

Microsoft Corporation & Anr vs Vacation Rental Services Private ... on 11 March, 2022

Author: Jyoti Singh

Bench: Jyoti Singh

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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CS(COMM) 158/2022 & I.A. 3996-4000/2022

MICROSOFT CORPORATION & ANR.

..... Plaintiff

Through: Mr. Pravin Anand, Mr. Saif Khan,
Mr. Shantanu Sahay, Mr. Deepank Singhal,
Mr. Apoorv Bansal and Ms. Imon Roy, Advocates

versus

VACATION RENTAL SERVICES

PRIVATE LIMITED & ORS.

.....

Through:

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

% 11.03.2022 I.A.3998/2022 (by the Plaintiffs under Order XI Rule 1(4) read with Section 151 CPC seeking leave to file additional documents)

1. For the reasons stated in the application, the application is allowed, subject to the Plaintiffs filing the additional documents positively within a period of 30 days from today.

2. The application is disposed of.

I.A.3999/2022 (by the Plaintiffs under Section 151 CPC seeking exemption from filing original, certified, clear copies, translated copies, left side margins and electronic documents etc.)

1. Allowed, subject to all just exceptions.

2. Plaintiffs shall file the originals of documents, which are in its possession, within 30 days from today.

3. Application stands disposed of.

I.A.4000/2022 (by the Plaintiffs under Section 151 CPC seeking exemption from filing certified English translations)

4. Allowed, subject to all just exceptions.

5. Plaintiffs shall file the English translated copies of documents within 30 days from today.

6. Application stands disposed of.

I.A.3997/2022 (by the Plaintiffs under Order XI Rule 1(6) as amended by the Commercial Courts, Commercial Division and Commercial Appellate Division Act, 2015 r/w Chapter IV of the Delhi High Court (Original Side) Rules r/w S. 151 CPC for discovery)

7. Issue notice to the Defendants, through all permissible modes, returnable on 05.05.2022, before the learned Joint Registrar. CS (COMM) 158/2022

8. Let the plaint be registered as a suit.

9. Upon filing of process fee, issue summons to the Defendants, through all permissible modes. Summons shall state that the written statement shall be filed by the Defendants within 30 days from the receipt of summons. Along with the written statement, Defendants shall also file an affidavit of admission/denial of the documents of the Plaintiffs.

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

11. List before the Joint Registrar for marking of exhibits on 05.05.2022. I.A.3996/2022 (by the Plaintiffs under Order XXXIX Rules 1 & 2 CPC)

12. Issue notice to the Defendants, through all permissible modes, returnable on 26.05.2022 before Court.

13. Plaintiffs have instituted the present suit seeking permanent injunction against the Defendants from using the Plaintiffs' well-known trademark "MICROSOFT" word per se, which is associated with an equally well-

known mark " " or any other formative marks or usage of any marks which would infringe the same.

14. It is averred in the plaint that Plaintiff No.1 (hereinafter referred to as "Plaintiffs") adopted the mark "MICROSOFT" in 1975 and holds trademark registration TM No. 430449, in respect thereof, since 30.11.1984. Para 9 of the plaint sets out a list of the registered trademarks of the Plaintiffs. It is further averred that Plaintiffs on account of their long and continuous use of their trademark since 1975 also exercise Common Law Rights to prevent others from using the trademarks, which are deceptively similar to the Plaintiffs trademarks, amounting to passing off such third parties goods or services as that of the Plaintiffs and causing confusion amongst customers as to the origin and thus

tarnishing the reputation of the Plaintiffs.

15. It is further averred that various Courts around the country have periodically granted over 150 ex-parte ad-interim injunction protecting different facets of Intellectual Property Rights, including the well-known trademark 'MICROSOFT'. Reliance is also placed on the judgment of this Court in Microsoft Corporation v. Kurapati Venkata Jagdeesh Babu, 2014 SCC Online Del 521, wherein it was held that the "MICROSOFT" mark of the Plaintiffs is a well-known mark, within the meaning of Section 2(zg) of the Trade Marks Act, 1999.

16. It is alleged in the plaint that the Defendants, without any authorization or licence from the Plaintiffs, are using the trademarks of the Plaintiffs and are misrepresenting their affiliation to the Plaintiffs, in order to defraud innocent customers.

