

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

Reserved on: 17.11.2022

Date of decision: 30.11.2022

+ **CS(COMM) 54/2020 & I.A. 1508/2020**

STAR INDIA PVT. LTD. & ANR. Plaintiffs

Through: Mr. Vivek Ayyagiri, Adv.

versus

AIRHDX.COM & ORS. Defendants

Through: Mr. K. G. Gopalakrishnan
and Ms. Nisha Mohandas,
Adv. for D-15.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

I.A. 18850/2022 (U/o XIII-A read with Section 151 of the Code of Civil Procedure, 1908)

1. This application has been filed by the plaintiffs praying for a Summary Judgment under the provisions of the Code of Civil Procedure 1908 (in short 'CPC'), *inter-alia*, praying for the following reliefs:-

“49. In light of the foregoing, it is most respectfully prayed that this Hon'ble Court may be pleased to:

- i. Pass an order and decree of permanent injunction restraining the Defendant Nos. 1 to 11 (and such other websites / entities which are discovered during the course of the proceedings to have been engaging in infringing the Plaintiffs' Exclusive Rights), their owners, partners, proprietors, officers, servants, employees, and all others in capacity of principal or agent acting for and on their behalf, or anyone claiming through, by or under it, from in any manner*

- hosting, streaming, broadcasting, rebroadcasting, retransmitting, exhibiting, making available for viewing and downloading, providing access to and / or communicating to the public, displaying, uploading, modifying, publishing, updating, sharing (including to its subscribers and users), on their websites, through the internet in any manner whatsoever, the broadcast of the New Zealand Tour, 2020 and the content related thereto, amounting to unfair competition and commercial misappropriation of the Plaintiffs' rights,*
- ii. *Pass an order and decree directing the Defendant No. 12, its directors, partners, proprietors, officers, affiliates, servants, employees, and all others in capacity of principal or agent acting for and, on their behalf, or anyone claiming through, by or under it, to suspend the domain name registration of domain names of Defendants No. 1 as identified by the Plaintiffs in the instant suit at Memo of Parties or such other domain names that may subsequently be notified by the Plaintiffs to be of Rogue Websites which infringe its exclusive rights;*
- iii. *Pass an order and decree directing the Defendant Nos. 13 to 21, their directors, partners, proprietors, officers, affiliates, servants, employees, and all others in capacity of principal or agent acting for and on their behalf, or anyone claiming through, by or under it, to block access to the various websites identified by the Plaintiffs in the instant suit, at S. No. 2 of the Documents or such other websites that may subsequently be notified by the Plaintiffs to be infringing of its exclusive rights;*
- iv. *Pass an order and decree directing the Defendant Nos. 22 and 23 to issue a notification calling upon the various internet and telecom service providers registered under it to block access to the various websites identified by the Plaintiffs*

- in the instant suit at S. No. 2 of the Documents or such other websites that may subsequently be notified by the Plaintiffs to be infringing of its exclusive rights;*
- v. *An order for damages of Rs. 2,00,01,000/- to be paid by the Defendant Nos. 1 to 11 (and such other websites / entities which are discovered during the course of the proceedings to have been engaging in infringing the Plaintiffs' exclusive rights), to the Plaintiffs on account of their illegal and infringing activities and a decree for the said amount be passed in favour of the Plaintiffs (the Plaintiffs reserve their right to claim additional damages and amend the pleadings accordingly once the magnitude of the Defendants' illegal / infringing activities and the revenues earned by the Defendants' in pursuance to such illegal / infringing activities is ascertained upon discovery in the instant action);*
- vi. *An order for delivery of all the apparatus and/or material that the Defendant Nos. 1 to 11 use or may be using to infringe the Plaintiffs' exclusive rights, to the authorized representatives of the Plaintiffs for the purposes of destruction;*
- vii. *An order for rendition of accounts of profits illegally earned by the Defendant Nos. 1 to 11, (and such other websites / entities which are discovered during the course of the proceedings to have been engaging in infringing the Plaintiffs' exclusive rights), on account of their illegal hosting, streaming, publishing, exhibiting, making available and/or communicating to the public of the Plaintiffs' Channels including the internet and telecom service providers registered under it.”*

2. The plaintiffs have impleaded the Domain Name Registrar as the defendant no.12. The plaintiffs have also impleaded various Internet Service Providers (in short, “ISPs”) as the defendant nos. 13 to 21, and

the concerned Departments of the Government of India, namely, the Department of Telecommunications (in short, “DoT”) and the Ministry of Electronics and Information Technology (in short, “MEITY”), as the defendant nos.22 and 23 respectively. The ISPs and the concerned Government Departments have been impleaded for the limited relief of ensuring compliance with any directions of this Court granted in favour of the plaintiffs.

