks, which is more apparent with Defendant No. 2 providing the defendants insider information about the value of "TODAY" and its variants in the trade circles.

34. That by adopting the trade mark and intending to use "Nation Today" as its trade mark in relation to the goods/services for which the trade mark "TODAY" and its variations are prior registered in the name of Plaintiff No. 1 and used by the Plaintiffs and their affiliates, the Defendant is not only infringing the Plaintiffs" rights in and to the trade mark "TODAY" and its variations but is also passing off its services as and for services of the Plaintiffs and/or their affiliates/subsidiaries.

36. That the trade mark as used by the Defendant is not only deceptively/confusingly/phonetically/structurally similar to trademark of the Plaintiffs but is also being used for absolutely similar goods/services and clearly would convey and/or is likely to convey to the people in trade and public in general including,

clients/consumers of both the Plaintiffs and the Defendants (if any exist) that there is some connection between the business of the Plaintiffs and the Defendants, when no such connection exists more specifically since the services/goods are absolutely similar.

2. On the basis of aforesaid averments and claims made in the plaint the plaintiffs have sought the relief's of permanent injunction, damages etc. and in the application under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, which is now being disposed of by this order, the prayer made is:-

(i) To issue an order of temporary injunction against the Defendants, its promoters, shareholders, directors, its agents, servants, employees, successors, assignees, licensees etc. or any other person claiming through or under the Defendants from using the trade mark "Nation Today" and/or any other word/mark deceptively/confusingly/phonetically similar to the Plaintiff's trade mark "TODAY" as part of their trade mark, trade name and/or domain name/email in relation to their business, goods and/or services especially for telecasting, broadcasting or relaying media channel, or in any manner whatsoever till the final disposal of the Suit

3. The defendants are jointly contesting the suit as well as this interim injunction application. In the written statement it has been averred by the defendants by way of preliminary objections as under:-

3. That the Plaintiffs have not approached this Hon"ble Court with clean hands and do not deserve any consideration by this Hon"ble Court. The malafides of the Plaintiffs and the vexatious nature of the suit are evident from the conduct of the Plaintiffs. The Plaintiffs" allegedly registered trademark in class 38 is INDIA TODAY under application No. 1349416 dated 07/04/2005 for "telecommunications".... It is pertinent to note herein that the mark INDIA TODAY is not being used by the Plaintiffs for "telecommunications and broadcasting" in class 38...

5. (a). The Plaintiffs have deliberately concealed the fact that first registration for the mark "INDIA TODAY" dated 27/01/1982 under TM No. 385723 is for a device mark. Further, during prosecution of the mark, the Plaintiffs had made voluntary submission before the Deputy Registrar stating that they may be granted Part B registration and agreed to disclaim "INDIA" and "TODAY" separately (vide hearing dated 8.10.1987). The final registration for the mark only disclaimed INDIA. The Plaintiffs did not file, mention or reveal the above fact before this Hon"ble Court nor made any mention of the same in the Plaint. Thus, from the very beginning the Plaintiffs have concealed this very relevant and material fact which amounts to an admission of the generic and descriptive nature of the words INDIA and TODAY. This is a vital and contributing factor indicating the malicious nature of the proceeding and total abuse of process of law.

(b) The Plaintiffs have filed the suit in deliberate suppression of the vital fact that they, while replying to the Examination Report issued by the Trademark Registry

in respect of their mark "INDIA TODAY" under application No. 1349416, inter alia, stated that the conflicting mark "PUNJAB TODAY" is visually, structurally and phonetically dissimilar to their mark "INDIA TODAY". It is pertinent to note that the explanation given by the Plaintiffs when the mark "PUNJAB TODAY" was being cited against their mark "INDIA TODAY", is an admission of the Plaintiff that mere use of the word "TODAY" does not make the competing mark similar to their mark.

(c) Another instance of the Plaintiffs concealing facts and coming with unclean hands is non-disclosure of the fact that there are numerous third parties, apart from the Defendants, who have adopted and are using the trade mark TODAY/TODAY-formative marks in relation to different goods and services including news broadcasting. Further, there are numerous companies for which TODAY forms a conspicuous and integral part of their trade name. Therefore, the Defendants' adoption of the mark NATION TODAY is bona fide.

