

M/S. New Rubric Solutions Llp vs Pearson India Education Services on 17 March, 2022

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OS.No.4899/2015

IN THE COURT OF XVIII ADDL.CITY CIVIL JUDGE,
AT BENGALURU CITY [CCH.NO.10]

Dated this day the 17th March 2022

PRESENT

Sri. NAGARAJAPPA A.K., B.Com., LL.M.
XVIII Addl.City Civil Judge.

O.S.No.4899/2015

Plaintiff: M/s. New Rubric Solutions LLP,
Having its corporate office at:
No.401, Pleasantville,
Karthik Nagar, Doddanakundi,
B A N G A L O R E - 37.

Reptd.by its authorized signatory
designated partner,Krithika, Aged
about 40 years.
[Rep.By.Sri.P.N.,Advocate]

/VS/

Defendant: Pearson India Education Services
Private Limited,
Having its office at No.10, 3rd Main,
Ashwini Layout, Intermediate Ring
Road, Ejipura, Koramangala,
B A N G A L O R E - 560 047.
[Rep.By.Sri.K.N., Advocate]

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Date of institution of suit	06-06-2015
Nature of the suit (Suit on pronote, suit for declaration and possession suit for injunction, etc.	Permanent & Mandatory injunction
Date of the	21.06.2017

commencement of
recording of the
evidence.

Date on which the 17.03.2022
Judgment was
pronounced.

	Year/s	Month/s	day/s
Total duration:	06	09	11

(NAGARAJAPPA A.K.)
XVIII Addl.City Civil Judge, Bangalore.

J U D G M E N T

The plaintiff filed this suit against the defendant for mandatory injunction directing the defendant to remove the test results of Kaleido from the MyPedia Presentation and the YouTube titled "Pearson MyPedia Launch" that was uploaded by the defendant on YouTube on 4.3.2015 and from any other marketing material where the results are used.

Further to restrain the defendant from using or referring in any manner to the test results of Kaleido in

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any press releases, public announcements, promotional or other materials for MyPedia.

And also to restrain the defendant from doing any act that amounts to infringement of the plaintiff's intellectual property rights in Kaleido, including copyright in the product and its results and for costs.

2. The nutshell case of the plaintiff are as follows:

The plaintiff is a LLP incorporated under the provisions of Partnership Act 2008. They focuses on personalising education and delivering better results to learners in schools, colleges, test prep centres and companies by inter alia conducting activities and assessments to determine learning goals, analysing the performance of the learners and providing specific recommendations for improvements. Further pleaded that in 2012 the plaintiff developed a product called 'Kaleido' which is the subject matter of the suit. The Defendant is an education company specializes in the publication of academic and reference books. The defendant also operates many schools in India and in the first half of 2015, the defendant launched a product

called MyPedia which allegedly performs functions that are similar to those performed by Kaleido. The present

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suit relates to copyright infringement of the test results of Kaleido by the defendant. The defendant has misrepresented the test results of Kaleido as the test results of MyPedia to potential users, who are also their potential customers. Kaleido is an assessment and analytics solution developed by the plaintiff and launched by it for pilot testing in the year 2012. Since then the plaintiff has been working with educational institutions and some non-profit organisations in India and has had good success in helping them achieve better results using Kaleido. The Kaleido enjoys significant advantages over the products of its competitors such as non extra burden imposed on schools and students, flexibility and ease of intergration, coverage of pre-primary grades, varied assessment, testing of not just content knowledge but also varied cognitive skills and Facebook on life skills. Since the time of launch, Kaleido has been used as an assessment tool by over 5000 students, and about 200 teachers have also used the produce and it has been successful in the market. On account of Kaleido being a innovative product, plaintiff has applied for a patent over Kaleido in both India and the USA., and the same are pending for approval.

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3. Further plaintiff has pleaded that in January 2014 plaintiff and defendant entered into discussions for introducing Kaleido as an assessment tool in Pearson schools. On 27.3.2014 the defendant requested the plaintiff to conduct a pilot of Kaleido in the academic year 2014-15, based on which the defendants would take a decision on whether to include it in the next academic year. On 8.4.2014 the defendant informed the plaintiff that Shishya BEML School, Bangalore had been identified for conducting the pilot test. Plaintiff conducted a pilot test of its product Kaleido in a school earmarked for this purpose by the defendant between August - September 2014. This was a Pearson School. The same was successful and the defendant expressed great appreciation for the results of Kaleido. Contrary to its usual practice, the plaintiff had agreed to conduct the pilot free of charge. As the defendant has represented the plaintiff that if the pilot was successful, the defendant would like to introduce Kaleido across Pearson Schools in India. Inview of the scale of the potential transaction and the inducement offered, the plaintiff waived its

charges for conducting the pilot test. On 14.10.2014 the plaintiff prepared a PDF presentation, outlining the results of analysis from Kaleido pilot test and circulated it to the defendant. Their presentation identified lessons

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under each subject in which students had shown relative signs of weakness and further training could be imparted. The presentation included comprehensive analysis of the results of the assessments, and indicated measures that could be adopted to improve learning. The plaintiff's presentation also indicated an overwhelmingly positive feedback from the teachers who had been part of the pilot test. The defendant offered to license Kaleido from them for a period of 2 years and the same was not materialized. The plaintiff and defendant were unable to reach an agreement on pricing. On 5.11.2014 the defendant proposed that the plaintiff licence Kaleido to it for a period of 2 years for a price of Rs.5 Lakhs for the first year and Rs.10 Lakhs for second year. However, the plaintiff declined the offer which was extremely low.

