

Amazon Seller Services Private Limited ... vs Amazonbuys.In & Ors on 26 May, 2022

Author: Jyoti Singh

Bench: Jyoti Singh

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CS(COMM) 364/2022

AMAZON SELLER SERVICES

PRIVATE LIMITED & ANR.

..... Plai

Through: Mr. Saikrishna
Mr.Sidharth Chopra, Ms. Sneha Jain, Mr.
Ayyagari, Mr. Sudarshan M.J. and Ms. Suh
Advocates.

versus

AMAZONBUYS.IN & ORS.

..... Defendant

Through: Mr. Sharique Hussain, Advocate
D-5.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

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26.05.2022

I.A. 8522/2022 (Exemption)

1. Subject to the Plaintiffs filing originals, clearer copies and documents with proper margins, which they may seek to place reliance on, within four weeks from today, exemption is granted.

2. Application is allowed and disposed of.

I.A. 8521/2022 (seeking leave to file additional documents)

3. Present application has been preferred on behalf of the Plaintiffs seeking leave to file additional documents under Order 11 Rule 1(4) CPC.

4. Plaintiffs, if they wish to file additional documents at a later stage, shall do so strictly as per the provisions of the Commercial Courts Act, 2015.

5. Application is allowed and disposed of.

I.A. 8523/2022 (exemption from service to Defendants)

6. Since there is an urgency in the matter and the matter is being heard today, Plaintiffs are exempted from serving advance notice on Defendants No. 1 to 3.

7. For the reasons stated in the application, the same is partly allowed and disposed of.

I.A. 8519/2022 (Directions) & I.A. 8520/2022 (under Section 80 CPC, by Plaintiff)

8. Issue notice.

9. Mr. Sharique Hussain, learned counsel accepts notice on behalf of Defendant No.5.

10. Issue notice to the remaining Defendants, through all permissible modes, returnable on 01.09.2022.

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11. Let plaint be registered as a suit.

12. Issue summons.

13. Mr. Sharique Hussain, learned counsel enters appearance on behalf of Defendant No.5.

14. Written statement, if any, be filed by Defendant No. 5 within 30 days from today along with affidavit of admission/denial of the documents of the Plaintiffs.

15. Replication thereto be filed by the Plaintiffs within 15 days of the receipt of the written statement along with an affidavit of admission/denial of the documents filed by Defendant No. 5.

16. Upon requisite steps being taken by the Plaintiffs, summons be issued to the remaining Defendants, through all permissible modes, returnable on 05.08.2022 before the learned Joint Registrar.

17. Summons shall state that written statement be filed by the remaining Defendants within 30 days from the date of receipt of summons. Along with the written statement, Defendants shall also file an affidavit of admission/denial of documents of the Plaintiffs.

18. Replication be filed by the Plaintiffs within 15 days of the receipt of the written statement. Along with the replication, an affidavit of admission/denial of documents filed by the Defendants shall be filed by the Plaintiffs.

19. If any of the parties wish to seek inspection of any documents, the same shall be sought and given within the timelines.

20. List before the Court on 01.09.2022.

I.A. 8518/2022 (under Order 39 Rules 1 and 2 CPC, by Plaintiffs)

21. Present application has been preferred by the Plaintiffs under Order 39 Rules 1 and 2 read with Section 151 of the Code of Civil Procedure 1908 for grant of ex-parte ad-interim injunction.

22. Issue notice.

23. Mr. Sharique Hussain, learned counsel accepts notice on behalf of Defendant No.5 and, at the outset, submits, on instructions, that there is only one account with respect to which details are being sought by the Plaintiffs and the answering Defendant shall comply with whatever directions are passed by this Court in this regard.

24. On steps being taken by the Plaintiffs, notice be issued to the remaining Defendants, through all permissible modes, returnable on 01.09.2022.

25. It is averred in the plaint that Plaintiff No. 1, inter alia owns, operates and manages the India online marketplace at www.amazon.in wherein lakhs of third-party sellers and buyers interact and conduct their transactions. Plaintiff No.1's online marketplace provides its users access to a range of approximately 170 million products listed/offered for sale by approximately 3,00,000 registered sellers across a broad range of categories. Plaintiff No.1 has lakhs of active visitors/users on its marketplace from all over the country at any given point of time.

