

## **Ziff-Davis Inc. vs Dr. D.K. Jain And Ors. on 23 September, 1998**

**Author: S.N. Kapoor**

**Bench: S.N. Kapoor**

ORDER

S.N. Kapoor, J.

1. This judgment shall dispose of IA No.3907.97 under Order 39 Rules 1 and 2 read with Section 151 CPC filed in a suit for permanent injunction restraining infringement of Copyright, passing off, breach of contract, rendition of accounts of profit, delivery etc.

2. According to the plaintiff company, it is successor in interest to the publishing assets of a business commenced in 1927 and is presently engaged in publication of magazines, newsletters and other printed media, electronic publishing via on-line services, CD-ROM, magnetic tape and other electronic media, computer training, development, maintenance and marketing of data base of computer and telecommunications installations, market research and consultancy It is also a leading publisher of computer publications and either directly or through its affiliates publishes and prints over 20 publications, including its flagship publication PC magazine having worldwide circulation of over 1 million copies. The plaintiff is also owner of the trademarks "PC Magazine", "PC Week", "Computer Shopper" and "Internet User" which are either registered or pending registration in favour of the plaintiff in over 70 countries all over the world, including India. The plaintiff is also the owner of the Copyright to the artistic work comprised of the stylized manner in which the trademark PC Magazine is represented in a logo format; the component PC is depicted in a large elongated font in white colour on a red coloured vertically inclined rectangular device having an inner white border with 9 thin horizontal lines in white. The word 'Magazine' appears in white in a relatively wider font beneath "PC". The said logo constitutes an original artistic work within the meaning of Section 2(c) of the Indian Copyright Act, 1957 (hereinafter called the 'Act' for short). It has been designed by an in house designer during the course of his employment. Consequently, the plaintiff is owner of the copyright within the meaning of Section 14 of the Act.

3. India being signatory to the Universal Copyright Convention (U ) and the Berne Convention and by virtue of the International Copyright Order, 1991, under the provisions of the said treaties, the plaintiff's said work is subject to the copyright protection in India.

4. The trademark 'PC Magazine' of the plaintiff was first used in India in 1987, the trademark 'Computer Shopper' in June, 1988, the mark 'PC Week' since February, 1986 and the mark 'Internet User' since September, 1996. The present circulation of the aforesaid magazines is as under:

Name of	Current	Paid per	Issues
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Magazine	Subscription	issue	per year
2. Computer Shopper	13 per monthly issue	13 paid per monthly issue	--
3. PC Week	12 per weekly issue	11 paid per weekly issue	--
4. Internet User	--	--	--

5. The plaintiff has got circulation of these magazines in 190 countries for literate, particularly computer literate public all over the world. These trademarks signify and mean the goods of the plaintiff.

6. On 9th April, 1994, the plaintiff entered into a licence agreement with defendant No.2. The plaintiff gave an exclusive licence to the defendants to a limited right to publish an Indian edition of the publication entitled PC Magazine and to use the mark 'PC Magazine' in relation thereto for a period of 3 years effective throughout India in connection with the said publication and advertising and promotion of the foreign edition and the supplements thereof. The PC Magazine in India was being published "with an editorial arrangement of Ziff-Davis Publishing Company, L.P., New York. All editorial material used under this agreement was copyright property of Ziff-Davis Publishing Co., L.P., copyright c 1994 1994 [or other year of first publication]". Clause 12(b) of the agreement provides that the defendant/licensee would "not have or obtain by exercising its rights under this agreement or otherwise, any right or interest in the trademarks or the Ziff marks beyond the rights specifically given in this agreement".

