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

Date of decision: 29.01.2010

CS (OS) 821/2009

+ MANPOWER INC. & ANR

..... Plaintiffs

Through : Mr. Hemant Singh with Mr. Mamata Jha, Mr. Sachin Gupta, Mr. Shashi P. Ojha, Mr. Animesh Rastogi, Advocates

versus

AL-HAMDULILLAH MANPOWER
CONSULTANTS

..... Defendant

Through : Mr. V.V.R. Rao, Advocate

CORAM:

MR. JUSTICE S. RAVINDRA BHAT

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| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | Yes. |
| 2. | To be referred to Reporter or not? | Yes. |
| 3. | Whether the judgment should be reported in the Digest? | Yes. |

S.RAVINDRA BHAT, J. (OPEN COURT)

1. This is a suit filed by plaintiff no. 1 claiming to be a corporation, set up in the State Wisconsin, United States of America and contends being the parent company of the second plaintiff. It is averred that the plaintiffs are owners of the Manpower Group and proprietors of the trade mark. Plaintiff seeks permanent injunction and consequential reliefs against the defendant from infringing their trade mark 'Manpower'.

2. The suit avers that the plaintiffs are well known as the 'Manpower Group' and offer their customers a variety of services in the employment and recruitment sectors. The plaintiffs claim to have worldwide network of 4300 offices in 72 countries and provide services to its 4

lakh customers each year.

3. It is claimed that the plaintiffs are ranked in the Fortune's Global 500 group of companies with the distinctive reputation in every country the world over. In support of this contention, the plaintiffs rely upon the turnover for the period 1995-2007 in para 8 of the suit. They claim to have spent in excess of US \$ 3 million in the year 2004-2005 for publicity and advertisements.

4. In para 10 of the suit, the plaintiffs submit that their annual advertising expenditure in Asia, in respect of goods and services offered under the trade name and trade mark "Manpower" was US \$ 8.3 million, in the year 2008.

5. The plaintiffs claim to be proprietor of the mark 'Manpower' in classes 9, 16, 35, 41 and 42 of the Schedule of the Trade Marks Act. It is submitted that the date of registration of the said trade mark, in class 35, 41 and 42 dates back to 5.10.1971. Even though the plaintiffs registered the mark in respect of the services provided under class 16 (paper, stationary etc.) since 22.4.1965, the registrations in respect of various other classes, including class 35 (which pertain to advertisement, business management, office function etc.) are w.e.f 6.12.2005. Plaintiffs clarify that there was no protection of the services sector prior to the enforcement of the Act, which came in September 2005. The plaintiffs claim ownership rights over the said mark, i.e. "Manpower", placing reliance on the registration certificates, copies of which are filed.

6. The suit is based upon the defendants' usage of the trademark 'Manpower' and its tradename in the website about which the plaintiffs gained awareness in December, 2008. The plaintiffs mention that services provided by the defendant (based upon investigator and his report) are identical to theirs; and the defendants have indulged in trademark infringement.

7. This Court by its order dated 6.5.2009, while issuing summons directed as follows:-

" Issue notice to the defendant by ordinary process and registered AD post on plaintiff taking steps within one week, returnable on 8th July, 2009. The

grievance of the plaintiff is that the plaintiff No.-1 had adopted the trade name/trademark manpower and the trademark of the plaintiff is registered. Learned counsel for the plaintiff has pointed out that though the defendant is not a subsidiary of the plaintiff, however, in its brochure it is being misrepresented by the defendant that it is subsidiary of manpower Inc., the plaintiffs

The plaintiff in the circumstances has contended that the defendant has adopted the trade name/trademark manpower with dishonest intention and with the objective of capitalizing on the quality of products and services of the plaintiffs. Considering the averments made in the plaint and in the application, the plaintiff has been able to make out a prima facie case. The inconvenience caused to the plaintiff shall be much more in case the defendant continues to misrepresent that the defendant is a subsidiary of the plaintiff. In the circumstances, balance of convenience is in favour of the plaintiff. In the totality of facts and circumstances, the defendant is therefore, restraint from using the trademark manpower as a part of his trade name or trademark in relation to consultancy or employment related services or business or any other allied services and from representing himself to be the subsidiary of plaintiff till the next date of hearing.

The plaintiff to comply with the provisions of Order XXXIX Rule 3 of the Code of Civil Procedure.”

8. The defendants entered appearance on 8th July, 2009 and sought time to file written statement within four weeks. However, no written statement was filed and on subsequent dates 24th September, 2009 and 23rd October, 2009 also no steps were taken by the defendant for further proceedings. The plaintiffs submit that the time for filing the written statement and even the extended period provided for the same by the Court has expired and in these circumstances the Court should proceed to invoke its power under 8 Rule 10 CPC.

9. The learned counsel for the defendant submitted on the basis of the instructions that the use of the mark ‘Manpower’ has been stopped since this Court directed an *ex-parte* injunction. Learned counsel for the plaintiffs submitted that in these circumstances, the Court should proceed and pass appropriate orders on the basis of the material on record in the form of the copies of the registration certificate dated 22nd April, 1965 (page 4 of the list of the documents);

as well as certified copy dated 16th December, 2005, of the registration in respect of the label, which contains the plaintiffs' distinctive mark "Manpower". The registration pertains to the classes 9, 16, 41 and 42 and the certificate is at page 14 of the list of the documents. The plaintiffs have also produced the copies of the Fortune Magazine and other materials in support of the claim of its established reputation in India, and copies of advertisement and so on. In respect of the allegation that the defendant are unauthorizedly using the plaintiffs' registered trade mark copies of the print-outs from the defendant's website, a copy of the defendant's brochure and of the investigator's affidavit have been filed.

10. The registration certificate of trade mark relied undoubtedly pertains to a composite mark. However, the word "Manpower" is a prominent or essential feature of the label; therefore, the plaintiffs' are within their rights to claim exclusive use. The defendant has not filed its written statement. The position taken on its behalf by the counsel is that the usage of the expression "Manpower" has been stopped and would not be resorted to in future. It is also stated that defendant has closed down the business itself.

11. In view of the above and in view of the further circumstances that the plaintiffs and defendant are engaged in similar trade under name "Manpower", the possibility of deception or confusion is more likely. The plaintiffs' relief is premised upon the use of their mark as part of the trade name by anybody else, would constitute infringement, as stated under Section 29 (5) of the Trade Mark Act, 1999, which reads as under:-

"A registered trade mark is infringed by a person if he uses such registered trade mark, as his trade name or part of his trade name, or name of his business concern or part of the name, of his business concern dealing in goods or services in respect of which the trade mark is registered".

12. In view of the above discussion and in view of the statements made on behalf of the counsel for the parties, the Court is satisfied that the plaintiffs are entitled to the

permanent injunction claimed. The suit is decreed in terms of the para 45 (a)and(b). The counsel's fee is quantified as Rs. 50,000/-.

The suit is hereby decreed in the above terms.

**S. RAVINDRA BHAT
(JUDGE)**

**JANUARY 29, 2010
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