

(2003) 05 DEL CK 0149

In the Delhi High Court

Case No : IA 9035 and 11130/02 in Suit No. 1553/02

Skyline Education Institute (India) Pvt. Ltd.

APPELLANT

Vs

Mr. S.L. Vaswani and Another

RESPONDENT

Date of Decision : 06-05-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, 151

Citation : (2003) 5 AD 531 : (2003) 105 DLT 249 : (2003) 69 DRJ 420 : (2003) 27 PTC 37

Hon'ble Judges : Ramesh Chand Jain, J

Bench : Single Bench

Advocate : Praveen Anand, for the Appellant; Ravinder Sethi Sunil Goel and Arvind Gupta, for the Respondent

Judgement

R.C. Jain, J.—The plaintiff has filed this application under Order 39 Rules 1 and 2 read with Section 151 of the CPC praying for grant of an ad-interim injunction, restraining the defendants, their officers, servants, agents, representatives, franchisees or any of them, from using the name "SKYLINE" as part of their trading name in relation to their activities in the field of education and/or as a trade mark in relation to any printed matter, including course material, literature, syllabus etc. or in any other manner whatsoever so as to pass off their goods and services as and for those of the plaintiff.

2. The brief facts are that the plaintiff has filed a suit for permanent injunction, passing off, damages, rendition of accounts and delivery up of all printed material etc. against the defendants, alleging that the plaintiff [Skyline Education Institute (India) Pvt. Ltd.] is an educational institution incorporated on 24.7.1996, having its registered office at 514, Jyoti Shikar, 8, District Centre, Janak Puri, New Delhi and campus at Hauz Khas Enclave, New Delhi. The plaintiff institute was established on the lines of the previously existing and highly successful Skyline College (Sharjah), the brainchild of Mr. Kamal Puri, an eminent educationist who set up the first Skyline institute in 1990 with the object of

providing high quality graduate and post-graduate level professional education and training to the students. plaintiff's institute has acquired substantial reputation and goodwill for providing high quality education, particularly in the field of management besides having carved a niche for self as being a premier training institute in the field of travel, tourism and management. The reputation and goodwill of the plaintiff institute under the name "Skyline" has been endorsed through its affiliation with well-known educational institutions overseas such as University of Oxford, University of Lincolnshire and Humberside, National American University, USA etc. National and global bodies such as IATA (International Air Transport Association), TAAI (Travel Agents Association of India), CII (Confederation of Indian Industry), UFTAA (Universal Federation of Travel Agents Association) etc. have collaborated with the plaintiff institute for their requirement of trained personnel in travel business to the credit of the plaintiff. Ever since its inception, the plaintiff institute had advertised its courses in leading newspapers of the country and it is alleged that the name of the plaintiff has come to singularly denote the plaintiff's business and stands for sterling educational services that ensure coveted career opportunities for the students who pass out from the plaintiff's institute and attract admiration for the teaching faculty. It is also averred that the plaintiff has applied for registration of the trade marks "SKYLINE INSTITUTE", "SKYLINE MEDALLIST", "SKYLINE BUSINESS SCHOOL" and "SKYLINE LEAD FACULTY" in class 16 inter alia for printed matter, literature, stationery etc. and the applications are pending since 1997 and 1998 respectively and the plaintiff expects its registration soon.

3. plaintiff has alleged that in the month of January, 2002, the plaintiff came across an advertisement for recruitment of teachers by the defendants under the heading "Skyline Institute of Engineering and Technology", unit of defendant No.2 and soon thereafter the plaintiff got issued a notice dated 31.1.2002 to the defendants apprising the defendants of the plaintiff's legal and vested rights in the trading style of name "Skyline", which was not answered to by the defendants. As there was no further advertisement, the plaintiff believed that the defendants had quietly ceased using the impugned name Skyline in relation to its institute, but around mid June, 2002, the defendants resumed advertising and in August, 2002, the defendants began to advertise themselves as "Skyline Institute of Engineering and Technology, a unit of Skyline Group of Companies" and so in early September, 2002, the plaintiff was taken aback to find an advertisement by defendant No.2, which professed that it was shortly introducing management courses in its academic year. It is alleged that the adoption of the impugned name Skyline by the defendant tended to and has actually caused confusion and deception inasmuch as the plaintiff had been receiving inquiries from potential students as well as teachers requesting for the prospects from the plaintiff for engineering course and a job at the Noida branch of the defendants. As the defendants have commenced their educational institute under the mark name of the plaintiff, the defendants are liable to be restrained by means of a permanent injunction.