7. In so far as the question of copyright is concerned there is no dispute in between the parties that the respondents were using the logo and copy right mark of the plaintiff under a licence agreement dated 9.4.1994. That licence agreement has expired on 31.3.1997. It is not claimed by the defendants that it has been extended. The defendants offered to undertake that they will keep stating, either on the mast-head of the magazine or on the contents page, the declaration that "PC MAGAZINE INDIA" has no relationship whatsoever neither with PC Magazine of USA nor with Ziff Davis Publishing Co., USA". However, irrespective of the fact the defendants can neither use the logo nor any material which they may be using under the licence of the plaintiff, the defendants had recognised the plaintiff's proprietary right in the copyright under the agreement. The submission that agreement is void and, therefore, it can be violated does not appeal to the reason. The logo is an artistic work within the meaning of Section 2(c) of the Copyright Act. The defendants were using the same under the licence. It is not in dispute that this logo is being used by the plaintiff not only in India but in numerous other countries as well. In terms of clause 3 of the International Copyright Order 1991 all the provisions of Copyright Act, 1957 excepting those of Chapter VIII; and those other provisions which apply exclusively to Indian works, shall apply to any work first made and published in a country mentioned in part I, II, III or IV of the Schedule, in like manner, as if it was

first published in India. United States of America is named in Part I of the Schedule at item No. 56 as one of the Berne Convention countries which have Ratified/Accepted/Accessed to the 1971 Text of the Convention. It may further be mentioned that in terms of clause 4 of the Order 1991 the United States being named at Item No. 45 in part III of the Schedule also, even the provisions of sub-section (1) of Section 32 shall apply to work first made and published in United States of America. Moreover in terms of clause 5 of 1991 Order the provisions of Section 32 (Excluding its sub-section (1), Section 32A and 32B shall apply to work first made or published in a Berne Convention Country mentioned in Part I of the Schedule or in a Universal Copyright Convention Country mentioned in Part III of the Schedule. Still further, by virtue of clause 6 of 1991 Order, the term of copyright in a work shall not cease that which is enjoyed by it in its country of origin, and in the instant case USA. There is apparent violation in using the logo, the style, the colour combination of the logo and the material which has been published by the plaintiff or which is likely to be published by the plaintiff and there would certainly be infringement of copyright in case the defendants use the material of the plaintiff published in USA in future also.

8. In so far as question of passing off is concerned the submission of learned Senior counsel for the defendants Shri P.N. Lekhi is that the agreement was void. The plaintiff's mark was not registered in India. The defendant is the prior owner and user of the registered title PC Magazine India. In fact, all the titles namely, PC MAGAZINE INDIA, COMPUTER SHOPPER INDIA, INTERNET USER INDIA and THE PC WEEK are also registered by the defendants with the Registrar of Newspapers for India (RNI) under the "The Press & Registration of Books Act, 1867 (hereinafter referred to '1867 Act'). Hence the defendants are the prior owner of these registered titles. The defendants had also published its first edition title "PC MAGAZINE INDIA" in the month of March, 1994. The plaintiffs have no trans-border operation and reputation for circulation figures of their publications "Internet User" is Nil, "PC Week" - 12, "PC Magazine" in the vicinity of 240 and "Computer Shopper" - 13 only. The plaintiffs' have no goodwill in India. The title of the magazines are not distinctive to plaintiffs' magazines. The Magazines in dispute are read by highly literate and educated people and they are not likely to be misled or deceived by use of such title by the defendants. There are 28 other distinctive features like their logo's sizes, prices, contents, weight, advertisers and the copy of the statements showing differences.

9. Whether the words "PC" "Week", "Magazine", "Computer", "Shopper", "User" "Internet" are descriptive and generic words? is a key question and answer to this question may lead to a just answer. So far as the letters P and C and the word Magazine are concerned there is no doubt that individually they are certainly descriptive words but the moment they are read together they no more remain just descriptive for by now the title PC Magazine has acquired a definite marketable value for those who are dealing in computers; and who are somehow or other interested in computer education. There cannot be any dispute also that title PC Magazine India itself implies that the PC Magazine India is a subsidiary of some foreign corporation doing the business in India.

