

Microsoft Corporation vs Mr. Kiran And Anr. on 7 September, 2007

Equivalent citations: MIPR2007(3)214, 2007(35)PTC748(DEL)

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JUDGMENT

Sanjay Kishan Kaul, J.

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1. The plaintiff has instituted a suit for permanent injunction restraining the infringement of copyrights, trademarks, passing off, rendition of accounts, damages, etc. against the defendants. The said suit has been instituted by one Mr. Anand Banerjee, the Constituted Attorney of the Plaintiff by virtue of a Letter of Authority in his favor (Ex. P1).
2. The plaintiff, Microsoft Corporation, is a company organized and existing under the laws of the State of Washinton, USA. The plaintiff has its marketing subsidiary, Microsoft Corporation India Private Limited, located in New Delhi. The plaintiff is stated to be one of the world's widely known companies and is also the largest software publisher in the world. The computer software of the plaintiff including various operating systems such as Microsoft Windows 2000 and Windows XP 2002 and application software such as Microsoft Office have acquired great fame and renown throughout the world. It is stated that apart from the said business, the plaintiff is also engaged in the manufacture and sale of a large range of computer peripherals (hardware).
3. It is stated that the software developed and marketed by the plaintiff is "computer programme" within the meaning of Section 2(ffc) of the Copyright Act, 1957 (herein after referred to as the said Act) and included in the definition of a literary work as per Section 2(o) of the said Act. The plaintiff's computer Page 2381 programmes are "works" that were first published in the USA and are also registered in the USA. These programmes have been created by the employees of the plaintiff, for the plaintiff. Under the US Copyright Law, US Code Title 17, Section 2(1)(b), the copyright in a work created by an employee belongs to the employer under the 'Work made for Hire' doctrine. Both, the computer programme, as well as the supplementary User Instructions and Manuals, are 'original literary works' as contemplated under Section 2(o) and Section 13(1)(a) of the Copyright Act, 1957. The plaintiff is the owner of the said copyrights. The rights of authors of member countries of the Berne and Universal Copyright Conventions are protected under Indian Copyright law. India and the USA are signatories to both the Universal Copyright Convention as well as the

Berne Convention. Original and Court Certified copies of Original Copyright registration certificates for the software programmes as owned by the plaintiff have been exhibited from Ex. P2 to Ex. P7. Plaintiff's works are created by authors of member countries and originate from and are first published in the said member countries. Plaintiff's works are, thus, protected in India under Section 40 of the Copyright Act, 1957 read with the International Copyright Order, 1999. The case of the plaintiff is that the plaintiff being the owner of the copyright in the aforesaid literary works within the meaning of Section 17 of the Copyright Act, 1957 is entitled to all exclusive rights flowing from such ownership as set out in Section 14 of the Copyright Act.

4. The plaintiff also enjoys the ownership in the trade mark 'Microsoft' which was adopted in the year 1970 and the plaintiff has used this trade mark continuously and extensively. 'Microsoft' is not only used as trade mark but also as a prominent/key and leading portion of its corporate name. The plaintiff claims that by adoption of long and extensive user products bearing the trademark Microsoft, the plaintiff is exclusively associated with the products originating from the plaintiff. Apart from the Common Law Rights, the plaintiff is also the registered proprietor of the said trademark. This trademark is registered in India in the name of the plaintiff in classes 9 and 16 and bears the registration numbers 430449B and 430450B respectively (Ex. P8 and Ex. P9). The plaintiff states that the said registrations have been renewed from time to time and are valid and subsisting.

5. It is stated that the plaintiff suffers incalculable damage to its intellectual property rights and business on account of various forms of copyright piracy. A brief description of common methods of copyright infringement employed in relation to computer software is described in para 11 of the plaint which are reproduced below:

reproducing the plaintiff's software and the packaging of that software, so that purchasers are deliberately misled into believing that the product they are buying is genuine software.

reproducing or "burning" the plaintiff's software onto a blank CD, where no attempt is made to represent that the copy is genuine.

reproducing a number of the plaintiff's programme on a single CD-ROM, known as a "compilation" CD.

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6. It is stated that there is another form of piracy that is assuming great significance in the information age is that of Internet piracy. Internet piracy occurs when software is downloaded from the Internet or distributed via the Internet without the permission of the copyright owner. Common Internet sites used for this infringing activity include online classified advertisements, Auction Houses, newsgroups, personal web sites and Bulletin Board Service (BBS) sites.

