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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 30th November, 2021

+ CS(COMM) 1214/2018

JASPER INFOTECH PRIVATE LIMITED Plaintiff

Through: Ms. Tanya Varma, Advocate.

versus

AADI SINS & ORS. Defendants

Through: Mr. Akshit Kapur and Mr. Rajiv Kapur, Advocates for Defendant No. 14 (SBI).

Mr. Sidhartha Barua, Advocate for Defendant No. 21 (IDBI Bank).

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGEMENT

[VIA HYBRID MODE]

SANJEEV NARULA, J. (Oral):

CS (COMM.) 1214/2018 & I.A. No. 14794/2021 (u/Order XIII-A Rules 3 & 6(1)(a) r/w Section 151 of CPC, 1908, for summary judgment)

1. The present application has been filed on behalf of Plaintiff seeking a summary judgment against the Defendants under Order XIII-A, Rule 3 & 6(1)(a) read with Section 151, Code of Civil Procedure, 1908 [*hereinafter*, “CPC”].

2. The learned Joint Registrar, *vide* Order dated 17th October, 2019, has noted that the Defendants stand served. Since there is no appearance on behalf



of Defendant Nos. 1, 3 to 13, and 23 to 40, the said Defendants are being proceeded against *ex parte*. Defendant No. 2 entered appearance on 20th May, 2019 and has taken the defence that it has been wrongly impleaded as a party, and therefore, the suit is liable to be dismissed for non-joinder and misjoinder of parties. Defendant No. 2 claims to be a mere service provider who assists customers in purchasing and registering domain names. Given this defence, Defendant No. 2 was required to furnish details of the entity responsible for the domain name – ‘*www.snapdealprizes.com*’, however, till date, no details are forthcoming, as also evident from the Order dated 15th April 2021. Nevertheless, considering the facts and circumstances, Defendant No. 2 is not being proceeded against, in line with the Order dated 20th May, 2019 – where *ex parte* injunction against it was vacated.

3. Although, as per Order XIII-A of the CPC, at least 30 days’ notice is required to be issued to the Defendants before fixing the suit for hearing on summary judgment, however, ever since the institution of the extant suit, Defendant Nos. 1, 3 to 13 and 23 to 40 have neither entered appearance nor filed any pleading/ document(s), despite being served with the summons and suit papers and being informed of the next date of hearing. Thus, a summary judgment can be passed on the basis of the pleadings, accompanied by the statutory affidavits under the Commercial Courts Act, 2015, and the documents filed by Plaintiff.

4. The Plaintiff prays for grant of the following reliefs in the suit:

“(i) An order for permanent injunction restraining Defendant Nos. 1 to 13 and 23 to 40, and all others acting through them and on their behalf from infringing the Plaintiffs registered “SNAPDEAL” trademarks listed in paragraph 49 of the



plaint;

(ii) An order for permanent injunction restraining Defendant Nos. 1 to 13 and 23 to 40, and all others acting through them and on their behalf from passing off their activities and business as that of the Plaintiff or affiliated to the Plaintiff;

(iii) An order directing a transfer of the domain names registered by Defendant Nos. 1-13 and 23-40 to the Plaintiff;

(iv) An order directing TRAI to permanently block the phone numbers listed in Exhibit 'J';

(v) A decree of mandatory injunction directing Defendant Nos. 14, 16, 17, 18, 20 and 22 to close the bank accounts listed in Exhibit 'A' to Exhibit 'I', 'K-M' as also Exhibit 'A1', 'A2' and 'D1' and transfer the amounts lying therein to the Registrar of this Hon'ble Court to be held as security pending the execution of any decree that may be passed by this Court;

(vi) An order of delivery up of all infringing and otherwise unlawful material, to the Plaintiff for purposes of destruction and/or erasure;

(vii) An order for rendition of accounts of profits illegally earned by Defendant Nos. 1-13 and 23-40 on account of their infringing activities and a decree for the said amount so found in favour of the Plaintiff;

(viii) An order for damages in the sum of Rs. 1,00,00,000/- in favour of the Plaintiff and against Defendant Nos. 1-13 and 23-40 on account of the unauthorized use of the impugned mark/device and a decree for the said amount be passed in favour of the Plaintiff;

(ix) An order for actual and full costs of the present proceedings against Defendant Nos. 1-13 and 23-40 in favour of the Plaintiff;

(x) Any other Order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

FACTS

5. The case of Plaintiff, in brief, is as follows:

5.1. The Plaintiff – Snapdeal Pvt. Ltd. (*previously*, Jasper Infotech Pvt. Ltd.), operates as an online marketplace through its website 'www.snapdeal.com', launched in India in February, 2010. It provides a pan-India platform for third-party sellers to connect with millions of customers to buy products.

