

Make My Trip(India) Pvt. Ltd. Vs. Make My Tours Pvt. Ltd. and Ors.

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SooperKanoon Citation : sooperkanoon.com/14152

Court : Delhi

Decided On : Dec-23-2014

Judge : Manmohan Singh

Appellant : Make My Trip(India) Pvt. Ltd.

Respondent : Make My Tours Pvt. Ltd. and Ors.

Judgement :

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

23. d December, 2014 % + CS(OS) 4039/2014 MAKE MY TRIP(INDIA) PVT. LTD.
..... Plaintiff Through Mr.Prashant Gupta, Adv. with Mr.Kanishk Kumar, Adv. versus
MAKE MY TOURS PVT. LTD. & ORS. Through None. Defendants CORAM:
HON'BLE MR.JUSTICE MANMOHAN SINGH MANMOHAN SINGH, J.

(Oral) I.A. No.26297/2014 This is an application filed by the plaintiff under Section 151 CPC seeking exemption from filing true typed copies of documents. For the reasons stated in the application, the same is allowed, subject to said documents being produced at the time of admission/denial of the documents. The application is disposed of. CS(OS) No.4039/2014 Let the plaint be registered as a suit. Issue summons to the defendants through all modes of service including e-mail in addition, returnable on 13th February, 2015. I.A. No.26296/2014 (u/o XXXIX R.1 & 2 CPC) 1. Issue notice to the defendants, returnable on 13th February, 2015.

2. Plaintiff has filed the present suit against the defendants seeking injunction and other reliefs to restrain the defendants from using the marks, Makemytours, and the logo (hereinafter referred to as impugned marks) thereby infringing the plaintiff's marks & (hereinafter referred to as MMT marks) and copyright in the artistic works and (hereinafter referred to as MMT logo).

3. Brief facts leading to the present case are that the plaintiff, a company incorporated under the Indian Companies Act, 1956, was founded in the year 2000 for offering of a range of best-value composite packages of flights, hotels and tour bookings with cutting-edge technology and dedicated customer support. The plaintiff claims to be the pioneer of the entire online travel industry in India. It is averred that focusing on enabling and assisting travelers with instant booking of flights and hotels and on providing comprehensive choices to its users, the plaintiff was able to take immediate advantage of the new opportunities in the Indian domestic travel market. Further, on account of launch of operations by various budget airlines in India and abroad, the plaintiff was able to offer its customers the option of making online travel bookings at very cheap prices. This resulted in the plaintiff becoming the preferred choice of millions of customers in India and internationally looking to book their travel online.

4. The plaintiff was originally incorporated as Travel by Web Private Limited on 13th April, 2000. On 2nd August, 2000, the plaintiff changed its corporate name to Makemytrip.com Pvt. Ltd. Subsequently, on 28th June, 2002, the plaintiff again changed its name to MakeMyTrip (India) Pvt. Ltd., its present name.

5. It has been averred that over the years, the plaintiff has expanded its repertoire of products and services to go beyond online booking of travel. As on date, the plaintiff, through its primary website, www.makemytrip.com and other technology-enhanced platforms, offers a wide range of travel services and products, both in India and abroad, including air tickets, hotels, rail tickets, bus tickets, car hire, domestic and international holiday packages and ancillary travel requirements such as facilitating access to travel insurance.

6. Recently, in January, 2010 with a view to raising of funds, the plaintiff decided to make an Initial Public Offer (IPO) of shares in the United States of America. The

said IPO was an instant and huge success. Consequently, on 12th August, 2010 the plaintiff was listed on the NASDAQ- The United States of Americas Stock Exchange.

