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(2012) 04 DEL CK 0238

In the Delhi High Court

Case No : CS (OS) 2639 of 2010

Malhotra Book Depot and Others — APPELLANT

Vs

Mata Basanti Devi School of Bio-sciences and Bio-technology — RESPONDENT

Date of Decision : 27-04-2012

Acts Referred:
Trade Marks Act, 1999 — Section 28, 29

Citation : (2012) 195 DLT 514 : (2012) 51 PTC 327 : (2013) 2 RCR(Civil) 261

Hon'ble Judges : G.S. Sistani, J

Bench : Single Bench

Advocate : Sidhant Goel, Mr. Sanjeet Goel and Mr. Mohit Goel, for the Appellant;

Judgement

G.S. Sistani, J.—Plaintiff has filed the present suit for permanent injunction, restraining infringement of trademarks, passing off, dilution of goodwill, unfair competition, rendition of accounts of profits/damages, delivery up against the defendant. Summons was issued in the suit and notice was issued in the application to the defendants on 24.12.2010. This court on 04.05.2011 restrained the defendant from using the trademark ''MBD'' in relation to its school activities with the clarification that the defendant would be entitled to use the full name as "Mata Basanti Devi" School. The defendant was proceeded exparte on 04.05.2011 as none had chosen to appear on behalf of the defendant nor written statement was filed.

2. In support of their case, plaintiffs have filed affidavit by way of evidence of Sh. Rohit Mehta, which is exhibited as Ex. PW-1/A and the Special Power Of Attorneys dated March 26, 2010 executed by plaintiffs No. 1 to 5 in favour of PW-1, are collectively exhibited as Ex-PW 1/1 (Colly).

3. PW-1 has deposed that plaintiff No. 1 is a partnership firm formed and registered under the laws of the Republic of India; and Ms. Satish Bala Malhotra, Ms. Monica Malhotra Kandhari and Ms. Sonica Malhotra are partners in the Plaintiff firm having its registered offices at Adda Hoshiarpur, Jalandhar City,

Punjab, India and its branch offices at 6, Gulab Bhawan, Bahadur Shah Zafar Marg, New Delhi-110002. Certified copy of the Registered Partnership Deed of the Plaintiff No. 1 is on record from pages No. 11 to 14, of the documents file, filed by the Plaintiffs vide list of documents dated August 24, 2011 and the same are exhibited as Ex. PW-1/2.

4. PW-1 has also deposed that plaintiff No. 2 to 5, are companies duly incorporated and existing under the laws of the Republic of India having its registered offices at Gulab Bhavan, 6-Bahadur Shah Zafar Marg, New Delhi-110002. Certified copies of the Certificates of Incorporation of the Plaintiff No. 2 to Plaintiff No. 5 Companies are on record and the same are collectively exhibited Ex. PW-1/3).

5. Sh. Rohit Mehta has deposed that the plaintiff No. 1 to plaintiff No. 5 ("Plaintiffs"), which, together with other companies, form part of the "MBD Group", are one of India''s leading business entities and the MBD Group is itself one of the largest Groups with more than five decades of experience; and all the group companies use the corporate name/house mark MBD, in some form or the other, for their business activities. Copies of brochures, introductory material of the Plaintiffs and their business activities under the trade mark MBD and other composite marks containing the mark MBD are exhibited as Ex. PW-1/4. The print outs from the website www.mbdgroup.com, www.mbdzephyr.com, www.mbdalchemie.com and www.mbdneopolis.com detailing the business activities of the plaintiffs under the trade mark MBD and other composite marks containing the mark MBD are collectively exhibited as Ex. PW-1/5.

6. PW-1 has deposed that the plaintiff No. 1 first used the mark MBD in the year 1956 and has been continuously and extensively been using the same till date, along with plaintiff No. 2 to 5 and other group companies. It has also been deposed by this witness that the plaintiff No. 1 started with activities in the publishing sector in the year 1956, under the house mark MBD, and today the plaintiff No. 1 is Asia''s largest publishers and printers of academic text books, reference books, children''s books and technical, commerce, science and management books; and the plaintiffs, together with other group companies, have more than 32 branch offices in India alone and currently have approx. 3,000 employees, a network of around 1,000 distributors and 10,000 booksellers.

