
(2014) 04 DEL CK 0060
In the Delhi High Court
Case No : CS (OS) 664/2013

Triumphant Institute of Management Education	APPELLANT
Vs	
Time Coaching/Education	RESPONDENT

Date of Decision : 30-04-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2
Trade Marks Act, 1999 — Section 11(6), 11(7), 11(7), 2(1)(h), 2(1)(zg)

Citation : (2014) 59 PTC 529

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

Bench : Single Bench

Advocate : Pravin Anand and Saukshmya, Advocate for the Appellant

Judgement

G.S. Sistani, J.—Plaintiff has filed the present suit for permanent injunction restraining violation and infringement of rights in the trademark T.I.M.E., passing off, unfair competition, delusion, rendition of accounts, delivery-up etc. against the defendants. Summons in the suit and notice in the application under Order XXXIX Rules 1 and 2 were issued on 10.04.2013. On an application for appointment of Local Commissioners, filed by the plaintiff, five Local Commissioners were also appointed in the matter. Counsel for defendants No. 3 and 4 entered appearance on 11.07.2013. Despite service, none appeared for defendant Nos. 1 and 2 who were proceeded ex parte on 11.07.2013 on which date fresh summons were also issued to defendant No. 5. Written statement was filed on behalf of defendant Nos. 3 and 4 on 23.09.2013 and admission/denial of documents was completed vide order dated 21.01.2014. Subsequently, the matter was referred for mediation between the plaintiff and defendant Nos. 3 and 4 to the Delhi Court Mediation and Conciliation Centre wherein amicable settlement was arrived at between the parties. On 11.03.2014, the suit was decreed in favour of the plaintiff and against defendant Nos. 3 and 4 in terms of the Settlement Agreement marked as Exhibit C-1. Ex parte evidence of plaintiff was closed on 25.04.2014.

2. Plaintiff has filed ex-parte affidavit by way of evidence of Mr. Sai Kumar Swamy, P.W.-1, the Director and the authorized signatory of the plaintiff company. The ex-parte affidavit by way of evidence of P.W.-1 has been marked as Ex. P.W.-1/A.

3. In his affidavit, P.W.-1 has deposed that the plaintiff is the renowned owner of comprehensive chain of coaching institutes and training centers running all over India under the name and style of T.I.M.E" which has been derived as an acronym of their Company name i.e. "TRIUMPHANT INSTITUTE OF MANAGEMENT EDUCATION".

4. P.W.-1 has further deposed that Plaintiff is the registered owner and lawful proprietor of the trademark as well as logo - T.I.M.E Triumphant Institute of Management Education" in class 41 and has over 232 offices in 116 towns and cities across the country and offers training for national level exams such as CAT, NIMCET and CLAT, IIT Foundation program aimed at students of the 8th, 9th and 10th standards, and the IIT JEE Program (aimed at 11th and 12th standard students). P.W.-1 has further deposed that the plaintiff provides training for state-level exams like the ICET in Andhra Pradesh, the Maharashtra CET and other local exams in different states. He has further deposed that in addition to the national and state level programs, the Plaintiff also caters to aspirants looking at higher education abroad and offers training for international tests such as the GRE and GMAT.

5. Mr. Sai Kumar Swamy, P.W.-1 has further deposed that the Plaintiff no longer sees itself as being limited to the arena of "coaching" but has expanded in the much broader space of "education & training". It has further been deposed by P.W.-1 that the Plaintiffs institute T.I.M.E Triumphant Institute of Management Education" is constantly diversifying & entering new areas of imparting education and it has successfully forayed into the pre-school segment as well with T.I.M.E. Kids chain of schools in the year 2008 which currently has 122 pre-schools across the 31 cities.

6. It has further been deposed by P.W.-1 that the Plaintiffs activities have grown over the last twenty two years and the said mark has acquired huge reputation and goodwill in the field of training/coaching services in India. He has further deposed that the Plaintiffs coaching institute being one of India's top coaching institutes, trains more than 1,50,000 aspirants of various competitive exams every year and is regarded as one of the best coaching institutes in India for selection in various competitive examinations including the following:

"? CAT (National entrance examination for MBA, IIMs) ICET (Common entrance examinations held for admissions to MBA and MCA courses in Andhra Pradesh)

? XAT (Xavier Aptitude test Jamshedpur)

? CMAT (Common Management Admission Test. Common entrance examination held for admissions to MBA courses all over India)"

7. P.W.-1 has further deposed that apart from MBA/MCA, Plaintiff also offers coaching and preparation for variety of other examinations like engineering/ medical entrance examinations, IIT-JEE, BBA/BCA entrance examinations etc.