10. According to the submission of learned counsel for the plaintiff an ex licensee is estopped from claiming that the mark is descriptive or that confusion would not take place because he himself has used it as a trademark. The ex licensee can also not challenge the proprietary right of a trademark on the ground of descriptiveness.

11. It is also submitted that it is settled proposition that even words like 'BEST' (Bombay Electric Supply & Tramway Co.) are capable of acquiring a secondary meaning and becoming distinctive in relation to certain goods and services. Learned Senior counsel Shri G.L. Sanghi for the plaintiff referred to the following cases.

1. Time, Incorporated Vs. Life Television Corporation (103 USPQ 131).
2. AS Vs. Hearst Corporation (206 USPQ 605).
3. Crain Communications, Inc. Vs. Fairchild Communications Inc. (12 USPQ2d 1214)
4. Modern Handcraft Vs. L.L. Johnson (210 USPQ 945).
5. Blake Publishing Vs. O'Quinn Studios (202 USPQ 945)
6. Church of Scientology International Vs. The Elmira Mission et al (230 USPQ 325 at 327).

11.1 In Time, Incorporated vs. Life Television Corporation (supra) it was held that the word 'LIFE' though descriptive had acquired a secondary meaning in relation to magazines and could not be used by the defendants in relation to televisions.

11.2 In AS Vs. Hearst Corporation (supra) 'Science' and 'Science Digest' itself were held to be similar for magazine titles.

11.3 Similarly in Crain Communications, Inc. Vs. Fairchild Communications Inc. (supra) 'Automotive News' and 'Automotive Electronic News' as the names of periodicals were held to be deceptively similar.

11.4 In Modern Handcraft Vs. L.L. Johnson (supra) it was held that the word 'Workbench' for a do-it-yourself magazine was protected.

11.5 In Blake Publishing Vs. O'Quinn Studios (supra) the words 'Fantastic Films' although descriptive as regards magazines dealing in science fiction and fantasy movies was protected and the defendant's magazine named Fantastica was restrained.

11.6 Church of Scientology International Vs. The Elmira Mission et al (supra) the Court drew a strong presumption as to the trademark's validity and the plaintiff's ownership on the ground that the defendants had obtained a license. The court further held that the fact that a license had been given showed that the plaintiff had an interest in the trade mark.

12. On the other hand, the Senior learned counsel for the defendants relies upon the following cases:

1. Office Cleaning Services Vs. Westminster (1946) 63 RPC 39 (HL) at 42.

2. Asiantic Government Security Life Assurance Co. Ltd. Vs. New Asiatic Insurance Co. Ltd. AIR 1939 Mad 555; and G.E. Tm. (1969) RPC 418 at 443.

3. Industrial Furnaces Vs. Reaves (1970) rpc 605

4. National Cash Register Vs. Therman (1907) 24 RPC 211

5. Tigon Mining Vs. South Tigon Mining (1931) 48 RPC 526 12.1 In Office Cleaning Services Vs. Westminster (supra) it was held as under:

"Foremost I put the fact that the Appellants chose to adopt as part of their title the words "Office Cleaning" which are English words in common use, apt and more apt than any other words to describe the service that they render. This is a trade name, not a trade mark, case, but I would remind your Lordships of the close analogy between the two classes of case found by Farwell, J., in Aerators Limited Vs. Tollit (1902) 2 Chancery 319 and by Parker J. in the Vacuum Cleaner case (ubi super). So it is that, just as in the case of a trade mark the use of descriptive words is jealously safeguarded, so in the case of trade names the Courts will not readily assume that the use by a trader as part of his trade name of descriptive words already used by another trade as part of his trade name is likely to cause confusion and will easily accept small differences as adequate to avoid it. It is otherwise where a fancy word has been chosen as part of the name. Then it is that fancy word which is discriminatory and upon which the attention is fixed, and if another trader takes that word as part of his trade name with only a slight variation or addition, he may well be said to invite confusion. For why else did he adopt it?