3. The plaintiff no. 1 is a leading entertainment and media company in India. It is the owner of various television channels and by virtue of the necessary uplink and downlink permissions from the Ministry of Information and Broadcasting, Government of India, has the sole and exclusive right to broadcast and distribute an extensive portfolio of sixty five channels (hereinafter referred to as, “STAR Channels”) in over eight languages. The plaintiff no.1 also produces some of the content that is broadcasted on the STAR Channels. The Star Channels broadcast various sporting events in the field of cricket, football, F1, badminton, tennis, hockey and such domestic and international cricket matches as organized by the Board of Control for Cricket in India (in short, “BCCI”) and the Indian Premier League organized by BCCI, among others.

4. The plaintiff no. 2 is the wholly-owned subsidiary of the plaintiff no.1, and is the owner of the online video streaming platform/domain name, www.hotstar.com, and the mobile application, ‘Hotstar’ (hereinafter collectively referred to as “Hotstar”). Hotstar offers online streaming services which enables its viewers to watch domestic and international television serials and programmes, films and sporting events as also content from STAR Channels. It operates as a library of general

entertainment content, including 80,000 hours of television content and movies in over eight languages.

5. It is the case of the plaintiffs that the plaintiffs acquired, *inter alia*, the Exclusive Television Rights, Internet Rights, Mobile Rights and Mobile Activation Rights (in short, “the Exclusive Rights”) for the Indian sub-continent and South-East Asia with respect to all international men and women cricket matches played in New Zealand, including,, but not limited to the India Tour of New Zealand, 2020, for a period of about three years commencing from 15.09.2017 until 30.04.2020. To acquire said exclusive rights, the plaintiffs entered into an agreement with ‘New Zealand Cricket’.

6. The claim of the plaintiffs is premised on the allegation of illegal and unauthorized distribution, transmission and streaming of the plaintiffs’ content by the defendant nos. 1 and 11 (hereinafter referred to as the ‘Rogue Websites’).

7. It is the case of the plaintiffs that as a result of the unauthorized transmission of their content, the Rogue Websites infringe the Exclusive Rights of the plaintiffs, which have been granted protection under Section 37 of the Copyright Act, 1957 (in short, “the Act”).

8. The plaintiffs, vide investigation conducted by an independent investigator, learnt of the extent of the infringing activity of the Rogue Websites, inasmuch as, the Rogue Websites have infringed the plaintiffs’ Exclusive Rights under the provisions of the Act in their content by streaming or hosting and/or by facilitating the use of the Rogue Websites, *inter alia*, by downloading and streaming the plaintiffs’ content in which the copyright vests.

9. It is also the case of the plaintiffs that despite cease-and-desist notices being served on the Rogue Websites in January 2020 the Rogue Websites continued to infringe the Exclusive Rights of the plaintiffs in their content.

10. The learned counsel for the plaintiffs submits that it is a fit case for passing a Summary Judgment under Order XIII-A read with Section 151 of the CPC, as applicable to commercial disputes of a specified value.

11. The grounds for filing the above application, as enumerated by the plaintiffs in the same, are as follows:

- a. All the defendants have been duly served by the plaintiffs;
- b. The defendants nos.1 to 11 are the Rogue Websites that are illegally playing the plaintiffs' 'India Tour of New Zealand 2020' on their websites, and even after being duly served by the plaintiffs, have decided not to contest the present Suit.
- c. That the defendants have no real prospect of successfully defending the claim of infringement of the plaintiffs' Exclusive Rights in the content and have further not chosen to contest the said claim.
- d. Additionally, there is no other compelling reason why the present suit should not be disposed of before recording of oral evidence particularly in view of the fact that there is no dispute regarding

the illegal activities of defendants nos.1 to 11 and in any event, in the absence of any challenge or opposition to the factual allegations made in the plaint, in view of provisions of Order VIII Rule 5 of the CPC, there is no occasion for recording of oral evidence in the present matter.