7. It is stated that defendant no. 2 of which defendant no. 1 is stated to be the Manager, is indulging in this illegal activity of counterfeiting and piracy. It is the case of the plaintiff that in September 2002, the plaintiff received the information that the defendants are infringing the plaintiff's copyright, trade marks and other intellectual property rights by carrying on business of unauthorised hard disk loading i.e. pre-loading various software of the plaintiff company onto hard disk of the computer that were being assembled and sold by them. The software loaded onto the machine, naturally, were not accompanied by the original Media, being the Compact Disc(s)/Floppy Disks, Certificate of Authenticity (COA), End User license Agreements (EULAs), User Instruction Manuals, Registration Cards and so on, that accompany the plaintiff's genuine software.

8. In order to ascertain if the defendants were indeed involved in such infringing activity, an independent investigator was sent to the outlet of the defendants to place an order for a computer with defendants. Accordingly, Mr. S. V. Hanuman, the said investigator visited the premises of defendant No. 2 on 02-09-2002 to place the order for the computer. On 04-09-2002 itself, the decoy investigator was given the delivery of the computer which is stated to be loaded with the unlicensed software of the plaintiff company. On 08-09-2002, a Technical Expert one Mr. Sunil John, inspected the computer purchased from the defendant and took printouts of the directories of the hard disk, which evidenced the fact that the following software programmes of the plaintiff were present on the computer sold by the defendants:

OPERATING		SYSTEM
Microsoft Windows 98		
Registered to	:	Mr. S.P. Rao
Product ID No.	:	50578-335-0625134-01488
SOFTWARE		
Microsoft Office 97		
Licensed to	:	Unknown version
Uninstalled version		
Product ID No.	:	53491-020-1120102-32265

9. The technical expert has opined that the plaintiff's programmes contained in the hard disk of the computer are unlicensed and/or pirated versions of the plaintiff's software. It is also stated that the registration details and product ID numbers available appeared to pertain to pirated software. Copies of the affidavits of the independent investigator and the technical expert have been exhibited as Ex. P10 and Ex. P11 respectively.

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10. On a comparison of the software being sold by the defendants, and software originating from the plaintiff, it was found that the software supplied by the defendants were pirated versions of original plaintiff's computer programmes. The following were the distinguishing features found:

The software supplied by the defendants does not have the accompanying User's Manual and was not shrink wrapped;

The software supplied by the defendants does not have Software license Agreement as in the case of the Plaintiff's software;

The software supplied by the defendants does not have the order number which is always present on the software of the plaintiff.

11. Accordingly the plaintiff addressed a letter dated 13-09-2002 to the defendants informing that by their action they had infringed the intellectual property rights that vest in the plaintiff. Through the said letter, the defendants were called upon for a settlement meeting on 18-09-2002 and were cautioned that a failure on their part to attend the meeting would leave the plaintiff with no choice but to resort to suitable legal action to protect their rights.

12. However, the defendants did not pay any heed to this call of the plaintiff and, therefore, the plaintiff has filed the present suit in terms of Sub-clauses a) to f) of the prayer clause detailed in para 35.

13. Summons were directed to be issued to the defendants vide order dated 21-01-2003 returnable on 12-05-2003. On the same day, ex parte ad interim injunction was granted in favor of the plaintiffs restraining them from manufacturing, selling, offering for sale, distributing, issuing to public, counterfeit/unlicensed versions of the plaintiff's software pre-loaded onto the Hard Disks of the computer, compact disc's or any other manner amounting infringement of the plaintiff's copyright as well as trade mark and also from copying, manufacturing, selling etc. version of the plaintiff's software.

14. On service of summons on the defendant none appeared on their behalf. Vide order dated 27-04-2005 the defendants were proceeded ex parte and the plaintiff was directed to file affidavit/s by way of evidence. Affidavit of Mr. Anand Banerjee, authorised representative of the plaintiff was filed and he was examined as PW-1.