7. PW-1 has also deposed that the MBD Group, through plaintiff No. 1, owns India''s largest publishing house under the trade-mark MBD, with more than five decades of experience. With more than 500 subject experts developing content in almost all the regional languages of India, the group trading under the trade mark/house mark MBD, is one of the largest content providers in education. PW-1 has also deposed that the plaintiffs are the only group which publishes books for all classes, all subjects, in all languages, all education boards in India and in most of the major languages spoken worldwide. Under the trade mark MBD, the group also prints technical books and children''s books under various imprints popular in India as well as abroad. Plaintiff No. 1 specializes in

production of school level books such as textbooks, reference books, help books and study material for recapitulation in English and Indian regional languages.

8. This witness has also deposed that the Plaintiff No. 1, along with other group companies of the MBD Group, has also acquired specialization in publishing text books and reference books for students at graduate and post graduate levels and for those pursuing a career in medical (covering exhaustively anesthesia and intensive care; anatomy and physiology; cardiology and cardiac surgery; dentistry, dermatology, ENT, gastroenterology and hepatology, haematology, and oncology; neurology, obstetrics and gynaecology, ophthalmology, orthopaedics, pathology, paediatrics, primary care, radiology and imaging, surgery, urology, electronic media), engineering and other technical areas.

9. PW-1 has also deposed that there are more than 8000 titles currently under the trade mark MBD and the same are increasing daily. The publishing house of the MBD Group, functioning under the trading name of plaintiff No. 1, publishes and exports books to North American Countries, Europe, Gulf Countries and South Asian Countries. A few of the major business entities of the MBD Group in the publishing industry, including the plaintiffs, are Holy Faith International Pvt. Ltd., Modern Publishers, Oxbridge, Creative, MBD International, etc. All these entities are using the trade mark/house mark MBD for their business activities.

10. PW-1 has also deposed that with the futuristic vision of Late Mr. A.K. Malhotra, the MBD Group, has diversified into various other industries including the paper manufacturing industry, hospitality, real estate, mall development and management. This witness has also deposed that the MBD Group of companies is today well respected amongst the competitors for their leadership initiatives and quality services & products and are considered as market leaders in all their business activities. PW-1 has deposed that the MBD Group, through plaintiff No. 3, has also expanded its business activities in the field of on-line education, i.e., education on the web, including, e-teaching, e-training; business of software, content services, BOP services and IT business etc; and all these services are being provided under the trading name/trade mark MBD ALCHEMIE.

11. Mr. Rohit Mehta has deposed that the plaintiffs are one of the fastest growing companies in India in the field of education, printing and publishing and in a short span of time, the plaintiffs have established an enviable reputation and track record for adopting latest techniques in education in schools, introducing world-class quality products in the field of education, hence the plaintiff No. 3 has adopted the mark MBD as a house mark.

12. PW-1 has deposed that the MBD Group has successfully established itself in the hospitality industry through its maiden venture, viz., The Radisson MBD Hotel (Five Star), Noida; and that the hotel is fully owned and managed by the MBD Group and is the first five star hotel in Noida. Under brands like MADE IN INDIA, RED, S-18, THE CHOCOLATE BOX, ESPACE and GIGABYTE, all owned and managed by the Plaintiffs, the MBD Group is promoting and operating hotel

services, world class & award winning restaurants and food courts. The same are located in major cities of India like Delhi, Mumbai, Bangalore, Chennai, Hyderabad, Jalandhar and Ludhiana and in all these centres, they are operated under the house mark MBD.