5.2. Defendant Nos. 1, 3 to 13 and 23 to 40,¹ are registrants of domain names using Plaintiff's trademark "SNAPDEAL" in their domain name and have acted with *malafide* intentions, as representatives of Snapdeal in

¹ Subsequently impleaded as parties *vide* Order dated 8th January, 2019.



order to dupe customers of the Plaintiff.

- 5.3. Defendants Nos. 14 to 22 are banks – who have been impleaded as parties to the suit only for the purpose of compliance of directions to be issued by this Court and are essentially proforma Defendants. Defendants No. 15 [Bank of India] & 19 [Indian Overseas Bank] have been deleted from the memo of parties.
- 5.4. Plaintiff is the registered proprietor of the standalone trademark “SNAPDEAL”, “SNAP DEAL” and other “SNAPDEAL” formative trademarks [*hereinafter*, “**SNAPDEAL trademarks**”]. The SNAPDEAL trademarks are valid and subsisting till date.
- 5.5. Plaintiff is also the owner of several domain names which incorporate the trademark “SNAPDEAL”.
- 5.6. In January, 2018, Plaintiff began receiving significant complaints from consumers who were receiving fraudulent calls, emails, SMSs from the Defendants – masquerading as the Plaintiff, by bearing a similar header like that of Snapdeal, and circulating letters, scratch cards, certificates and personal representations containing promoting schemes and asking the recipients to deposit monies to certain bank accounts in order to avail gifts such as Tata Safari, Maruti Suzuki, bikes, cash, etc.
- 5.7. Unauthorized persons were sending scratch cards and fake certificates claiming that the recipients were winners of a certain amount in a ‘*Snapdeal Lucky Draw Contest*’. The cover letters accompanying the scratch cards contained the following text:

“[...] please note that this is an internal initiative of the Company solely meant for promotional purpose only and all the prize information will only be available on our prize helpline number only and not in the company customer number. So please don’t call the Customer Care Number as that is only meant for taking orders and providing post-sales support.”



5.8. Additionally, the Defendants listed their personal phone numbers as those of Snapdeal's customer care on their websites. Members of the public who search for Plaintiff's customer care number have invariably chanced upon the said fraudulent phone numbers (under the *bona fide* belief that they belong to Plaintiff) and have made calls on those for assistance. Such members of the public were asked to reveal their bank account and credit card details and have consequently been duped of huge sums of money.

5.9. Aggrieved by the aforementioned fraudulent activities, Plaintiff took the following recourse:

- i. Sent out advisories to its customers and the public at large *vide* emails, SMSs and caution notices on their website warning them of fraudulent calls, SMSs and emails offering lucrative rewards on behalf of Snapdeal or asking customers to make advance payments to receive such rewards.
- ii. Taken the initiative of taking down several third-party websites/ domains bearing the infringing trademark "SNAPDEAL" and those offering lucky draw/lottery schemes, by issuing take-down notices to the respective domain name Registrars, along with evidence of infringement and fraud.
- iii. Filed a police complaint on 13th January, 2018 with the DCP West, Gurugram Haryana requesting an investigation into the fraudulent activities being carried out in the name of the Plaintiff's brand and trademark "SNAPDEAL" to initiate appropriate action.
- iv. Sent an email dated 31st August, 2018 to the Chairman of State Bank of India [Defendant No. 14] informing him of various fraudulent activities



being carried out through the bank accounts held with it – in the name of Plaintiff's brand and trademark "SNAPDEAL" and provided a list of these bank accounts. However, no action in this regard was taken by it.

- v. Contacted the Telecom Regulatory Authority of India ("TRAI") and provided a list of the mobile phone numbers from which these fraudulent calls were being made to the customers of Plaintiff.



5.10. Despite the above-mentioned measures taken by the Plaintiff, the fraudulent activities of the Defendants did not stop. Before filing the suit, Plaintiff had received close to 12,000 customer complaints and inquiries relating to fraudulent activities of the Defendants. In view thereof, Plaintiff filed the instant suit to restrain the Defendants from perpetrating fraud under the Plaintiff's "SNAPDEAL" trademarks.

