

**infosys Technologies Limited Vs. K.T.L. Infosys Limited and anr.**

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**SooperKanoon Citation :** [sooperkanoon.com/704231](http://sooperkanoon.com/704231)

**Court :** Delhi

**Decided On :** Sep-05-2005

**Reported in :** 123(2005)DLT529

**Judge :** Anil Kumar, J.

**Acts :** Trade and Merchandise Act, 1958; ;Companies Act

**Appeal No. :** CS(OS) 1543/2002 and is 8973/2002

**Appellant :** infosys Technologies Limited

**Respondent :** K.T.L. Infosys Limited and anr.

**Advocate for Def. :** Nemo

**Advocate for Pet/Ap. :** Manmohan Singh, Adv

**Judgement :**

**Anil Kumar, J.**

1. This is a suit of plaintiff for permanent injunction against infringement of his trade mark/corporate name 'Infosys' and for rendition of accounts and payment of damages against defendant

2. The suit was filed by the plaintiff contending that 'Infosys Consultants Pvt. Ltd.', was incorporated on 02.07.1981 in the State of Maharashtra and shifted its base

to the State of Karnataka in 1992. Its name was changed to 'Infosys Technologies Pvt. Ltd.' on 21.04.1992 and was converted to a public limited company on 02.06.1992.

3. The plaintiff contended that the word 'Infosys' was coined by the plaintiff in order to distinguish its business and goods and the plaintiff is maintaining its corporate identity under the said name and its products and services are sold in the market all over the world under the said trade mark. The word 'Infosys' by virtue of its inherent distinctive and extensive use has become distinctive of plaintiff in the eyes of the consumers all over the world including India. The trade mark of the plaintiff 'Infosys' was got registered with Registration No. 475269 dated 15.07.1987 in Class 16 of the 4th Schedule of Trade and Merchandise Act, 1958 in respect of computer stationery, computer manuals, printed matter for computer instructions and teachings. The plaintiff is also a registered proprietor of the said mark under Registration No. 475267 as on 15th July, 1987 in class 09 in respect of computer hardware, computer interface, peripherals, etc. Trade mark of the plaintiff is also registered in class 07 in respect of machine, machine tools and motors under No. 484837 as of 27.01.1988. The trade marks are still valid.

4. The plaintiff gave the details of extension of its business and commercial activities and certification levels awarded by the plaintiff company on account of its reputation. Details of advertisements/promotional expenses incurred by the plaintiff since 1990 were also given. It was averred that the plaintiff became the first company incorporated under the Indian Companies Act to get its share listed on Nasdaq, US Stock exchange. The promotional expenditure was given during different years in para 7 of the plaint.

5. It was contended on behalf of the plaintiff that in or around June,2000 it became aware of existence of defendant No. 1 using its trade name and therefore, a notice dated 8th June,2000 was sent to the defendants demanding them to cease from using trade name 'INFOSYS'. Plaintiff had already issued trade mark caution notice in various News Papers and journals. A representation dated 8th July,2000 was also served on the Registrar of Companies contemplating that action shall be taken by the Registrar of companies, Kanpur. However, no action was taken

against defendant No. 1 which was originally incorporated on 12th September, 1989 as Koa Tools India Private Limited which ultimately changed its name to KTL Infosys Limited. In the record, defendant No. 2 is shown as its director.

6. Plaintiff averred that it also filed a writ petition against the Registrar of Companies, West Bengal seeking a restraint against permitting companies with the expression INFOSYS as a part of corporate name, where an interim order was passed.

7. It was contended that the defendants by using the mark INFOSYS as a part of corporate name of defendant No. 1 are attempting to and must have passed off their business as that of the plaintiff or connected to the plaintiff in some way. According to the plaintiff, the defendant have selected expression INFOSYS solely to trade on the goodwill and reputation of the plaintiff and project them as an associate and/or part of the plaintiff. Since the plaintiff has refused to desist from using the corporate name of plaintiff INFOSYS as part of the corporate name of defendant No. 1 and therefore the suit seeking perpetual injunction etc. has been filed.