13. In so far as question of ownership of the trade mark is concerned the defendants claimed that he is the prior owner and user of the registered title "PC Magazine, India, Computer Shopper India, Internet User India and the PC Week are already registered by the defendants with the Registrar of Newspapers under the 1867 Act. The title PC Magazine India was registered by the defendants in the year 1992 and hence the defendants are the prior owner of these registered titles. The defendants had also published its first edition title "PC MAGAZINE INDIA" in the month of March, 1994. On the other hand it is contended that the defendants obtained registration of the plaintiff's titles with the Registrar of Newspapers of India under The Act after representing to the plaintiff that such registration was compulsory in order to publish the magazines in India and to give effect to the license agreement. The first edition of the PC magazine was printed by the defendants under the terms and licence agreement using the plaintiff's copyright material and not independently. It is also contended that the Indian law did not permit Indian edition of foreign publications as per the Cabinet decision of September, 1995. Therefore by virtue of Section 24 of the Indian Contract Act the agreement was void as its object was unlawful. It may be mentioned in this regard that the licence agreement was entered into 9th April, 1995, therefore, subsequent decision would not enure to the benefit of the respondent. Moreover no notification and/or enactment has been shown in this regard.

14. There are two different aspects, one is the ownership of the trade mark and another is licence for publication.

15. It may be mentioned that registration of the PC Magazine under 1867 Act by itself would not confer the ownership right on the trade mark. The source of authority to use the trade mark was only the licence in view of the correspondence and the agreement. The moment licence ceases the defendants being just a licensee could not claim ownership of the trade mark. Since PC Magazine was published under the licence granted by the plaintiff company the defendants cannot use the trade mark. The registration under the 1867 Act in respect of the licence is just subservient to the licence granted by the plaintiff company to use the trade mark PC Magazine. In this regard In *Haw Par Bros. International Ltd. Vs. Tiger Balm Co. (P) Ltd. & Ors.*, 1996 PTC (16)(DB) 311, the following observations have been made:

In *Kerly's Law of Trade Marks and Trade Name*, 12 Edition, at page 356, in para 16-14, the following passage occurs:-

Subject to two qualifications, nothing in the Trade Marks Act affects a trader's right against another in an action for passing-off. It is, therefore, no bar to an action for passing-off that the trade name, get-up or any other of the badges identified with the plaintiff's business, which are alleged to have been copied or imitated by the defendant, might have been, but are not registered as trade marks, even though the evidence is wholly addressed to what may be a mark capable of registration. Again, it is no defense to passing-off that the defendant's mark is registered. The Act offers advantages to those who register their trade marks, but imposes no penalty upon those who do not. It is equally no bar to an action for passing-off that the false representation relied upon is imitation of a trade mark that is incapable of registration. A passing-off action can even lie against a registered proprietor of the mark used upon."

In *Narayanan on "Trade Marks and Passing off"* IV Edition, para 22.03 at pages 410 and 411 reads thus:-

"The provisions of the Act including those of registration do not affect rights of action against any person for passing off goods as the goods of another or the remedies in respect thereof. Thus in an action for passing off the defendant cannot plead that the mark he is using, which has resulted in passing off, is registered. This would appear to follow from the use of the words "subject to the other provisions of this Act" in the opening part of s.28(1) defining the right conferred by registration. The "other provisions of the Act" would obviously include s.27(2) dealing with rights of action for passing off. Section 27(2) overrides the provision of S.28."

15.1 Though the observations of Srinivasan, J. relate to the registration of the Trade Marks Act yet rationale and spirit would cover the case of registration under the 1867 Act also. Therefore the registration would not confer ownership of the trade mark in

favour of the defendants.

16. In this connection it is also contended that the plaintiff's are not owners of the trade mark PC Magazine for it is being published in Germany also and consequently the plaintiff's have no monopoly over the trade mark PC Magazine. This argument of the defendants is solitary instance of an unrelated third party using the title PC Magazine in Germany. It does not justify the activities of ex-licensee like the defendants.