4. It is also contention of the plaintiff that the defendant continued to ask the plaintiff increasingly nuanced questions on the technical aspects of Kaleido, including questions regarding the data structure in their technology platform and how their analysis algorithms worked. To preserve the confidentiality of the information shared with the defendant during the pilot test, on 28.10.2105 sent the defendant a standard form non-disclosure agreement. Despite several requestes by the

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plaintiff the defendant did not sign the agreement. In parallel with the discussions regarding the introduction of Kaleido in Pearson schools, the defendant having been impressed by the rest results of Kaleido, initiated discussions for entering into a larger marketing alliance with them, whereby they would license Kaleido, initially to include it as part of the new product that they were planning to launch and later as part of their ICT solutions being sold by the Pearson Multi-media and ICT business. The said negotiations were unsuccessful and ended in January 2015.

5. It is further pleaded by the plaintiff that Mr.Nived Dinesh of the defendant had proposed them to make an application to Pearson Affordable Learning Fund (PALF) for funding for Kaleido. PALF is supported by global

team within Pearson. Said Dinesh requested them to fill out a form and required them to disclose many confidential and proprietary details about their product Kaleido and their plans for the future and accordingly they agreed and provided the sensitive and confidential details. They requested the defendant and its employees to preserve the confidentiality of the information shared with them during the pilot test and requested the defendant to sign a standard form non-disclosure

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agreement. The defendant never signed the agreement and the negotiations were continued till March 2015. Even after plaintiff rejected the initial offers of the defendants, in order to induce them to part with proprietary and confidential information that they would not have parted, the defendant persisted in continuing negotiations for such an extended period. Defendant's capacity as a potential investor (through PALF) and potential marketing partner if managed to obtain a lot more information, including technical and financial information and such technical information which is owned by the plaintiff is now being exploited by Pearson for its own commercial gain.

6. It is further pleaded that on 28.5.2015 they discovered a video titled "Pearson MyPedia Launch" uploaded by the defendant on YouTube on 4.3.2015 provided similar assessment solutions. In the said video Ujjwal Singh making a presentation to potential customers of such solutions and the press about the different features of the defendant's new product Mypedia. The said assessment functionality was similar to what was offered by Kaleido. The defendant verbatim copying of slides for the plaintiff's presentation, and misrepresenting them as the defendant's own slides

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constitutes a copyright infringement of the plaintiff's literary work. MyPedia was launched by the defendant in January 2015. From the information available in the public domain, it appears that at the time of its launch MyPedia did not include an assessment feature akin to Kaleido. Plaintiff suspects the assessment feature was added to MyPedia later, when it became apparent to the defendant that plaintiff would not agree to the substantial reduced pricing structure. The defendant continued to give the plaintiff the impression that it was interesting in licensing Kaleido, so that it could continue to request the plaintiff to make presentations at regular

intervals, thus allowing defendant's team ample opportunity to clarify its doubts and fine-tune MyPedia in regard to the assessment function. The deficit of the defendant is apparent from the fact that the YouTube Video with the infringing data was uploaded even while negotiations regarding pricing were continuing with the plaintiff. The plaintiff has filed criminal complaint against the defendant and its executive on 1.6.2014 with SHO Vivek Nagar PS for commission of theft and dishonest misappropriation of the test results of Kaleido, cheating, criminal breach of trust and conspiracy. That the results of any test using MyPedia were significantly inferior to the test results of Kaleido. Had MyPedia been tested and

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the results been satisfactory, the defendant would have had no reason to include the test results of Kaleido in the MyPedia Presentation instead of the test results of MyPedia. The confidential is not for circulation of marks on the slides of plaintiff's presentation has been removed and defendant's logo had been added to the confidential analysis of Kaleido's pilot test in MyPedia presentation, thereby the defendant infringed the copy right of the plaintiff's literary work. The defendant has misappropriated Kaleido's test results and presented the same as the test results of MyPedia. The defendant has no reason to include the test results of Kaleido in MyPedia presentation instead of the test results of MyPedia. The students and educational institutions would be deceived into believing that MyPedia has the same capabilities as Kaleido. Hence the plaintiff prayed to decree suit.

7. The defendant appeared through its counsel and filed the written statement. Wherein he has denied the plaintiff's averments besides contending that plaintiff has not come with clean hands and has made dishonest pleas with some ulterior motives. Further contended that the defendant is engaged in the business of manufacturing, developing, exporting, importing,

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consulting, advising in all or any other activities of information technology, computer solution and computer based education, educational aids and providing solution with digital content and required hardware components for K12 and higher education markets and is the proprietor of the trade mark known as "DigitALLY" representing high standards in the field of education. They also built composite instructional and computing

technology (ICT) solutions involving composite education infrastructure, implementation, teacher training and contents development together with hardware components required for their effective dissemination for the school on BOOT Model.

8. The defendant has developed the content, software and hardware solution for its own use and also for the purpose of selling it in open market. The defendant has its own technical and academic research and development wing and it is developing content, hardware and software solutions for the said purpose. The product names MyPedia an integrated learning solutions consisting of books, assessments, digital aids and professional development for school teachers is developed by them for effective learning of the students.

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9. Further defendant has contended that the plaintiff was introduced to them by one Saumil of Edusport in September 2011 stating that the plaintiff is developing a solution to help simplify the assessment and reporting process and are looking to get feedback and suggestions from progressive schools leaders and experienced educationist so that they can improve the solution's design and utility for Principals and teachers. The defendant evaluated the solution developed by the plaintiff, however opined that the same is lacking in certain areas. In 2013 plaintiff approached them and informed that they have launched a new model and plaintiff is keen to offer services to them. The plaintiff has also given its proposal to the defendant. In 2014, they agreed to consider the proposal of the plaintiff to provide its services relating to analysis and reporting on the student's performance on the basis of data provided by them subject to its utility and negotiation on commercials. They allowed the defendant to collect data from Shishya BEML School, one of the schools managed by them for the purpose of demo and pilot test was conducted at Shishya BEML School.