8. It has further been deposed by P.W.-1 that the plaintiff has a brand turnover of approximately Rs. 240 Crores. The details of Plaintiffs turnover since last six years is reproduced below:--

9. P.W.-1 has also deposed that a copy of Chartered Accountant certificate detailing the Plaintiffs turnover in the Year 2010-2011 and the Chartered Accountant Certificate indicating the promotional/advertising expenditure of the Plaintiff Company (and not the brand) in the financial year 2010-2011 are exhibited as Exhibit P.W. 1/3 and Exhibit P.W. 1/4 respectively.

10. P.W.-1 has further deposed that the Plaintiff has been advertising its coaching centers since the year 1992 extensively all over the country including by way of publication in various local newspapers and national dailies. The said advertisements of the Plaintiff; T.I.M.E. Triumphant Institute of Management Education are not only for advertising the coaching centers under the said name but also to invite prospective franchisees from various parts of the country. Copies of various press clippings and advertisements of the Plaintiff have been exhibited as Exhibit P.W. 1/5 and original Corporate Brochures of the Plaintiff have been exhibited as Exhibit P.W. 1/7.

11. It has further been deposed by P.W.-1 that the trademark "T.I.M.E" was coined by the Plaintiff during its inception in 1992 and has been continuously used since then till date in respect of its service of education and training primarily falling in class 41. He has also deposed that the public at large associate the mark "T.I.M.E. Triumphant Institute of Management Education" with the Plaintiff and therefore, the mark having earned enormous amount of goodwill and reputation is entitled to high degree of protection. He has further deposed that the mark "T.I.M.E. Triumphant Institute of Management Education" in both word and logo form stands registered in the name of the Plaintiff herein in class 41. Details of the Plaintiffs trade mark registrations as well as pending applications are reproduced below:--

Copy of Trademark Registration Certificate and Online Status along with the Journal Advertisements for the T.I.M.E. formative marks of the Plaintiff have been exhibited as Exhibit P.W. 1/9.13. P.W.-1 has further deposed that the Plaintiffs T.I.M.E coaching institutes owing to the enormous reputation and goodwill acquired all over India have become one of the top coaching institutes in India for management and other courses and all students aspiring for the competitive exams are aware of the Plaintiffs coaching centre.

13. It has further been deposed by P.W.-1 that the Plaintiff has chosen to make its online services available by virtue of domain name www.time4education.com and this has been categorically done to enable the prospective students/ franchisees to get exclusive information about the Plaintiff as desired. He has

also deposed that the said domain name was registered in the name of T.I.M.E. Pvt. Ltd. since August 25, 2000 which belongs to the Plaintiff and the website is fully operational. Internet printouts of the Plaintiffs website www.time4education.com have been exhibited as Exhibit P.W. 1/12.

14. P.W.-1 has further deposed that the mark due to its long and continuous use has acquired the status of the well known mark under Sections 11(6) and 11(7) of the Trademarks Act 1999 and the public at large immediately connects and associates the mark and name T.I.M.E with the Plaintiffs educational and training/coaching services.

15. Mr. Sai Kumar Swamy, P.W.-1 has further deposed that the said trade mark/service mark has been continuously, extensively, and uninterruptedly used by the Plaintiff in respect of the educational services provided by them since 1992. He has further deposed that the aforesaid mark of the plaintiff symbolizes in itself a mark of quality and has become synonymous with high degree of excellence.

16. P.W.-1 has further deposed that the defendants are engaged in providing educational/training services for CAT, MAT, IIT- JEE/ISEET/AIEEEE/State Level Exam, GOVT Jobs/Medical entrance exams in Gorakhpur, Lucknow and Azamgarh under the impugned mark/name/trading style/trade name TIME/TIMES. He has further deposed that the Defendant No. 1 is a coaching institute running under the name TIME COACHING/EDUCATION whereas defendant No. 2 is one of the owners of defendant No. 1 and defendants No. 1 and 2 own and run the website under the impugned domain name www.timeforedu.com. Coloured printouts of Defendant's No. 1 website have been exhibited as Exhibit P.W. 1/14. Printout from the WHOIS database of the Defendant No. 1 website www.timeforedu.com has been exhibited as Exhibit P.W. 1/15.

17. P.W.-1 has further deposed that at the time of the institution of the suit, the website of the Defendants was an active website promoting the services of the defendants in such a manner that any normal internet user would presume that the Defendants are connected with the Plaintiff due to the use of the name/mark TIME by the defendants. He has further deposed that on bare perusal of the impugned website, confusion is inevitable as to their origin because the domain names used by the Defendant No. 1 & 2 are identical to the mark of the Plaintiff. Registration details of the domain names of the plaintiff and defendants are provided below:

18. P.W.-1 has further deposed that the registration of the domain name www.timeforedu.com by the defendants is completely dishonest, illegal and mala fide with a view to make monetary gain out of the Plaintiffs goodwill and reputation considering that the plaintiff is the most well recognized player in the field of education and training services in India and enjoys enormous goodwill and reputation.