7. Plaintiff is the registered proprietor of the following marks in India: Mark CS(OS) No.4039/2014 Registration Class No./ Use Since Description Status of Date Filing of 1447892 / April 2006 CS(OS) No.4039/2014 Services 39 25, June 27, 2000 Travel arrangements including in bound and out bound tour packages, holiday packages, booking of seats for travel and travel reservation including flight bookings, bus reservations, railway reservation including flight booking, bus reservations, railway reservations, luxury coach booking, taxi and pleasure boat booking, arranging of cruises, transport packages including tourist transport (passenger) car rentals, coach rentals escorting of travelers, sight seeing Registered and valid upto April 1954006/ 16 April 21, 2010 8. Proposed to be Used information about journeys and transportation Advertisemen t boards of paper, booklets, catalogues, charts, comic books, magazines (periodicals), newsletters, newspapers, pamphlets, periodicals, posters, publications (printed). Registered and valid upto April 21, 2010 Additionally, the plaintiff has also applied for registration of the following marks in India: Mark Application No./ Date of Filing Class User Claimed 1954007 / April 21, 2010 35 Proposed to be used 1954008 / April 21, 2010 39 Proposed to be used MakeMyTrip 2149947 / May 25, 2011 39 June 27, 2000 MakeMyTrip 2149948 / May 25, 2011 43 June 27, 2000 2149949 / May 25, 2011 43 June 27, 2000 2191826 / August 17, 2011 39 April 3, 2011 2191827 / August 17, 2011 43 April 3, 2011 MakeMyTrip - Memories Unlimited 2191828 / August 17, 2011 39 April 3, 2011 MakeMyTrip - Memories Unlimited 2191829 / August 17, 2011 43 April 3, 2011 2415691 / October 22, 2012 35 April 4, 2012 2415692 / October 22, 2012 38 April 4, 2012 2415693 / October 22, 2012 39 June 27, 2000 2415694 / October 22, 2012 41 April 4, 2012 2415695 / October 22, 2012 42 April 4, 2012 2415696 / October 22, 2012 43 June 27, 2000 2536200 / May 22, 2013 39 & 43 April 2, 2013 2536201 / May 22, 2013 39 & 43 April 2, 2013 MakeMyTrip - Hotels Unlimited 9. In addition to the Indian registrations/ applications, the plaintiff has also registered the MMT marks in several foreign jurisdictions, including Bhutan, Mauritius, Nepal, Singapore, Taiwan, USA, Canada, Indonesia, UAE and Malaysia. The plaintiff has pending applications for

registration of the MMT marks in several countries including Australia, Thailand and Sri Lanka.

10. It has been stated that the MMT logos, and , constitute original artistic works within the meaning of the Copyright Act. The said works were created in the year 2000, and ever since their creation, the same have been continuously and extensively used by the plaintiff in relation to the MMT marks. Plaintiff has obtained copyright registration in respect of the artistic work vested in the following logos in India: under Diary No.6720/2011-COA dated 25th a. May, 2011; b.-. under Registration No.A- 105451/2013 dated 19th September, 2013; c.-. under Registration No.105452/2013 dated 19th September, 2013; 11. Additionally, the plaintiff has also applied for registration of copyright in respect of several other artistic works, as detailed in Para 20 of the plaint.

12. It has been stated that with a view to promote its MMT marks and MMT logos, the plaintiff has made substantial investment in advertising and promotion on a worldwide basis, through electronic and print media including, newspapers, television, magazine publications and over the Internet. Details of the marketing expenses incurred by the plaintiff in the advertising and promotion of the MMT marks and MMT logos in India for the last thirteen years are provided in Para 22 of the plaint out of which the said expenses for the period 2013-2014 are stated to be Rs. 1,080,097,176 13. It has also been stated that the plaintiff has been actively involved in sponsoring various national and international events, including Bollywood movies and international sports events. Specifically, the plaintiff has sponsored, inter-alia, Tripalong (April, 2012), Race 2 (Date of release- January 25, 2013), Indian Premier League franchisee Sunrisers Hyderabad (March, 2013), Yeh Jawani Hai Deewani (Date of release- May 31, 2013).