15. PW-1 in his affidavit affirmed the various averments made in the plaint. He also proved the copy of letter of authority in his favor given by the plaintiff company as Ex. P-1, copyright registrations as Ex. Nos. P-2 to P-7, trade mark registrations as Ex. Nos. P-8 and P-9, affidavit of Mr. S. V. Hanuman exhibited as Ex. P-10 and affidavit of Sh. Sunil John, Technical Expert, as Ex.P-11. He also stated that due to blatant infringing activities of the defendants, the plaintiffs have suffered enormous amount of damages under the following heads:

(a) Actual Damages- Plaintiff has suffered a heavy loss of revenue due to the defendants' unauthorised loading of plaintiff's pirated versions of software free of cost, onto the computers of its consumers. By award of actual damages, the plaintiff seeks to be put in the same position as if defendants had caused no loss to the plaintiff.

(b) Damages to Goodwill and Reputation- Plaintiff Company and its software are indisputably the market leader in the global software products market and thus, enjoy enormous world-wide reputation and goodwill. Defendants by unauthorisedly loading free software of the plaintiff from pirated CDs, have undermined plaintiff's reputation and goodwill in the market. The infringing acts of the defendants have not only weakened the market position of the plaintiff but also caused bad image before its existing and potential customers.

(c) Exemplary Damages- Such damages are awarded if there is a flagrant violation by the defendants of the plaintiff's rights, to set a deterrent example for others. Such violation can be inferred from, inter alia, nature of the infringing act, reasonable knowledge of a person skilled in the concerned trade and continuance of violation despite knowledge. Defendants' act leaves no doubt as to their international and flagrant violation of the plaintiff's intellectual property rights.

16. The aforesaid facts and circumstances show that the plaintiff has the ownership of copyright in the software and hardware products including in the computer programme as well as supplementary user instructions and manuals which are original literary works, and therefore no other person has any right to copy the said work of the plaintiff.

17. Section 7 of the Copyright Act gives exclusive right only to the plaintiff to exploit all rights flowing from such ownership which are set out in Section 14 of the Act. Section 14, inter alia, provides:

(a) the right to reproduce the work in any material form, including storing it in any medium by electronic means

(b) to issue copies of the work.

(c) to make an adaptation or translation of the work

(d) for a computer programme, the additional right to sell or give on commercial rental, or offer for sale or commercial rental any copy of the computer programme.

(e) the right to authorise the doing of any of the aforesaid Act the Plaintiff has the exclusive right to use their trademark Microsoft and the defendants are attempting to counterfeit the products of the plaintiff and pass off its products as that of the plaintiff.

18. As per Section 51(1)(i) of the Copyright Act, copyright in a work shall be deemed to be infringed, when any person, without a license from the owner of copyright, does anything, the exclusive rights of which are granted to the owner of copyright, which are the primary acts of infringement.

19. Under Section 51(b) of the said Act, copyright in a work shall be deemed to be infringed, when any person, without a license from the owner of copyright, i. makes for sale or hire, or sells or lets for hire, or by way of trade displays or offers for sale or hire any infringing copies of the work, or ii. permits for profit any place to be used for the communication of the work to the public where such communication constitutes an infringement of copyright in the work Page 2385 iii. distribute either for the purpose of trade or to such an extent as to affect prejudicially the owner of copyright, any infringing copies of the work, or iv. by way of trade exhibits in public, or v. imports into India, any infringing copies of the work.

The aforesaid acts are also termed as the 'secondary acts of infringement'.

20. The plaintiff also enjoys the ownership and the exclusive right to use the trade mark 'Microsoft' which is a registered trade mark. The defendants have attempted to counterfeit the products of the plaintiff and pass off its goods as that of the plaintiff. The defendants have no right to use this trade mark and trade name that too in respect of same goods. It is not only infringement of the plaintiff's trade mark but also a clear case of counterfeiting or piracy. This has not only caused loss of profits to the plaintiff, but also resulted in inferior products being made available to the public at large who have been deceived by the conduct of the defendant by making the public to believe that the marks the defendants used were the valid and the incontestable Microsoft marks. In my opinion there cannot be a clearer case of consumer confusion than the instant case where the defendant being in the same line of business sold the counterfeit products on which the plaintiff's registered marks appear in their entirety.

21. The computer industry is a high investment industry not only in terms of money but also in terms of the valuable time, skill and effort which goes into the development of new and advanced computer programs and software, therefore, it becomes imperative that the illegal trade activities of traders like the defendants are restrained and the dangerous growth of the computer software piracy be stemmed. And since the plaintiff is the world leader in this field, it tends to be the main target of such counterfeiting and piracy.