26. It is averred that Plaintiff No.2 is an affiliate of Amazon.com Inc, a company based in Seattle, Washington. Plaintiff No.2 is the owner of the 'AMAZON' trademarks in various classes, as also the owner of copyright in the 'AMAZON' logos, which are artistic works as per Section 2(c) of the Copyright Act, 1957. Plaintiff No.2 has licensed its copyrights and trademarks to Plaintiff No.1, for the purpose of promotion, publication and merchandising within the territory of India. By virtue of being the licensee of such trademarks and copyrights, Plaintiff No.1 is responsible for granting licenses for commercial exploitation of Plaintiff No.2's copyrights and trademarks in India.

27. It is further averred the trademark 'AMAZON' was adopted in the year 1995 and by virtue of its long, continuous and extensive use since its adoption in relation to the Plaintiffs' business, has become immensely popular and well-known. It is submitted that the success of the Plaintiffs' e-commerce business, which is dependent on the popularity and reach of the 'AMAZON' services and trademarks, is reflective of the immense recognition and fame that the 'AMAZON' trademarks enjoy.

28. It is averred that the use of the mark 'AMAZON' in relation to online sales are synonymous with the Plaintiffs and are therefore inherently distinctive. Consumers immediately associate 'AMAZON' with the Plaintiffs. Apart from e-commerce, the 'AMAZON' name and trademarks are also associated with online streaming services such as 'Amazon Prime Video' and 'Amazon Music'. The degree of association of the 'AMAZON' trademark or the 'AMAZON' series of marks with the Plaintiffs is so intense that any reference to the word 'AMAZON' in the context of e-commerce would lead a substantial part of members of the public to recognize, acknowledge and associate the same exclusively with the Plaintiffs. The trademark 'AMAZON' is also relied upon to distinguish the Plaintiffs' services from other Companies and their services.

29. It is pleaded that in October 2018, 'The Guardian' reported that the Plaintiffs, together with Apple and Google, is one of the most valuable brands in the world. Further, the Plaintiffs have maintained their position by being ranked as the top-most valuable brand in the world in the Brand Finance Global 500 report in 2019 and 2020. In fact, Amazon has been ranked third by Interbrand in global brand rankings.

30. It is averred that the reputation and goodwill of 'AMAZON' trademarks is not restricted to the online marketplace but spills over into online streaming services, cloud storage, artificial intelligence, producers of consumer electronics (Kindle e-readers, Echo, Fire tablet etc.), production houses, gaming services, publishers, amongst others.

31. It is averred that the Amazon Easy ("AE") program is an assisted shopping program introduced by Plaintiff No.1. The 'AE' program is a program that allows interested parties to set up an 'Amazon Easy Store' by getting in touch with Amazon Easy marketing partners. Store owners through AE Store provide assistance to a customer to browse selections, identify and select a product that they like and buy products on www.amazon.in marketplace. Some of the products available on Amazon.in are displayed at these stores for customers to touch and feel the product before placing an order on Amazon.in. This allows interested buyers (who would have otherwise placed orders on the amazon.in marketplace directly) to walk into the 'Amazon Easy Stores' and view/experience the product prior to purchasing the same on www.amazon.in. Further, 'Amazon Easy Stores' also assist buyers who face difficulties/impediments in navigating through the amazon.in marketplace for placing orders.

32. It is averred that the 'AE' program was piloted way back in 2016 and has since expanded across States and Union Territories in India. Over the last six years, the Plaintiffs have set up a vast network of close to 100,000 AE Stores across the country. The AE program has been extremely successful in bridging the digital divide for India's shoppers in small towns and cities. Not only does the AE program benefit potential buyers interested in placing orders on the amazon.in marketplace but is also a source of income and livelihood for many third-party store owners, who are looking to scale up their businesses.

33. It is averred that Plaintiff No.1 is the authorized user and licensee of these registered trademarks whose proprietor is Plaintiff No. 2. Plaintiff No.1 being a Licensee, has been extensively using 'AMAZON' as a part of its brand campaign and for every mode of communication/correspondence. The list of Plaintiff's registered, valid and subsisting trademarks is mentioned in para 23 of the plaint.