4. Then by way of preliminary submissions the defendants have pleaded the following facts in their written statement: -

2. That the word "TODAY" is not an invented word but a common English word having a dictionary meaning. The Concise Oxford Dictionary, Tenth Edition defines the word "Today" as, "on or in the course of this present day; at the present period of time; nowadays; this present day; the present period of time". Therefore, the word "TODAY" is clearly descriptive for news, is generic and the Plaintiffs cannot claim exclusivity over the same. The word "TODAY", being a common English word, is free to be adopted and used by third persons in relation to their goods. It is reiterated that the mark TODAY is an oft used expression for a daily publication/news channel and the mark TODAY is descriptive and common to trade in respect of such goods/services. The word "TODAY" is extensively used in India and across the globe in respect of daily publications/news channels.

4. That search report generated from the records of the Trade Marks Registry for the mark "TODAY" in class 38, revealed trademark applications for the following third-party marks containing "TODAY" for news reporting/broadcast:

- i. PUNJAB TODAY
- ii. NEWS TODAY WITH LABEL
- iii. TODAY NEWS WITH DEVICE
- iv. CINEMA TODAY PVT. LTD. (Label)
- v. MUMBAI TODAY TV NEWS (LABEL)
- vi. TODAY. IN

5. The relevant averments made in the plaint, which have already been extracted, have been dealt with by the defendants in the following manner in the written statement:-

15. ...Further, in Application No. 1104577 for the mark `TODAY" rectification has been filed. It is further pertinent to mention herein that from the Plaintiff's own averments, most of the marks alleged to be owned by the Plaintiff are registered under classes 9, 16, 25, 35 and 41. Further, in the entire list of its alleged trademarks given by the Plaintiffs, only two are news channels, i.e. `AAJ TAK" and "HEADLINES TODAY". It is pertinent to mention herein that the application for the mark "HEADLINES TODAY" is still under objections before the Trade Marks Registry. Furthermore, the list drawn out by the Plaintiffs is irrelevant and immaterial to the issue at hand. The list prima facie reveals that the marks indicated therein are composite marks and are visually, structurally and phonetically different from the mark "NATION TODAY" of the Defendants. It is further submitted that even if any individual has more than 50 marks registered under a single class, all of which contain a word as descriptive to a business as "Today" is for news business, the said individual cannot be permitted to monopolies use of the said word for a business of which the said word is so descriptive. Furthermore, it is submitted that an overwhelming majority of the said marks indicated in the list are not registered under class 38.

21-22. ... It is denied that TODAY is a brand owned by the Plaintiffs and that it has acquired the status of a well known trademark and commands the highest level of protection irrespective of the class they have been applied for and used in. It is emphatically denied that the Plaintiff has been using the trademark "TODAY" and its variants continuously since 1975 and have spent sufficient resources in terms of money, time and creativity to promote and publicise the said brands. It is submitted that the Plaintiff has failed to file any document in support of the alleged use of its trademark "TODAY" since 1975 in respect of news and other allied and cognate goods and services or otherwise as has been falsely alleged by the Plaintiff. The alleged registration in the Plaintiffs' name for the mark TODAY is in Class 16 for device mark and not for the word mark TODAY per se, as falsely projected by the Plaintiffs and that too is much later than 1975 as falsely projected by the Plaintiffs. At any rate, there is no registration of mark "TODAY" under class 38. Further, the TODAY formative marks mentioned by the Plaintiffs are combination marks and do not provide any exclusive rights to the use of the mark TODAY. It is further pertinent to mention herein that the mark "INDIA TODAY" registered and alleged to be used by the Plaintiffs in the year 1982 was a device label under class 16 and not a word mark.... It is vehemently denied that the TODAY and its variants have become distinctive of the Plaintiffs' goods/services. The Plaintiffs have failed to place any document to show the distinctiveness that has allegedly been attained by the Plaintiffs qua the word "Today" At any rate, the mark TODAY is descriptive in nature for news publications and news related products and hence cannot be claimed to be proprietary to one entity alone... It is reiterated that the Defendants' mark NATION TODAY is distinct and does not cause any confusion whatsoever in the minds of the public, who in the present case will be able to distinguish between defendants' services from those of the Plaintiffs. It is further pertinent to

mention that numerous TODAY and TODAY formative marks are being used and exist in the records of the Trade Marks Registry inter alia under class 16 and/or 38. The mark TODAY is an oft used expression for a daily publication/news channel and the mark TODAY is descriptive and common to trade in respect of such goods/services. It is reiterated that the word TODAY is not an invented word, it is an adopted word which is descriptive of the business of news and current affairs and therefore cannot be monopolised by any one entity.