6. On 1st November, 2018 and 8th January, 2019, *ex parte ad interim* injunctions were passed against Defendant Nos. 1 to 13 and Defendant Nos. 23 to 29, respectively in the following terms:

- 6.1. Defendants No. 1 to 13 and its representatives, agents, etc. were restrained from infringing and passing off Plaintiff's "SNAPDEAL" trademarks.
- 6.2. The respective domain registrars were directed to suspend the domain names registered in the names of Defendants No. 1 to 13.
- 6.3. The banks *viz.* Defendant Nos. 14 to 22, were directed to freeze the bank accounts being used by Defendant Nos. 1 to 13 to deposit money fraudulently sought from unwary customers – on the pretext of being the Plaintiff or being associated with the Plaintiff.
- 6.4. However, the injunction was vacated *qua* Defendant No. 2 on 20th May,



2019.

7. The allegations made in the plaint have been substantiated based on the documents on record. Plaintiff is the proprietor of the trademarks enumerated in the plaint. A list of Plaintiff's trademark registrations in India has been provided in paragraph 7 of the summary application. It has placed on record the certificates of registration of the trademarks in question. The "SNAPDEAL" trademarks are valid and subsisting till date. The infringement of the trademarks by the Defendants by way of the foregoing activities is also established from the documents placed on record – which are in the nature of *inter alia* complaints, fake certificates, scratch cards and documents, copies of e-mails and SMSs sent to the Plaintiff's unwary consumers, a copy of the police complaint filed on 13th January, 2018 with DCP West, Gurugram, Haryana, a copy of the e-mail sent to the Chairman of Defendant No. 14 [State Bank of India] informing him of the fraudulent activities being carried out through the accounts held with this bank, extracts from the fraudulent websites and a list of phone numbers and e-mail IDs used by the infringing Defendants in furtherance of the fraud. Plaintiff has, thus, established that Defendants No. 1, 3 to 13 and 23 to 40 are misrepresenting themselves to be affiliated to/ representatives of the Plaintiff; are offering prizes to customers under fake lucky draw/lottery schemes of the Plaintiff; use Plaintiff's trademark "SNAPDEAL" as the key component of their domain names and the trademark "SNAPDEAL" along with the device marks “” and “” on their websites – which amounts to infringement and



passing off; make false representations of being the ‘SNAPDEAL prize department’ on their websites, thereby, blatantly misleading customers into believing that it is associated with the Plaintiff. This free riding on the Plaintiff’s reputation is responsible for the Defendants defrauding unwary customers and extorting money. The aforesaid activities of the said Defendants are also causing unfair losses in the course of trade and severe detriment to the business, goodwill and reputation of the Plaintiff.

RELIEFS

8. In view of the above, Plaintiff has clearly made out a case for grant of injunction and infringement of their trademarks. Defendants No. 1, 3 to 13 and 23 to 40 are guilty of wrongfully registering domain names that use trademark “SNAPDEAL” in their domain name. Thus, the suit is decreed in favour of the Plaintiff and against Defendants No. 1, 3 to 13 and 23 to 40 *qua* prayers (i), (ii) and (iii). In so far as prayer (iii) is concerned, it is clarified that the domain names to be transferred are limited to those suspended *vide* Orders dated 1st November, 2018 and 8th January, 2019. Ms. Tanya Varma, counsel for the Plaintiff, on instructions, has given up the prayers sought in paragraphs (vi), (vii) and (viii), and therefore, no decree is passed for the said reliefs.

PRAYER AGAINST TRAI

9. In so far as the prayer (iv) is concerned, Plaintiff seeks a direction to TRAI to permanently block the phone numbers that have been identified by the Plaintiff in Exhibit ‘J’ of the plaint. Ms. Varma has drawn the attention of the Court to the relevant provisions *qua* the Telecom Commercial Communication Customer Preference Regulations, 2018 [*hereinafter*,



“Regulations”] – where a scheme pertaining to the blacklisting of telephone connections used for unsolicited commercial communication is elucidated. Regulation 25 lays down the complaint mechanism, wherein the access providers are under an obligation to ensure that action is taken against entities/individuals engaged in unsolicited commercial communication. Regulation 25(6) provides for the blacklisting of individuals/entities engaged in unsolicited commercial communication. The same reads as under:

“25.(6) OAP shall issue notice, within three business days, to give opportunity to such sender(s), under sub regulations (5)(c)(i), (5)(c)(ii)(A) to represent his case and shall investigate, within thirty business days from the date of receipt of complaint and shall conclude whether the communication so made was unsolicited commercial communication or not; and conclusion of the investigation was that sender was engaged in sending unsolicited commercial communications, OAP shall take action against such sender as under: -