17. The next contention of the defendant is that the trade marks in question are merely descriptive and generic and as such the plaintiff can neither be said to be the owner nor can monopolize the letters and words. Learned Senior counsel for the defendants relies upon the following cases:

1. George Outram Vs. London Evening News Papers (1911) 28 RPC 308.
2. Ridgeway Cp. Vs. Hutchinson (1923) 40 RPC 335
3. Mathieson Vs. Pitman (1930) 47 RPC 541
4. Pearl Cooper Ltd. Vs. Richmond Hill (1957) RPC 363
5. Ridgeway Vs. Amalgamated Press (1912) 29 RPC 130
6. Thomson Vs. Kent Messenger (1975) RPC 191; (1974) FSR 494.

17.1 It is further contended by the learned Senior Counsel for the defendants that in USA itself the plaintiff's had no exclusive right to the trade mark in letters PC and Magazine in this respect. Moreover if ordinary generic word has no exclusive and monopolistic right, even a combination of two or three such words will have no right for in absence of distinctiveness. The learned Senior counsel for the defendants further relies upon the following cases:

1. Drive yourself Hire Vs. Self Drive Cars (1957) RPC 307
2. Asiatic Government Security Life Assurance Vs. New Asiatic Insurance AIR Mad. 555
3. Salaried Persons Postal Loans Vs. Postal and Salaried Loans of Glasgow (1966) RPC 24 (Scotland).
4. Premier Motor (Birmingham) Vs. Premier Driving School (Birmingham) (1962) RPC 222

5. Park Court Hotel Vs. Trans World Hotels (1972) RPC 27
6. Credit Management Company Vs. Credit Management (1961) RPC 157
7. Deane Vs. Schofield (1962) RPC 179
8. Teju Singh Vs. Shanti Devi
9. Lyons Vs. G & K Restaurants (1955) 72 RPC 259
10. Sypha Sound and Tape Recorder Centre Vs. Tape Recorders (Electrics) (1961) RPC 27
11. Corel Index Vs. Regent Index (1970) RPC 147
12. Turton Vs. Turton (1889) 42 ChD 128

18. In regard to these submissions, the response is that the defendants as licensee agreed on the following terms:

"it will not have or obtain, by exercising its rights under this agreement or otherwise, any right or interest in the trademarks or the Ziff Marks, beyond the right specifically given in this agreement. If contrary to the provisions of this agreement, licensee has obtained or shall obtain any such right or interest by any cause, then licensee, will immediately assign it to Licensor or Licensor's designee and/or abandon or withdraw any application or other claim of ownership for it, at Licensor's option and at Licensee's expense, in accordance with Licensor's written instructions given at any time. If any such right or interest is not assignable or assigned for any reason, Licensee agrees never to exercise such right or interest by exploiting it directly or through any other party, or by preventing Licensor or any of its affiliate or divisions or any other party authorized by Licensor or any of its affiliates or divisions from exploiting it.

Licensee acknowledges that, as between Licensee and Licensor, Licensor is the exclusive owner of the Trademarks and the Ziff Marks and of all trademark rights related to or created by Licensee's use of the Trademarks in any language or the Ziff Marks. Without limiting the foregoing, with respect to each such mark, Licensee hereby assigns to licensor, or its affiliate or division, as the case may be, all of such trademark rights together with the goodwill attaching to that part of the business in connection with which such trademark rights are used. Licensee agrees to, at its expense, execute and deliver to Licensor such documents as Licensor may request to register Licensee as a Registered User or Permitted User of such trademark rights and to follow Licensor's instructions for proper use thereof in order that protection and/or registrations for the trademark rights may be obtained or maintained.