26. ... It is also pertinent to mention herein that the Plaintiffs, while replying to the Examination Report issued by the Trademark Registry in respect of their mark "INDIA TODAY", inter alia, stated that the conflicting mark "PUNJAB TODAY" is visually, structurally and phonetically dissimilar to their mark "INDIA TODAY". Therefore, the Plaintiffs are estopped by their own submissions such that the mark "NATION TODAY" of the Defendants could ever be confused with that of the Plaintiffs...

30-31... It is denied that the mark of the Defendants is deceptively/confusingly/phonetically/structurally similar to the trademark of the Plaintiffs. It is vehemently denied that the mark of the Defendants is being used for absolutely similar goods/services. It is submitted that the Defendants in their reply dated November 16, 2012 clearly stated that the Defendants are within their statutory rights to use the mark "NATION TODAY" inasmuch as the same is phonetically, visually and structurally different from the mark of the Plaintiffs which were composite marks and were registered and being used classes other than class 38, under which the Defendants had applied for registration of its mark...

34. ... It is further submitted that by the Plaintiffs' own assertions the Defendants have not launched their channel therefore, there is no possibility of passing off and the said allegations are based on mere conjectures and surmises and have no merit...

36. ... It is submitted that mark "NATION TODAY" of the Defendants has been filed for registration under Class 38 i.e. Telecommunications, whereas the Plaintiffs' alleged mark which was registered in 1982, was a device label and was registered under class 16, i.e. publications.... Further, "HEADLINES TODAY" is not registered under the class 38 and the application for registration of the mark Headlines Today, is under objections before the Trade Marks Registry since 2011. It is also pertinent to mention herein that the Plaintiffs "registered trademark "INDIA TODAY" in class 38 is, in fact, not a news channel but a magazine/publication. Therefore, there the marks of the Defendants are beings used for services which is totally different from the "goods" i.e. publications for which the mark "INDIA TODAY" is being used by the Plaintiffs and therefore, there is no question of confusion between the same...

6. The plaintiffs have filed replication in which they have reiterated their case pleaded in the plaint while refuting the defence pleas taken by the defendants in their written statement.

7. When the suit and the present interim stay application were taken up for preliminary consideration on 30th November, 2012 the defendants were yet to launch their TV News channel by the name of "NATION TODAY" and taking note of the oral submissions made on behalf of the defendants at that time the Court had observed that " The effect of the plea taken by the plaintiffs while replying to the objection of the Trade Mark Registry at the time they sought registration of the mark "INDIA TODAY" would need to be considered, in the light of the pleadings of the parties and the documents which they may choose to file alongwith the pleadings." Then further taking note of the fact that the defendants were yet to launch their TV news channel they were restrained from launching their news channel under the name "NATION TODAY".

8. During the course of arguments submissions from both sides were confined to the already extracted portions from the plaint and the written statement. Many judgments of the Supreme Court as also of different Benches of this Court were also cited by the learned counsel for the parties and those are frequently cited judgments before the Courts whenever cases relating to infringement of registered trade marks and passing off action come up for adjudication. In those judgments it had been held as to what trade marks are descriptive/generic and when descriptive/generic trade marks can be said to acquire distinctiveness and secondary meaning as also the effects of registration of trade marks. Those judgments also include judgments on the law of passing off which is too well settled.

9. From the pleadings of the parties, documents placed on record from both sides and the oral submissions made by the learned counsel for the parties the position which emerges is that the defendants intend to launch a TV news channel by the name of "NATION TODAY". This channel was scheduled to be launched on 15th December, 2012 but as noticed already this Court had restrained the launching of the said channel. Plaintiffs' grievance is not against the defendants launching any TV news channel but is against the use of the word "TODAY" as a part of the name of their proposed channel since it is the plaintiff No. 1's trade mark having acquired distinctiveness in relation to their goods and services and which distinctiveness led to its registration as a stand alone mark as well as its use as a predominant part of many other trade marks of the plaintiffs like "DESIGN TODAY", "BUSINESS TODAY" "METRO TODAY", "MUSIC TODAY", "TV TODAY NETWORK", "MAIL TODAY" etc. Plaintiff No. 1 also claims to be having a TV news channel by the name of "HEADLINES TODAY" under a licence to use this name from its sister concern, plaintiff No. 2. This trade mark is, however, pending registration.