14. Further, it has been stated that the MMT marks and MMT logos have been the subject matter of widespread media coverage in leading Indian and international daily newspapers and magazines, including the Economic Times, the Hindu, Mail Today, India Today, the Mint etc. Additionally, a number of articles relating to the plaintiff have also been posted on various third party websites, including travel and tourism websites.

15. It has been averred that owing to its high quality of services and creative products, extensive advertising and promotion, sponsorship events and unsolicited media attention, the plaintiffs MMT marks and MMT logos have today achieved enviable fame and notoriety not only in India, but internationally. Consequently, the revenue attributable to the plaintiffs MMT marks and MMT logos in India alone runs into crores of rupees. A table showing the year-wise revenue generated by the MMT marks and MMT logos in India since 2000-till date is provided in Para 25 of the plaint out of which revenue for the period 2013-2014 is stated to be Rs.13,469,544,900 16. Plaintiff has been the recipient of numerous prestigious national and international awards. Additionally, the plaintiffs business has also been recognized as a SUPERBRAND in the year 2009-2010 by Superbrands India, which is a publication of the story of highly successful business and consumer brands.

17. Plaintiff is also a member of several well-known national and international trade associations, including, inter-alia, The International Air Transport Association (IATA), Indian Association of Tour Operators (IATO), Travel Agents Federation of India (TAFI), Travel Agents Association of India (TAAI), Ministry Of Tourism, Govt. Of India.

18. It is averred that plaintiffs website, www.makemytrip.com, is one of the most accessed and used online travel booking and planning portals in India and the number of Internet visitors to the plaintiffs website are consistently increasing. The number of Internet hits on the plaintiffs website www.makemytrip.com since October, 2010 till August 2014 is given in Para 29 of the plaint and the hits for August, 2014 were 76,13,48,233.

19. In addition to the Internet hits, the number of Internet users who have made travel bookings through the plaintiffs website has also been steadily increasing. A break-down of the total number of Internet users, who made bookings through the plaintiffs website for 2010-till date is given in Para 30 of the plaint and the users for the year 2014 (till October) were 343,727,615.

20. With a view to offer better structured tour and travel packages and related benefits to its customers, the plaintiff has entered into collaboration agreements

with various travel companies, hotels, airlines etc., including British Airways, Turkish Airlines, Gulf Air, Singapore Airlines, Lufthansa, Etihad Airways, HSBC, Accor, Hilton, Expedia, Amex, IBM, SBICPSL, HDFC Tourism Boards of Korea, New Zealand, Singapore, Australia and Malaysia.

21. Plaintiff has been actively enforcing its rights in the MMT marks and MMT logos through various legal actions. Plaintiff had earlier filed a suit for infringement being CS(OS) No.1902 of 2013 against an entity namely, Shree Ganesh Enterprises, before this Court for misuse of its mark wherein this Court vide its Order dated 1st October, 2013, granted an ex-parte ad-interim injunction restraining the defendant therein from using the mark and Logo in any manner including in relation to recruitment services.

22. Additionally, the plaintiff has filed several domain name complaints with the World Intellectual Property Organization (WIPO) through the Uniform Domain Name Resolution Policy (UDRP) and with the National Internet Exchange of India (NIXI) under the IN Domain Name Dispute Resolution Policy (INDRP) against the registration of the domain names , , .

23. It is the case of the plaintiff that by virtue of prior adoption, substantial expenditure on promotion, long, continuous and extensive use in India, significant turnover and diligent enforcement, the MMT marks have acquired a secondary meaning in the business and trade, qualifying them as well-known marks within the meaning of Section 2(1)(zg) and 11(6) of the Trade Marks Act, 1999 and is entitled to be protected as such.

24. The case of the plaintiff against the defendants is that somewhere in the last week of October 2014, the plaintiff came across a website www.makemytours.com that was providing information as to tours, packages, flight tickets and booking services, which services are identical to that of the plaintiff. Upon perusing through the said website, the plaintiff was shocked to note that apart from using the mark MAKEMYTOURS, which is deceptively similar to the plaintiffs mark MAKEMYTRIP, the website was also using the logo, which is virtually identical to the logo of the plaintiff. Additionally the website also provided with an option to contact a 24x7 helpline number, wherein a prospective customer could contact the

owner and make the desired booking. However, the impugned website was a passive website, in that it was not possible for a customer to make online bookings. A customer could only access information and, thereafter, in order to make a booking, the customer had to contact the defendants in person. As per the contact details provided on the impugned website, the defendant No.1 was the owner of the said website.