12. The learned counsel for the plaintiffs also relies upon the judgment dated 10.04.2019 passed by this Court in a batch of suits, including **UTV Software Communication Ltd. & Ors. v. 1337X.to & Ors.**, 2019 SCC OnLine Del 8002, which dealt with the determination of rogue websites.

13. I have heard the learned counsel for the plaintiffs.

14. In **UTV Software** (*supra*), this Court, on the question of Rogue Websites, identified the following illustrative factors to be considered in determining whether a particular website falls within that class:

“59. In the opinion of this Court, some of the factors to be considered for determining whether the website complained of is a FIOL/Rogue Website are:-

- a. whether the primary purpose of the website is to commit or facilitate copyright infringement;*
- b. the flagrancy of the infringement, or the flagrancy of the facilitation of the infringement;*
- c. Whether the detail of the registrant is masked and no personal or traceable detail is available either of the Registrant or of the userX*
- d. Whether there is silence or inaction by such website after receipt of take down notices pertaining to copyright infringement.*
- e. Whether the online location makes available or contains directories, indexes or categories of the means to infringe, or facilitate an infringement of, copyright;*

- f. Whether the owner or operator of the online location demonstrates a disregard for copyright generally;*
- g. Whether access to the online location has been disabled by orders from any court of another country or territory on the ground of or related to copyright infringement;*
- h. whether the website contains guides or instructions to circumvent measures, or any order of any court, that disables access to the website on the ground of or related to copyright infringement; and i. the volume of traffic at or frequency of access to the website;*
- j. Any other relevant matter.*

60. This Court clarifies that the aforementioned factors are illustrative and not exhaustive and do not apply to intermediaries as they are governed by IT Act, having statutory immunity and function in a wholly different manner.

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69. Consequently, the real test for examining whether a website is a Rogue Website is a qualitative approach and not a quantitative one.”

15. This Court, in **UTV Software** (*supra*) further held as under:

“29. It is important to realise that piracy reduces jobs, exports and overall competitiveness in addition to standards of living for a nation and its citizens. More directly, online piracy harms the artists and creators, both the struggling as well as the rich and famous, who create content, as well as the technicians-sound engineers, editors, set designers, software and game designers-who produce it and those who support its marketing, distribution and end sales. Consequently, online piracy has had a very real and tangible impact on the film industry and rights of the owners.

30. The Indian Copyright Act, 1957 (“the Copyright Act”) confers a bundle of exclusive

rights on the owner of a “work” and provides for remedies in case the copyright is infringed.

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82. One can easily see the appeal in passing a URL blocking order, which adequately addresses over-blocking. A URL specific order need not affect the remainder of the website. However, right-holders claim that approaching the Court or the ISPs again and again is cumbersome, particularly in the case of websites promoting rampant piracy.

83. This Court is of the view that to ask the plaintiffs to identify individual infringing URLs would not be proportionate or practicable as it would require the plaintiffs to expend considerable effort and cost in notifying long lists of URLs to ISPs on a daily basis. The position might have been different if defendants' websites had a substantial proportion of non-infringing content, but that is not the case.

84. This Court is of the view that while passing a website blocking injunction order, it would have to also consider whether disabling access to the online location is in the public interest and a proportionate response in the circumstances and the impact on any person or class of persons likely to be affected by the grant of injunction. The Court order must be effective, proportionate and dissuasive, but must not create barriers to legitimate trade. The measures must also be fair and not excessively costly (See: Loreal v. Ebay, [Case C 324/09]).

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86. Consequently, website blocking in the case of rogue websites, like the defendant-websites, strikes a balance between preserving the benefits of a free and open Internet and efforts to stop crimes such as digital piracy.

87. This Court is also of the opinion that it has the power to order ISPs and the DoT as well as MEITY to take measures to stop current

infringements as well as if justified by the circumstances prevent future ones.”

16. In the present Suit as well, vide order dated 05.02.2020, this Court had granted an *ex-parte ad-interim* injunction against the defendant nos.1 to 11 (and such other domains/domain owners/website operators/entities which are discovered during the course of the proceedings to have been engaging in infringing the plaintiffs’ exclusive rights), restraining them from making available, streaming or communicating the ‘India Tour of New Zealand, 2020’ cricket series matches and events on their impugned websites herein or any other mirror websites.