22. Various averments made in the plaint have gone unrebutted as the defendants have not come forward with any defense. The plaintiff has, therefore, been able to prove that the defendants have been infringing the copyright of the plaintiffs in the aforesaid works, as there is no license granted by the plaintiff to the defendants for this purpose. By copying the trade mark 'Microsoft' there is also an infringement of the plaintiff's trade mark.

23. In view of the aforesaid, the plaintiff is entitled to a decree of permanent injunction against the defendant in terms of Sub-clauses (a), (b) and (c) of para 35 of the plaint.

24. In so far as the issue of damages is concerned, learned counsel for the plaintiff submits that even in the absence of specific evidence to the same effect, such damages can be granted.

25. It is trite to say that the defendants have deliberately stayed away from the present proceedings with the result that an enquiry into the accounts of the defendants for determination of damages

cannot take place. However, the infringement of the trademark of the plaintiff is not in dispute. The plaintiff has claimed token damages and compensation of Rs. 5 lacs as it was not possible to determine the exact nature of damages at the stage of filing of the suit. The attention of this Court has been drawn to a number of Page 2386 judgments (Indian as well as international) in this behalf where dealing with similar situations, damages have been awarded.

26. Various cases of such piracy and counterfeiting are filed by the plaintiff against offending parties in United States, Australia, United Kingdom, Hong Kong and China. The Courts have granted compensatory damages. The position in this respect is summarized below:

I. UNITED STATES S.No. Case Title Damages Awarded Damages in Rupees (in US Dollars) (Approx)

1. Microsoft Corporation Treble profits plus \$ 88,780 Treble profits plus V. G.D. Systems America in Attorney fees and costs. Rs. 39 lakhs in Attorney Inc. & Anr. 872 F. Supp. fees and costs.
2. Microsoft Corporation v. Damages of \$300,000 for Damages of Rs. 1 crore 31 Grey Computer, et al Civ. infringement of copyright lakhs for infringement of A. No. AW 94-221 plus \$ 3,889,565.16 as treble copyright plus Rs. 17 profits crore 3 lakhs as treble profits.

II. AUSTRALIA S.No. Case Title Damages Awarded Damages in Rupees (in US Dollars) (Approx)

1. Microsoft Corporation v. Compensatory damages of Compensatory damages of TYN Electronics Pty. Ltd. \$ 386,000 plus Additional Rs. 1 crore 32 lakhs [2004] FCA 1307 damages of \$300,000 plus Additional damages of Rs. 1 crore 3 lakhs.
2. Microsoft Corporation v. Damages of \$295,750 Damages of Rs.1 crore Glostar Pty Limited [2003] FSR 210
3. Microsoft Corporation v. Damages of \$ 653,818.55 Damages of Rs.2 crore Goodview Electronics Pty. plus additional damages 25 lakhs plus additional Ltd. [2000] FCA 1852 of \$500,000 damages of Rs.1 crore 72 lakhs
4. Autodesk Australia Pty Compensatory damages of Compensatory damages of Limited and Anr. v. \$ 25,000 plus additional Rs. 8 lakhs 61 thousand Cheung (1990) 17 IPR 69 damages of \$ 35,000 plus additional damages of Rs. 12 lakhs Page 2387 III. UNITED KINGDOM S.No. Case Title Damages Awarded Damages in Rupees (in US Dollars) (Approx)

1. Microsoft Corporation v. Court suggested an award Court suggested an Electro-Wide Limited and of additional damages. award of additional Anr. [1997] FSR 580 damages.

2. Microsoft Corporation v. Microsoft entitled to Microsoft entitled to an Plato Technology Limited an account of profits account of profits to [1999] FSR 834 to the extent of the extent of Rs.4 lakhs 5000 Pounds IV. HONG KONG S.No. Case Title Damages Awarded Damages in Rupees (in US Dollars) (Approx)

1. Microsoft Corporation v. Compensatory damages of Compensatory damages of Able System Development \$ 32,575,064 and additional Rs. 18 crore 29 lakhs Ltd. HCA 17892/1998 damages of \$ 3,257,506 and additional damages of Rs. 1 crore 82 lakhs V. CHINA S.No. Case Title Damages Awarded Damages in Rupees (in US Dollars) (Approx)

1. Autodesk Inc. v. Beijing Compensation of RMB Compensation of Rs.

Longfa Construction & Decoration Co. Ltd. (2003) Er. Zh. M. Ch. Zi. No. 6227	1.49 million	78 lakhs
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27. A bare reading of the judgments shows that the courts found the conduct of the defendants to be "willfully calculated to exploit the advantage of an established mark" and held that in such circumstances, the plaintiff would be entitled to damages by way of compensation. Even assuming, arguendo, that they had no knowledge of Microsoft licensing products, knowledge is not an element of copyright infringement.