19. It has further been deposed by P.W.-1 that the defendants No. 1 & 2, due to mala fide adoption and subsequent conduct are liable to pay penal damages.

20. P.W.-1 has further deposed that defendants No. 1 & 2 are running the coaching classes under the mark/name TIME with a mala fide intention to encash upon the goodwill and reputation of the Plaintiff and to pass off their services as those of the plaintiff and that such a use has caused loss to the Plaintiffs both by way of monetary loss as well as by way of dilution of their brand and hence, it is a fit case for the grant of pecuniary damages to the Plaintiff.

21. I have heard counsel for the Plaintiff and carefully perused the documents which have been placed on record along with the affidavit by way of evidence of P.W.-1. Plaintiff has proved the copy of Trademark Registration Certificate and Online Status along with the Journal Advertisements for the trademark T.I.M.E. used by the plaintiff which have been exhibited as Exhibit P.W. 1/9. Plaintiff has also proved the use of its domain name www.time4education.com since August, 2000 which has been exhibited as Ex. P.W.-1/12. Plaintiff has also proved the copy of Chartered Accountant certificate of the details of the Plaintiffs turnover in the Year 2010-2011 and the Chartered Accountant Certificate indicating the promotional/advertising expenditure of the Plaintiff Company (and not the brand) in the financial year 2010-2011 which have been exhibited as Exhibit P.W. 1/3 and Exhibit P.W. 1/4 respectively, to prove the heavy turnover that the plaintiff has been generating under its trademark "T.I.M.E." due to high quality of educational services provided by them. Plaintiff has also relied upon the copies of various press clippings and advertisements of the Plaintiff which have been exhibited as Exhibit P.W. 1/5 and original Corporate Brochures of the Plaintiff which have been exhibited as Exhibit P.W. 1/7 to prove the vast scale on which plaintiffs have advertised their brand over a period of years and the enormous expenses incurred by the plaintiff in advertising/promoting its brand.

22. The local commissioner who visited the premises of defendant No. 2 has also filed his report, wherein he has stated that a board outside the premises of defendant No. 2, bearing the mark TIME was found. Further, on being questioned about the other branches and institutes being run by the name of TIME, the Defendant No. 2 stated that initially he was a partner with EDU TIMES YOUTHZ Pvt. Ltd., i.e. Defendant No. 3. It was further stated by Defendant No. 2 that he had left the partnership with EDU TIMES YOUTHZ Pvt. and now he independently runs classes under the name "TIME for education foundation"

23. Section 2(1)(zg) of the Trade Marks Act, 1999 defines "Well-known trade mark", in relation to any goods or services as a mark which has become so to the substantial segment of the public which uses such goods or receives such services that the use of such mark in relation to other goods or services would be likely to be taken as indicating a connection in the course of trade or rendering of services between those goods or services and a person using the mark in relation to the first-mentioned goods or services.

24. In the case of Tata Sons Ltd. Vs. Manoj Dodia and Others, , following observations were made by another bench of this court with respect to the factors that ought to be looked into while considering what constitutes a "well-

known mark":

"13. Trademarks Act, 1999 does not specify the factors which the Court needs to consider while determining whether a mark is a well known mark or not, though it does contain factors which the Registrar has to consider whether a trademark is a well known mark or not. In determining whether a trademark is a well known mark or not, the Court needs to consider a number of factors including (i) the extent of knowledge of the mark to, and its recognition by the relevant public; (ii) the duration of the use of the mark; (iii) the extent of the products and services in relation to which the mark is being used; (iv) the method, frequency, extent and duration of advertising and promotion of the mark; (v) the geographical extent of the trading area in which the mark is used; (vi) the state of registration of the mark; (vii) the volume of business of the goods or services sold under that mark; (viii) the nature and extent of the use of same or similar mark by other parties; (ix) the extent to which the rights claimed in the mark have been successfully enforced, particularly before the Courts of law and trademark registry and (x) actual or potential number of persons consuming goods or availing services being sold under that brand."

[Also See Rolex Sa Vs. Alex Jewellery Pvt. Ltd. and Others, ."

