

Livspace Pte. Ltd. & Anr vs Livspace-Reviews.Com & Ors on 30 August, 2022

Author: Prathiba M. Singh

Bench: Prathiba M. Singh

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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CS (COMM) 595/2022

LIVSPACE PTE. LTD. & ANR.

..... Pla

Through: Mr. Pranjit Bhattacharya, Advoc
(M:7045589826)

versus

LIVSPACE-REVIEWS.COM & ORS.

..... Defend

Through: Ms. Nidhi Raman, CGSC with Mr.
Zubin Singh and Mr. Vinod Tiwar
GP for D-4 & 5. (M:9958614305)

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

% 30.08.2022

1. This hearing has been done through hybrid mode.

I.A.13828/2022 (additional documents)

2. This is an application seeking leave to file additional documents under the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 (hereinafter, 'Commercial Courts Act'). The Plaintiff, if it wishes to file additional documents at a later stage, shall do so strictly as per the provisions of the Commercial Courts Act.

3. I.A.13828/2022 is disposed of.

I.A.13829-30/2022 (for exemption)

4. These are the applications seeking exemption from filing original/certified/cleared/typed or translated copies of documents. Exemption is allowed, subject to all just exceptions.

5. I.A.13829-30/2022 are disposed of.

I.A.13826/2022 (u/S 12A)

6. This is an application seeking exemption instituting pre-litigation mediation. In view of the orders

passed in CS (COMM) 132/2022 titled Upgrad Education v. Intellipaat Software, the I.A.13826/2022 is allowed and disposed of.

I.A.13827/2022 (exemption from advance service to the Defendant No.4 & 5)

7. In view of the fact that the Plaintiff has sought ex parte ad-interim injunction, the exemption from advance service to the Defendants is granted.

8. Accordingly, I.A.13827/2022 is disposed of.

CS (COMM) 595/2022

9. Let the plaint be registered as a suit.

10. Issue summons to the Defendants through all modes upon filing of Process Fee.

11. The summons to the Defendants shall indicate that a written statement to the plaint shall be positively filed within 30 days from date of receipt of summons. Along with the written statement, the Defendants shall also file an affidavit of admission/denial of the documents of the Plaintiffs, without which the written statement shall not be taken on record.

12. Liberty is given to the Plaintiffs to file a replication within 15 days of the receipt of the written statement(s). Along with the replication, if any, filed by the Plaintiffs, an affidavit of admission/denial of documents of the Defendants, be filed by the Plaintiffs, without which the replication shall not be taken on record. If any of the parties wish to seek inspection of any documents, the same shall be sought and given within the timelines.

13. List before the Joint Registrar for marking of exhibits on 12th October, 2022. It is made clear that any party unjustifiably denying documents would be liable to be burdened with costs.

I.A. 13824/2022 (u/O XXXIX Rules 1 & 2 CPC) & I.A.13825/2022 (discovery of documents)

14. The Plaintiffs i.e. Livspace Pte. Ltd./Plaintiff No. 1 and Home Interior Designs E-Commerce Private Limited/Plaintiff No. 2, have filed the present suit for permanent injunction restraining passing off, dilution, damages, etc., against the Defendants. The Plaintiffs are seeking protection of the trademark and name 'LIVSPACE'. The Plaintiffs have a multi-class trademark registration bearing no. 3934895, as well as several other registrations for 'LIVSPACE', its similar variants, device, and logo marks.

15. The Plaintiffs claim rights in the mark 'LIVSPACE' and logo since 2013. Plaintiff No. 2 is the subsidiary of Plaintiff No. 1 and the Plaintiff No. 1 conducts all its business in India through the Plaintiff No.

1. The Plaintiffs are also users of the domain name www.livspace.com. The said mark 'LIVSPACE' is used in respect of interior designing services, and the Plaintiffs claim to offer one of the world's largest interior design and home renovation platforms that connects interior designers, homeowners and vendors. The Plaintiffs' motto is one of creating reliable, modern, economical and utility driven interior spaces for all their customers in an economical fashion. The Plaintiffs' business is stated to have garnered immense popularity and goodwill over the years, and its expenses on advertising have been approximately Rs. 400/- crores in the year 2021-22. The projected sales turnover for the year 2021-22 is over Rs. 650/- crores.

16. The present suit has been filed by the Plaintiffs against the following Defendants:

i. Defendant No. 1 - livspace-reviews.com ii. Defendant No. 2 - Domainshype.com, LLC iii. Defendant No. 3 - Domain Name Registrar, Privacy Protect, LLC iv. Defendant No. 4 - Department of Telecommunications (hereinafter "DoT") v. Defendant No. 5 - Ministry of Electronics and Information Technology (hereinafter "MEITY")

17. The Defendant No. 1 is the domain name on which a website is being hosted, called www.livspace-reviews.com. The said website is hosted on a server, which is provided by 'hostgator.in', as per an online portal check, which has been done during the hearing. The 'WHOIS' details for www.livspace-reviews.com, have been extracted hereinbelow:

18. It is submitted by the Id. Counsel for the Plaintiffs, that there are various reviews, which have been written against the Plaintiffs, on the Defendant No. 1 website - www.livspace-reviews.com. These reviews are disparaging and defamatory in nature. There is no identity revealed as to the person who has purchased the said domain name, or who is hosting the said website. Id. Counsel for the Plaintiffs shows the images from the Plaintiffs and Defendant No. 1's website to highlight the fact that the entire look and feel of the Plaintiffs' website is identical to that of the Defendant's. The Defendant No. 1 website uses extremely derogatory language against the Plaintiffs. The reviews, which are on record, show that the Defendant No. 1 merely intend to decry the Plaintiffs. The screenshots of the websites belonging to the Plaintiffs and Defendant No. 1, have been placed on record by the Plaintiffs, and are extracted hereinbelow:

19. Id. Counsel for the Plaintiffs submits that the Defendant No. 1 has merely added the word 'review' at the end of the Plaintiffs' mark 'LIVSPACE' and is operating a rogue website. The 'WHOIS' data shows that the entire details of the Defendant No.1 have been completely masked.