34. It is averred that the Plaintiffs are the bona fide prior adopter, continuous and uninterrupted user and registered proprietor of the Amazon family of trademarks globally and in India. By virtue of its long and continuous use as also its immense popularity with its consumers, the Plaintiffs' marks have achieved a status of well-known marks, not only in India but globally, as per Sections 2(1)(zg), 11(6) and 11(7) of the Trade Marks Act, 1999. The Plaintiffs enjoy both statutory rights under the Trade Marks Act, 1999 and also common law rights arising from the goodwill and reputation associated with the Plaintiffs' Marks. Thus, the Plaintiffs' Marks are entitled to protection

against any kind of misappropriation. Accordingly, the unauthorized use of the Plaintiffs' Marks or any other deceptive variant thereof, with respect to any goods or services whatsoever, constitutes infringement and passing off the Plaintiffs' statutory and common law rights.

35. It is averred that apart, from the registered trademark rights, as mentioned aforesaid, Plaintiff No.2 is the owner of the copyright in the artistic work comprised in the unique get up, lay out with respect to "Amazon" logos. The said logos constitutes an original artistic work within the meaning of Section 2(c) of the Copyright Act, 1957 and is consequently the subject matter of copyright protection under Section 13 of the Copyright Act, 1957.

36. It is further averred that Plaintiff No.1 not only operates and manages the Plaintiffs' Website/Domain Name (viz., www.amazon.in) but also sources all the content (literary and artistic) for the said website/domain name. The literary content (including but not limited to Contact Us, FAQs, etc.), graphical user interface, arrangement and colour scheme as contained on Plaintiff No.1's Website/Domain Name i.e., amazon.in qualifies as 'literary work' per Section 2 (o) of the Copyright Act, 1957. Further, the images, pictures and photographs contained on Plaintiff No.1's Website/Domain Name qualify as 'artistic works' per Section 2 (c) of the Copyright Act, 1957.

37. It is pleaded that the copyright of Plaintiff No.1 subsists in its Website/Domain Name i.e., amazon.in as well as in the overall 'look and feel' of the website 'www.amazon.in'.

38. It is averred that Defendants No.1 to 3 are the Rogue Defendants who are defrauding innocent members of the public, by inter alia requiring them to pay a fee towards registration as an 'Amazon Easy Store'. A brief description of the Rogue Defendants is as follows:

a) Defendant No.1: Defendant No.1 is the website '<https://amazonbuys.com>', that is unauthorisedly using the Plaintiffs' 'AMAZON' Trade Marks and logos and offering fake registration services for the AE program. Defendant No.1's website has also adopted a look and feel that is identical to the Plaintiffs' website amazon.in.

b) Defendant No.2: Defendant No.1's website also has a Facebook page by the name of 'Amazon Franchise' (viz. <https://www.facebook.com/Amazon-franchise-102180815731934/about>), which is evident from the contact information on the Facebook page, wherein, the URL to Defendant No.1's website is provided as additional contact information. Further, a link to Defendant No.2's Instagram page, (viz. <https://www.instagram.com/pankajObisen/>) is also providing the contact information tab.

c) Defendant No.3: Defendant No.3 is <https://estoreamazon.in>. While Defendant No.3's website is presently inactive, it was ascertained upon investigating that Defendant No.3 was also offering Amazon's dealership/franchise in relation to the AE program.

39. It is averred that the Rogue Defendants have engaged in a pre-planned conspiracy to defraud and dupe innocent members of the public by unauthorizedly and illegally using the Plaintiffs' Marks, either on the rogue websites and social media pages operated by them or as part of the domain name

registered by the Rogue Defendants and are blatantly reproducing the Plaintiffs' Website Content as well as adopting a look and feel that is identical to the Plaintiffs' website 'www.amazon.in'. It is averred that the Rogue Defendants have engaged in these infringing and deceptive activities to de-fraud innocent members of the public who are interested in registering as an 'Amazon Easy Store'.

40. It is averred that the Rogue Defendants reach out to innocent and gullible members of the public who are interested in registering as an 'Amazon Easy Store' and swindle money from them on the pretext that such monies are being collected as part of the registration process for setting up an 'Amazon Easy Store'. Evidently the Rogue Defendants are attempting to lure unsuspecting members under the false pretext of offering to register them as an 'Amazon Easy Store', in the name of the Plaintiffs.

