

(2019) 08 DEL CK 0054

In the Delhi High Court

Case No : Civil Suits (COMM) No. 156 Of 2019

Tata SIA Airlines Limited

APPELLANT

Vs

M/S Pilot18 Aviation Book Store & Anr

RESPONDENT

Date of Decision : 05-08-2019

Acts Referred:

Citation : (2019) 3 RLR 169 : (2019) 264 DLT 66 : (2019) 80 PTC 600

Hon'ble Judges : Prathiba M. Singh, J

Bench : Single Bench

Advocate : Kruttika Vijay, Aditya Gupta, Raunaq Kamath, Manya Hasija, Nishad L. S.

Judgement

Prathiba M. Singh, J

1. The Plaintiff has filed the present suit seeking permanent injunction, restraining infringement of its registered trademarks, dilution, damages, rendition of account, etc. The Plaintiff is a joint venture of TATA Sons Private Limited (hereinafter, "TATA Sons") and Singapore Airlines Limited (hereinafter, "SIA"). It operates a full-service airlines under the mark "VISTARA" which undertakes almost 800 weekly flights in India to various destinations. The mark "VISTARA" has been used by the Plaintiff since 2014 for airline services. The use of the mark "VISTARA", as part of the airline services includes usage on the various merchandise, uniforms, name tags, badges and other accessories which are worn by airline staff. The Plaintiff's mark "VISTARA" is registered in India in classes 12, 39, 21, 25, 27 and 28, Singapore, and in various other jurisdictions. The list of the Indian and global registrations has been set out in the plaint.

2. The grievance of the Plaintiff in the present suit is that the Defendant No.1 - M/s Pilot18 Aviation Book Store operates an aviation studies portal called www.pilot18.com and Defendant No.2 - Mr. Aanand Keerthy is believed to be the proprietor of Defendant No.1. The Plaintiff acquired knowledge in February, 2019 of sale of "VISTARA" branded products on the website of the Defendants as also

on various e-commerce portals such as Amazon and Snapdeal. A perusal of the website print outs, which have been placed on record, show that the Defendants are offering various badges, name tags and other accessories including mugs, baggage tags, etc., bearing the mark "VISTARA" with an identical device mark/logo form.

3. It is the case of the Plaintiff that it got an investigation conducted, in which it was revealed that the Defendants are not only offering these products on their website, but also claim that the Defendants were supplying "VISTARA" branded aviation products to Vistara Airlines. Ld. counsel, upon a query, submits that this is untrue, as the Plaintiff has never sourced any "VISTARA" branded products from the Defendants. Ld. counsel also relies upon the grooming manual of the Plaintiff company which shows that the uniform and other accessories worn by the staff is used and distributed in a controlled manner and is under the control of the Ground Station Head.

4. It is under these circumstances that the present suit came to be filed and prayers for injunction were sought. This Court, vide order dated 26th March, 2019, after considering the pleadings and the documents on record, restrained the Defendants from manufacturing, selling, offering for sale, or dealing in any manner whatsoever with any "VISTARA" branded products, or any other mark or logo which is identical or deceptively similar to the "VISTARA" mark/logo.

5. Submissions have been heard on behalf of both parties. The case of the Defendants is that they have not used the trademark 'Vistara' and that the Plaintiff has concocted a false story. The Defendants have stated in their written statement in paragraph 6 as under: -

"6. That the contents of para no.23-28 of the plaint are wrong hence denied. It is submitted that defendants was selling journals and periodicals related to aviation and never sell any products bearing the registered marks VISTARA and the Vistara Star Logo through their physical premises in Delhi as well as through online. Further submitted that defendants never violated Intellectual Property Rights and mislead customers to make profit."

6. A Local Commissioner was also appointed on 26th March, 2019. The Local Commissioner had visited the premises of Defendant No. 1 at E-1085, Lower Ground Floor, Ramphal Chowk Circle, Dwarka Sector-7, Palam Extension, New Delhi-110077 on 2nd April, 2019. The Local Commissioner, in fact, found a large number of products bearing the mark 'Vistara'. He has prepared an inventory of the same. The person present at the shop was one Mr. Vikash Kumar Jha, who claimed to be one of the employees. He informed the Local Commissioner that the proprietor is one Mr. Aanand Keerthy who is out of station. The mobile number of Mr. Aanand Keerthy was also recorded by the Local Commissioner. The Local Commissioner had spoken to the owner and had then executed the commission. All the inventorised products, which were more than 300 in number, including tie clips, cufflinks, bag tags, stickers etc. bearing the brand name

'Vistara' were sealed and released on Superdari to Mr. Vikash Kumar Jha. The Superdari was also executed.

7. The Local Commissioner has placed on record the photographs of the products which were seized by him. It is clear that the Defendants are taking a false stand before this Court that they have not used the mark 'Vistara'.