10. In October 2014, plaintiff sent email attaching PDF Presentation containing the analysis of data of them

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provided by it. The said data were constructed for them by the plaintiff as a pilot by collecting the defendant's data with the help and assistance of the teachers and other personnel of the defendant's school. Plaintiff cannot

claim exclusive proprietary right over the same. No copy right involved in the said PDF and it only contains the data of the defendant. They have not used nor had any intention to use the said PDF for any of its commercial activities. During the negotiations with the plaintiff, the defendant has launched its digital product by name MyPedia in January 2015 which is an integrated learning solutions consisting of books, assessments, digital aids and professional development for school teachers and same is developed for school teacher, for effective learning of the students studying in the schools managed by the defendant across India and other schools as well.

11. Further defendant has taken contention that the solutions are developed by the defendant in January 2015 which is not at all similar to the plaintiff's product. During the period of negotiations with the plaintiff, defendant also was in negotiations with other vendors of similar products. During launch the defendant has shown the chart as an example to the parents & customers on the basis of Pearson Text Books and the

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student's data collected in the Pearson school. It is only a chart prepared on the basis of data available in the school of the defendant and there is no technology used to analyse the data. They prepared the data in the school of the defendant and there is no technology used to analyse the data. They have negotiated and finalized with one of the vendors by name M/s.Report Bee, who has developed a software solution for capturing various information about the students and conduct assessments. The solutions provided by new vendor is totally different and distinct from the solution developed by the plaintiff. There are several vendors in the market who are providing similar solutions for analyzing the students performance and provide reporting on the same. The plaintiff has filed the frivolous suit in view of the fact that the defendant has not enter into commercial transaction with the plaintiff. Since the defendant has not used or infringed the alleged copyright of the plaintiff, there is no cause of action for the suit. The plaintiff is not entitled for any relief as sought. On the above grounds prays to dismiss the application.

12. On the basis of the above pleadings the predecessor in office has framed the following issues:

1.

Whether the plaintiff proves that they are the copy right owners of the product "Kaleido"?

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2. Whether the plaintiff proves that the defendant infringed the plaintiff's well established copy right by publishing the test results of Kaleido in MyPedia Presentation and YouTube video titled Pearson MyPedia Launch?

3. Whether the plaintiff is entitled for a decree of permanent and mandatory injunctions as prayed?

4. What order or decree?

13. The plaintiff in order to prove its case, got examined its authorised representative as PW1, got marked Ex.P1 to P27 and closed its side. On the other hand, defendant examined its authorised signatory as DW1, got marked the documents at Ex.D1 to D3 and Ex.C1 & C1(a) and closed their side.

14. Heard the arguments for plaintiff and defendant. The learned counsel for the plaintiff has relied on the following decisions:

1. (2008)1 SCC 1 - Eastern Book Company Vs. D.B.Modak

2.(2011) 8 SCC 781 - ICAI Vs.Shaunak H.Satya 3.2003 SCC Online Cal.323 - Barbara Taylor Bradford Vs. Sahara Media Entertainment Ltd.

4. 1998 SCC Online Del.779-Escorts Constructions Equipment Ltd. Vs. Action Construction Equipment Pvt. Ltd.

5. 2015 SCC Online Bom 4223 - Beyond Dreams Entertainment Pvt.Ltd., Vs. Zee Entertainment Enterprises Ltd.

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6. 1959 SCC Online Mad 15 -C Cunniah & Co.

Vs. Balaraj and Co.

7. (1978) 4 SCC 118 - R.G.Anand Vs. Delux Films

8. 2016 SCC Online Del.6229 - Masters & Scholars of University of Oxford Vs. Rameshwari Photocopy services.

9. 1991 SCC Online Kar 58 - Associated Electronic & Electrical Industries (Bangalore) Pvt. Ltd. Vs. Sharp Tools

10. 2008 SCC Online Bom 1688 - Indiana Gratings Pvt. Ltd., Vs. Anand Udyog Fabricators Pvt. Ltd.

The learned counsel for the defendant has relied on the decision reported in (1978) 4 SCC 118 (R.G.Anand Vs. M/s.Delux Films and others . I have considered the rulings of both the parties and the oral and written arguments filed by both counsels with utmost reverence.

15. My findings on the above issues are as under:

Issue No.1	:	In the affirmative
Issue No.2	:	In the affirmative
Issue No.3	:	In the affirmative
Issue No.4	:	As per final order,

For the following:

REA S O N S

16. Issue No.1:- The specific and foremost case of the plaintiff is that plaintiff has developed the product called Kaleido for assessing and analysing the OS.No.4899/2015 performance of the learners and providing specific recommendations for improvement and same was launched in the year 2012. Defendant is an education company that specialises in the publication of academic and reference books and also operates many schools in India. In the first half of 2015, the defendant launched a product called 'MyPedia' which allegedly performs functions that are similar to those performed by Kaleido. Further plaintiff has been working with educational institutions and some non-profit organisations in India had good success in helping them, achieve better results using Kaleido and said Kaleido is presently used by many prominent schools, including the Zee Mount Litera Group of Schools, Samashti International, Ashok Leyland Trust School and Inventure Academy. Kaleido's platform can be customized to meet the needs of CBSE, ICSE, State Board and International Schools and the plaintiff has partner schools in all these categories. The plaintiff is working with 13 schools in Bangalore, Hosur, Mumbai and Hyderabad and is also partnering with an education focused NGO and Financial Sponsors (Gray Matters Capital) to make improvement to student learning using Kaleido.