13. PW-1 has deposed that the MBD Group has also made its foray into premium and luxury mixed use developments primarily entailing hotel, retail and entertainment under brand names like MBD NEOPOLIS, MBD ZEPHYR, MBD PRIVE which are currently under operation and construction in Jalandhar, Ludhiana and Bangalore with planned presence in Hyderabad, Chennai, Mumbai, Delhi and Goa. Under the trade mark MBD NEOPOLIS & NUOVO, the MBD Group caters to international designers having the best labels like Fendi, Tommy Hilfiger, Van Cleef Arpel, Canali, Kimaya, etc. The luxury retail targets under the trade mark MBD ZEPHYR which includes brand names like Saks, Channel, Hermes, Gucci, Jimmy Chao, Louis Vutton, Christian Dior, Escada.

14. PW-1 has also deposed that the consolidated sales turnover of the plaintiff No. 1 since the financial year 1982-83 to 2009-10 is Rs. 682,72,28,836.21/- (Crores). The annual turnover of the plaintiffs combined for the year 2009-10 was approximately Rs. 200 Crores. The approx. annual turnover of the plaintiffs for the past five financial years is given herein below:

15. PW-1 has also deposed that the above figures of the annual turnover have been obtained from the books and accounts of the plaintiffs maintained in the ordinary course of business. A certified copy of a certificate from the chartered account/auditor of the plaintiff No. 1 detailing the annual sales turnover from the financial year 1983-84 to 2009-10 are exhibited as Ex. PW-1/6. Certified copies of the account statements, including balance sheets, of all the plaintiffs are collectively exhibited as Ex. PW-1/7. Copies of some sales invoices are (collectively on record from page nos. 751 to 775 (Volume-IV) of the documents filed by the plaintiffs vide list of documents dated December 24, 2010 and are) collectively exhibited as Ex. PW 1/8.

16. PW-1 has also deposed that in the year 1956 the plaintiff No. 1 thoughtfully coined the trade mark MBD by taking the first alphabets of its name MALHOTRA BOOK DEPOT and the mark MBD has been exclusively and continuously used by the plaintiff ever since, in the capacity of a trade mark/house mark in relation to all its leading business activities. The trade mark MBD is inherently distinctive and is exclusively associated by consumers as indicative of trade source distinguishing goods and business in the course of trade of the plaintiffs from those of others. PW-1 has also deposed that the trademark MBD has been internationally used by the plaintiff No. 1 and by all the other plaintiffs under a license from Plaintiff No. 1.

17. Mr. Rohit Mehta has deposed that the trade mark MBD has also been prominently appended by the plaintiffs as an essential feature to most of its other leading trade marks/trade names like MBD NEOPOLIS, MBD ZEPHYR, MBD

ALCHEMIE, MBD GROUP, etc., and thus the trade mark MBD has come to be associated as a house mark and the said use of over five and a half (5 1/2) decades has generated colossal sales volumes for the plaintiffs and unprecedented and unmarked reputation/goodwill in the domestic as well as international markets.

18. PW-1 has also deposed that, during this course of time the trade mark MBD has become a household name certainly in India, if not to that extent internationally, along with its various other affiliate/subsidiary companies, namely:

19. It is also deposed by PW-1 that the plaintiffs have extensively used MBD as a trade mark/corporate name/house mark and all the above companies have a strong presence in India and in neighboring countries. It is also deposed by this witness that without prejudice to the fact that the mark MBD is inherently distinctive being an arbitrarily coined mark, the plaintiffs have also acquired common law rights in the collective collocation and arrangement of the letters "M", "B" and "D" through continuous and extensive use over all these years.