8. On the said date, i.e. 9th July, 2016, considering that the Defendants took a plea that they have never sold any products bearing the mark 'VISTARA' or the logo 'VISTARA', which was completely contrary to the report filed by the Local Commissioner which had reported that a large number of goods with the mark 'VISTARA' were found at the Defendant's premises, the Court had directed both Mr. Vikas Kumar Jha and Mr. Anand Keerthy to remain present in Court on the next date and were also directed to produce the products which were seized and given to them on Superdari.

9. On 25th July, 2019, the statement of Mr. Anand Keerthy was recorded in which he stated as under:

"Statement of Mr. Anand S.V. Keerthy, S/o K.K. Sadanandan, R/o Kidangil House, Kidarakuzhy, Venganoor PO, Trivandrum, (M-9020649964) On S.A.

I live in Trivandrum, Kerala and I have a shop in Ramphal Chowk, Dwarka Sector-7, New Delhi. I am in the business of selling of books and accessories for pilots. Mr. Vikas Kumar Jha is my salesman in the Dwarka shop. When the Local Commissioner visited the shop in Dwarka, I was contacted by my salesman - Mr. Vikas. I state that the goods bearing the mark 'VISTARA' which were seized by the Local Commissioner were being sold at our shop. I was supplied these products by some seller who approached my shop. He handed us various merchandise. All the products which are in the shop were supplied by him. I paid approximately Rs.8,000 - Rs.9,000/- to the said supplier. I did not know that these were duplicate products. I was not aware that these are counterfeit products or that they are not permitted to be sold. I am undergoing training for becoming a pilot. I admit my signatures on the written statement. I did not understand what was prepared by my lawyer and what was stated in the written statement as I was unwell due to the filing of this case.

M/s Pilot18 Aviation Book Store is the name of my store. I adopted this name because at the age of 18, one can apply to become a pilot.

I admit the contents of the website which are on record from pages 53 to 80. After the Local Commissioner visited our premises, we have stopped selling any products having the trademarks of other airlines. We were using the names of Jet Airways, Indigo, Spice Jet and Air India. I had also displayed my products on Amazon and on any given day, there are only 4 to 5 customers who purchase the products."

10. A perusal of the statement shows that the plea taken in the written statement was false, i.e., that the Defendants had not used the mark 'VISTARA'.

This is a grave misstatement made by the Defendants in the face of the Commissioner's report and in the face of the admission in the statement recorded on 25th July, 2019. Clearly, the Defendants were not just selling products bearing the mark 'VISTARA' but products of various other airlines including Jet Airways, SpiceJet and Air India as well. The sale of so much merchandise with the names of various airlines is not only violative of the trademark rights of the respective parties, including the Plaintiff but also poses a serious threat owing to the fact that some unauthorised persons may try to seek entry into airports etc., on the basis of the counterfeit badges, labels, uniforms and other merchandise illegally bearing the trademarks of these airlines. Such a threat cannot be ignored by this Court in the manner in which it is sought to be done by the Defendants.

11. This Court is of the opinion that the Defendants are not only liable to be permanently enjoined from using the mark 'VISTARA' but are also liable to pay costs and damages. Further, the incorrect statement made in the written statement also constitutes perjury before this Court, inasmuch as the Defendants had no remorse whatsoever while making the statement in the written statement that they have never used the trademark 'VISTARA'. Clearly, the pleading in the written statement is not only a misstatement but clearly constitutes misrepresentation to the Court. Under these circumstances, there shall be permanent injunction restraining the Defendants in terms of paragraph 36 (a), (b), (c), (d) & (f) of the plaint.

12. Ld. Counsel for the Defendants submits that this Court may consider the matter sympathetically owing to the fact that the Defendants tender an unconditional apology. Mr. Aanand Keerthy is present in Court and he submits that he regrets making the false statement in the written statement as also on his behalf by his counsel on the previous occasion. The Defendants are directed to pay Rs.2 lakhs to the Plaintiff within a period of 1 month from today as costs. On the next date, the Court shall consider if any further action is required to be taken in view of the false plea taken in the written statement and the apology that has been tendered today.

13. Ld. Counsel for the Defendants submits that the goods that were seized by the Local Commissioner have been brought to Court. The same be handed over to the Ld. counsel for the Plaintiff today itself.

14. The mark VISTARA is quite popular in India and has acquired a unique status. It is a distinctive mark that enjoys enormous goodwill and reputation in the airline, travel and tourism industry. Use of this mark, even in respect of unrelated services would create confusion and deception. It deserves to be declared as a 'well-known mark'. The suit is thus decreed in terms of paragraphs 36 (a), (b), (c), (d) & (f). Decree sheet be drawn.

15. List the matter for reporting compliance of payment of costs on 12th September, 2019. Mr. Aanand Keerthy shall remain present in Court on the next

date.