- (a) for first instance of violation, due warning shall be given; Provided that the first instance of the violation shall include all the complaints against the sender within two business days after the date of receipt of the first complaint, against which the sender is to be warned under this sub-regulation.*
- (b) for the second instance of violation, Usage Cap shall continue for a period of six months; Provided that the second instance of the violation shall include all the complaints against the sender after the issuance of first warning within two business days after the date of receipt of the complaint against which second warning is being given to the sender under this sub-regulation.*
- (c) for third and subsequent instances of violations, all telecom resources of the sender shall be disconnected for a period up to two years and OAP shall put the sender under blacklist category and communicate to all other access providers to not to allocate new telecom resources to such sender for up to two years from the date of such communication; Provided that the third instance of the violation shall include all the complaints received against the sender after the date of second warning within two business days after the receipt of the complaint against which telecom resources are being disconnected under this sub-regulation. Provided further that one telephone number may be allowed to be retained by such sender with the Usage Cap for a period up to two years.”*



10. The Court finds merit in the contention of the Plaintiff that since the mobile numbers (annexed in Exhibit 'J' of the Plaint) have been held to be used for perpetrating fraud, the same is liable to be blocked. Accordingly, in terms of Regulation 25(6), TRAI is hereby ordered to direct the access providers to block the afore-mentioned mobile numbers.

PRAYER AGAINST THE BANKS

11. In so far as prayer (v) is concerned, since the identified bank accounts were opened to perpetrate fraud and were in furtherance of illegal purposes, a decree is passed in favour of Plaintiff, and accordingly, a direction is issued to the banks *i.e.*, the Defendants No. 14, 16, 17, 18, 20 and 22 to permanently close the banks accounts that have been identified by the Plaintiff in Exhibits 'A-I', 'A1', 'A2', 'D1', 'H1', 'I1', 'K', 'L', 'M'.

12. Having ordered the closure of the said bank accounts, the immediate concern of the Court is now with respect to how the amounts lying in the said accounts are to be dealt with, since admittedly, Plaintiff does not have any right over such amounts. These amounts were received in these accounts in light of the fraudulent activity orchestrated by the Defendants. The consumers who have been duped are not before the Court, and therefore, the Court considers it appropriate to devise a mechanism for keeping the amounts protected, till such time a legitimate stakeholder may claim the money. In this regard, reliance is placed on Sections 26(a)(1) and (2) of the Banking Regulation Act, 1949 and Section 124 of the Companies Act, 2013. The afore-noted provisions provide that unclaimed deposits in bank accounts, which have been inoperative for more than ten years, shall be kept in RBI's



‘Depositor Education and Awareness Fund’. However, as the said provision is not strictly applicable as in the instant case, the said bank accounts are being directed to close under orders of the Court. Nevertheless, keeping the objective of the afore-noted provision in mind, and also finding no other provision to be squarely applicable to the instant case, the Banks *i.e.*, Defendants No. 14, 16, 17, 18, 20 and 22 – are directed to transfer money in the bank accounts identified by the Plaintiff in Exhibits ‘A-I’, ‘A1’, ‘A2’, ‘D1’, ‘H1’, ‘I1’, ‘K’, ‘L’, ‘M’ to the ‘Depositor Education and Awareness Fund’. The Court records appreciation for Ms. Tanya Varma’s able assistance rendered to the Court for issuing directions relating to the utilisation of monies in public interest.

13. In the event the legitimate owners of the said monies were to raise any claim(s) at any time in the future, the Bank shall consider the same in terms of the applicable banking regulations and the scheme regarding the ‘Depositor Education and Awareness Fund’.

14. Further, the Plaintiff would also be entitled to the actual costs – recoverable jointly and severally from the infringing Defendants *i.e.*, Defendants No. 1, 3 to 13 and 23 to 40 – in terms of the Commercial Courts Act, 2015 and extant Delhi High Courts Rules. The Plaintiff is directed to file its Bill of Costs in terms of Rule 5 of Chapter XXIII of the Delhi High Court (Original Side) Rules 2018, within fifteen days of uploading of the instant order. As and when the same is filed, list before the Taxing Officer for computation of costs.



15. Decree sheet be prepared to that effect.

16. Registry is directed to convey the order to the relevant banks and to TRAI, for compliance. Plaintiff to provide necessary assistance to the Registry in this regard.

NOVEMBER 30, 2021

nk/as/hd

(Corrected and released on 21st January, 2022)

SANJEEV NARULA, J