20. Mr. Rohit Mehta has deposed that the plaintiffs have secured registrations under the Trade Marks Act, 1999 (the "Trade Marks Act") for exclusive use of the trade mark MBD, its variants and most of its group marks. The plaintiffs have successfully obtained six (6) registrations for the mark MBD or containing the mark MBD as a prominent feature, namely:-i)

Registration No. 325406 dated 18.5.1977 in class 16 for the word mark MBD; ii) Registration No. 462795 dated 07.11.1986 in class 16 for the word mark MBD Sure Shot; iii) Registration No. 632634 dated 1.7.1994 in class 16 for the word mark MBD Safalta Ka Sadhan (Hindi); iv) Registration No. 1478047 dated 11.08.2006 in class 42 for the mark MBD ZEPHYR; v) Registration No. 1338755 dated 16.02.2005 in class 41 for the mark MBD NEOPOLIS Where The Experience Never Ends (Stylized); vi) Registration No. 1338756 dated 16.02.2005 in class 42 for the mark MBD NEOPOLIS Where The Experience Never Ends (Stylized). PW-1 has further deposed that the registered trade-marks, as aforesaid, are duly renewed, subsisting and conclusively valid under the provisions of the Act. Certificates for use in legal proceedings and Registration Certificates, along with their renewal certificates are collectively exhibited as Ex. PW-1/9.

21. Mr. Rohit Mehta has deposed that the MBD Group boasts of a trade mark portfolio of approximately two hundred and fifty (250) trade mark applications, out of which approximately one hundred and forty (140) applications have been filed for registration of trade-marks bearing the mark MBD. All these applications are pending registration and are at an advanced stage of the process. Copies of the trade mark applications filed for registration by the plaintiffs for the trade mark MBD and other composite marks containing the house mark MBD are collectively exhibited as Ex. PW-1/10. PW-1 has also deposed that all the applications, pending or registered, bearing the trade mark MBD of the plaintiffs,

have been reproduced below in a consolidated list:

Plaintiff No. 1 (Malhotra Book Depot)

Plaintiff No. 2 (Bright Enterprises Pvt. Ltd.)

Plaintiff No. 3 (MBD Alchemie Pvt. Ltd.)

Plaintiff No. 4 (A.K.M. Enterprises Pvt. Ltd.)

Plaintiff No. 5 (MBD Printographics Pvt. Ltd.)

22. PW-1 has also deposed that the plaintiffs are the registered proprietors of the mark MBD and other variants, as demonstrated above, thereby having right to use thereof u/s 28 of the Trade Marks Act, 1999 and the use of an identical or deceptively similar trade mark by an unauthorized user amounts to infringement of plaintiffs registered trade mark u/s 29 of the said Trade Marks Act, 1999; and apart from constituting infringement, the impugned use also amounts to criminal offence under the Trade Marks Act, 1999.

23. PW-1 has also deposed that the above evidences, that the plaintiffs have always placed significance on the goodwill of the mark MBD to denote its goods and services; and in fact, all printed material, such as text books, guides, question banks, etc., only use the mark MBD. The trade name MBD has also been used prominently as a house mark for many titles/trade marks in relation to all its leading brand names as illustrated in the earlier paragraphs. To evidence the prominence of the mark MBD in all the leading brand names of the plaintiffs and the MBD Group, a pictorial representation of the same is provided herein below:-

24. PW-1 has also deposed that apart from the statutory rights which have accrued in favour of the plaintiffs in the trade mark/house mark MBD, as demonstrated above, the plaintiffs have also acquired common law rights to the exclusive use of the trade mark/house mark MBD, i.e., either independently or conjunctively with other marks or trading names; and the plaintiffs have expended a great amount of time, money and effort to promote and advertise the trade mark MBD, all its variants and the composite marks to which MBD has been appended as a house mark, in all and every possible manner. Print outs of a few media releases covering the activities of the plaintiff under the trade mark MBD and other composite marks containing the house mark MBD are collectively exhibited as Ex. PW 1/11.