Licensee agrees that Licensee will not use, directly or indirectly, either the Trademarks or the Ziff Marks in any way other than as herein authorized (or as is authorized in such other written contract signed by both of the parties hereto as may be in effect between them). In addition to any other right and remedy which Licensor may have under this agreement, or at law or in equity, Licensee agrees that all the profits from any use thereof on products other than the Foreign Edition or Supplements or in connection with any services (unless authorized by Licensor in writing), and all profits from the use of any other material of licensor, as set forth above and otherwise, without Licensor's written authorization, shall be payable to Licensor.

19. It is apparent that trade marks of the plaintiff are not just generic or descriptive in nature for the Plaintiff's magazines have acquired their own reputation in the market in view of circulation abroad as well as in India. Besides, the fact that the defendant themselves took licence and it indicates the high value of the trade marks of the plaintiff for otherwise, there was no reason for the defendants to copy them out. In such circumstances the defendants cannot claim any ownership of either of these trade marks. It may be added that a Division Bench of this Court in *Rob Mathys India Pvt. Ltd., Vs. Synthes Ag Chur*, 1997 (17) PTC (DB) 669, after referring to *Aktiebolaget Jonkoping Valcan Vs. S.V. Palanichammy Nadar & Ors.* took the view that "the International Convention for the protection of industrial property" originally of Paris in 1883 and recently revised at Lisbon in 1958 clearly recognizes the principle specially in its Article 6 that when a Trade Mark has been duly registered in the country of origin and is then registered in other Convention Countries, each of these national marks is to be considered as independent and the renewal of registration in the country of origin does not involve the obligation to renew in other Convention Countries".

20. It follows that the PC Magazine of Germany is different from trade mark PC Magazine India. Nothing has been pointed out to indicate that the PC Magazine of Germany has been circulated in India or has been marketed in India to question and challenge exclusiveness of the trade mark PC Magazine in question. This would indicate that there are two different trade marks and since there is no evidence of its use in India the plaintiff's are the exclusive owner though the defendants published the Magazine in India and got Magazine registered under the 1867 Act in his own name. Simple claimed reputation of any trade mark abroad may not be of any help and assistance in India if the trade mark has not been used by the owners in India themselves or through their affiliates or through their licensees. In case the defendants had not taken the licence and published the PC Magazine, this Court might have been persuaded to hold that the plaintiff's are not the owner and the defendants have acquired ownership by prior use of the trade mark in India, and then the argument that the plaintiff has no claim in USA to exclusive right to use PC and Magazine could have succeeded in holding that the defendant is owner of the trade mark.

21. One of the arguments advanced is that agreement itself was a nullity under Section 24 of the Contract Act for want of approval of the Cabinet. In absence of any prima facie evidence, I think that

it is just very far fetched idea which cannot be accepted. Similarly the contention that this kind of agreement puts restraint on trade and thus violates Article 19(1)(g) and 19(1)(a) of the Constitution has also got no force at all for it is a reasonable restraint invited by the defendant himself by entering into the licence agreement with the plaintiff.

22. From the foregoing it is apparent that the plaintiff has got a prima facie case in his favour to seek injunctions prayed for.

23. Coming to the question of balance of convenience, the defendant undertakes not to use the logo's of the plaintiff. The defendant is willing to give an undertaking to the effect that on the mast-head of the magazine or the content page declaration shall be published to the effect that PC Magazine India has no relation whatsoever neither with PC Magazine USA nor with Jiff Davis Publishing Company, USA. This PC Magazine as well as other common names are already registered in India under the 1867 Act. It appears that the plaintiff's company itself cannot get it published in view of the policy of the Government of India.

