

Dabur India Limited vs Ashok Kumar And Ors on 2 June, 2022

Author: Prathiba M. Singh

Bench: Prathiba M. Singh

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CS (COMM) 135/2022

DABUR INDIA LIMITED

..... Pla

Through: Ms. Kripa Pandit and Mr. Anirudh

Bakhru, Advocates. (M:9810013453

versus

ASHOK KUMAR AND ORS.

..... Defendants

Through: Mr. Alipak Banerjee and Mr. Brijes

Ujjainwal, Advocates for D-4.

Ms. Geetanjali Viswanathan, Ms.

Kruttika Vijay and Ms. Aishwarya

Kane, Advocates for D

(M:9910083144)

Mr. K.G. Gopalakrishnan and Ms.

Nisha Mohandas, Advocates for D-7.

(M:9810813707)

Mr. Moazzam Khan and Ms. Shweta

Sahu, Advocates for D-

(M:9987115749)

Mr. Harish Vaidyanathan, CGSC with

Ms. S. Bushra Kazim, Mr. Srish

Kumar Mishra and Mr. Sagar

Mehlawat, Advocates for UOI.

23

AND

+

CS (COMM) 350/2020

GUJARAT COOPERATIVE MILK MARKETING FEDERATION

LTD & ANR.

..... Plaintiffs

Through: Mr. Abhishek Singh, Mr. J. Amal

Anand, Ms. Elvin Joshy and Ms.

Alisha Sharma, Advocate

(M:9910291290)

versus

AMUL-FRANCHISE.IN & ORS.

..... Defen

CS (COMM) 135/2022 & 350/2020

Signature Not Verified

Digitally Signed

By:DEVANSHU JOSHI

Signing Date:03.06.2022

19:24:24

Through: Mr. Azhar Dayan, A
14/TTL. (M:98107507
Mr. Darpan Wadhwa,
with Mr. Moazzam Kh
Shweta Sahu, Advoca
(M:9987115749)
Mr. Alipak Banerjee
Ujjainwal, Advocate
30. (M:9987115749)
Mr. Praveen Kumar J
Shalini Jha, Advoca
(M:9871278525)
Mr. Neel Mason, Mr.
Mr. Parva Khare and
Advocates for D52/G
(M:8816817301)
Mr. Anil Soni, CGSC
Mr. Harish Vaidyana
Ms. S. Bushra Kazim
Kumar Mishra and Mr
Mehlawat, Advocates

CORAM:
JUSTICE PRATHIBA M. SINGH
ORDER

% 02.06.2022

1. This hearing has been done through hybrid mode. I.A.6317/2022 (for exemption) in CS (COMM) 135/2022
2. This is an application filed on behalf of Defendant No. 4, the Public Domain Registry, seeking exemption from filing original/certified, clear copies, prayer copies and documents with proper margins.
3. Allowed, subject to all just exceptions.
4. Accordingly, I.A.6317/2022 is disposed of. I.A.9363/2022 (for clarification of order dated 25.04.2022) in CS (COMM) 135/2022
5. This is an application filed on behalf of Defendant No.5- Hosting Concepts B. V, for clarification of order dated 25th April, 2022 passed by this Court.
6. Vide the said order the Court directed Defendant No. 5 to lock/block domain names which may be complained of by the Plaintiff, subject to the Plaintiff filing an affidavit before this Court.
7. The clarification sought of this order is to the effect that Defendant no. 5 is to lock/block domain names found by the Plaintiff, only after a Court order specifically finds such domain names are infringing.

8. Issue Notice. Let reply be filed within four weeks. I.A.6230/2022 (for additional documents) in CS (COMM) 350/2020

9. This is an application on behalf of Defendant No. 26, GoDaddy.com LLC, seeking leave for filing additional documents.

10. The additional documents are taken on record, subject to the objection that the Plaintiff can address at the time of making submissions.