17. The learned Senior Counsel for the plaintiff has also vehemently argued that the plaintiff and defendant OS.No.4899/2015 had entered discussion regarding the assessment of the skills of the students in the schools and colleges belongs to the defendant and plaintiff have conducted a pilot test of their products Kaleido in the schools identified for the said purpose by the defendants during August 2014 and said excise was successful resulting in appreciation by the defendant for the results of Kaleido. Since Kaleido has been used as an assessment tool by over 5000 students, and about 200 teachers have also used the product. Kaleido has been successful in the market and hence, plaintiff has applied for Patent over Kaleido in both India and USA and two patent applications are pending for approval. Further in the month of January 2014 the plaintiff and defendant explored the possibility of conducting pilot tests in Pearson schools and they held meeting on 6.2.2014 pursuant to the interest shown by the defendant in Kaleido, Ms.Krithika Muthukrishnan, the Chief Operating Officer of the plaintiff, sent a proposal to the defendant for implementation of Kaleido at Pearson Schools. Pursuant to the email dtd.27.3.2014 the defendant requested the plaintiff to conduct a pilot of Kaleido in the academic year 2014-15 and also suggested that the process of identifying the schools, duration of the pilot, dates of implementation and expected outcome be completed by

10.4.2014 and the actual pilot be conducted OS.No.4899/2015 in July or thereafter. Further on 8.4.2014, the defendant informed the plaintiff that Shishya BEML School, Bangalore had been identified for conducting the pilot test between the end of July 2014 and end September 2014 and defendant requested the plaintiff to design the pilot for Grades 4 & 8. Further plaintiff claims to have prepared a presentation outlining the results of the analysis from the pilot test and circulated it to the defendant and according to the plaintiff, identified lessons under each subject in which students have shown relative signs of weakness, for which further training could be imparted.

18. It is further argued that the defendants was highly appreciative of the results of Kaleido's pilot Mr.Jairam Balakrishnan of the defendant responded to the plaintiff email of 14.10.2014 on the same day stating that he was very excited to be a part of the meeting etc., as discussed regarding larger marketing alliance were unsuccessful as the price offered by the defendant was extremely low and could not be accepted by the plaintiff and these discussions was ended in January 2015. As plaintiff and defendant were unable to agree on the pricing for Kaleido, defendant is alleged to have opted for license to avail Kaleido from the plaintiff for a period of two years. Again the price offered by the defendant was OS.No.4899/2015 allegedly significantly below the expectation of the plaintiff, therefore, the parties continued to negotiate and there was no agreement reached and there was parallel to the discussion regarding introduction of Kaleido in the defendant's school, the school initiated discussions for entering into a larger marketing alliance with the plaintiff and they would license Kaleido initially to include it as a part of new product they were planning to launch. On 28.5.2015, the plaintiff discovered a video titled "Pearson MyPedia" launched and uploaded by the defendant on YouTube on 4.3.2015 by offering the features MyPedia are allegedly similar to that what was offered by Kaleido, verbatim slides depicted from Kaleido pilot test the the defendant school which plaintiff has shared in its presentation were copied from the plaintiff's presentation were resorted to resulting injury to the interest of the plaintiff.

19. On the other hand, the learned senior counsel for the defendant has argued that there was no infringement as alleged by the plaintiff and plaintiff is not having copyright over Kaleido. MyPedia launched in January 2015 was a learning solution developed by the defendant for effective learning of the students which was not at all similar to the plaintiff's product and defendant had partnered with M/s. Report Bee for analysing the OS.No.4899/2015 students' performance in the schools pursuant to an agreement. It is also specifically argued by the counsel for the defendant that plaintiff was introduced to the defendant stating that it would help simplify the assessment and reporting process of the skill of the students, for the purpose of providing demo, the defendant allowed the plaintiff to collect the data from Shishya BEML School managed by them and in fact teachers of the defendant conducted the test and by using the test results, plaintiff generated the requisite data in the format and structure requested by the defendant the contents of the format was also given by the defendant from its books and therefore question of defendant infringing the copyright of the plaintiff as alleged in the plaint does not arise.

20. Now before discussing about the documentary evidence of the plaintiff and defendant what is the meaning of copyright or definition of copyright, how it can be acquired, whether it requires registration, what is the meaning of the infringement are all to be looked into.

21. In this aspect I would like to go through Sec.2(o) of the Copyright Act, 1957 reads as under:

Sec.2(o) of the Copyright Act defines the expression Literary Work which states as under:

OS.No.4899/2015 "literary work" includes computer programmes, tables and compilations including computer Whereas in the present case on hand whether the pilot work of Kaleido done by the plaintiff is comes under literary work including the computer programmes, tables and compilations including computer are to be looked into. The main object of the plaintiff is an assessments and analytics solution that was developed by them and it has been worked with educational institutions and some non-profit organizations in India and it had good success in helping them achieve better results using Kaleido. In order to substantiate the contention of the plaintiff, plaintiff has produced number of documents Ex.P1 to 12 email correspondence between plaintiff and defendants. Ex.P14 is the CD of Ex.P1 to 13. Further plaintiff has produced the 5 sheets of screen shots from the Google and YouTube search as per Ex.P15. Further plaintiff has produced the Criminal Proceedings initiated against the defendants as per Ex.P17 and Ex.P18 is the certified copy of protest petition and Ex.P19 is the CC of B Report with police requisition. Ex.P20 is the CC of order sheet in Cr.No.176/2015. Ex.P21 & 22 are CDs. Ex.P23 is the screen shot of comparative analysis of plaintiff and defendant work.

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22. In fact for the first time around in the month January 2014 the plaintiff and defendant explored the possibility of conducting pilot tests in Pearson Schools, a meeting was held on 6.2.2014 as per Ex.P1 email. Ex.P2 discloses pursuant to the email dtd.27.3.2014 defendant requested the plaintiff to conduct pilot test of Kaleido for the academic year 2014-15. Based on which defendant would take decision on whether to include in the next academic year etc. Same has been discussed in Ex.P2. Thereafter roughly in between around July end and September 2014, defendant requested the plaintiff to design the pilot for grade 4 and 8, said aspect has been discussed in email as per Ex.P3. On 14.10.2014 plaintiff circulated a PDF presentation inter alia outlining the results of the analysis from the Kaleido pilot test (plaintiff's presentation). That outline results of the analysis from the Kaleido pilot at Shishya BEML Public School ie., email dtd.14.10.2014. Plaintiff presentation also indicates an overwhelmingly positive feed back from the teachers who had been part of the pilot test. As per the contention of the plaintiff, the plaintiff has produced along with Ex.P4 the discussions and exchanges between the plaintiff and defendants with regard to starting of the pilot and what are the next step to be taken etc., and also produced the copies of the screen shots of the plaintiff OS.No.4899/2015 Kaleido wherein it is mentioned confidential - not for circulation.

