

**\*IN THE HIGH COURT OF DELHI AT NEW DELHI**

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**Date of decision: 4<sup>th</sup> April, 2013**

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**CS(OS) 1426/2006**

**TIMES INTERNET LTD. .... Plaintiff**

Through: Mr. Satyajit Sarna, Adv.

versus

**M/S INDATIMES.COM & ANOTHER FC+ .... Defendants**

Through: None.

***CORAM :-***

**HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

**RAJIV SAHAI ENDLAW, J**

1. The plaintiff has sued, (i) for permanent injunction restraining the defendant No.1 from operating its business, products and services with reference to or under the mark/domain name/website "indaitimes.com" or any other mark or device or logo likely to deceive and cause confusion and/or passing off the defendant No.1's business as that of the plaintiff; (ii) for permanent injunction restraining the defendant No.1 from operating the domain name/website "indaitimes"/ "indaitimes.com deceptively similar to the plaintiff's mark/trade mark/logo/domain name/website; (iii) for mandatory injunction directing the defendant No.2 IPNIC Inc to cancel the

registration of the domain name “indaitimes.com” granted to the defendant No.1; and, (iv) for ancillary reliefs of compensation, delivery etc.

2. Summons of the suit were issued to the defendants and on the application of the plaintiff for interim relief vide *ex parte* ad interim order dated 18<sup>th</sup> July, 2006 which continues to be in force, the defendants were restrained from using the domain name “indaitimes.com” or any other domain name deceptively similar to the plaintiff’s domain name “indiatimes.com”.

3. The defendants failed to appear despite service and were vide order dated 23<sup>rd</sup> July, 2009 proceeded against *ex parte* and interim order dated 18<sup>th</sup> July, 2006 made absolute till the decision of the suit.

4. The plaintiff has led its *ex parte* evidence and the counsel for the plaintiff has been heard.

5. The plaintiff has proved, (a) that the suit has been instituted and the plaint signed and verified by a duly authorized person on behalf of the plaintiff Company; (b) that Bennett Coleman & Co. Ltd (BCCL) is the promoter of the plaintiff Company; (c) that the said BCCL in or around the

year 1996 had entered into the field of e-commerce under the brand name “INDIATIMES” and for the said purpose had created a portal in the name of “indiatimes.com”, developed a website with the URL, www.indiatimes.com and got the same registered as a domain name with the Registrar, “Network Solutions Inc.” on 22<sup>nd</sup> November, 1996; (d) that the trademark “INDIATIMES” was coined by BCCL in 1996 and has been in use since then; (e) that BCCL vide agreement dated 1<sup>st</sup> April, 2000 assigned its internet business including its website/portal “indiatimes.com” to the plaintiff Company and since then the plaintiff Company has been carrying on its internet business under the trademark/brand name “indiatimes.com”; (f) that the plaintiff has incurred huge expenditure in setting up and operation of the said business; (g) that on account of quality and multiplicity of products and services offered through the plaintiff’s website www.indiatimes.com, the said business has grown manifold over the years and at the time of institution of the suit had 10 million registered users and was receiving 30 million text messages a month, 1 billion eyeballs a month and was facilitating business worth 80 million every month; (h) that the plaintiff in February, 2003 also launched its U.S.A. edition of the website www.indiatimes.com; (i) that the plaintiff has applied for and secured

registration for the mark “INDIATIMES” and variations thereof in classes 9,16 and 35 of Trademark Act; (j) that on account of the priority in adoption of the coined trademark INDIATIMES or indiatimes.com, the plaintiff’s trademark INDIATIMES for internet, commerce and the domain name indiatimes.com have acquired an extensive reputation; (k) that a domain name in virtual world serves the same function as a trademark; (l) that the plaintiff became aware of the registration of the domain name www.indaitimes.com in June, 2006 and on making inquiries learnt that the same was registered in July, 2003 and was renewed through defendant No.2 and that the defendants no.1 and 2 are the same entity though operating as registrar and registrant; (m) that the defendant No.1 on its impugned domain name “indaitimes” home page has provided a link to the sponsored results of the plaintiff’s website indiatimes.com.