11. Accordingly, I.A.6230/2022 is disposed of. CS (COMM) 135/2022 & I.A.3423/2022 CS (COMM) 350/2020 & I.As.7456/2020, 9624/2020, 9629/2020, 996/2021, 9204/2022

12. The present two suits have been filed after discovering that several fraudulent websites bearing Plaintiffs' well-known marks 'AMUL' and 'DABUR' are soliciting business from vulnerable customers.

13. In CS(COMM) 135/2022, vide the order dated 3rd March, 2022, after a detailed hearing, it was noted that there were various domain names and websites, which were operating with the name DABUR such as www.daburdistributor.com, & <https://daburdistributorships.in>. Monies were being collected from vulnerable customers through the said websites, and therefore, the following order was passed:

"23. In order to curb any malpractice or any monetary harm to the public as also to the franchisees and distributors who may pay monies to the websites, and to protect the Plaintiff's rights in various intellectual properties, which are being violated on the websites of the Defendants, this Court directs as under:

(1) Defendant Nos.4 & 5 shall immediately block the domain names, as also the websites <https://www.daburdistributor.com>, <https://daburdistributorships.in>, and www.daburfranchisee.in. Status quo shall also be maintained in respect of the said domain names and the same shall be locked with immediate effect. The Defendants 4 & 5 are restrained from transferring the said domain names or creating any third-party interest on the same.

(2) Defendant Nos.2 & 3 i.e., DoT and MEITY shall issue directions to all ISPs to block the said websites as also any other websites, except the Plaintiff's websites, bearing the mark 'DABUR'.

(3) Defendant Nos.4 & 5 shall also disclose to ld.

Counsel for the Plaintiff and file an affidavit before this Court as to the details of the registrants or the persons who have registered the abovementioned domain names along with their complete contact details, postal address, email address, bank account details, and telephone numbers, etc. Let the said affidavit be filed within one week from the receipt of the copy of this order. Upon receipt of

this order, Defendants 4 & 5 shall communicate immediately the order to the registrants of the infringing domain names.

(4) The Registrants of the infringing domain names <https://www.daburdistributor.com>, <https://daburdistributorships.in>, and www.daburfranchisee.in. shall cease all use of the domain names and pull down the websites hosted on the said domain names with immediate effect. The email addresses reflected on the said websites shall also be de-activated.

(5) Defendant Nos.4 & 5 are also restrained from allowing any third-party, apart from the Plaintiff, from registering domain names using the mark/name 'DABUR'.

(6) Defendant Nos.6 to 14 i.e., the Internet Service Providers shall give effect to this order immediately.

(7) Upon the disclosure of the names of the registrants of the domain names, the Plaintiff is permitted to implead them as the Defendants in the present suit. In case the Plaintiff comes across any other domain names or websites with the mark 'DABUR', they are permitted to approach the Court with an application for appropriate relief, including seeking extension of the present injunction to the said domain names or websites as well."

14. As is evident from the aforementioned direction no.2, the DoT and MEITY were directed to block the said fraudulent websites. In addition, a direction was issued in the following terms:

"25. Further, this Court notices that the practice of hiding or masking the details of the Registrants who hold domain names is increasingly resorted to by persons who register such domains which impinge upon owners of trademarks and names. Such Registrants seek to enjoy domain name registrations and host websites, in a concealed or a hidden manner, without disclosure of their identity. The domain names are used to the exclusion of the whole world including the trademark owner. Whenever any person or entity registers a mark, name, company, firm etc., the identity of such person is openly available. However, in the case of domain names, this is not so. It appears that disabling of privacy protect feature may be essential to ensure that the identity of the persons registering domain names is clearly visible on the <https://www.whois.com> database, as also other such databases. Accordingly, the Defendant Nos. 2 and 3 to also disclose their stand in respect of privacy protect features, provided by domain name Registrars to their Registrants. Let the affidavit on behalf of the Defendant Nos.2 & 3 be filed one week before the next date."

