

Siemens Aktiengesellschaft and anr Vs. Siemens Solutions

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Court : Delhi

Decided On : Nov-10-2014

Judge : Manmohan Singh

Appellant : Siemens Aktiengesellschaft and anr

Respondent : Siemens Solutions

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % Judgment delivered on:

10. h November, 2014 + CS (OS) No.1986/2013 SIEMENS AKTIENGESELLSCHAFT & ANR. Plaintiffs Through Ms. Anju Agrawal, Adv. versus SIEMENS SOLUTIONS ThroughDefendant Defendant already ex-parte CORAM: HON'BLE MR.JUSTICE MANMOHAN SINGH MANMOHAN SINGH, J.

(Oral) 1. The plaintiffs have filed a suit for permanent injunction restraining infringement of the plaintiffs well known trademark SIEMENS, misuse of the trademark SIEMENS as a trading name and rendition of accounts, damages, delivery up etc.

2. Plaintiff no.1 is the registered proprietor of the trademark SIEMENS duly registered in India in class 1, 5,7,9,10,11 and 35. The plaintiff No.1 had adopted the trademark SIEMENS in the year 1847 in Germany and has a worldwide reputation.

3. The Plaintiff No.2 is an Indian subsidiary of plaintiff No.1. and has spent huge sum on sales, marketing and advertisement for the trademark SIEMENS of plaintiff No.1 in India. The domain name www.siemens.com and www.siemens.co.in are owned by the plaintiff companies.

4. The plaintiff is dealing with wide range of products and services in relation to automation, building technology, consumer products, industry solutions, energy, financial solutions, healthcares, motor an drives and mobility etc.

5. The plaintiffs came to know about the defendants website www.siemenssol.com in the month of July, 2013.

6. It is the case of the plaintiffs that the defendants are infringing the plaintiffs well-known trademark SIEMENS by using the trademark and trade name SIEMENS in relation to services control automation solutions, refineries, distilleries, sugar plants, steel plants, cement plants, paper industries , textiles industries, water treatment & waste water treatment plants, dairy plants etc. automobiles, material handling, packaging, printing, airport baggage handling, monitoring solutions for power generation, power plants distribution and energy monitoring, substations, boilers, air, gas, water & electricity etc. which is tarnishing the reputation, goodwill and monetary losses.

7. On 11th October, 2013 this Court passed an order of ad-interim injunction and restrained the defendant, their servants, agents etc. from manufacturing, selling, offering for sale, advertising, directly or indirectly dealing in products and offering services under the trademark and trade name SIEMENS or any other trademark and trade name deceptively and/or confusingly similar to the trademark SIEMENS of the plaintiffs. On 17th July, 2014 the said interim order was confirmed. The 8. defendant was proceeded ex-parte as neither the written statement has been filed nor anyone on behalf of the defendant has appeared. Thereafter the Court directed to the plaintiffs to file an ex-parte Evidence by way of Affidavit. The plaintiffs filed evidence on 3rd September, 2014 by way of 9. affidavit of Ms. Aditi Ghosh and on 25th September, 2014 the evidence by way of affidavit of Ms. Aditi Ghosh was tendered who has established and proved their case.

10. The plaintiffs exhibited the following documents: i) Exhibit PW1/1- Original General Commercial Power of Attorney dated 08.08.2014 executed by plaintiff No.1 in favour of Ms. Aditi Ghosh. (Filed alongwith evidence of Ms. Aditi Ghosh) ii) Exhibit PW1/2 Original Board Resolution dated 01.08.2014 in favour of Ms. Aditi Ghosh by plaintiff No.2 (Filed alongwith evidence of Ms. Aditi Ghosh) iii) Exhibit PW1/3 Original General Commercial Power of Attorney executed by plaintiff No.2 in favour of Ms. Aditi Ghosh. (Filed alongwith evidence of Ms. Aditi Ghosh) iv) Exhibit PW1/4 Constituted Power of Attorney executed by plaintiff No.1 in favour of Mrs. Laxmi Bisht. (Page No.324 filed alongwith list of documents alongwith plaint). v) Exhibit PW1/5 Constituted Power of Attorney executed by plaintiff No.2 in favour of Mrs. Laxmi Bisht. (Page No.1-2 filed alongwith list of documents on 21.10.2013). vi) Exhibit PW1/6 to PW110 (Collectively) Original Legal Certificate of Trademark Registration Nos. 153597, 153598, 153599, 153600 and 159675 registered in the name of plaintiff No.1. (Page No.1-13 filed alongwith list of documents dated 25.08.2014). vii) Exhibit PW1/11 (Collectively) List of Trademark Registrations for the Trademark SIEMENS in various countries of the world. (Page No.1964 filed alongwith list of documents alongwith plaint). viii) Exhibit PW1/12 (Collectively) Trademark Registration Certificates for the Trademark SIEMENS in various countries. (Page No.65-161 filed alongwith list of documents alongwith plaint). ix) Exhibit PW1/13 Catalogue of plaintiffs. (Page No.278-367 filed alongwith list of documents alongwith plaint). x) Exhibit PW1/14 True copy of invoices for the Trademark SIEMENS of plaintiff No.2. (Page No.162-227 filed alongwith list of documents alongwith plaint). xi) Exhibit PW1/15 Annual Reports for the year 1982/83 of plaintiff No.2. (Page No.228-277 filed alongwith list of documents alongwith plaint). xii) Exhibit PW/15(A) xiii) Exhibit PW1/16 (Collectively) xiv) Exhibit PW1/17 Printout of website www.siemens.com owned by plaintiff No.1. (Page No.417-423 filed alongwith list of documents alongwith plaint). Printout of website www.siemens.co.in owned by plaintiff No.2. (Page No.424-668 filed alongwith list of documents alongwith plaint). Printout of who is record showing details of domain name www.siemenssol.com. (Page No.373-374 filed alongwith list of documents alongwith plaint). xv) Exhibit PW1/18 (Collectively) Printout of website of defendant www.siemenssol.com. (Page No.368-372 filed alongwith list of documents alongwith plaint). xvi) Exhibit PW1/19 (Collectively)

Printout of various links/URL in respect of advertisement of various jobs under the name of Siemens. (Page No.375-416 filed alongwith list of documents alongwith plaint).