4. The defendants are contesting the suit by filing a written statement raising preliminary objections about the plaintiff institute being illegal and unauthorised having no prior approval from All India Council for Technical Education (AICTE) and without affiliation from the concerned State University and on the other hand, it is stated that the institute of the defendants under the name and style of "Skyline Institute of Engineering and Technology" in Greater Noida is affiliated with the U.P. Technical University and has been set up on a plot of land acquired by it from Greater Noida at a cost of Rs.4.5 crores and having spent more than Rs.10 crores in establishing the institute. The engineering college of the defendants is a legally established institute after complying with all the rules, norms and guidelines. The suit is also resisted on the ground that the word "Skyline" is a generic word and the plaintiff cannot claim monopoly in the said word. Besides it is alleged that there are about 32 companies in Delhi itself and 117 companies in whole of India starting with the word "Skyline" and there are more than 13 lacs companies throughout the world with the said name. It is also pleaded that Mr. S.L.Vaswani, defendant No.1 and President of the defendant No.2 Society is a renowned Engineer and has undertaken and completed various prestigious and construction projects and had been carrying on their diverse business inter-alia in the name of the following firms:

1. M/s. S.K.Contracts (P) Ltd. (a company started in 1986)
2. M/s. Skyline Construction Company (a partnership firm started in 1990)
3. M/s. Skyline Constructions (a partnership firm started in 1993)
4. M/s. Skyline Constructions Engineers & Builders Company (a partnership firm started in 1999)
5. M/s. Skyline Contractors (P) Ltd. (a company firm started in 1999)
6. Ms. Skyline Software (P) Ltd. (a company firm started in 2001).

5. It is also claimed that defendant No.1 has acquired a reputation and goodwill as contractors and engineers and the Society defendant No.2 has been established for higher technical education for all sections of the community in the country after approval from AICTE which is the regulatory body in India for regulating and monitoring the technical courses. It is denied that the name and use of "Skyline" by the defendant institute is likely to cause any confusion or has caused any confusion to the prospective students. It is denied that the plaintiff has any exclusive right to use the word "Skyline" or using of the said word by the defendants amounts to passing off the educational services by the defendants as that of the plaintiff.

6. In the replication the plaintiff has controverted the objections and pleas raised in the written statement and has reiterated the averments made in the plaint. It is averred that the pleadings of the defendants are contradictory and self destructive inasmuch as at one place, they state that the word "Skyline" is a generic word and at the other they want to claim a right therein on the strength

of long user of this very name attached to their various business firms or activities during the past several years.

7. The application was filed simultaneously with the prayer for grant of an ex-parte ad-interim injunction and the Court vide order dated 1.10.2002 restrained the defendants from issuing any further advertisement or undertaking publicity campaign by using the name "Skyline" for its courses and academic sessions as also from enrolling the students for any course using the name "Skyline" till further orders.