25. Mr. Rohit Mehta has deposed that the trade mark MBD and other composite marks containing the mark MBD, prominently feature in print and electronic media including trade journals, directories, magazines and periodicals having, which have wide coverage and circulation and also have a voluminous presence on cyber space with domain names like mbdgroup.com, mbdneopolis.com, mbdalchemie.com and mbdzephyr.com; and that the sales, promotional and advertisement expenses incurred by the plaintiffs, on promotion of the trade mark MBD and other composite marks containing the mark MBD as a house

mark, are as follows:-

26. PW-1 has further deposed that the invoices for the promotional activities carried out by the plaintiffs for the trade mark MBD and other composite marks containing the house mark MBD in Electronic Media are collectively exhibited as Ex. PW-1/12. Copies of the Invoices for registration of domain names of the plaintiffs are collectively exhibited as Ex. PW-1/13. Copies of the invoices for the promotional activities carried out by the plaintiffs for the trade mark MBD and other composite marks containing the house mark MBD in Print Media are collectively exhibited as Ex. PW-1/14.

27. PW-1 has also deposed that the trade mark MBD has become a single source identifier; and the mark MBD has attained the designation of being a ''well known mark'', as defined under the Act, due to the following factors:

(a) The mark MBD has been used by the Plaintiffs for more than five decades and is subject matter of honest adoption;

(b) The mark MBD is distinctive of the Plaintiffs goods/services and has been registered in favour of the Plaintiffs in several variants;

(c) The mark MBD has been subjected to extensive, open, continuous, uninterrupted use, with enormous volumes of sale of the goods/services under the said trade mark;

(d) The prominent placement of the mark MBD in the market and industry, coupled with the promotional efforts initiated by the Plaintiffs.

Thus, any adoption or use of the mark MBD or of any deceptively similar mark in relation to identical and/or similar goods will not only cause confusion and deception to the public, but will also be contrary to the protection required to be afforded to a well-known mark, dilute its image and be generally misleading to consumers and members of the trade.

28. PW-1 has also deposed that the defendant as per the information received by the plaintiffs, is an education institution; and the plaintiffs in the month of December 2010, acquired knowledge of the fact, through an advertisement published on cyber space and through a web link advertising the infringing mark, that the defendants were using the name MBD School of Biosciences & Biotechnology (''"infringing mark"). PW-1 has also deposed that the plaintiffs are aggrieved by the usage of the mark MBD in the infringing mark MBD School of Biosciences & Biotechnology by the defendant for their business activities as the same contains the trade mark MBD as a whole and bears an identical/deceptive resemblance to the composite marks of the plaintiffs bearing the house mark MBD, viz., MBD Alchemie, MBD Zephyr, MBD, Neopolis, MBD Prive, etc. This witness has also deposed that the photographs depicting use of the infringing mark by the defendant and printouts of the web pages demonstrating usage of the infringing mark are collectively on record from page nos. 17 to 24 (Volume-I) of the documents filed by the plaintiffs vide list of documents dated December

24, 2010 and are collectively exhibited as Ex. PW-1/15.

29. Sh. Rohit Mehta has also deposed that the defendant school is affiliated to the Dr. B.R. Ambedkar University, Agra as "Mata Basanti Devi School of Biosciences & Biotechnology" and not as MBD School of Biosciences & Biotechnology. This witness has next deposed that the defendants'' adoption of an abbreviation which is identical to the registered trade mark of the plaintiffs is intentional. Print Out of the list of schools affiliated to the Dr. B.R. Ambedkar University, Agra, obtained from the website of the University, i.e., from http://www.dbrau.ac.in/college detail.pdf is on record from page nos. 25 to 52 (Volume-I) of the documents filed by the plaintiffs vide list of documents of December, 2010 and are exhibited as Ex. PW-1/16.

30. Sh. Rohit Mehta has also deposed that the adoption and user of the mark MBD, as a whole, by the defendant for its business activities constitutes infringement of the statutory rights of the plaintiffs under the Trade Marks Act in the mark MBD and all the composite marks bearing the house mark MBD. PW-1 has also deposed that the manner of display and use of the infringing trade mark unequivocally suggests that prominence has been given to the mark MBD and it is also bound to cause confusion. PW-1 has also deposed that the defendant has adopted and used the impugned mark with mala fide intentions in order to obtain undue monetary benefits in view of the substantial goodwill and reputation attached to the Plaintiff and its other group companies.