25. On the basis of the documents placed on record, the plaintiff has been able to establish that the Plaintiff is the registered owner and lawful proprietor of the trademark as well as logo - "T.I.M.E Triumphant Institute of Management Education", and offers training for national level exams such as CAT, NIMCET and CLAT, IIT Foundation program etc. and also caters to aspirants looking at higher education abroad and offers training for international tests such as the GRE and GMAT. Plaintiff has also established that the Plaintiffs T.I.M.E coaching institutes owing to the enormous reputation and goodwill acquired by them all over India, have become one of the top coaching institutes in India for management and other courses and all students aspiring for the competitive exams are aware of the Plaintiffs coaching centre. Further, the plaintiff has also been able to show that the plaintiff has been advertising its coaching centers since the year 1992 extensively all over the country including by way of publication in various local newspapers and national dailies and have incurred humongous expenses in advertising/promoting their services under the said trademark. The plaintiff has also been able to establish that the trademark "T.I.M.E" was coined by the Plaintiff at the time of its inception in the year 1992 and has been continuously used by the plaintiff since then till date in respect of its service of education and training. Plaintiff has further established that the mark T.I.M.E" due to its long and continuous use has acquired the status of a well known mark under Sections 11(6) and 11 (7) of the Trademarks Act 1999 and the public at large immediately connects and associates the mark and name T.I.M.E with the Plaintiffs educational and training/coaching services and therefore, the mark having earned enormous amount of goodwill and reputation is entitled to high degree of protection. Also, plaintiff has depicted how online services are being made

available by them through their registered domain name www.time4education.com which was registered in the name of T.I.M.E. Pvt. Ltd. in August 25, 2000 and which is also entitled to protection against infringement.

26. In the case of Evergreen Sweet House Vs. Ever Green and Others, , it was observed as under:

"15. A mark, is said to be deceptively similar to another (Section 2(1)(h), Trademarks Act, 1999) if it so nearly resembles that other mark as to be likely to deceive or cause confusion. Section 29(1) deals with a situation where the defendant uses a mark, which is identical or deceptively similar to that of the plaintiff, in respect of the same goods or services, and in such manner that it is likely that such use is taken as being an use as a trademark. This amounts to infringement. To fall within Section 29(1), the defendant's use of the mark must be so that it is likely that the public assumes that the said mark is used as a trademark. Section 29(2) deals with three situations; one where the defendants mark is identical to that of the plaintiff and in respect of similar goods. Two, where the marks are similar and in respect of goods which are identical or similar. Three, the marks as well as the goods are identical. Infringement does not take place if only one of the three ingredients are satisfied; the plaintiff has to prove that use by the defendant is likely to cause confusion on the part of the public or is likely to have an association with the registered mark."

(Emphasis Supplied)

27. Having regard to the evidence on record and the report filed by the Local Commissioner, I am of the view that the defendants, who are engaged in the same line of business as the plaintiff, i.e. providing educational/training services for entrance exams, are carrying on their business under the impugned name "TIME" which is identical to the plaintiff's trade name/mark. The plaintiff's trade name/mark has attained the status of a well known mark by virtue of high quality services provided by them over years and the consumers and the general public identify the mark T.I.M.E. with the plaintiff alone. The impugned mark has attained a secondary significance as belonging to the plaintiff. Use of the impugned trademark TIME by the defendants is nothing less than a blatant attempt on their part to ride on the hard earned goodwill and reputation of the plaintiff that has been acquired by the latter over a period of years by providing quality education/coaching to students. Furthermore, adoption of the domain name www.timeforedu.com by the defendants, to provide online education services is completely mala fide, dishonest and illegal as the same is phonetically and visually deceptively similar to the domain name of the plaintiff i.e. "time4education.com". The domain name adopted by the defendants, by virtue of being so deceptively similar to that of the plaintiff, is bound to create confusion in the minds of public with respect to its origin and any average internet user would presume that the defendants are carrying on their business in association with the plaintiff. Therefore, in my view, adoption of the trade mark "TIME" and domain name www.timeforedu.com by the defendants amounts

to infringement of the plaintiffs trademark "T.I.M.E." and domain name "time4education.com" under section 29 of the Trade Marks Act, 1999 and the defendants are also guilty of passing off their services as those of the plaintiff, thus illegally exploiting the latter's goodwill and diluting their well reputed trade mark.

28. Although under para 40(d) of the plaint, the plaintiff has sought a decree of rendition of accounts of profits illegally earned by the defendants by use of the impugned trade mark, it is prayed that punitive damages may be awarded in this case.

29. In the case of Time Incorporated Vs. Lokesh Srivastava and Another, apart from compensatory damages of Rs. 5 lakhs, punitive damages were also awarded. [Also see Hero Honda Motors Limited Vs. Rafiq Memon , Gora Mal Hari Ram Ltd Vs. Ashique Exports Pvt. Ltd, , L.T. Overseas Ltd. Vs. Guruji Trading Co. and Another, , Relaxo Rubber Limited and Another Vs. Selection Footwear and Another, .

30. 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 10.04.2013 is confirmed and the suit is decreed in favour of the plaintiff and against the defendants No. 1 & 2 in terms of para 40 (a), (b) and (c) of the plaint. Defendant No. 5 is directed to cancel the domain name hitherto registered in the name of defendants No. 1 and 2. Plaintiff is also entitled to damages to the tune of Rs. 2.0 lacs. Decree sheet be drawn up accordingly.