41. It is further averred that the entire modus operandi of the Rogue Defendants ex-facie demonstrates that their intention is to deliberately mislead the general public and scam monies under the false pretext of offering registration as an 'Amazon Easy Store'. It is also averred that in addition to the above, there is great likelihood that the actual and potential victims will be further induced into believing that the Rogue Defendants have a connection and/or association with the Plaintiffs and/or that the aforesaid fraudulent activity is being perpetuated by the Plaintiffs. Plaintiffs have come across several messages, videos, and tweets from the Plaintiffs' customers, as to how the Rogue Defendants are reaching out to them through several modes, including but not restricted to emails and post.

42. It is averred that due to the very nature of the Internet, these Rogue Websites/Domain Names are accessible all across the world, including, in India, i.e., within the territorial jurisdiction of this Court. Thus, any such use by the Rogue Defendants amounts to infringement of the exclusive rights owned by the Plaintiffs within the purview of the Trademarks Act, 1999. A chart comparing the Plaintiffs' trademarks with the marks/logos used by the Rogue Defendants is as follows:

Plaintiffs' marks

Defendant No.1 & 3's/
Domain Names as well
Plaintiffs' Marks in
manner

AMAZON (Word)

<https://amazonbuys.in>
<https://estoreamazon.in>

Buy'

43. It is averred that the Rogue Defendants have also grossly misrepresented to the public that they are connected with/affiliated to the Plaintiffs. The degree of misrepresentation is so high that Defendant No.1 website provides Plaintiff No.1's address as its own. Therefore, in light of established precedent, it is evident that the Rogue Defendant are guilty of passing off their services as those of the Plaintiffs.

44. It is averred that the brazen and unauthorized identical reproduction of 'AMAZON' logo and the identical reproduction of the look and feel of the Rogue Website of Defendant No.1 to that of the Plaintiff No.1's Website Content, amounts to an infringement of the Plaintiffs' Copyright.

45. It is further averred that the activities of the Rogue Defendants will undoubtedly result in diminishing the distinctiveness of Plaintiffs' Marks from serving their basic purpose, i.e., identifying Plaintiffs' services as emanating from the Plaintiffs alone. Thus, the Rogue Defendants' abovementioned activities are also resulting in dilution by blurring as well as tarnishment. Learned counsel draws the attention of the Court to various documents placed on record to substantiate the arguments made.

46. I have heard the learned counsel for the Plaintiffs and also perused the documents on record including the home page of the Plaintiffs highlighting the copying of Plaintiff No.1's website by the Rogue Defendants; website of the Rogue Defendants using the address of the Plaintiffs; screenshot of the e- mails received from one of the complainants and the actual money deposited by the said complainant; registration form, legal notice issued by the complainant to the Plaintiffs, etc.

47. Having heard the learned counsel for the Plaintiffs, this Court is of the view that Plaintiffs have made out a prima facie case for grant of ex parte ad-interim injunction. Balance of convenience lies in favour of the Plaintiffs and they are likely to suffer irreparable harm in case the injunction, as prayed for, is not granted. Additionally, the activities of the Rogue Defendants are leading to a financial loss to the innocent and unsuspecting members of the public.

48. Accordingly, Defendants No.1 to 3 and their owners, partners, proprietors, officers, servants, employees and all others in capacity of principal or agent acting, for and on their behalf or anyone claiming through, by or under them are restrained from using the mark "AMAZON", "Amazon.in" etc. and/or any deceptive variants thereof, which is identical and/or similar to the Plaintiffs' AMAZON marks and/or any marks stated in the plaint, in any manner, amounting to infringement of Plaintiffs' trademarks, till the next date of hearing.

49. Defendants No.1 to 3, their owners, partners, proprietors, officers, servants, employees, and all others in capacity of principal or agent acting for and on their behalf, or anyone claiming through, by or under them are further restrained from using the mark "AMAZON", AMAZON logos (which is used by the Plaintiffs exclusively within the Indian territory) and/or any deceptive variant thereof, which is identical and/or similar to the Plaintiffs' AMAZON marks in respect of domain name or any other manner amounting to passing off the Plaintiffs' goods/services, till the next date of hearing.