10. Plaintiff No. 1 claims to have got the trade mark "INDIA TODAY" registered initially in the year 1982 in Class 16, though no certificate of registration has been placed on record. During the registration proceedings this plaintiff had agreed to accept the registration of the said mark with a disclaimer of the words "INDIA" and "TODAY" separately, and which disclaimers, according to the case of

the defendants, showed that both these words were descriptive and generic. Finally, the disclaimer was restricted by the plaintiff No. 1 to the word "INDIA" and the mark "INDIA TODAY" was allegedly registered with the disclaimer of the word "INDIA" alone. However, this background of the case leading to the registration of the mark "INDIA TODAY" was not disclosed in the plaint by the plaintiffs and according to the defendants this concealment being of a material fact alone disentitles the plaintiffs to grant of any relief by this Court.

11. Mr. C.M. Lall, learned counsel for the plaintiffs had submitted that once the trade mark "INDIA TODAY" got registered in the year 1982, even though it was at that time for magazine being published by the plaintiffs by the name of "INDIA TODAY", the fact that this background was not disclosed in the plaint loses relevance now and similarly the defendants' objection that the mark "TODAY" is descriptive of the products of the plaintiffs, namely, news, and is also generic becomes inconsequential after the registration of this mark since registration was accorded by the Registrar of Trade Marks, which is the only authority to be satisfied as to whether a particular mark sought to be registered is a descriptive/generic mark which cannot be registered and once the Registrar is satisfied about the distinctiveness of the concerned mark and is also satisfied that the mark is not disqualified for registration as provided u/s 9 of the Trade Marks Act, 1999("Act of 1999" in short) and allows registration thereof that is the end of the matter and Section 28(1) of the said Act of 1999 then gives exclusivity of user to the registered proprietor of the trade mark. Mr. Lall contended that in the present case the plaintiff No. 1 had convinced the Registrar by producing sufficient evidence to show that the word "TODAY" had acquired a secondary meaning and become distinctive of the plaintiff No. 1's goods/service and that is why the mark "INDIA TODAY"(with the disclaimer of the word "INDIA") and "TODAY" were registered and so the defendants cannot be permitted to infringe these registered trade marks of the plaintiffs. It was further submitted that if the plaintiffs' trade marks in question are considered by the defendants to have been registered invalidly and this Court also, prima facie, considers it to be so for the reason that the mark "TODAY" is descriptive and generic then as provided u/s 124 of the Act of 1999 all that this Court can do is to adjourn the matter for a period of three months to enable the defendants to apply to the competent Authority under the said Act for rectification of the Trade Marks Register and till that rectification is carried out the defendants cannot use the mark "TODAY".

12. There is no doubt that the plaintiff No. 1's trade mark "INDIA TODAY" is a registered trade mark but despite that registration the intended use of the mark "NATION TODAY" for a new TV news channel by the defendants cannot amount to infringement of the plaintiff No. 1's mark as defined u/s 29 of the Act of 1999. It is admitted by the plaintiffs that when the mark "INDIA TODAY" was sought to be registered under Class 38 (telecommunications & broadcasting) there was already an application pending for registration of a trade mark "PUNJAB TODAY" for TV news channel the applicant whereof had claimed its user from early

nineties. For that reason the Trade Marks Registry had raised an objection that already the mark "PUNJAB TODAY" was being used for news channel and application for its registration was pending and the plaintiff No. 1's mark was descriptive and not distinctive. Plaintiff No. 1 had at that time claimed before the Registrar of Trade Marks that the mark "PUNJAB TODAY" had no similarity with its mark "INDIA TODAY". So, learned counsel for the defendants was right in her submission that the plaintiffs cannot now allege similarity between their mark and that of the defendants proposed to be used and particularly when the plaintiff No. 1's mark "INDIA TODAY" is not being used till date for any TV news channel. Mr. Lall had submitted that even though "INDIA TODAY" mark is not being used for TV news channel but since the news published in the said magazine can be read through internet on mobile phones, I-Pads etc. it can be said that this mark is being used for telecommunications. However, having an access to the contents of the magazine "INDIA TODAY" through internet cannot be compared with viewing of news on a TV channel.

13. Even otherwise in the mark "INDIA TODAY" the word "INDIA" is of a very small font as compared to the word "TODAY" while the word "TODAY" in the defendants' mark "NATION TODAY" is of a much smaller font than the word "NATION". Prima facie, there is no likelihood of any viewer of TV news channel getting misled into believing that the news channel "NATION TODAY" is a part of "INDIA TODAY GROUP", as is the apprehension of the plaintiffs and particularly when in India as well as in other countries of the world also there are many TV news channels using the word "TODAY" and which factual position was not disputed on behalf of the plaintiffs during the arguments.