23. Out of them Ex.P7 is the email dtd. 5.11.2014 clearly goes to show that Dinesh Nivad of defendant sent email to Anurag Dwivedi ie., plaintiff wherein it is mentioned plaintiff licensing of the Kaleido to it for a period of two years for a price of Rs.5 lakhs for first year and Rs.10 Lakhs for second year. But plaintiff declined the offer it was extremely low. Same can be seen in Ex.P7. In view

of the said documents or copy of the email exchange between the plaintiff and defendant are clearly goes to show that plaintiff is the creator of the Kaleido. Though defendant has offered plaintiff license Kaleido to it for a period of two years for the price of Rs.5 Lakhs for the first year and Rs.10 Lakhs for the second year, but plaintiff has not agreed.

24. It is true learned counsel for the defendant vehemently argued that to establish the copyright what is the product which has copyright, what is the copyright being claimed itself not proved by the plaintiff etc. But as per Sec.2(o) of Copyright Act specifically stated that the "literary work" includes computer programmes, tables and compilations including computer. Whereas in the present case on hand also considering the nature of the work created by the OS.No.4899/2015 plaintiff in the name of Kaleido, is comes under the definition of Sec.2(o) of Copyright Act.

At this juncture I would like to refer the provision Sec.14 of Copyright Act reads as follows:

14. Meaning of copyright.--For the purposes of this Act, "copyright" means the exclusive right subject to the provisions of this Act, to do or authorise the doing of any of the following acts in respect of a work or any substantial part thereof, namely:--

(a) in the case of a literary, dramatic or musical work, not being a computer programme,--

(i) to reproduce the work in any material form including the storing of it in any medium by electronic means;

(ii) to issue copies of the work to the public not being copies already in circulation;

(iii) to perform the work in public, or communicate it to the public;

(iv) to make any cinematograph film or sound recording in respect of the work;

(v) to make any translation of the work;

(vi) to make any adaptation of the work;

(vii) to do, in relation to a translation or an adaptation of the work, any of the acts specified in relation to the work in sub- clauses (i) to (vi);

(b) in the case of a computer programme,--

(i) to do any of the acts specified in clause (a);

2[(ii) to sell or give on commercial rental or offer for sale or for commercial rental any copy of the computer programme: 2[(ii) to sell or give on commercial rental or offer for sale or for commercial

rental any copy of the computer programme:" Provided that such commercial rental does not apply in respect of computer programmes where the programme itself is not the essential object of the rental.

So, in view of the said provision of law the person OS.No.4899/2015 having exclusive right over his literary work or a computer programme created by him becomes the owner of the copyright. More particularly as per Sec.17 of the Copyright Act speaks who is the first owner of the copyright. Whereas in the present case on hand also plaintiff is a creator and developer of the Kaleido which was launched by the plaintiff for pilot test in the year 2012. Whereas the defendant has launched MyPedia in the year 2015. Even in the written statement at para 28 the defendant has admitted that "MyPedia was launched by defendant in January 2014 and also admitted that at the time of launch or thereafter MyPedia did not include an assessment feature akin to Kaleido." Further defendant has admitted in its written statement specifically para No.11 & 12 with regard to the correspondence between plaintiff and defendant to introducing pilot test of Kaleido. Further defendant has admitted in the written statement particularly at paragraph No.25 that the plaintiff has filled up the details required in the applications. So as per Sec.58 of Indian Evidence Act the facts admitted need not be proved. When defendant itself admitted in the written statement about the email discussions between the plaintiff and defendant with regard to the pilot test and also defendant has not denied that the plaintiff is a creator as well as developer of OS.No.4899/2015 Kaleido, that too in the year 2012 itself shows that author of the work of Kaleido shall be the first owner of the copyright as contemplated under section 17 of the said Act.

25. In addition to that in the written statement at para 23 the defendant themselves have admitted that the negotiations on pricing for introduction of Kaleido in the defendant's school continued until end of March 2015 and even other facts relating to the email of Deepak Mehrotra the CEO of the defendant is also once again a matter of record and defendant begs to rely upon the same for its true purport and contents. Further defendant has pleaded with regard to para 25 of the plaint that the negotiations between the plaintiff and defendant on commercials were ultimately unsuccessful that itself shows that whatever ownership of the copyright claimed by the plaintiff with regard to Kaleido pilot test is admitted by the defendant.

26. Whereas in the evidence of PW1 he has reiterated the plaintiff's averments. Even during the course of cross examination also he has not turned up. It is true defendant's counsel has taken some admissions from the mouth of PW1 regarding the pilot project was done Shishya BEML School and the said school was identified OS.No.4899/2015 by the defendant. Further PW1 has admitted that the data collected from the school was uploaded in Kaleido. But denied that from the said data they have generated the test report. Further PW1 deposed that it was one of the sources to generate the test report. The said admission of PW1 will not be helpful to the case of the defendant to show that plaintiff is not the creator and copyright owner of Kaleido. Even the defendant has not denied that plaintiff is the creator of the Kaleido and said created work of the plaintiff might have tested on the students of the defendant and teachers might have assisted the plaintiff in collecting out the analysis on the students that does not make the teachers or students joint author of the presentation, far from making the defendant a contributor or joint owner as contemplated under Sec.2(o) of the Copyright Act. Further in view of the oral and documentary evidence of the plaintiff, he is the

copyright owner of the Kaleido as contemplated u/s.14 of the Act. On careful perusal of the email correspondence between the plaintiff and defendant as well as other documents produced by the plaintiff, the plaintiff has fulfilled the ingredients of Sec.17 of the Copyright Act.

