

(2017) 10 DEL CK 0184

In the Delhi High Court

Case No : Civil Suit (COMM) No. 282 Of 2016, Miscellaneous Application No. 11426 Of 2014, 11707 Of 2017

Today Merchandise Pvt. Ltd. & Anr.

APPELLANT

Vs

WWW.INDIATODAYSHOPPING.CO.IN & Anr

RESPONDENT

Date of Decision : 26-10-2017

Acts Referred:

Citation : (2017) 10 DEL CK 0184

Hon'ble Judges : Jayant Nath, J

Bench : Single Bench

Advocate : Nishant Verma, Setu Niket

Final Decision : Disposed Of

Judgement

Jayant Nath, J

1. Arguments have been heard in the suit. On 21.05.2015, learned Counsel for Defendant no.2 submitted that they are not a necessary and a proper party to the suit and hence, Defendant no.2 was deleted from the array of parties. Despite several attempts of service including service through publication in newspapers- Indian Express and Dainik Jagran, none has appeared on behalf of Defendant no.1. Since, Defendant no.1 did not appear, nor written statement was filed, it was proceeded ex parte vide order dated 11.07.2017.

2. The Plaintiffs have filed the present suit seeking a decree of permanent injunction restraining infringement of their registered trademark, "India Today" by the Defendant no.1 and its agents. Plaintiffs also seek a decree of damages of Rs. 20,00,100/- against the Defendant no.1.

3. It is the contention of the Plaintiffs that Plaintiff no.1 and 2 are companies incorporated under the Companies Act, 1956. Plaintiff no.1 owns and operates a website, namely, "www.bagittoday.com" which is an exclusive, invitation-only online destination where members discover premier brands which is open for a brief time span. Plaintiff no.2 is a media conglomerate, founded in 1975, which

includes 14 magazines, 3 radio stations, 4 TV channels, 1 newspaper, a classical music label, book publishing and India's only book club. Plaintiff no.1 is also a part of India Today Group (Plaintiff no.2).

4. It is the contention of the Plaintiffs that the India Today Group has painstakingly built its reputation and goodwill over the last several decades.

5. It is the contention of the Plaintiffs that the Plaintiffs' trademark "India Today" is registered in several countries, including but not limited to India details of which are mentioned in the plaint. By virtue of the same, the Plaintiffs enjoy the exclusive statutory rights in India to use the trademark "India Today" and other related trademarks. All the trademarks have been renewed from time to time and are valid and subsisting.

6. The contention of the Plaintiffs is that they were recently made aware of the impugned website operating under the name and style, "www.indiatodayshopping.co.in" being run by Defendant no.1. It appears to be an e-commerce portal engaged in business identical to that of the website owned by Plaintiff no.1.

7. The Plaintiffs further contend that not only has Defendant No.1 knowingly, wrongfully and unlawfully registered a domain name which is identical to the registered trade mark of the Plaintiff no.2, "India Today" but the fact that the Defendant no.1 through the impugned website also carries on business identical to the business carried out by Plaintiff No. 1 on its website, "www.bagittoday.com" further increases the likelihood of confusion amongst the consuming public.

8. It is the contention of the Plaintiffs that a preliminary search was conducted by the Plaintiffs on the Whois database which shows that one Mr. Rajeev Sharma is the registrant of the said domain name and Defendant no.2 is the sponsoring Registrar. The said report states that the said domain name was registered by Defendant no.1 on 03.12.2013. It is further contended that a domain name is a host name that identifies Internet Protocol resources such as websites and is nothing more than an identity card for an organization.

9. It is the contention of the Plaintiffs that the likelihood of confusion is even greater since the consuming public, which has immense faith in the Plaintiffs goods / services and is aware that the plaintiffs are themselves also operating a business which is similar to the business conducted by the Defendant on the impugned website. It is further contended that any patron of the Plaintiffs who has availed the services of the Plaintiffs on the Website, "www.bagittoday.com" might get the impression that the Plaintiffs are merely expanding their online retail business and are now offering goods / services on the impugned website. It is submitted that the actions of the Defendant no.1 are not only diverting traffic from the Plaintiffs websites, but also causing losses to the Plaintiffs.

10. It is further contended by the Plaintiffs that the actions of Defendant no.1 are

not only resulting in dilution of the Plaintiffs registered trade mark, since the Plaintiffs have no control over the quality of goods / services provided by the Defendant no.1 on the impugned website but also leave the Plaintiffs open to legal action as customers who are dissatisfied with the quality of goods/ services provided by the Defendant no.1 or have other issues with the content of the impugned website, might initiate legal action against the Plaintiffs under the mistaken impression that the Plaintiffs are the owners of the impugned website.

11. Reference may be had to the judgments of this Court in the case *The Indian Performing Right Society Ltd. vs. Gauhati Town Club and Anr.*, 2013 (134) DRJ 732 and in *United Coffee House vs. Raghav Kalra & Anr.* 2013 (55) PTC 414 (Del) where it was held that when the defendant is ex parte, the plaintiff need not file evidence keeping in mind that the averments made in the plaint have been supported by an affidavit. In the present case the plaint is supported by the affidavit of Mr. Gaurav Kachru, CEO of the Plaintiff no.1 company.

12. In view of the averments made in the plaint, the Plaintiff no.1 and 2 have established that they are the registered owners of the said domain name "www.bagittoday.com" and trademark "India Today" respectively, thus having a statutory right to exclusive use of the same. The Plaintiffs have also proved that the use of the mark by Defendant no.1 "www.indiatodayshopping.co.in" constitutes violation of the Plaintiffs' statutory right. The impugned mark is structurally, visually and phonetically identical to the registered trademark of the Plaintiffs and the act of the Defendant no.1 in using the domain name "www.indiatodayshopping.co.in" is an infringement of the Plaintiffs' trademark. The acts of the Defendant no.1 also appear to be lacking bonafide.

13. Accordingly, a decree of permanent injunction is passed in favour of the Plaintiffs and against Defendant no.1 restraining the Defendant no.1, its employees, servants, agents, etc. from in any manner howsoever and whatsoever infringing the trade mark "India Today" or from using the domain name "www.indiatodayshopping.co.in" or using any other name or mark which is deceptively similar to the Plaintiffs' trademark "India Today" or any part thereof. The Plaintiffs shall also be entitled to costs.

14. The present suit is disposed off. All pending applications also stands disposed off.