50. Defendants No.1 to 3, their owners, partners, proprietors, officers, servants, employees, and all others in capacity of principal or agent acting for and on their behalf, or anyone claiming through, by or under it, are also restrained from using identical and/or similar logos as that of the Plaintiffs' copyright protected artwork for the Plaintiffs' AMAZON logos, thereby infringing the Plaintiffs' copyright in its artistic works and the content as captured on the Plaintiffs' Website, till the next date of hearing.

51. Defendants No.1 to 3, their owners, partners, proprietors, officers, servants, employees, and all others in capacity of principal or agent acting for and on their behalf, or anyone claiming through, by or under it, from, in any manner are also restrained from using directly or indirectly the Plaintiffs' Marks or any other mark identical/deceptively similar to the Plaintiffs' Marks, amounting to dilution or tarnishment, of the Plaintiffs' trademarks, till the next date of hearing.

52. Defendant No.4, is directed to suspend the fake accounts of Rogue Defendants (Facebook page available at https://www.facebook.com/Amazon-franchise-102180815731934/?ref=page_internal and Instagram page of Defendant No.2 available at https://l.facebook.com/l.php?u=https%3A%2F%2Fwww.instagram.com%2Fpankajobisen%3Ffbclid%3DIwAR2B7kg0UCXfCfy1jE_qlwp1lovdxs5o9fp8FRrAZZ2UL1UA8G9FEizZyKg&h=AT1taTJrEl14iUuysMaollJuqo41Pqgj1HRN9fiR4SFoNJBMF_Hgf1PkPzByRZ3nQoI2aJkE8h8wyADwwwWaQyyNLtfrkV4BfVTwo6DsB2-cxpCEtCbl-RFbFXevxoru55qQ) and provide IP addresses/other details of the users of the fake profiles/accounts/pages of the said Defendants' platform, as identified by the Plaintiffs now and/or at any subsequent time.

53. Defendants No.5 and 6, their owners, partners, proprietors, officers, servants, employees, and all others in capacity of principal or agent acting for and on their behalf, or anyone claiming through, by or under them are directed to freeze the bank accounts with Account Nos. 50100452149604 and 75662010010628 and provide the statement of accounts pertaining to the said account numbers as well as furnish on affidavit, the identity of the bank account holder and KYC details.

54. Defendant No. 7, its owners, partners, proprietors, officers, managers, servants, employees, and all others in capacity of principal or agent acting for and on its behalf, or anyone claiming through, by or under them are directed to furnish on Affidavit, the KYC details of the beneficiary of the PayTM account holder in respect of transactions bearing reference numbers "203930943561", "203314433268", "203221153244" and "203227090489", conducted using the said PayTM account.

55. Defendant No. 8, their directors, partners, proprietors, officers, affiliates, servants, employees, and all others in capacity of principal or agent acting for and, on their behalf, or anyone claiming through, by or under it are directed to disclose details of the Registrant of Defendant No.1's and Defendant No. 3's website <https://amazonbuys.in>. and <https://estoreamazon.in>, and block access to the said websites.

56. Defendants No. 9, 10, 12, 15 and 17, their directors, partners, proprietors, officers, affiliates, servants, employees, and all others in capacity of principal or agent acting for and, on their behalf,

or anyone claiming through, by or under it are directed to disclose details of Defendants No. 1 to 3's phone numbers, details of which have been furnished in a tabular form in paragraph 67 of the Plaint.

57. Defendants No. 9-17, their directors, partners, proprietors, officers, affiliates, servants, employees, and all others in capacity of principal or agent acting for and, on their behalf, or anyone claiming through, by or under it are directed to block access to the website identified as websites of the Rogue Defendants in the plaint.

58. Defendants No. 18 (DoT) and 19 (MEITY) are directed to issue notifications calling upon the various internet and telecom service providers registered under it to block access to the various websites/Rogue Defendants identified by the Plaintiffs in the plaint.

59. Plaintiffs shall comply with the provisions of Order 39 Rule 3 CPC within ten days from today.

JYOTI SINGH, J MAY 26, 2022/rk