27. Whereas the DW1 is none other than the person who presented MyPedia of the defendant as per Ex.P15, OS.No.4899/2015 same is admitted by DW1. The defendant has produced the documents ie., Ex.D1 is the Letter of authorisation dtd.17.1.2019, Ex.D2 is the Book named Logman Active Maths(Grade-5) and Ex.D3 is the Platform License Agreement. Further in the cross examination of DW1 has deposed that he was not aware who had conducted the teachers training for pilot study and he do not know whether according to the defendant for pilot study in Shishya BEML School was done by plaintiff not by defendant. Further DW1 has deposed that he was not aware about the meeting held on 13.7.2014 between the plaintiff and defendant, he was not aware why defendant conducted teachers training for pilot study and he do not know anything about the pilot study. The oral testimony of DW1 shows about his ignorance about the creation work of the plaintiff Kaleido. Further the admission of the DW1 that Kaleido belongs to the plaintiff and MyPedia belongs to the defendant itself is sufficient to hold that plaintiff is the owner of the copyright of 'Kaleido'.

28. It is true the learned counsel for the plaintiff cited number of decisions in support of his argument. Out of them the decision reported in (2008) 1 SCC 1 (Eastern Book Company Vs. DB.Modak, wherein the lordships have observed that:

G. Intellectual property - Copyright Act, OS.No.4899/2015 1957- S.13- Literary works, - Classes of - Primary or prior works distinguished from secondary or derivative works.

I. Intellectual property - Copyright Act, 1947

- Ss.13, 14, 17 & 52- Nature and scope of copyright in India- held, copyright is purely a creation of statute under the 1957 Act- What rights the author has in his work by virtue of his creation, are defined in Ss.14 & 17 - Though referred to as exclusive rights, there are various exceptions listed in S.52.

Relating to the same principles plaintiff counsel has relied on the decisions reported in (2011) 8 SCC 781 - ICAI Vs.Shaunak H.Satya and 1998 SCC Online Del.779- Escorts Constructions Equipment Ltd. Vs. Action Construction Equipment Pvt. Ltd. When I gone through the said decisions in detail though the facts of the said decisions and present case are different from the case on hand, but the principles laid down in the said decisions are helpful to the case of the plaintiff. Moreover as observed by the Hon'ble High Court of Karnataka in MFA No.6065/2015 & 6066/2015 their lordships elaborately discussed what is the meaning of copyright under section 2(o) of the Copyright Act and also discussed what is the object of copyright has been incorporated under the said Act. Hence, considering the oral and documentary evidence and observations of the Hon'ble High Court of Karnataka are all taken into consideration that plaintiff has proved issue No.1. Hence, I answer

issue No.1 in OS.No.4899/2015 the affirmative.

29. Issue No.2: The specific allegations of the plaintiff is that defendant infringed the plaintiff's well established copyright by publishing the test results of Kaleido in MyPedia presentation and YouTube video titled Pearson MyPedia Launch. In this aspect in the written statement, the defendant has categorically admitted the contention of the plaintiff pleaded in para 14 to 17 of the plaint that email correspondence referred to in the above paras are matters of record and the defendant also relied upon the same for its true purport and contents. He has further admitted that defendant launched the product called MyPedia and also admitted the plaintiff averments in para 11 & 12 with regard to the defendant requested the plaintiff to conduct project for the academic year 2014-15 based on which defendant would take a decision etc., and again further discussion on 8.4.2014 as pleaded by the plaintiff. Further he has admitted that the negotiations on pricing for introduction of Kaleido in the defendant school continued until end of March 2015 and negotiation between the plaintiff and defendant on commercials were ultimately unsuccessful as pleaded in plaint para 25 and defendant's proposal to the plaintiff to make an application to PALF etc., as pleaded in plaint para 26. It is further admitted by the defendant in his written OS.No.4899/2015 statement para 26 that on 28.5.2015, in the video Mr.Ujjwal Singh who is none other than DW1 is making a presentation to potential customers of such solutions and the press about the different features of defendant's new product MyPedia.

30. According to defendant's though MyPedia was launched by the defendant in the month of January 2015 and it did not include assessment feature to akin to the Kaleido. But as per Ex.P15 screen shot video of Pearson MyPedia launch on 4.3.2015 are presentation made by the DW1 to the customers is none other than the presentation of the plaintiff Kaleido by removing the name Kaleido and MyPedia has been replaced in the presentation. Further in the evidence of DW1 deposed that he do not have any knowledge in developing or using smart code and he do not have any formal qualification in computer science or information technology. So even though he has no knowledge or developing source code the context of the verbatim reproduction of the presentation of the plaintiff by defendant claiming that it was defendant's own creation discloses that there has been no such doubtful claim and indeed the plaintiff has been very specific making allegations regarding infringement. Admittedly in the presentation of defendant slides depicting analysis from Kaleido pilot at the OS.No.4899/2015 defendant school which the plaintiff had shared with defendant clearly stating that said information was confidential and not for circulation had been made use of by adding defendant's logo to the slides. The documents produced by the plaintiff titled Pearson MyPedia launched and uploaded by defendant on YouTube wherein one Ujjwal Singh is seen making a presentation to potential customers about the different features of the defendant's new product is exactly similar to that of plaintiff Kaleido.

