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Triumphant Institute of Management Education Pvt Ltd vs.time Plus Institute & Anr

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Court : Delhi

Decided On : Apr-16-2019

Appellant : Triumphant Institute of Management Education Pvt Ltd

Respondent : Time Plus Institute & Anr

Judgement :

\$~42 * IN THE HIGH COURT OF DELHI AT NEW DELHI FAO(OS) (COMM) 87/2019 TRIUMPHANT INSTITUTE OF MANAGEMENT EDUCATION PVT LTD Through Mr. Sanjeev Sindhwani, Sr. Advocate with Ms. Bitika Sharma, Ms. Anusuya Nigam, Mr. Lakshay Kaushik, Ms. Ruchika Wadnawan & Ms. Vrinda Pathak, Advocates. versus Appellant TIME PLUS INSTITUTE & ANR Through None.

... RESPONDENTS

+ CORAM: HON'BLE MR. JUSTICE G.S.SISTANI HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

1604.2019 % CM APPLs 18201/2019 & 18202/2019 (Exemptions) 1. Exemptions are allowed, subject to all just exceptions.

2. The applications stand disposed of. FAO(OS) (COMM) 87/2019, CM APPL182002019 (stay) & CM APPL182032019 (u/O XXVI Rule 9 CPC) 3. Challenge in this appeal is to the order dated 08.04.2019 passed by a learned Single Judge of this Court on two applications being I.A. no.5138/2019 filed under Order 39 Rules 1 & 2 C.P.C. and I.A. no.5139/2019 under Order 26 Rules 9 of CPC. The learned Single Judge has declined the grant of an ad-interim injunction and also appointment of a Local Commissioner.

4. Learned Senior Counsel appearing for the appellant submits that the learned Single Judge has failed to consider that TIME is the registered FAO (OS) (COMM) 87/2019 Page 1 of 10 trademark of the appellant. The appellant has been using the trademark TIME since the year 1993. The details of the registration have been extracted in para 13 of the plaint, which read as under : 13. The Plaintiff is the registered proprietor, prior user and lawful owner of the mark 'T.I.M.E' and its variants in Classes 16, 38 and 41. Details of the various trademark applications registered in favour of the Plaintiff have been provided below: S.No.Trade Mark TM Date of Class 1 2 3 4 5 6 Application Application No.1343168 09.03.2005 41 2109877 04.03.2011 41 1408314 22.12.2005 41 3201141 03.03.2016 41 2109879 04.03.2011 16 2820861 01.10.2014 16 FAO (OS) (COMM) 87/2019 Page 2 of 10 7 8 9 10 11 12 T.I.M.E. TUTIONS (WORD) time4education (WORD) time4education (WORD) 2820862 01.10.2014 16 2559941 05.07.2013 38 2712609 04.04.2014 38 2712599 04.04.2014 38 2712608 04.04.2014 38 1725338 26.08.2008 16 5. Mr. Sindhwani, learned senior counsel appearing for the appellant submits that the appellant has also been vigilant in protecting its trademark, which is evident from the fact that as many as 8 proceedings were initiated. In all the earlier proceedings, ex-parte injunctions were granted and 5 cases stand decreed and other stand disposed of all in favour of the appellant herein. Counsel points out that the appellant is the registered proprietor of the mark T.I.M.E. and their formative marks in classes 16, 38 and 41 and the prior adopter of the same for the coaching and training services for competitive exams. Further the appellant also enjoys valuable common law rights in the said marks by virtue of being the first to coin and adopt the said marks, having used the mark continuously, exclusively and extensively since the year 1993 in the field of Coaching and Training Institutes for various competitive exams. FAO (OS)

(COMM) 87/2019 Page 3 of 10 6. A comparison of the two marks have been scanned at page 13 of the paper book to show that the respondent has not only copied the name, colour scheme, writing style but the logo as well. Counsel for the appellant/plaintiff states that by offering its services under the identical mark TIMESIAS, the defendants/respondents are trying to deceive the general public and their consumers are bound to believe that the defendants/respondents services are connected and approved by the plaintiff/appellant. He also states that the impugned mark is structurally, phonetically and deceptively similar to that of the plaintiffs/appellants registered trade mark.

7. Counsel for the appellant submits that the appellant has a very strong presence throughout the country and has 12 coaching centres within the territorial jurisdiction of this court. Counsel further submits that over the passage of time, the appellant has made a special name in the field of coaching classes, owing to the hard work and the specialized faculty employed by the appellant. Counsel further contends that one of the reasons for declining an ex-parte injunction as observed by the learned Single Judge in para 8 of order dated 08.04.2019 is that the registered office of the appellant is in Andhra Pradesh and out of more than 200 centres, only one centre is in Delhi, which is factually incorrect and thus, it is for this reason, it has been observed that the business of coaching has a territorial nexus. Counsel contends that had the learned Single Judge correctly noted that there were in fact 12 coaching centres in Delhi alone, the observations of the learned Single Judge would have been otherwise and in favour of the appellant.