11. It appears from the evidence that plaintiff No.2 which is a subsidiary of plaintiff no.1 company is carrying on its business within the jurisdiction of this Court as it is evident from Exhibit PW114 (Invoice of plaintiff No.1 showing the current address of Plaintiff No.2) hence this Court has jurisdiction to try this case.

12. The defendant did not appear before this Court in spite of substituted services by way of publication in the newspaper Times of India circulated in the cities of Hyderabad and Pune.

13. The plaintiffs filed printout of whois record of defendants domain name www.simenssol.com along with list of documents of plaint at page No.368-372. A bare perusal of this domain name reflects the expiry date of this domain name as 19th June, 2014 however the current status of this domain name (defendants domain name) reflects expiry date as 19th June, 2015 as well as updation date as 29th August, 2014 which clearly establishes that the defendant intentionally updated the domain name and is also still running their website www.simenssol.com in gross violation of order dated 11th October 2013. Various link/URL are also still running and advertising various job under the name of SIEMENS and Siemenssol.

14. From the entire gamut of the matter, it is evident that the defendant is guilty of infringement of trademark and passing off its business and services as that of the plaintiffs. The defendant has no justification to adopt and use the trademark/trade name/ domain name and to use the same in any manner even its own websites, otherwise it would amount to infringement of legal rights of the plaintiffs. The defendant has deliberately and intentionally chosen not to appear in Court and has raised its defence as the defendant is aware that it has no case of merit. Thus, the defendant is liable to pay the punitive damages and costs in view of its clear conduct in the matter.

15. The plaintiffs have also suffered loss and damages by reason of unlawful activities of the defendant who are using trademark SIEMENS and trade name Siemens Solution which results in tarnishing the plaintiffs goodwill, reputation and monetary losses.

16. Infact, the defendant is also cheating to the general public by offering services mentioned in paragraph No.2 under the trademark and trading name SIEMENS hence the public interest, the defendant also liable to be restrained from carrying the business under the trademark and trading name SIEMENS.

17. The website and domain name www.siemenssol.com is liable to be restrained which is creating confusion and deception. The use of website and domain name www.siemenssol.com is also infringing the plaintiffs well-known trademark SIEMENS which is giving impression that the said website belongs to plaintiffs directly and/or indirectly. The current Registrar of domain name (www.siemenssol.com) is Tucows domains Inc.

18. The necessary directions are issued to the Registrar of disputed domain name to stop the said domain name so that the website of the defendant shall stop automatically. The plaintiffs are also entitled to get punitive/exemplary damages, court fees and cost of proceedings.

19. Therefore, the suit of the plaintiffs is decreed in terms of the prayer clause (a), (b) and (c) of the plaint.

20. As regard to the costs and damages are concerned, there are various judgments pertaining to the aspect of damages where this Court has granted previously granted both exemplary and punitive damages against the defendants in ex-parte matters of similar nature in various industries ranging from software to automotives, chocolates to pharmaceuticals, stationary to luxury brands, etc. Some of such decisions are as under: (i) In Time Incorporated Vs. Lokesh Srivastava & Anr., 2005 (30) PTC3(Del.) while awarding punitive damages of Rs. 5 lakhs in addition to compensatory damages also of Rs. 5 lakhs, Justice R.C. Chopra observed that time has come when the Courts dealing in actions for infringement of trademarks, copyrights, patents etc., should not only grant

compensatory damages but also award punitive damages with a view to discourage and dishearten law breakers who indulge in violation with impunity out of lust for money, so that they realise that in case they are caught, they would be liable not only to reimburse the aggrieved party but would be liable to pay punitive damages also, which may spell financial disaster for them.

(ii) In Microsoft Corporation Vs. Rajendra Pawar & Anr., 2008 (36) PTC697(Del.) decided on 27th July, 2007, this Court held that Perhaps it has now become a trend of sorts, especially in matters pertaining to passing off, for the defending party to evade court proceedings in a systematic attempt to jettison the relief sought by the plaintiff. Such flagrancy of the Defendants conduct is strictly deprecatory, and those who recklessly indulge in such shenanigans must do so at their peril, for it is now an inherited wisdom that evasion of court proceedings does not de facto tantamount to escape from liability. Judicial process has its own way of bringing to tasks such erring parties whilst at the same time ensuring that the aggrieved party who has knocked the doors of the court in anticipation of justice is afforded with adequate relief, both in law and in equity. It is here that the concept of awarding punitive damages comes into perspective.

21. Keeping in view the infringement committed by the defendant, I am of the opinion that a sum of Rs. 3,00,000/- as punitive damages as well as damages on account of loss of reputation and goodwill of the plaintiffs. The plaintiffs are also awarded Rs.30,000/- as costs of the Counsel fee.

22. The decree be drawn accordingly in terms of clause (a), (b) and (c) of the plaint. Rest of the prayers are disposed of in view of the finding arrived in para 20 and 21 of the judgment. The suit is disposed of accordingly. (MANMOHAN SINGH) JUDGE NOVEMBER10 2014

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