

Verizon Trademark Services Llc & Ors vs Rakshit Bagepalli Shivaraju & Anr on 14 January, 2019

Author: Manmohan

Bench: Manmohan

#16

\$~

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CS(COMM) 17/2019

VERIZON TRADEMARK SERVICES LLC & ORS. Plaintiffs
Through Ms. Vaishali Mittal with Mr. Sidhant
Chamola, Advocates

versus

RAKSHIT BAGEPALLI SHIVARUJU & ANR. Defendants
Through None

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

ORDER

% 14.01.2019 Keeping in view the averments in the application, plaintiffs are exempted from filing the originals/certified/clearer/typed and translated copies of documents at this stage.

Needless to say, this order is without prejudice to the rights and contentions of the parties.

Accordingly, present application stands disposed of.

Keeping in view the averments in the application, plaintiffs are permitted to file additional documents within a period of thirty days.

Accordingly, present application is allowed subject to just exceptions. CS(COMM) 17/2019 Let the plaint be registered as suit.

Issue summons in the suit to the defendant by all modes including dasti, returnable for 22nd February, 2019 before the Joint Registrar for completion of service and pleadings.

The summons to the defendant shall indicate that a written statement to the plaint shall be positively filed within four weeks of the receipt of the summons. Liberty is given to the plaintiff to file a replication within two weeks of the receipt of the advance copy of the written statement.

The parties shall file all original documents in support of their respective claims along with their respective pleadings. In case parties are placing reliance on a document which is not in their power and possession, its detail and source shall be mentioned in the list of reliance which shall be also filed with the pleadings.

Admission/denial of documents shall be filed on affidavit by the parties in accordance with the Delhi High Court Rules.

List the matter before Court on 1st April, 2019.

Issue notice to defendants by all modes including dasti, returnable for 22nd February, 2019 before the Joint Registrar.

It is pertinent to mention that the present suit has been filed for declaration of well known trademark, permanent injunction restraining infringement of trademarks, passing off, dilution, damages, rendition of accounts, delivery up etc. In the plaint it is stated that plaintiff no. 1 is an intellectual property holding company and the proprietor of numerous trademark registrations consisting of the arbitrary and fanciful mark VERIZON. The said mark was adopted by the plaintiff no. 1 in 2000 and since March 2000 the plaintiffs have used the said trademark extensively and continuously in an uninterrupted manner in India. Plaintiff no. 1 is a part of the VERIZON group of companies which has granted an exclusive licence to plaintiff no. 2 for the use of trademark VERIZON and the VERIZON logos in connection with various products and services, including communications, real estate, development and construction services. Plaintiff no. 2 has further granted a sub-licence to plaintiff no. 3, plaintiff no.4 and plaintiff no.5.

It is stated in the plaint that the plaintiffs are amongst the world's leading providers of communication, entertainment, information technology, website development and security products and services. The plaintiffs own and operate one of the most expansive end to end global Internet Protocol (IP) networks serving more than 2,770 cities in over 150 countries worldwide including India and provide advanced IP, data, voice and wireless solutions to large business and government customers. It is stated that as a result of continuous innovation in the field of wireless internet and mobile technology the plaintiff group of companies have become leading players in the field of world mobile telecommunication.

It is further stated in the plaint that the plaintiffs are also the proprietors of several domain names comprising of the VERIZON trade marks including www.verizon.com, www.verizonenterprise.com, www.verizonwireless.com, verizon.in and verizonenterprise.in.