31. Hence, on perusal of the documentary evidence more particularly perusal of the two presentations appeared or placed on record that analysis being presented by the defendant was same and quite similar to the output of the pilot test of MyPedia presentation created by work of plaintiff in defendant school was meant to be used periodically for testing the skills of students and for improving the same. Moreover the presentation included the comprehensive analysis of the results of the assessments and indicated measures that could be adopted to improve learning. The

question whether this presentation prepared by the plaintiff and shared by it with the defendant on condition that it shall be strictly confidential and shall not be circulated, the plaintiff constituted literary work that has been infringed OS.No.4899/2015 by the defendant. Sec.2(m) of Copyright Act defines under what circumstances can say infringement of copyright and what is the meaning of infringement has been explained reads as follows:

Sec.2[(m) of the Copyright Act defines the expression Infringing Copy which states as under:

"infringing copy" means,--

(i) in relation to a literary, dramatic, musical or artistic work, a reproduction thereof otherwise than in the form of a cinematographic film;

(ii) in relation to a cinematographic film, a copy of the film made on any medium by any means;

(iii) in relation to a sound recording, any other recording embodying the same sound recording, made by any means;

(iv) in relation to a programme or performance in which such a broadcast reproduction right or a performer's right subsists under the provisions of this Act, the sound recording or a cinematographic film of such programme or performance, if such reproduction, copy or sound recording is made or imported in contravention of the provisions of this Act.

32. In this aspect the learned counsel for the plaintiff has cited a decision reported in (1978) 4 SCC 118 (R.G.Anand Vs. Delux Films) wherein their lordships observed as follows:

One of the surest and the safest test to determine whether or not there has been a violation of copyright is to see if the reader, spectator or the viewer after having read or seen both the works is clearly of the opinion and gets an unmistakable impression that the subsequent OS.No.4899/2015 work appears to be a copy of the original.

The counsel for the defendant has also relied on the same decision relied by the plaintiff. Wherein the Hon'ble Supreme Court gave some guidelines or relevant law to the Copyright reads as follows:

1. There can be no copyright in an idea, subject matter, themes, plots or historical or legendary facts and violation of the copyright in such cases is confined to the form, manner and arrangement and expression of the idea by the author of the copyright work.

2. Where the same idea is being developed in a different manner, it is manifest that the source being common, similarities are bound to occur.

In such a case the courts should determine whether or not the similarities are on fundamental or substantial aspects of the mode of expression adopted in the copyrighted work. If the defendants work is nothing but a literal imitation of the copyrighted work with some variations here and there it would amount to violation of the copyright. In other words, in order to be actionable the copy must be a substantial and material one which at once leads to the conclusion that the defendant is guilty of an act of piracy.

3. One of the surest and the safest test to determine whether or not there has been a violation of copyright is to seeing the reader, spectator or the viewer after having read or seen both the works is clearly of the opinion and gets an unmistakable impression that the subsequent work appears to be a copy of the original.

4. Where the theme is the same but is presented and treated differently so that the subsequent work becomes a completely new work, no question of violation of copyright arises.

5. Where however apart from the similarities OS.No.4899/2015 appearing in the two works there are also material and broad dissimilarities which negative the intention to copy the original and the coincidences appearing in the two works are clearly incidental no infringement of the copyright comes into existence.

6. As a violation of copyright amounts to an act of piracy it must be proved by clear and cogent evidence after applying the various tests laid down by the case law discussed above.

7. Where however the question is of the violation of the copyright of stage play by a film producer or a Director the task of the plaintiff becomes more difficult to prove piracy. It is manifest that unlike a stage play a film has a much broader prospective, a wider field and a bigger background where the defendants can by introducing a variety of incidents give a colour and complexion different from the manner in which the copyrighted work has expressed the idea. Even so, if the viewer after seeing the film gets a totality of impression that the film is by and large a copy of the original play, violation of the copyright may be said to be proved.

33. When I gone through the said decision in detail though the facts of the said decision is different from the case on hand, but the principles laid down in the said decision ie., point No.3 of the decision is aptly applicable to the case on hand. Whereas in the present case on hand also as admitted by the defendant, plaintiff is the creator of Kaleido in the year 2012 and defendant product MyPedia is launched in the month of January 2015. But on comparison the presentation of the plaintiff and defendant, it clearly discloses that the plaintiff OS.No.4899/2015 presentation has been reproduced by the defendant as shown in Ex.P15 & 16. It is true the Hon'ble High Court of Karnataka in the above MFA has observed that when a person produces something with his skill and labour, it normally belongs to him and other person would not be permitted to make profit out of the skill and labour of the original author and it is for this reason copyright give to the authors

certain rights in relation to literary work. Whereas in the present case also what ever the literary work created by the plaintiff, he is the first owner of the said work and he becomes exclusive ownership of the said creation of Kaleido. When the defendant has reproduced the presentation of the plaintiff in any manner without his permission or license it amounts to infringement of the copyright of the plaintiff. Relating to this aspect plaintiff counsel has relied upon number of decisions reported in (2008)1 SCC 1 - Eastern Book Company Vs. D.B.Modak, 2003 SCC Online Cal.323 (Barbara Taylor Bradford Vs. Sahara Media Entertainment Ltd.), 2015 SCC Online Bom 4223 (Beyond Dreams Entertainment Pvt.Ltd., Vs. Zee Entertainment Enterprises Ltd.), 1959 SCC Online Mad 15 (C.Cunniah & Co. Vs. Balaraj and Co.) 2016 SCC Online Del.6229 (Masters & Scholars of University of Oxford Vs. Rameshwari Photocopy services.), 1991 SCC Online Kar 58 (Associated Electronic & Electrical Industries (Bangalore) Pvt. Ltd. Vs. Sharp Tools) and 2008 SCC Online Bom 1688 (Indiana Gratings Pvt. Ltd., Vs. Anand Udyog Fabricators Pvt.

OS.No.4899/2015 Ltd.)

34. When I gone through the said decisions in detail though the facts of the said decisions are different from the case on hand, but the principles laid down in the said decisions are helpful to the case of the plaintiff to come to the conclusion that plaintiff has established that he has designed the literary work in the form of presentation and chart which clothed him with copyright and this right was sought to be infringed by the defendant.

35. Hence, considering the facts and circumstances of the case, considering the oral and documentary evidence and admission of DW1 and the principle of law as observed by Hon'ble High Court of Karnataka are all taken into consideration, plaintiff has proved issue No.2. Hence, I answer Issue No.2 in the affirmative.