15. The DoT and MEITY were, accordingly, directed to file an affidavit disclosing their stand in respect of privacy protect features provided by domain name Registrars to their Registrants. An affidavit deposed by Mr. Samaya Balan, Scientist (E), MEITY, giving certain details in respect of '.IN' domain names registered through NIXI, as also the applicability of General Data Protection Regulations (GDPR) which came into effect in the European Union on 25th May, 2018. The stand of the said authority is that the privacy protection features even in respect of '.IN' domain is in due

compliance of the global regulations.

16. There are various challenges faced by the Courts in respect of domain names, mobile applications, messaging services wherein various illegal activities are being carried out through the said domain names/websites, applications and messaging services. Such activities include:

- i. Offering of franchises and distributorships as a means of collecting money from vulnerable Indian customers and citizens.
- ii. Sale of counterfeit, pass off and knock off products.
- iii. Use of infringing domain names and promoting the websites through the said domain names.
- iv. Various other illegal activities including launching of schemes, infringement of copyright, unlawful communications etc.

17. There are a large number of domain name registering entities located across the globe, who offer domain name registration services in India. A large number of these companies do not have any base or office in India. Therefore, it has become increasingly challenging to enforce orders passed by Indian Courts against these companies in respect of:

- i. Blocking/suspension of the website/domain name,
- ii. Transfer of domain name,
- iii. Revealing of details of the registrants,
- iv. In a large number of cases, even upon the said registrants details being revealed, it is found that the said registrants' names, contact details etc. are either non-existent or fictitious.
- v. The manner in which payments are being collected through these websites.

18. It is in this background that the affidavit was sought from both, the DoT and MEITY, vide order dated 3rd March, 2022, in respect of the privacy protect features. The said authorities also need to address the manner in which such domain name registering companies can be directed to give effect to the orders passed by Courts.

19. The affidavit placed before the Court today does not address these issues. There is a need for the authorities to have a relook into this matter and file a proper affidavit as to the manner in which orders passed by Indian Courts against such registering authorities are properly given effect, since these authorities do not have offices in India. While on the one hand, services of such companies are being offered in India and huge revenues are collected by these companies from India, it is seen that due to lack of physical office or assets in India, the orders passed are not being given effect to in an efficient and proper manner.

20. Going forward, in order to ensure that the names of the registrants which are found to be fictitious, non-existent, or whose proper details are not revealed, do not escape injunction orders, the Registrars of domain names henceforth shall:

I. Disclose the details as available on their database of all the persons registering the said impugned domain names; II. Disclose the details of the payments received by them for registering the domain name as also for any other services which may have been provided such as website hosting services, cloud services, etc.,

21. Insofar as the websites which have already been blocked are concerned, these details be provided by the concerned Registrar to the ld. Counsel for the Plaintiff within two weeks.

22. Let DoT and MEITY file a fresh affidavit in this regard by 10th July, 2022.

23. On behalf of Bharti Airtel, Defendant No. 7 in CS(COMM) 135/2022, it is submitted that the orders have been complied with by them.

24. Ld. counsel on behalf of Tata Teleservices, Defendant No.14 in CS(COMM) 135/2022, submits that the orders have been complied with by his client.

25. Mr. Darpan Wadhwa, ld. Senior Advocate appearing for GoDaddy LLC, Defendant No. 26 in CS(COMM) 350/2022, submits that even though GoDaddy has no office in India, it has made the requisite arrangements for all Court orders to be complied with and to disclose their registrant's details, whenever the Court orders the same.

26. Responsible officials of the Dot and MEITY, who are aware of the policy related issue in this regard, shall join the proceedings virtually on the next date of hearing.

27. List on 3rd August, 2022. These matters shall be treated as part heard matters.

PRATHIBA M. SINGH, J.

JUNE 2, 2022/dk/ss