FAO (OS) (COMM) 87/2019 Page 4 of 10 8. Mr. Sindhwani, learned senior counsel, contends that the learned Single Judge has wrongly observed that the acronym of the appellant/plaintiff is itself an imitation of an earlier well-known marks TIMES and Times of India. Learned counsel submits that there was a suit filed against the appellant by M/s Time Inc., USA and no injunction was granted in their favour against the appellant. There was an amicable settlement arrived at between the appellant herein and M/s Time Inc., USA, who was the plaintiff in the suit before the learned Single Judge of this Court being CS (OS) 1389/2003 and the appellant continued to use the mark with minor changes of changing its mark/logo from TIME to T.I.M.E.. Pursuant to this settlement, the appellant has used the trademark T.I.M.E. and the domain name continuously and extensively.

He further submits that Times of India has also not opposed the use of the mark and in fact as per his instructions, they are not even in the field of education. He further clarifies that the acronym of the appellant is vested on the full name of the Institute, which is Triumphant Institute of Management Education.

9. Learned senior counsel further submits that in case the ex-parte injunction is declined, serious prejudice would be caused to the rights of the appellant. Counsel for the appellant has placed reliance on the observation made by another Division Bench of this Court in the order dated 23.11.2016 passed in FAO (OS) (COMM) 127/2016 titled as ITC LIMITED Vs. M/S ARORA OFFSET PRINTERS & ORS, more particularly paras 3 and 4. Counsel further submits that a local commissioner was also appointed in the said matter. The relevant part of the order dated 23.11.2016 reads as under : FAO (OS) (COMM) 87/2019 Page 5 of 10 3. Learned senior counsels for the appellant urge that in view of the law declared by the Supreme Court in the judgment reported as (2002) 3 SCC65Laxmikant V.Patel Vs. Chetanbhai Shah & Anr., where so telling is the infringement of a trade-mark and/or a trade-dress, injunction must ensue. As observed in paragraph 17 of the decision, in such a case a refusal to grant an injunction in spite of the availability of facts, which are prima-facie established by overwhelming evidence and material available on record justifying the grant thereof, occasion a failure of justice and such injury to the plaintiff as would not be capable of being undone at a later stage.

4. In afore-noted decision the Supreme Court was constrained to issue an ad-interim injunction in spite of overwhelming facts shown to the learned Trial Judge but ad-interim injunction not granted. 10. Counsel has further placed reliance on B.K. Engineering Vs. U.B.H.I. Enterprises, reported in 1985 (27) DLT120 more particularly paras 34, 45, 55 and 56, which we reproduce below : 34. B.K. is the manufacturer's mark of the plaintiffs. This is seen by the public. In a common field of activity it is likely to deceive prospective purchaser if the defendants are allowed to market their product under the mark B.K.-81. There is likelihood of diversion of trade from the plaintiffs to the defendants. This is an injury against which an injunction is directed in the action of passing off. The plaintiffs can well complain that their goodwill suffers from an injurious association with the defendants' goods.

In *Harrods Ltd. v. R. Harrod Ltd.*, (1924) 41 RPC74(22) the public thought that the great, departmental store had stopped to money lending. An action of passing off lies if one trader represents his business as being that of or connected with that of, the plaintiff, as is the case here. There is a false suggestion by one competing trader in the same line of business that his business is connected with that of the other. This, I FAO (OS) (COMM) 87/2019 Page 6 of 10 apprehend, would damage the reputation and thus the goodwill of the plaintiffs' business.

45. The learned judge observed that if one carefully examines the products one can distinguish the defendants' bells from the plaintiffs' bells as the name of U.B.H.I. Enterprises is engraved on the defendants' bell. I do not agree. It is no answer to a complaint of misrepresentation to say that, an observant person who made a careful examination would not be misled. The test is the impression likely to be produced on the casual and in Senger unwary customer, *Manufacturing Co. v. Loog*, (1882) 8 App. Cas 15 (27). 18). (per Lord Selborne 55. The mainstay of the defendants' case is that they are using their mother's name B.K. to which they are entitled. I cannot accept this contention. Firstly it is not the defendants' name. The name of the partner who appeared before the learned judge and made a statement is Man Mohan Singh. Even if a man uses his own name as to be likely to deceive and so to divert business from the plaintiffs to the defendants he will be restrained. Pears' soap is the stock example of this. A man name William Johan Pears cannot set up a soap business and call his soap Pears Soap. He is not entitled to abbreviate his own name so as to lead to deception. [Parker Knoll (supra) at p. 276 per Loard Denning].. Another example I gave in the course of arguments was of Haman soap. On the cake it is stamped A Tata Product. Is it open to a rival trader to call his soap. Tata Soap simply because Tatas do not make Tata Soap as such by name?. The fundamental question is whether there is a likelihood of deception of the public by the use of a particular name. If the complainant can bring an action against the deceiver, the maker of the representation. As Lord Parker said that the case of action is complete with the representation. It is no longer true that the cause of action is complete only upon sale. It was true to say this in 1896 when Lord Halsbury likelihood there is FAO (OS) (COMM) 87/2019 Page 7 of 10 decided the leading case of *Reddaway v. Banham*. It is true after 1915 when the leading cases of *Parker- Knoll* and *Warnink*