28. In Microsoft Corporation v. G.D. Systems America Inc. & Anr. (supra) referring to the case of Louis Vuitton S.A. v. Lee 875 F. 2d 584, the U.S. court held that the disparity in size between the typical owner of a trademark on fashionable goods and the typical owner of counterfeits of those trademarked goods is no reason to deny monetary relief to the former; for the smaller the violator, the less likely he is to be caught, and the more needful therefore of a heavy punishment if he is caught.

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29. The Courts while applying the provisions of Lanham Act came heavily upon the defendants as irrefutable evidence was found to an inference of the defendants' intentional, knowing and willful infringement. The Court also awarded damages for trademark infringement holding that "willful blindness" could be a basis for award of Treble profits.

30. The Australian Courts, on the other hand, found the "license fee approach" to be the appropriate approach to measure the compensatory damages, which had the attraction of precision. In Microsoft Corporation v. TYN Electronics Pty. Ltd. (supra), the court held that in a case where the Court may infer that, presented with a choice between paying license fee and not using the work, the infringer would have paid the license fee, the approach is also a logical one. Ex hypothesi, the copyright owner

has been deprived of a license fee. On this basis compensatory damages to the tune of \$ 386,000 were awarded. The Court, however, in addition to compensating the plaintiff for the loss of license fee also awarded additional damages in view of the conduct of infringing parties in committing willful and intentional violation of the plaintiff's copyright and trade mark.

31. Similarly in *Microsoft Corporation v. Goodview Electronics Pty Limited* (supra), the court while referring to the provision of Section 11(4) of the Copyright Act, observed that the court may award additional damages, if it is satisfied that it is proper to do so, having regard to i) flagrancy of the infringement; ii) any benefit shown to have accrued to the defendant by using of the infringement; and iii) all other relevant factors.

32. The English Courts have adopted the same approach and in *Microsoft Corporation v. Plato Technology Ltd.* (supra), the Court opined that the crucial distinction in such a case is between the honest and the dishonest trader. What essentially distinguishes the two is the trader's degree of knowledge of infringement.

33. The legal position in India with respect to granting damages in cases of infringement of trademarks and copyrights has been progressive. The courts have now started granting the relief of damages with the view that a defendant cannot escape damages as a consequence of its disappearing from the legal proceedings. The claimant has a right to damages regardless of the defendant's state of mind, and that is so regardless of whether the cause of action is infringement of a registered mark, or passing off.

34. To substantiate the case to such damages, reference to the judgment of this Court in *Asian Paints (India) Ltd. V. Balaji Paints and Chemicals and Ors.* 130 (2006) DLT 150 can be made, wherein it has been observed that a party not appearing in the Court should not avail of the benefit of such absence from the Court proceedings. The relevant portion in this behalf is as under:

11. Learned Counsel for the plaintiff states that apart from the relief claimed for in paras (a) to (d) of para 33 of the plaint, the plaintiff is also entitled to damages. In this behalf, learned Counsel has relied upon the judgments of this Court in *Relaxo Rubber Limited and Anr. v. Selection Footwear and Anr.* 1999 PTC (19) 578, *Hindustan Machines v. Royal Electrical Appliances* 1999 PTC (19) 685 and *CS (OS) 2711/1999 Page 2389 L.T. Overseas Ltd. v. Guruji Trading Co. and Anr.* decided on 7.9.2003. In all these cases, damages of Rs.3 lakhs were awarded in favor of the plaintiff. In *Time Incorporated v. Lokesh Srivastava and Anr.* 2005 (30) PTC 3 (Del) apart from compensatory damages even punitive damages were awarded to discourage and dishearten law breakers who indulge in violation with impunity. In a recent judgment in *Hero Honda Motors Ltd. v. Shree Assuramji Scooters* 125 (2005) DLT 504 this Court has taken the view that damages in such a case should be awarded against defendants who chose to stay away from proceedings of the court and they should not be permitted to enjoy the benefits of evasion of court proceedings. The rationale for the same is that while defendants who appeared in court may be burdened with damages while defendants who chose to stay away from

the court would escape such damages. The actions of the defendants result in affecting the reputation of the plaintiff and every endeavor should be made for a larger public purpose to discourage such parties from indulging in acts of deception.