36. Issue No.3: In view of findings on issue No.1 & 2 plaintiff has proved that he is the copyright owner of the product Kaleido and also proved that defendant has infringed the plaintiff's well established copyright by publishing the test results of Kaleido in MyPedia presentation and YouTube video titled Pearson MyPedia Launch as discussed supra. When plaintiff is the exclusive owner of the copyright product Kaleido, OS.No.4899/2015 defendant infringing the right of the plaintiff as contemplated under section 51 of Copyright Act. It is necessary to direct the defendant to remove the test results of Kaleido from the MyPedia presentation and the Youtube titled 'Pearson MyPedia Launch' that was uploaded by the defendants on YouTube on 4.3.2015 and from any other marketing materials and where the results are used. Further it is very much necessary to restrain the defendant, any related person, entity, officers, agents, representatives, managers, employees and all others acting for and on their behalf permanently from using or referring in any manner to the test results of Kaleido in any press releases, public announcements, promotional or other materials for MyPedia. Further it is also necessary to restrained the defendants from doing any act that amounts to infringement of the plaintiff's intellectual property rights in Kaleido, including copyright in any products and its results. If the defendant is not directed to remove the test results of Kaleido from the MyPedia Presentation or from YouTube titled Pearson MyPedia Launch uploaded by the defendant and if the defendant is illegally using the creative work of the plaintiff Kaleido for wrongful gain, it will cause more inconvenience and injustice to the plaintiff. Likewise if the

defendant is not restrained from using the test results of OS.No.4899/2015 Kaleido plaintiff will be put to irreparable loss and injury. Under such circumstances, it is very much necessary to protect the plaintiff under Copyright Act as he has proved that he is the original author of the said literary work Kaleido as discussed supra. In the result I answer issue No.3 in the affirmative.

37. Issue No.4: For the foregoing reasons and discussion and considering the facts and circumstances of the case and considering the findings on the above issues, the suit of the plaintiff is deserved to be decreed without costs. Under the above circumstances, accordingly I proceed to pass the following:

O R D E R Suit of the plaintiff is hereby decreed.

The defendant is hereby directed to remove the test results of Kaleido from the MyPedia Presentation and the YouTube titled "Pearson MyPedia Launch" that was uploaded by the defendant on YouTube on 4.3.2015 and from any other marketing material where the results are used.

Further the defendant, any related person, entity, officers, agents, representatives, managers, employees and agents, as the case OS.No.4899/2015 may be, and all others acting for and on behalf of the defendant, are hereby restrained permanently from using or referring in any manner to the test results of Kaleido in any press releases, public announcements, promotional or other materials for MyPedia.

Further the defendant, his officers, agents etc., are hereby permanently restrained from doing any act that amounts to infringement of the plaintiff's intellectual property rights in Kaleido, including copyright in the product and its results in any manner.

No order as to costs.

Draw decree accordingly.

[Dictated to the Judgment Writer, computerised, and print out taken by him, corrected and then pronounced by me, this day the 17th March 2022.

(NAGARAJAPPA. A.K.) XVIII ADDL. CITY CIVIL AND SESSIONS JUDGE,
BENGALURU AN N E XU RE

1. No.of witnesses examined on behalf of plaintiff/s :

PW1 : Krithika Muthukrishnan

2. No.of documents marked on behalf of plaintiff/s :

Ex.P1 : email dtd.6.2.2014

Ex.P2 : email dtd.27.3.2014

OS.No.4899/2015

Ex.P3 : email dtd.8.4.2014
Ex.P4 : email dtd.14.10.2014
Ex.P5 : email dtd.14.10.2014
Ex.P6 : email dtd.16.10.2014
Ex.P7 : email dtd.5.11.2014
Ex.P8 : email dtd.28.10.2014
Ex.P9 : email dtd.22.12.2014
Ex.P10 : email dtd.17.12.2014
Ex.P11 : email dtd.28.3.2015
Ex.P12 : email dtd.3.7.2014
Ex.P13 : email dtd.30.1.2015
Ex.P14 : CD of Ex.P1 to 13

Ex.P15 : Screen Shots from the Google & YouTube Ex.P16 : CD of Ex.P15 Ex.P17 : CC of FIR in Cr.No.176/2015 Ex.P18 : CC of Protest petition in Cr.No.176/2015 Ex.P19 : CC of B Report with police requisition Ex.P20 : CC of order sheet in Cr.No.176/2015 Ex.P21 & 22: Two CDs Ex.P23 : Screen shot of Comparative analysis of plaintiff and defendant's work.

3. No. of witnesses examined on behalf of defendant :

DW1 : Ujjwal Singh

4. No. of documents marked on behalf of defendant :

Ex.D1 : Letter of authorisation dtd.17.1.2019 Ex.D2 : Book named Logman Active Maths(Grade-5) Ex.D3 : Platform License Agreement Ex.C1 : Compact Disc Ex.C1(a) : Transcription of the contents of Ex.C1.

XVIII Addl. City Civil Judge Bangalore City.

43 OS.No.4899/2015 Judgment pronounced in the open court vide separate judgment. The operative portion of judgment reads thus:

O R D E R Suit of the plaintiff is hereby decreed.

The defendant is hereby directed to remove the test results of Kaleido from the MyPedia Presentation and the YouTube titled "Pearson MyPedia Launch" that was uploaded by the defendant on YouTube on 4.3.2015 and from any other marketing material where the results are used.

Further the defendant, any related person, entity, officers, agents, representatives, managers, employees and agents, as the case may be, and all others acting for and on

behalf of the defendant, are hereby restrained permanently from using or referring in any manner to the test results of Kaleido in any press releases, public announcements, promotional or other materials for MyPedia.

Further the defendant, his officers, agents etc., are hereby permanently restrained from doing any act that amounts to infringement of the plaintiff's intellectual property rights in Kaleido, including copyright in the product and its results in any manner.

No order as to costs.

Draw decree accordingly.

XVIII Addl.C.C. & S.J., Bangalore