8. I have heard Mr. Praveen Anand, learned Counsel representing the plaintiff and Mr. Ravinder Sethi, Senior Advocate representing the defendants and have given my careful consideration to their respective submissions. The principles on which a party is entitled for grant of an ad-interim injunction are well settled. A party seeking an interim injunction must establish existence of a prima facie case in its favor besides showing that the balance of convenience lies in its favor and that it will suffer irreparable loss and injury in case an ad-interim injunction is not granted. The facts in the present case are not much in dispute inasmuch as sufficient material has been produced to show that the plaintiff has been running its institute under the name and style of "Skyline Education Institute (India) Pvt. Ltd. ever since 1996 and has been imparting education at the level of undergraduate and post-graduate courses in management, travel and tourism etc. and that the students who had passed out of their institute have found place in certain well reputed Government, Semi-Government and private organisations. It is not denied that the defendants have started their institute only from the session 2002 although defendant No.1 had been carrying on its business and various construction activities under the name and style of Skyline in Bombay and some other parts of the country. There is also no denial of the position that the defendants have obtained the requisite affiliation and recognition from the concerned statutory and regulatory authorities and have spent a huge sum in establishing their institute and the first ever batch of students in the field of engineering is already undergoing the first year course. There is also no denial of the position that the plaintiff's applications for registration of the trade marks "SKYLINE INSTITUTE", "SKYLINE MEDALLIST", "SKYLINE BUSINESS SCHOOL" and "SKYLINE LEAD FACULTY" in class 16 inter alias for printed matter, literature, stationery etc. are pending for registration with the Registrar of Trade Marks. The important question which awaits for consideration is as to whether the word "Skyline" is a generic, specific or invented word. The dictionary meaning of the word "Skyline" is "the line where earth and sky meet horizon", "the outline of the building seen against the sky". Learned counsel for the defendants has empathetically urged that this word was chosen and adopted by the defendants honestly and bonafide as it was connected with the construction business of the defendants and later on it was used to found a charitable Society to set up an engineering college. As against this, contention of Mr. Anand is that the plea of the defendants is self-contradictory inasmuch as if the word is generic, then the defendants cannot claim any right therein. Besides it is alleged that the use of

the word "Skyline" in relation to the defendant No.2 institute is not bonafide because as early as in January, 2002, the plaintiff had put the defendants to notice about the plaintiff having adopted and using the said name every since 1996, but no reply was received and despite a meeting held sometimes in March, the defendants did not cease from using the same. This Court on a consideration of the respective submissions is prima facie of the view that the word "Skyline" being admittedly neither an invented nor specific word, has to be considered a generic word more particularly, when it is shown that thousands of persons and institutions are using such word either as a part of their trading name and the word is being used by lacs of people all over the world. Therefore, even a prior user of such a mark by the plaintiff will not vest any exclusive right in them to use the said word in exclusion of others. Similarly pendency of the applications for registration in class-16 is not of much help to the plaintiff. This is for the reason that Trade and Merchandise Act, 1958 does not seem to have a category of educational institute for a class of goods for which trade mark can be registered. Educational institutions like that of the plaintiff and defendants are liable to be registered under AICTE and apparently plaintiff has no approval under AICTE Act and, Therefore, cannot claim any equitable and discretionary relief.

9. Mr. Praveen Anand, learned counsel for the plaintiff has strongly urged that the plaintiff is not required to be registered or affiliated with All India Council for Technical Education (AICTE) because the said body is appointed merely for regulation of technical education and it does not have jurisdiction over institutions which have affiliation from foreign university. In this connection, he has placed reliance on the Supreme Court decision in the case of Bharathidasan University and Another Vs. All India Council for Technical Education and Others, AIR 2001 SC 287, holding that the appellant was not required to seek prior approval of AICTE to start a department for imparting a course or programme in technical education. Reliance is also placed on an unreported judgment in Civil Writ petition No.11416/96 passed by His Lordship Justice Shivraj Patil of Madras High Court (as His Lordship then was). In that case, the Court recognised the validity of foreign affiliation of institute like APTECH, First Computers etc. with the following observations:

"....(they) are helping the students and candidates of this country to get better training and knowledge in order to secure employment or enrich their knowledge... .. prima facie ... there is no prohibition in law to do so". However, he went on to hold that the respondents "shall notify at their Head Offices or Branch Offices if any, that the courses or training or coaching conducted by them leading to issue of certificates/diplomas to be granted by Foreign Universities or other agencies, and such certificates/diplomas are not recognised by the Government of India, State Governments, UGC, AICTE and AIU. The prospectus and brochures to be issued by them shall contain the same clause. Further, every application to be issued to students or candidates shall contain the said clause so that the students or candidates know about the same. These directions shall

apply to all other similarly placed institutions in the country."