There is no clarity as to who has booked the domain name, what are the details of the said person, where the server has been hosted, and why such derogatory reviews have been uploaded. Id. Counsel for the Plaintiffs submits that the entire business of the Plaintiffs is based on online interactions with its customers and hence, such derogatory language being used by the Defendants is undoubtedly creating a dent in the Plaintiffs' business.

20. It is the opinion of the Court the present suit highlights the perils of some internet based businesses. The impugned domain name - www.livspace-reviews.com, is merely one such domain name, which has been registered by an unknown person of whom no details are known. Matters in which unknown persons are infringing and using well-known marks, to the detriment of the holder of the mark, are mushrooming at an alarming rate. On the said domain name - www.livspace-reviews.com, a website has been hosted by a company, which is claimed to be 'hostgator.in'. Other than that, it is not clear as to who has booked the domain name, who has hosted the website, from where the reviews have been collected, and where the content has been developed. None of the details are decipherable from the said website.

21. The Court, during the course of the hearing today, has accessed the impugned website - www.livspace-review.com, and notices that the website is in fact, completely devoid of any details whatsoever. The website has extremely derogatory comments to make about the Plaintiffs, such as 'worst for interior companies', and 'for an experience that would drive you up the wall, choose livspace'. The details of any of the persons, who have written such scathing reviews, are also not available. The tagline, 'all the things that livspace can do for you' is being used badly on the said website. Additionally, derogatory remarks are being made against the persons, who have commented positively qua 'LIVSPACE'. Some such reviews have been extracted hereinbelow:

22. The content is extremely critical of the Plaintiffs and this Court is concerned that the scathing remarks being made by the Defendants could have a serious and deleterious impact on the Plaintiffs' business as these are online reviews, for a business that largely operates online. While there can be no doubt that general criticism and review would be permissible in terms of any business, the fact that the entire website, its operations, the persons reviewing, etc., have been totally masked, without any details provided whatsoever, clearly gives the Court the feeling that the same is ingenuine and clandestine.

23. Ld. Counsel for the Plaintiffs points out that this is not merely a case of defamation and derogation of the Plaintiffs, but it is also malicious propaganda, inasmuch as the website seeks to direct customers to complain to the CEO, COO, of the Plaintiffs' business, as also business journalists and investors. The Defendant No. 1 website provides a 'toolkit', by which it offers contact details and links to users of the website, to make it easier for writing complaints and negative emails, to those associated with the Plaintiffs. It is also noticed that the customers are being actively asked and encouraged to write complaints to the investors of the Plaintiffs. The website is a clear attempt to bring disrepute the Plaintiffs and their business. Prima facie, it is a deliberate and well thought out campaign.

24. Upon perusing the record and hearing the submissions of the Ld. Counsel for the Plaintiffs, the Court is convinced that the Plaintiffs have made out a prima facie case in their favour for grant of ex-parte ad interim injunction against the Defendants. The entire operation is clandestine and the purpose can only be to damage the Plaintiffs' business. While using the trademark 'LIVSPACE' of the Plaintiffs and the trade name, in a surreptitious manner, the Defendant No. 1 is intending to cause irreparable harm to the Plaintiffs business. The balance of convenience also lies in favour of the Plaintiffs. Accordingly, it is directed that till the next date of hearing, the domain name

www.livspace-reviews.com shall stand blocked by the Defendant Nos. 4 & 5. The Defendant Nos. 2 & 3 shall inform the Plaintiffs, within one week of receipt of these summons and notice, the details of the registrant of the said domain name, the other contact details including the email, mobile number and address etc.

25. Since the website is being hosted on 'hostgator.in', the Plaintiffs are directed to write to NIXI to obtain the details of the person/owner of 'hostgator.in', and send the copy of this order to the said website hosting company, so as to ensure that the said website host also brings down the website www.livspace-reviews.com.

26. MEITY and DoT shall issue blocking orders within 48 hours, and the ISP shall ensure the website www.livspace-reviews.com, shall remain blocked till the next date of hearing.

27. Let a detailed investigation be conducted by the Cyber Crime Unit, Special Cell of the Delhi Police, into the ownership and persons involved in running the website www.livspace-reviews.com and a status report in this regard be filed by Mr. Raman Lamba, Assistant Commissioner of Police, IFSO, Special Cell, Delhi Police (M:8750450055). Registry to send this order to Mr. Lamba on the number specified. In addition, notice be also served on Ms. Hetu Arora Sethi, Id. Counsel for the Delhi Police.

28. Compliance of Order XXXIX Rule 3 CPC be effected within two weeks.

29. Reply to the application be filed within four weeks from the service of the present order, along with the paper book.

30. List on 12th October, before the Joint Registrar.

31. List on 13th September, 2022, before the Court.

32. Order Dasti.

PRATHIBA M. SINGH, J.

AUGUST 30, 2022/dk/ss