17. This Court had further directed the defendant no. 12 to block the domain names mentioned hereinbelow:-

SL. NO.	DOMAIN NAME
1.	<i>airhdx.com</i>
2.	<i>hulksport.com</i>
3.	<i>jackstreams.com</i>
4.	<i>Cric7.me</i> <i>1.mylivecricket.biz</i> <i>web2.mylivecricket.biz</i> <i>web3 .mylivecricket.biz</i> <i>web4.mylivecricket.biz</i>
5.	<i>runnel.ir</i>
6.	<i>thoptvofficial.buzz</i>
7.	<i>freecast123.com</i>
8.	<i>live.harleyquinnwidget.live</i>
9.	<i>telerium.tv</i>
10.	<i>playuc.xyz</i>
11.	<i>plydata.me</i>

18. This Court also directed the defendant nos.13 to 21 to block access to the said websites and that the directions were to be implemented by the defendant nos.22 and 23. Further, the defendant nos.22 and 23 were

directed to issue a notification calling upon the ISPs to block access to the listed Rogue Websites.

19. The learned counsel for the plaintiffs submits that pursuant to the order of this Court dated 05.02.2020, the defendant nos. 12 to 23 have complied with the said order of injunction.

20. Thereafter, the defendant no. 12, being a *pro forma* defendant in the present suit, sought its deletion from the array of parties as it had complied with the *ad interim ex parte* order of injunction of this Court dated 05.02.2020. This Court vide order dated 10.09.2021 directed that the name of the defendant no.12 be deleted from the Memo of Parties.

21. Thereafter, on 17.08.2022, the learned Joint Registrar (Judicial) passed the following order:-

“...Counsel for plaintiff submits that all the defendants have been duly served and affidavit to this effect has already been filed.

Further, the subject matter has expired long back and, therefore, matter may be decreed in accordance with law. As prayed, matter be placed before the Hon'ble Court on 18.10.2022 for further directions.”

22. Thereafter, on 18.10.2022, this Court noted that the defendants nos.1 to 11 have chosen not to file any written statement or contest the suit. They were accordingly proceeded *ex-parte* in the present suit.

23. Since the defendant nos.1 to 11 have chosen not to enter appearance in the present suit despite service of notice, in my opinion, the suit can be heard and decided summarily. The defendant nos. 1 to 11 have no real prospect of defending the claim of infringement of the plaintiffs' Exclusive Rights in the copyright and have further chosen to not contest the said suit. The present matter is mainly concerned with

enforcement of the injunction orders, which are passed against the 'Rogue Websites' who use the anonymity offered by the internet to engage in illegal acts of infringement. This is a fit case for passing a Summary Judgment by invoking the provisions of Order XIII-A of the CPC, as applicable to commercial disputes of a specified value, read with Rule 27 of the Delhi High Court Intellectual Property Rights Division Rules, 2022.

24. In the present case, applying the test as laid down in *UTV Software (supra)*, and considering the documents filed and the averments made in the plaint, which remained uncontroverted, it has to be held that the defendant nos. 1 to 11 are 'Rogue Websites', with their primary purpose being to commit and facilitate infringement of the Exclusive Rights of the plaintiffs. Moreover, the subject matter in the present suit has expired as on 30.04.2020. The plaintiffs are, therefore, held entitled to a decree in terms of prayers made in paragraph nos. 49 (i), (iii) and (iv) of the plaint.

25. Accordingly, I.A. 18850 of 2022 under Order XIII-A read with Section 151 of the CPC, as applicable to commercial disputes, seeking a Summary Judgment is allowed.

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26. In view of the above, the suit is decreed in terms of prayers mentioned in paragraph nos.49 (i), (iii) and (iv) of the plaint. The plaintiffs are also permitted to implead any mirror/redirect/alphanumeric websites which provide access to the defendant nos.1 to 11 websites by filing an appropriate application under Order I Rule 10 of the CPC, supported by affidavits and evidence as directed in *UTV Software*

(*supra*). Any website(s) impleaded as a result of such application will be subject to the same decree.

27. The suit and the pending applications are disposed of in the above terms.

28. Let a decree sheet be drawn up accordingly.

NAVIN CHAWLA, J.

NOVEMBER 30, 2022/DJ/s