10. According to the plaintiff's counsel, the relevant body which grants equivalence to degree of institute with foreign collaboration is the Association of Indian Universities (AIU) under the aegis of the Ministry of Human Resources Development (HRD) and the said Association had confirmed that , University of Lincolnshire and Humberside, U.K. Is an accredited University vested with the Royal Charter and a Member of Association of Commonwealth Universities (ACU) listed on page 1665 of ACU Yearbook 1996. All its degree programmes are recognised and treated at par with corresponding degrees of Indian Universities. Reliance is also placed on a Gazette Notification of the Ministry of HRD, Government of India dated 13th March, 1995 clarifying that all foreign qualifications recognised by AIU should be recognised for employment by Central Government. Assuming for the sake of argument that the plaintiff is not governed by AICTE and the plaintiff institutions are in fact affiliated to the above named foreign Universities and the degrees, diplomas or awards granted by these institutes are recognised and equated with the Indian degrees, diplomas and awards, in the opinion of this Court, it does not advance the case of the plaintiff in any way.

11. Admittedly, the courses imparted by the defendants are not related either to management or tours and travels etc., which are the courses run by the plaintiff institute. Therefore, it is to be seen as to whether there is any likelihood of any confusion arising in the mind of general public, the prospective students, who want to pursue their studies either in the plaintiff's or the defendant's institute. In the opinion of this Court, merely by the use of the word "Skyline" as a prefix in the name of the two institutes, there is no likelihood of such a confusion because the full name of the plaintiff institute is "Skyline Education Institute (India) Pvt. Ltd." while that of the defendant is "Skyline Institute of Engineering and Technology "are distinctive enough. The words "Engineering and Technology" used in the defendant's name are sufficient to indicate to all concerned that the defendant is not the same institute as the plaintiff. In any case, care can be taken to clarify such a confusion, even if there is any likelihood of such a confusion.

12. So far as existence of prima facie case and balance of convenience is concerned, in the opinion of this Court, equities in the present case appear to be equally balanced inasmuch as, as per the plaintiff's own showing, it had adopted the word "Skyline" in respect of its institute since 1996 and the defendant though started the present institute in the year 2002, had been pursuing their activities in the field of Engineering and Construction under the name having a prefix "Skyline" since 1986 onwards. The institute of the defendant is being run by a Trust and has been established for a laudable object of imparting technical education to all sections of the Society at a cost of more than Rs.10 crores after meeting all requirements with regard to its registration and affiliation. They are already functional and have made recruitment of the faculty and imparting

education to its first batch. The next batch is likely to start shortly. On the face of this position, this Court is of the view that it would create hardship and irreparable loss to the defendants if a blanket injunction is granted against them from running their institute under the name and style of "Skyline Institute of Engineering and Technology". The balance of convenience, if any, Therefore lies in favor of the defendants rather than in favor of the plaintiff.

13. In view of the foregoing discussion and having considered the matter from different angles, this Court is of the opinion that it would meet the ends of justice if the defendants are presently directed not to undertake any course in management and tour and travels etc. which are run by the plaintiff's institute. The plaintiff admittedly is not running any course in engineering at the present. So far as the aspect of issuing advertisements and making publicity under the name "Skyline" is concerned, it would be appropriate if the defendants are called upon to append a note in their advertisements issued by them either for admission of students to its institute or for recruitment of faculty or for any other purpose, clearly indicating therein that the institute of the defendants has no concern whatsoever with the plaintiff institute being run under the name of "Skyline Educational Institute (India) Pvt. Ltd."

14. In the result, the application is partly allowed and till the disposal of the suit, the defendants are hereby restrained from starting any new courses similar to the courses run by the plaintiff viz graduate and post-graduate education in management, travel and tourism. The ex-parte ad-interim order dated 01.10.2002 is modified to the extent that the defendants will be free to make publicity/issue advertisements etc. in their existing name for any courses in technical/engineering education provided the said advertisements contain a note to the effect that the institute of the defendants is not related to the plaintiff's institute being run under the name of "Skyline Educational Institute (India) Pvt. Ltd." in any way.

The application stands disposed of accordingly.

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The pleadings are complete. Additional documents, if any, may be filed within four weeks.

List before Joint Registrar on 11.08.2003 for admission/denial of the documents.