It is the plaintiff's case that the trademark VERIZON and the VERIZON logos have acquired a well known status which has been protected by this Court in various cases. It is stated that in Financial Year 2017 the annual revenue generated by the plaintiffs from its business under the mark VERIZON was US\$ 126 billion and incurred expenses of US\$ 2.64 billion towards promotion and advertisement. Learned counsel for the plaintiffs states that in July, 2018, the plaintiffs, while conducting routine market surveillance, came across the advertisement and promotional presence

of the defendants' goods and services under the VARYZON/VARYZON TECH mark and logos. She states that the plaintiffs were made aware of the commercial operations of the defendants with the use of logo and , VARYZON TECH, the domain name www.varyzon.com along with the email id rakshit.bs@varyzon.com, all which are deceptively similar and phonetically identical to the plaintiffs' VERIZON trademarks. Learned counsel for the plaintiffs states that in order to ascertain better particulars of the commercial expanse and outreach of the defendants , the plaintiffs conducted an investigation into the activities of the defendants in and around the month of July, 2018. She states that the plaintiffs' representative visited the location of the defendant no.2 and met with defendant no.1, who introduced himself as the owner and sole proprietor of defendant no.2. She states that the defendant no.1 informed the plaintiffs' representative that the defendants are engaged in wholesale and trading business of CCTV Camera, Power Battery, Power UPS, Desktops, Laptops etc. He states that the defendant no.1 also informed the plaintiffs' representative that they are involved in providing various services in the range of website design and development and mobile applications and design development. She states that the defendant no.1 further informed the plaintiffs' representative that though they do not manufacture any products, but are involved in dealing and selling these products making use of logo and , the word mark VARYZON TECH and the domain name www.varyzon.com.

Learned counsel for the plaintiffs states that the defendants are actively providing services and selling their products on the interactive website www.indiamart.com and are also listed on the third party search engine www.justdial.com, allowing customers and members of the trade to contact them and place order for their goods and services.

Learned counsel for the plaintiffs states that the plaintiffs addressed a cease and desist letter to the defendants on 16 th August, 2018 to intimate the defendants of the violation of the plaintiffs' statutory rights by the defendants. He states that the defendants sent a response to the legal notice dated 18th September, 2018, denying all claims made by the plaintiffs and claimed that there was no similarity between the trademarks and names used by the parties. He states that in addition to the response, the defendants, in and around second week of November, 2018, also instituted a groundless threat suit before the Additional City Civil and Sessions Judge at Bengaluru against plaintiff no.1, plaintiff no.4 and plaintiff no.5 seeking relief of permanent injunction restraining the present plaintiffs from interfering with the peaceful possession, enjoyment of their business activities.

Learned counsel for the plaintiffs states that the defendants' mark VARYZON is structurally, phonetically and visually similar to the plaintiffs' mark VERIZON the use of the impugned VARYZON marks by the defendants along with making use of the logos and , VARYZON TECH, the domain name www.varyzon.com and the existence of the mail id rakshit.bs@varyzon.com for overlapping and highly related goods and services is bound to create confusion in the minds of the consumers that the defendants have a direct nexus or affiliation with the plaintiffs.

She states that similar orders have been passed by the Delhi High Court vide order dated 21st October, 2016 in CS(COMM) 1434/2016 and order dated 21st November, 2016 in CS(COMM) 1520/2016.

Keeping in view the aforesaid, this Court is of the opinion that a prima facie case of infringement and passing off is made out in favour of the plaintiffs and balance of convenience is also in their favour. Further, irreparable harm or injury would be caused to the plaintiffs if an interim injunction order is not passed.

Consequently, till further orders, this Court restrains the defendants their partners or proprietors, principal officers, servants, agents, distributors and all others acting on their behalf as the case may be from manufacturing, marketing, selling, offering, or making for sale, providing goods and/or services related to products in the field of technology, security systems, security solutions, surveillance cameras, hardware products, UPS Systems, Desktop machines, services related website development, website designing, web application development, mobile application development, cloud and big data technology, domain name registration and web hosting, automation tools, business and technology consulting etc under the corporate/trading name M/S VARYZON TECH along with the marks VARYZON TECH, VARYZON, the logos and , the domain name www.varyzon.com and the email id rakshit.bs@varyzon.com, or any other trademark and name which is either identical with or consists of designation deceptively similar to the plaintiffs' trademarks VERIZON and logos.

Let the provisions of Order 39 Rule 3 CPC be complied within a week.

Order dasti under the signature of the Court Master.

MANMOHAN, J JANUARY 14, 2019 rn