25. Immediately thereafter, the plaintiff proceeded to ascertain the WHOIS details of the domain name and learnt that the said domain was registered in the name of the defendant No.3, one of the directors of the defendant Nos.1 & 2. The WHOIS details further revealed that the defendant No.2 was the Registrants organization under which the defendant No.3 was operating.

26. The plaintiff around first week of November made enquiries with the records of the Trade Marks Registry and noted that the defendant No.1 had also filed a trademark Application under No.2325382 in Class 39 dated 2nd May, 2012 to register the mark MAKE MY TOURS. In its trademark Application, the said defendant had claimed use of the mark MAKE MY TOURS since 1st April, 2012.

27. Somewhere in the second week of November 2014, plaintiff conducted an investigation into the business activities of the defendants which revealed that defendants were carrying on its business under the impugned marks from the aforesaid premises. It has been mentioned that at the time of filing of the suit, the plaintiff noticed that the impugned website was not operational. However, the defendants were carrying on their business of making travel bookings under the impugned marks from the addresses mentioned and were also using the same as part of their company name. As such, the plaintiff being aggrieved by the continued use of the impugned marks initiated the present suit against the defendants.

28. From comparison of the marks, it is clear that the impugned marks used by the defendants in the course of their business, are not only virtually identical to the plaintiffs well-known MMT marks, but are also colorable imitation of the MMT logos. Besides, both the plaintiff and the defendants are providing identical services, being travel booking service and, therefore, the defendants are deemed

to have been aware of the goodwill and reputation of the plaintiff in the MMT marks and MMT logos. The visual identity between the defendants' plaintiffs mark and the mark and logo and the logo, seems to be motivated by an intention to trade upon and benefit from the reputation and goodwill enjoyed by the plaintiff in its MMT marks.

29. It is evident from the material placed on record that the MMT marks and MMT logos of the plaintiff are identified and associated in the public mind with the plaintiff. Defendants use and promotion of virtually identical impugned marks for identical services creates a false sense of affiliation or collaboration or nexus between the plaintiff and the defendants in the minds of the public. Such use by the defendants is likely to cause confusion and deception and is bound to mislead the public to believe that the source of the defendants services is the plaintiff.

30. Considering the facts of the present case as well as settled law applicable to the present case, this Court is of the opinion that the plaintiff has been able to make out a strong prima facie case in its favour and the balance of convenience also lies in favour of the plaintiff and against the defendants. The use of the impugned marks (Makemytours, CS(OS) No.4039/2014 and the defendants would cause irreparable loss and injury to the plaintiff, in case the interim order is not passed.

31. Accordingly, till the next date of hearing, defendants, jointly and severally, by themselves, their partners, servants, agents, representatives and all those acting in concert with them or claiming under or through them or otherwise howsoever, are restrained from using the impugned marks (Makemytours, and the logo) and/or any deceptive variation thereof upon or in relation to their business, products, services as a trade mark or as part of their trade/corporate name, Internet domain name, web address, email address infringe the and/or in any other manner whatsoever so as to plaintiffs and statutory trade marks and mark rights in its and logos, and/or so as to pass off or attempt to pass off or cause, enable or assist others to pass off their business, products and services as and for the business, products and services of the plaintiff.

32. However, it is made clear that defendants are at a liberty to use the mark/words "My Tour" or "My Travel" in different style/script.

33. Compliance of Order XXXIX Rule 3 CPC be made within one week. Dasti to plaintiff under the signatures of Court Master. (MANMOHAN SINGH) JUDGE
DECEMBER23 2014

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