8. The defendant Nos. 1 and 2 were served and put appearance through their counsel after an interim order dated 25th September, 2002 was passed against them restraining them and their subsidiaries, agents or servants from infringing the registered trade-mark 'Infosys' or any other deceptively similar trade-mark in their advertisements as part of their corporate name either in isolation or in goods and services or in or by way of any advertisement or publicity campaigns. During the pendency of the suit behalf of defendants time was also sought for amicable settlement of the dispute, however, neither the matter was settled nor any written statement was filed and subsequently even the appearance was not made on behalf of the defendants leading to passing of an ex-parte order against them on 5.7.2004. Thereafter, the plaintiff filed his evidence on affidavit by filing the affidavit of Sh. Nityanandan Radhakrishnan, corporate counsel and legal head.

9. The witness on behalf of the plaintiff proved the board resolution as Ex.P-1 authorizing the deponent Nityanandan Radhakrishnan to appear on behalf of

plaintiff who also proved the power of attorney in favor of Ashish Banerjee Ex.P-2 who had signed, verified and instituted the plaint. The plaintiff proved the certificate of incorporation as exhibit P-3 and gave details of registration of trade mark 'Infosys' in various classes and for various goods as detailed in paragraph 6 of the affidavit of the deponent. The trademark registrations were collectively proved by the plaintiff as exhibit P-4. Plaintiff deposed about the survey undertaken by a well-known English language weekly magazine Outlook where word 'Infosys' had been identified as leading Indian brand. The extracts from certain newspapers and journals regarding the trademark of the plaintiff were proved as exhibit P-5.

10. The plaintiff proved the legal notice which was given to the defendants which was exhibited as P-6 and trademark caution notices published in the Economic Times as exhibit P-7. After gathering information about defendant No. 1 a representation dated 8.7.2000 was sent to the Registrar of Companies, U.P, Kanpur and a copy of the representation was proved as annexure P-8.

11. The plaintiff deposed that the defendant by using the mark 'Infosys' as part of the corporate name of the defendant No. 1 is attempting to pass off their business as that of plaintiff and the defendants are attracting the customers of the defendants. The witness of the plaintiff categorically deposed that the defendants have selected the expression 'Infosys' solely to trade on the goodwill and reputation of the plaintiff and project them as an associate or part of the plaintiff.

12. The witness of the plaintiff has deposed that defendant is using the expression 'Infosys' as part of its corporate name with malafide intention and that the defendant has no right to use in its trade name/corporate name 'Infosys' or any other mark/name deceptively similar thereto or colorable imitation thereof. It has been deposed that defendants cannot pass on their business or goods as being that of plaintiff by making use of the mark 'Infosys' in isolation or in combination with other words or letters.

13. The contentions and pleas of the plaintiff remains undisputed as no written statement was filed. The evidence produced by the plaintiff also remains un rebutted. Consequently, it is held that the plaintiff coined and adopted the word

'Infosys' and on account of various trade marks which the plaintiff have obtained in respect of various goods, the plaintiff company only is entitled to use the word 'Infosys'. The word INFOSYS is being and has always been used not only in India but throughout the worldly plaintiff company.

14. In the facts and circumstances on perusing the plaint, documents filed, evidence produced by the plaintiff and the submissions made by the learned counsel for the plaintiff, it is concluded that the plaintiff has been able to make out the case for grant of permanent injunction. Considering the registration which plaintiff has, the extent of promotional expenditure spent by the plaintiff, irreparable loss shall be caused to the plaintiff in case defendant is allowed to continue using the word 'Infosys' in its corporate name in any manner.

15. The plaintiff has claimed damages of Rs. 5.00 lakh, and cost of proceedings and Rs. 15 lakhs towards rendition of account. The witness of the plaintiff also prayed that the suit be decreed in terms of prayer (a), (b), (c), (d) and (e) of the plaint, however, learned counsel for the Plaintiff, while making submission, restricted relief of the plaintiff for perpetual injunction only and gave up the other claims and reliefs of the plaintiff, if any.

16. Consequently, the suit of the plaintiff for permanent injunction against the defendant is decreed and the defendant is restrained from using trade mark/corporate name 'Infosys' as a part of mark and/or business name in respect of goods and/or services for publicity or propaganda and from using the mark 'Infosys' in isolation or in combination with words/letters/numbers in respect of his goods, advertisements and publicity campaigns.

17. The suit in terms hereof is decreed with costs. Decree sheet be drawn accordingly.