31. PW-1 has further deposed that the infringing mark "MBD School of Biosciences & Biotechnology" by the defendant is contrary to the provisions since:

(i) The Plaintiffs are the prior adopters and users of the trade mark/house mark MBD, which is arbitrary, fanciful, invented and a coined mark and thus inherently distinctive. The mark MBD has been registered by the Plaintiffs as a word mark and also conjunctively as a composite mark. Due to its continued use, the mark MBD has become a household name, which is associated exclusively with the Plaintiffs. Any use or adoption of an identical or deceptively similar mark, such as the infringing mark, would be without any basis and would be construed to be originating from the Plaintiffs;

(ii) The infringing mark, namely, MBD School of Biosciences & Biotechnology, contains the Plaintiffs well-known and widely used mark MBD as a whole. The manner of use of the infringing marks suggests that prominence has been given to the mark MBD. This evidences the mala fide motive of the Defendant to use an identical mark to that of the Plaintiffs for promoting and passing off its own services as that of the Plaintiffs;

(iii) The trade mark MBD (per se) has been registered, and applied for registration, by the plaintiffs in various classes with user claim since the year 1956. Furthermore, all the variants of the trademark MBD, along with composite marks of the Plaintiffs, which contain the mark MBD, are also registered and/or are pending registration. Thus, adoption and user of the infringing mark by the defendant would violate the statutory and common law rights of the plaintiffs in the mark MBD and other composite marks containing the mark MBD;

(iv) The trade mark MBD is an essential feature of the Plaintiffs trading activities and the use of the infringing mark by the defendant leads to gross colorable imitation of the trade mark MBD and other composite marks of the Plaintiffs, resulting in deceptive similarity, likelihood of confusion, infringement, dilution of goodwill, unfair competition and/or passing off;

(v) The Defendants infringing mark is phonetically, visually, structurally, and otherwise, identical and/or deceptively similar to the registered trade mark MBD, and other composite marks of the Plaintiffs, bearing the mark MBD. The infringing mark is similar in idea and contains an identical collocation and arrangement of words to that of the Plaintiffs marks. The competing marks are liable to be confused for each other on account of imperfect recollection by unwary consumers;

(vi) The services, for which the infringing mark is being used by the Defendant, are cognate and allied to the goods and services of the Plaintiffs. It is noteworthy that the Plaintiff No. 1 is, inter alia, in the business of publishing and selling educational books, and thus, the target consumers are likely to be the same and overlap, which would increase the possibility of confusion and deception;

(vii) Since its adoption in the year 1956, the Plaintiffs have made long, continuous and prior use of its mark MBD, and other composite marks. Considering that the consumers are not equipped with photographic memory, the services of the Defendant will be presumed by the public to be under the license of the Plaintiffs or a logical and legitimate business expansion of the Plaintiffs;

(viii) The Defendant''s adoption of the infringing mark is mala fide and dishonest. On a bare perusal of the infringing mark, it is evident that the Defendant has laid prominence on the mark MBD, whereas the other parts of the infringing mark are insignificant. Considering that the trade mark MBD of the plaintiffs, is the symbol point of attraction and point of identification, by which their goods/services are known and marketed, use of the same by the defendant for its business activities is bound to lead to confusion and deception amongst the consumers and in their trade.

32. PW-1 further goes on to state that due to the illegal adoption & use of the infringing mark, the plaintiffs are suffering and are likely to continue to suffer dilution, diminution and eventual erosion of the goodwill and reputation of their mark MBD and all other composite marks adopted and used by the plaintiffs which contain the mark MBD as a whole.

33. I have heard counsel for the plaintiffs and perused the plaint and the accompanying documents and the evidence led by the plaintiffs. The evidence of the plaintiffs remained unrebutted. In this case, vide order dated 04.05.2011 interim orders were granted in favour of the plaintiff and against the defendants.