35. In *Microsoft Corporation v. Mr. Rajendra Pawar and Anr.* decided on 27-07-2007 this Court referred to the case of *Mathias v. Accor Economi Lodging, Inc.*, cited at 347 F.3d 672 (7th Cir. 2003), the Court, while elucidating the factors underlying the grant of punitive damages, observed that one of the functions of punitive damages is to relieve the pressure on an overloaded Criminal Justice System by providing a civil alternative to criminal prosecution of minor crimes. It was further observed that the award of punitive damages serves the additional purpose of limiting the defendant's ability to profit from its fraud by escaping detection and prosecution.

36. In addition to the above said, the Learned Counsel for the plaintiff has brought forth the earlier judgments in the cases of Microsoft against similarly placed defendants engaged in copying, selling, offering for sale, counterfeit/unlicensed versions of the plaintiff's software wherein the court had granted ex parte ad interim injunction orders along with compensatory and punitive damages.

37. In CS(OS) No. 529/2003, *Microsoft Corporation v. Deepak Raval*, decided on 16-06-2006, the court held that the justification for award of compensatory damages is to make up for the loss suffered by the plaintiff and the rationale behind granting punitive damages is to deter a wrong doer and the like-minded from indulging in such unlawful activities. This is more so when an action has criminal propensity. Thus, while awarding punitive damages Courts have taken into consideration the conduct of the defendants which has "willfully calculated to exploit the advantage of an established mark" (expression used by US Courts), which may also be termed as "flagrancy of the defendant's conduct" (test adopted by Australian Courts). The English Courts have, adopting the same nature of test, have used the test of "dishonest trader", who deals in products knowing that they are counterfeit or "recklessly indifferent" as to whether or not they are.

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38. While deciding the issue in respect of damages, this Court in CS(OS) No. 117/2003, *Microsoft Corporation v. Mr. Akram Khan and Anr.*, decided on 31-08-2006, held as under:

...in respect of the prayer for damages there is no evidence considering that in such cases of piracy it is difficult for the plaintiff to establish volume of sale by the defendants I take judicial notice of the fact that in today's era virtually every office and virtually every house including middle class families and above has a computer, sales by the defendants could not be less than 10-15 computers a month. The address of the defendants shows that they are operating from a prima facie place in Bangalore. 2 telephones are installed in the business premises. This shows if not the affluence of the defendants, at least the fact that considerable volume of business was transacted requiring 2 telephones at the business premises.

11. Software piracy is a menace and needs to be put down with a heavy hand. I award compensatory damages in sum of rupees of Rs. 5, 00,000/- (Rupees Five Lacs Only) in favor of the plaintiff and against the defendants. Defendants shall be jointly and severally liable.

12. Plaintiff would be entitled to costs.

39. I am, thus, of the considered view that in the present case the defendants have willfully, intentionally and flagrantly violated the copyrights and trade mark of the plaintiff. The defendants' have disregarded the plaintiff's rights and have caused "deliberate and calculated" infringement of copyrights and trademark of the plaintiff. Thus, I am inclined to grant damages to the plaintiff. In the suit damages claimed are Rs. 5 lacs, though the total damages would work out to be much more. Therefore, I have no option but to limit the claim of the plaintiff to Rs. 5 lacs.

40. A decree is passed for permanent injunction in favor of the plaintiff and against the defendants restraining the defendants from using or otherwise copying, selling, offering for sale, distributing, issuing to the public, counterfeit/unlicensed versions of the plaintiff's software, in any manner, amounting to infringement of the plaintiff's copyrights in the said computer programs and related manuals. The plaintiff is entitled to a decree in terms of prayer Clauses 35 (a) to (d). A decree of damages is also passed in favor of the plaintiff and against the defendants for a sum of Rs. 5 lacs. The plaintiff shall also be entitled to costs.

41. Decree sheet be drawn up accordingly.