were decided. The roots of passing off tort lay in deceit, yet the fraud was practised not upon the plaintiff but upon the customers of the defendant who purchased the goods believing them to be of the plaintiffs manufacture.

56. If there is a real prospect of injury to the plaintiff's goodwill he is entitled to injunction. Applying this principle it seems to me that B.K. is the most valuable single asset of the plaintiffs. Prima facie they possess a substantial reputation in this. The adoption of B.K.-81 by the defendants would lead persons to think that B.K.- 81 is the product of a business associate or an affiliate of B.K. Engineering Co. There is a real risk that a substantial number of members among the public would in fact believe that there is a business connection between the plaintiffs and the defendants. The defendants cannot be allowed to cash in on the popularity of the plaintiffs' product in which they have built up a goodwill. If not prevented they will harm the plaintiffs' business. In my opinion there is sufficient material to support a claim for temporary injunction at this stage. 11. We have heard learned senior counsel for the appellant. As per plaint, the plaintiff is the registered proprietor, prior user and lawful owner of the mark T.I.M.E. and its variants in classes 16, 38 and 41 and is in the business of running coaching services for various national as well as international competitive examinations. The appellant has a chain of more than 270 Institutes throughout the country including 12 Institutes in Delhi alone. The appellant has been in this business since the year 1993 and has grown from strength to strength, as is evident from the fee calculation figures and the amount spent on advertisements. We also find that the respondent has only recently commenced his business in FAO (OS) (COMM) 87/2019 Page 8 of 10 the month of March, 2019. We also find that the nature of business of the appellant and the respondent is identical in nature and there is every likelihood that students are likely to be misled by the use of identical name & writing style and identical colour scheme. The appellant is not only the registered proprietor of the trademark TIME but is also a prior user. For all the reasons stated hereinabove, we are satisfied that it is a fit case for grant of an ad-interim injunction and also for appointment of a local commissioner. In case the ad-interim injunction is not granted, the appellant will suffer irreparable loss and damage to their goodwill and reputation. The appellant is also likely to suffer monetary damages in terms of loss of consumers.

12. Accordingly, till the next date of hearing, the respondent, its proprietors, directors, partners, principal officers, agents, family members, servants, dealers, distributors and/or anyone acting for or on their behalf are restrained from using the trade mark/name/domain name TIME / T.I.M.E/ TIME+ or any other mark/trade name/logo/label, which is identical or deceptively similar to the appellant's well-known trademark T.I.M.E in relation to services identical or similar to that of the appellant so as to result in infringement of the appellant's common law and statutory rights. Respondent, its proprietors, directors, partners, principal officers, agents, family members, servants, dealers, distributors and/or anyone acting for or on their behalf is further restrained from using the trade mark/name/domain name TIME / T.I.M.E/ TIME+ or any other mark/trade name/logo/label which is identical or deceptively similar to the appellant's well-known trademark T.I.M.E in relation to services FAO (OS) (COMM) 87/2019 Page 9 of 10 identical or similar to that of the appellant so as to result in passing off, misrepresentation and dilution of the appellants rights.

13. We are also of the view that it would be in the interest of justice that a local commissioner is appointed to visit the premises of the respondent at Time Plus Institute, B-4, Bareja Sadan Market, Badarpur, New Delhi- 110044. Accordingly, Mr. Arjun Nihal, Senior Advocate (Mob.9999453649), is appointed as a local commissioner. The local commissioner will take into custody the infringing products including packaging, brochures, stationery, pamphlets or any other print or electronic material or otherwise bearing the impugned trade name/mark TIME and its variants. The offending materials may be sealed, inventory to be prepared by the local commissioner and other relevant documents should be taken on pendrive and should be handed over to the respondent on Superdari.

14. The fees of local commissioner shall be Rs.1,00,000/- and the local commissioner would be entitled to police protection. The compliance of Order 39 Rule 3 CPC shall be made within 10 days from today.

15. CM APPL182032019 stands disposed of.

16. List the appeal and stay application being CM APPL182002019 on 08.05.2019.

17. Copy of this order be given dasti under signature of the Court Master. G.S. SISTANI, J JYOTI SINGH, J APRIL 16 2019 ck / FAO (OS) (COMM) 87/2019 Page 10 of 10

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