24. In Times Publishing House Limited, Bangalore Vs. Financial Times Limited, London & Ors., 1995(1) Kar. L.J. 219 Financial Times Limited, London obtained registration of the trade mark "Financial Times" under No. 468937 in Class 16 in respect of printed matters etc. The Times Publishing House Limited on 23.7.1990 obtained a certificate under the Press & Registration of Books Act, 1867 registering a title published by the Times Publishing House Limited. The matter was contested on various grounds. In that case since the appellant was publishing "Financial Times" from the year 1990 with some gaps in between due to financial constraints. It has again started in 1993 as 'Weekly'. There was no hindrance to the publication of "Financial Times" till 16.10.1993. On these facts the appeal of the Times Publishing House Limited was allowed and injunction order dated 2.3.1994 was vacated. But in that case there was no licence agreement between the plaintiff and defendant as is obtained in this case and that is the distinctive feature. But there is one thing more if the PC Magazine is being imported in India it would cause confusion indicating that there are two PC Magazines one is PC Magazine, USA and another is PC Magazine India. Even the novices in the computer world may get confused and may purchase PC Magazine India believing it to be PC Magazine published in USA. This is one aspect. The submission that even the novices in the computer world would be literal enough to distinguish between PC Magazine India alongwith bold letter disclaimer in terms of the undertaking below the name of the Magazine by mentioning the PC Magazine by publishing the word in the same size as that of "Magazine" would be sufficient to distinguish, may be very plausible submission but further consideration inhibits its acceptance. This could be just a very temporary arrangement. Further complication arises the moment in place of the defendant the plaintiff appoints another affiliate to get Indian version of the PC Magazine with the copyright material of the plaintiff published in India. One could not be oblivious to the fact that an imported magazine in India would be costly while a magazine which is printed in India would be cheaper. Question of cost of the magazine in India is a very delicate question. In case the defendant is allowed to use the same trade name on the basis of the registration under the 1867 Act no PC Magazine could be registered under the 1867 Act in India. Similarly other trade names could also not be registered with the result that it may not be possible even the plaintiff's affiliate to get a similar magazine published in India to sell it at cheaper rates to the Indian buyers. If it cannot be

registered then only option left is to import it. Whether the Indian students of information technology of such magazine are required to be punished either to suffer heavy cost of the magazines or by depriving them of the latest material available in the world on information technology. In case the matter is considered from this point of view one feels that the balance of convenience is also in favour of the plaintiff.

25. The use of any other name like PC Magazine India, Computer Shopper India, Internet User India and The PC Week would certainly cause or likely to cause irreparable loss. The plea that there was no loss on the ground that there was little circulation of the later magazines appears to be of little consequence seeing the fact that if these trade marks have no value the defendant would not have copied them.

26. A duty to promote commercial morality is cast on the Indian Courts in such matters. In Rob Mathys India Ltd's case (supra) a Division Bench of this Court in para 19.2 further observed as under:

"It would thus appear that there is conflict of approach between the "hard-line or national approach" of the English authorities and the "liberal international approach" of the Courts in other Commonwealth countries. We feel that we must follow a middle course. We must readily support decisions which seek to promote commercial morality and discourage unethical trade practices of making such a situation where Indian purchaser/consumer starts presuming franchise like connection between foreign products and Indian Products which either cause confusion or which appear to be deceptively similar. Indian Courts have consistently and rightly disapproved the attempt by Indian trade and industry to bask in the warmth of, and make illicit profit from, a reputation not earned legitimately by their own effort but built by others elsewhere, by the short cut of trickery and passing off and thus protected not only private rights but commercial morality and thus expanded the scope of passing off action to meet the end. This approach is essential to protect the interest of Indian users i.e. public in general. But, this approach must be confined to same or similar products or at the most closely related products and services. This approach cannot be extended to totally different kind of products. In this later area, in order to protect national economic interest English rigidity appears to be essential."

27. For the foregoing reasons it appears essential to grant injunction for simple undertaking to publish disclaimer continuously is not going to help.

28. Accordingly the application is allowed and defendants are hereby restrained from using the stylized logo and trade mark PC Magazine, Computer Shopper, Internet user and PC Week, subject to the condition that the plaintiff furnishes a bank guarantee of Rs. 5 lakhs to compensate the defendants in case the suit itself is finally dismissed, for the loss which the defendants may suffer due to this injunction order. I.A. 3907/97 is disposed of accordingly.