Thereafter defendant was proceeded ex parte and plaintiff was directed to file affidavit by way of evidence.

34. Plaintiff has filed affidavit of PW-1 (Rohit Mehta). As per the affidavit the MBD group is one of the largest group with more than five decades of experience and all the group companies use the corporate name/house mark MBD in some form or the other for their business activities. Copies of brochures and other materials have been placed on record and the same has been exhibited as Ex. PW 1/4. The print outs have also been exhibited as Ex. PW-1/5. It has been established by the evidence that plaintiff No. 1 is the prior user of the mark "MBD" since the year 1956, has more than 32 branch offices in India alone, has approximately 3000 employees, a network of around 1000 distributors, and 10,000 book sellers. The plaintiff No. 1 has been using the trademark continuously and extensively along with plaintiff No. 2-5 and other group companies. It has also been proved that group companies of the MBD Group, have also acquired specialization in publishing text books and reference books for students at graduate and post graduate levels and for those pursuing a career in medical, engineering and other technical areas. It has also been proved that plaintiff No. 1 publishes and exports books to North American Countries, Europe, Gulf countries and South Asian countries. The plaintiff has obtained six registrations for the mark MBD, details of which is given in the affidavit by way of evidence and the certificates for use in legal proceedings and registration certificates, along with renewal certificates are proved and collectively exhibited as Ex. PW-1/9. Invoices for the promotional activities carried out by the plaintiffs for the trade mark MBD and other composite marks containing the house mark MBD in Electronic Media are proved and are collectively exhibited as Ex. PW-1/12. Copies of invoices for registration of domain names of the plaintiffs are collectively proved and marked as Ex. PW-1/13. Copies of invoices for the promotional activities carried out by the plaintiff for the mark "MBD" and other composite marks containing the house mark MBD in print media are proved and collectively marked as Ex. PW-1/14. The evidence also establishes that the mark MBD has been subjected to extensive, open, continuous, uninterrupted use, with enormous volume of sale and the plaintiff has spent enormous amounts for the promotion and on advertisement of the mark. The photographs depicting use of the infringing mark by the defendant and printouts of the web pages demonstrating usage of the infringing mark have been proved and are collectively exhibited as Ex. PW-1/15. The adoption of the defendants of an abbreviation identical to the registered trade mark of the plaintiff is intentional. It is also established that the motive of the defendants to use a mark identical to that of the plaintiffs for promoting and passing off its own services as that of the plaintiffs is mala fide and dishonest and with a view to ride upon the goodwill and reputation of the plaintiff.

35. Counsel for the plaintiff also prays for damages @ Rs. 21,00,000/- for loss of reputation and business as also the cost of the present proceedings. It is trite to say that the defendant has deliberately stayed away from the present

proceedings with the result that an enquiry into the accounts of the defendant for determination of damages cannot take place. The infringement of the trademark of the plaintiff is not in dispute. Counsel for the plaintiff in support of his case has drawn attention of this court to a number of judgments [M/s. L.T. Overseas Ltd. v. M/s. Guruji Trading Co. and Anr. [CS (OS) No. 2711/1999; and Relaxo Rubber Limited and Anr. v. Selection Footwear and Anr., 1999 PTC 578 . Counsel has also placed reliance on Time Incorporated Vs. Lokesh Srivastava and Another, where apart from compensatory damages of Rs. 5 lakhs, punitive damages have also been awarded. Justice R.C. Chopra, has set out in Time Incorporated''s case (supra) that punitive damages are founded on the philosophy of corrective justice. For the reasons stated above, the plaintiff has made out a case for grant of decree as prayed in the plaint. Accordingly, the order dated 24.12.2010 is confirmed and the suit is decreed in favour of the plaintiff and against the defendant in terms of para 33 (i), (ii), (iii) & (v) of the plaint with costs and damages to the tune of Rs. 5.00 lakhs. Let a decree sheet be drawn up accordingly.