14. Mr. Lall had submitted that though the plaintiff No. 1 had claimed before the Registrar of Trade Marks that there was no similarity between the marks "INDIA TODAY" and "PUNJAB TODAY" while seeking registration of their mark "INDIA TODAY" under Class 38 but subsequently they had also opposed registration of the mark "PUNJAB TODAY" and for that reason the said mark has not been registered till date. However, in my view, the fact that the trade mark "PUNJAB TODAY" has not been registered so far and plaintiff No. 1's mark stands registered will not make any difference since the fact remains that even according to the plaintiffs themselves the mark "PUNJAB TODAY" has no similarity with the mark "INDIA TODAY" and so at this interlocutory stage they cannot be permitted to contend that there is a similarity between "INDIA TODAY" and "NATION TODAY".

15. As far as the plaintiffs' case that the stand-alone word/mark "TODAY" has acquired secondary meaning and distinctiveness, as is normally understood in the field of trade mark disputes, is concerned, it would be for the plaintiffs to establish the same during the trial by adducing necessary evidence which claim of the plaintiffs at this stage cannot be accepted because of many other parties also already using the word "TODAY" in relation to TV news channels and the plaintiffs having raised no objection to those users. Learned counsel for the

plaintiffs had submitted that since there is no evidence brought on record by the defendants regarding the extent of the use of the word "TODAY" by those third parties and the plaintiffs having not felt seriously affected by those users it cannot be said that the failure of the plaintiffs to run after each one of those infringers entitles the defendants to infringe the plaintiffs' well known and household name for news. Learned counsel had relied upon a Division Bench judgment of this Court in *Shri Pankaj Goel Vs. Dabur India Ltd.*, in support of the submission that non-initiation of legal proceedings against third party users is of no consequence in the present case. This submission has no merit since in the replication the plaintiffs did not claim that they had not initiated any action against the infringements by third parties as the use of the word "TODAY" by them was not substantial enough to have any impact on the plaintiffs' business. In fact, the Supreme Court had held in *National Bell Co. and Gupta Industrial Corporation Vs. Metal Goods Mfg. Co. (P) Ltd. and Another*, that if a registered proprietor of a mark ignores repeated infringements of its mark that can even be considered as an abandonment of its mark. In the aforesaid circumstances the adoption of the mark "NATION TODAY" even otherwise also cannot be said to be dishonest and is an honest adoption which is protected u/s 30 of the Act of 1999. So, even the judgment of the Supreme Court in *T.V. Venugopal Vs. Ushodaya Enterprises Ltd. and Another*, relied upon by the learned counsel for the plaintiffs, also does not come to the aid of the plaintiffs as in that case the adoption of the impugned trade mark by the defendant of that suit was found to be dishonest, fraudulent and mala fide.

16. So, prima facie, it can be safely said at this interlocutory stage that the plaintiff No. 1 cannot claim in order to get an ad interim injunction against the use of the name/mark "NATION TODAY" by the defendants that the defendants' mark "NATION TODAY" is either identical or deceptively similar to the mark "INDIA TODAY" and for that matter even to the unregistered mark "HEADLINES TODAY" by which name plaintiff No. 1 claims to be having a TV news channel and in respect of which channel the plaintiffs have in any case not placed on record any proof of its popularity or revenue earnings separately and it cannot take any advantage by pleading the consolidated earnings from the TV channels "Aaj Tak" and "HEADLINES TODAY".

17. As far as the mark "TODAY" is concerned the same has also admittedly never been used by the plaintiffs for "telecommunications and broadcasting" and was registered in Classes 16 and 35. In fact, the plaintiffs have not produced any evidence to show that the stand-alone mark "TODAY" has been used at all. Similarly, the mark "INDIA TODAY" has also not been used for any TV news channel ever since its registration in Class 38 in the year 2005 which shows that the plaintiff No. 1 never intended to use this mark for the said services. So, even the balance of convenience, which has a vital role to play in such like cases, as per the decision of the Supreme Court in *Ramdev Food Products Pvt. Ltd. Vs. Arvindbhai Rambhai Patel and Others*, is also not in favour of the plaintiffs for the grant of interim injunction to them. This application is, therefore, liable to be

dismissed not only for the relief claimed on the basis of alleged infringement of trade marks of the plaintiffs by the defendants but also on the basis of alleged attempt of the defendants of passing off their yet to be launched TV news channel as that of "INDIA TODAY GROUP". This application is accordingly dismissed but with the observation that it is being dismissed only on a prima facie view of the matter and nothing observed herein above is a final expression of opinion on the merits of the plea of both the parties.