17. Learned counsel for the Plaintiffs submits that in January 2021, an anonymous criminal complaint was received by the Cyber Cell, South-East District, Police Station Sunlight Colony, New Delhi, regarding fraudsters running online cheating/fraud racket from their call centre at Ashram Sunlight Colony, targeting foreign nationals at Spain, posing as executives of the Plaintiffs. Pursuant thereto, an FIR No. 11 of 2021 was lodged against Defendants No. 1 and 2 and certain other persons and in March 2021, chargesheet has been filed under Sections 419, 420, 120B, and 34 IPC read with Section 66D of the Information Technology Act, 2000 and Sections 20, 20A and 21 of the Indian Telegraph Act, 1885. Learned Magistrate, Saket District Court has taken cognizance of the offences in the matter. Upon conducting search and seizure, Delhi Police has seized many hard disks, laptops, email accounts, wi-fi routers, load balance broadband router etc. from the premises of Defendant No. 1.

18. Mr. Anand further submits that Delhi Police also recovered various fake invoices issued to the alleged victims in the computer system of Defendant No. 2. Perusal of the invoices, as issued by Defendants No. 1 and 2 reveal that they were purportedly issued on behalf of the Plaintiffs or their authorized technicians. Pertinently, invoices contain the Microsoft logo in addition to the words 'Microsoft Support' and also mentions Plaintiffs' address at Redmond, United States.

19. It is submitted that Plaintiffs received information about the Defendants through the Notice under Section 91 Cr.P.C. sent by the Investigating Officer under FIR No. 11 of 2021, requiring certain information regarding a Technical Fraud being committed by accused persons. Plaintiffs in reply to the said Notice provided the complaints received by them pertaining to the email addresses, which were being used by the Defendants on their laptops/computer systems.

20. Mr. Anand submits that in criminal proceedings pending before Criminal Court no.1, Court of First Instance and Instruction in Calatayud - Zaragoza, Spain (Preliminary Inquest no. 10/2018) (the "Spanish Proceedings"), various persons namely Carlos Torres Plasencia, Maria Reyes Julia Cordero Prieto, Pilar Concepción Nicolas Cuevas and Tomas Moreno Gil have been accused of committing the crime of continuous mass fraud, money laundering and other related crimes. Spanish proceedings also revealed that Defendant No. 3, Mr. Gul Mohd. Khan and his company Sky Solutions FZE are the main recipient of illicit money transfers received upon defrauding the victims.

Furthermore, some of the Accused Persons in the Spanish Proceedings (namely Carlos Torres Plasencia) claimed to have maintained contact with Defendant no. 2 herein.

21. Mr. Anand submits that it is evident that Defendants No. 1 to 3 are acting in consort with each other to carry out infringing activities and duping innocent victims on the false pretext of being associated with the Plaintiffs' Microsoft brand, which is negatively impacting the Plaintiffs' goodwill and reputation.

22. Having heard learned counsel for the Plaintiffs, in my view, Plaintiffs have made out a prima facie case for ex-parte ad-interim injunction. Balance of convenience also lies in favour of the Plaintiffs and irreparable loss shall be caused to the Plaintiffs in case an ex-parte interim injunction is not granted.

23. Accordingly, Defendants No. 1, 2 and 3 and their affiliates, directors, members, employees, contractors, officers, servants and agents including all other persons acting on their behalf, as the case may be, are hereby restrained:

(a) from using Plaintiffs' trademark "MICROSOFT" word per se, , and its other formative marks as that of Plaintiffs or indulging in activities and services bearing the impugned mark, identical or deceptively similar to the Plaintiffs' registered trademarks, as described in the suit, amounting to infringement of Plaintiffs' trademark rights and leading to passing off, dilution and tarnishing of the plaintiff's trademarks.

(b) from misrepresenting and impersonating as the Plaintiffs and/or their authorized agents, technicians, affiliates, agents, employees, etc. in any manner, whatsoever.

24. Provisions of Order XXXIX Rule 3 CPC shall be complied with by the Plaintiffs, within a period of two weeks from today.

25. Copy of the order be given dasti to learned counsel for the Plaintiffs.

JYOTI SINGH, J MARCH 11, 2022 nn