6. It is the case of the plaintiff that the adoption and registration by the defendants of the domain name indaitimes.com amounts to infringement of the plaintiff’s registered trademark INDIATIMES and amounts to passing off and also amounts to cyber squatting. Hence this suit for restraining the same.

7. The counsel for the plaintiff has initially sought adjournment stating that the main counsel for the plaintiff is not available. Upon adjournment being denied since the suit is of the year 2006, the counsel for the plaintiff next contended that the affidavit by way of examination-in-chief was filed in the year 2010 and the counsel believes that since then some of the registrations applied for by the plaintiff may have matured and the plaintiff desires to place the said facts on record. The same is also no reason for adjourning the matter.

8. It was thereafter that the counsel for the plaintiff has taken me through the pleadings and affidavit by way of examination-in-chief and has also handed over copies of the following judgments:

- i. ***Times Internet Ltd. Vs. Belize Domain Whois Service Ltd*** 2011 (45) PTC 96 (Del.);
- ii. ***Times Internet Ltd. Vs. M/s Just Flowers*** 2007 IX AD (Delhi) 779;
- iii. ***Times Internet Ltd. Vs. Jonathan S*** 2012 LawSuit (Del) 2868;
- iv. ***Time Incorporated Vs. Lokesh Srivastava*** 116 (2005) DLT 599;
- v. ***Societe Des Produits Nestle, SA Vs. Prayag Nutri Products Pvt. Ltd*** 2011 (48) PTC 152 (Del)

Written submissions have also been handed over.

9. There can be no scope for doubt that the name indaitimes.com adopted by the defendants is deceptively similar to the name indiatimes of the plaintiff. The possibility of confusion thus definitely exists. There is also no reason to doubt the un-rebutted evidence of the plaintiff of the defendants having adopted the name indaitimes.com only in the year 2003 and the plaintiff being a prior user thereof.

10. The counsel for the plaintiff has also taken me through the downloads of the website of the defendants and which website is found to contain pornographic material and links to other adult/pornographic sites. The counsel for the plaintiff has argued that persons/clients wanting to visit the website indiatimes.com of the plaintiff merely by a minor error in spelling and in punching the keys of the computer are likely to reach the website of the defendant and which website provides similar commercial services as the plaintiff's website is providing. It is further argued that owing to the adult/pornographic content on the website of the defendants, the consumers of the plaintiff are likely to formulate an opinion that it is the plaintiff which is on its website dealing in pornographic/adult material, resulting in the consumers/clients of the plaintiff shunning the said website in future and causing irreparable loss, injury and loss of reputation to the plaintiff.

11. This Court vide judgment in *Belize Domain Whois Service Ltd* (supra) held that the right to use the word “indiatimes” vests only with the plaintiff and the Registrar of the domain name is obliged to transfer the domain name “indiatimetravel.com” adopted and got registered with the Registrar to the plaintiff. Similarly, in *M/s Just Flowers* (supra), relief to the plaintiff was granted with respect to the mark “eindiatimes”. Similarly, in *Jonathan S* (supra) also injunction protecting the trademark of the plaintiff was issued. The plaintiff, in *Lokesh Srivastava* (supra), was found entitled to restrain use by the defendant in that case of “TIME ASIA SANSKARAN” and/or using the component “TIME” and damages of Rs.5 lacs awarded and which judgment was followed in *Societe Des Produits Nestle, SA* (supra).

12. On the basis of the *ex parte* evidence of the plaintiff and the judgments cited, I am satisfied that the suit is entitled to be decreed. Accordingly, a decree is passed in favour of the plaintiff and against – (1) defendant no.1 for permanent injunction in terms of prayers (a) and (b) of para 43 of the plaint; (2) against the defendant No.2 in terms of para 43 (c) of the plaint; and, (3) though the counsel for the plaintiff has not addressed any arguments on the aspect of damages and though the recovery of any

damages from the defendants who have failed to appear inspite of service looks remote but following the dicta in the judgments cited, the plaintiff is awarded damages in the sum of Rs.1 lacs from the defendant No.1. The plaintiff shall also be entitled to the costs of the suit as per schedule.

Decree sheet be drawn up.

**RAJIV SAHAI ENDLAW, J**

**APRIL 4, 2013**

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