

infosys Technologies Ltd. Vs. Access Infosys and anr.

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Court : Delhi

Decided On : Sep-16-2005

Reported in : 2005(31)PTC374(Del)

Judge : Anil Kumar, J.

Acts : Trade and Merchandise Act, 1958; Companies Act

Appeal No. : CS(OS) 1530/2002

Appellant : infosys Technologies Ltd.

Respondent : Access Infosys 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 defendants.

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 Technology 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.

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.

5. It was contended by the plaintiff that when they became aware of the existence of defendant No. 1 under the name 'Access Infosys' and as the trading name of defendants' contained the expression 'infosys', a notice dated 11th December, 2001 through attorneys was served upon defendants asking the defendants to cease and desist from using the name 'Infosys'. The notice sent on behalf of the plaintiff was replied by the defendants by letter dated 22nd December, 2001 by which they refused to comply with cease and desist notice and refused from not using of word 'infosys'. Another notice dated 28th December.2001 was given,

which was also not complied with. Plaintiff contended that defendant No. 1 is a concern owned by Sannet Computers Pvt. Limited which is operating in the field of computer data information technology since 1999-2000. The business of defendants is similar to the business of the plaintiff and the defendants asserted in their reply to the notice of the plaintiff that they will apply for the registration of the trade name 'Access Infosys'. Defendant No. 2 is a company incorporated under the Companies Act and the corporate office of the defendant No. 2 is located in the same premises in which defendant No. 1 has its office and both are engaged in similar goods and services.

6. Plaintiff made a grievance that defendant No. 1 has a website under the domain name accessinfosys.com and the expression 'infosys' has been selected by the defendant solely to trade on the goodwill and the reputation of the plaintiff and to represent themselves as an association and/or part of the plaintiff. The plaintiff contended that the use of trade name 'infosys' by the defendants is contrary to the plaintiff's registered trade mark and the illegal acts of the defendants are causing unascertainable loss to the plaintiff which may not be compensated in terms of money. By using the trade name 'infosys', the defendants have invaded the valuable rights of the plaintiff and thus filed the suit for perpetual injunction seeking restraint against the defendants from using expression 'infosys' as a part of their corporate name and in their advertisements, websites or on goods or for services in any manner.

7. Pursuant to the summons issued, the defendants appeared on 17th February, 2003 through a counsel, however, subsequently neither any written statement was filed nor appearance was put and therefore, ex-parte proceedings against them were ordered. Thereafter, plaintiff was directed to file evidence on affidavit and prove the documents.

8. Plaintiff filed the evidence of its constituted attorney, Shri Nithyananda Radhakrishnan by his affidavit dated 6th April, 2004. The witness of the plaintiff categorically deposed that he is the constituted attorney and competent to file the suit on behalf of plaintiff and the plaint has been signed, verified and instituted by him. The witness deposed about the turnover of the plaintiff company and that the

adopted word 'infosys' has become a global symbol of excellence and the said word is used bonafidely, continuously and exclusively by the plaintiff in the case of its trade mark. The witness also deposed about the registration of its trade marks under class 16, 9 and 7 and gave the details of the sums spent on advertisements and sale promotional activities from the year 1990-91.

9. The plaintiff has proved the advertisements given in the name of 'infosys' in different newspapers, journals as exhibit 'A' and the copies of the notice and letters sent by the attorneys of the plaintiff and the reply received from the defendant as Exhibit 'B'. The caution notice on behalf of plaintiff was exhibited as Exhibit 'C'. The witness deposed about the writ petition filed and the notice of given to the Trade Mark Registry and exhibited the web pages as Exhibit D and D1. On behalf of plaintiff, it was categorically deposed that on account of illegal acts of the defendants losses are being caused to the plaintiff and that the defendants are not entitled to use the trade mark/name 'infosys' as part of their trading name of the first defendant nor they have any right to invade the perpetual rights of the plaintiff in respect of their registered trade mark/name 'infosys'

10. The pleas raised by the plaintiff have remained un-rebutted and the evidence adduced and the documents proved have also not been rebutted by the defendants. The plaintiff, in the circumstances, has been able to establish that the plaint has been signed, verified and filed by a duly authorized person on behalf of plaintiff and that the trade mark 'infosys' is a registered trade mark of the plaintiff. The plaintiff has also established the huge expenditure incurred by it on advertisements. It has been established that the defendants have indulged in illegal acts in order to utilize the trade name of the plaintiff for making illegal gains.

11. The learned counsel for the plaintiff, at the time of arguments, had stated that the plaintiff company gives up its relief of rendition of account and other reliefs except of perpetual injunction against using of their trade name 'Infosys' in any manner.

12. Considering all the facts and in totality of circumstances, the plaintiff is able to establish its claim against the defendants and therefore, I decree the suit of the plaintiff for perpetual injunction and restrain the defendants from using the name

'Access Infosys' as a part of their corporate name and use `Infosys' in their corporate name and in their advertisements, websites or on goods or for services or other commercial operations in any manner. The cost of the suit is also awarded to the plaintiff and against the defendants.

13. Decree sheet be prepared accordingly.

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