



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

Reserved on: 24.08.2022

Date of decision: 31.08.2022

+ CS(COMM) 510/2019 & IAs 12818/2019, 13317/2022
STAR INDIA PVT. LTD. & ANR. Plaintiffs
Through: Mr. Vivek Ayyagari, Adv.

versus

AAPKEAAJANESE.NET & ORS. Defendants
Through: Mr. Manish Mohan, Adv. for UOI.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

I.A. 13317/2022

1. This application has been filed by the Plaintiffs under Order XIII A of the Code of Civil Procedure, 1908, as applicable to commercial disputes of specified value under the Commercial Courts Act, 2015, praying for a Summary Judgment in terms of prayers made in paragraph 61 of the plaint in favour of the plaintiffs and against the Defendants.
2. The Plaintiffs have filed the present suit seeking permanent injunction against infringement of copyright in their content; unfair competition; and commercial misappropriation of their exclusive rights enumerated under Section 14(d) of the Copyright Act, 1957 (hereinafter referred to as the 'Act'). The prayers of the Plaintiffs as mentioned in paragraph number 61 of the Plaintiff are reproduced herein below:

"61. 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



Defendants No. 1 to 67 (and such other websites / entities which are discovered during the course of the proceedings to have been engaging in infringing the Plaintiffs' exclusive rights and Copyrights), 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 communicating, hosting, streaming, and/or making available for viewing and downloading, without authorization, on their websites or other platforms, through the internet in any manner whatsoever, the Original Shows/Television Shows/Original Content and content related thereto, so as to infringe the Plaintiffs' exclusive rights and Copyrights,

ii. Pass an order and decree directing the Defendant No. 68 and Defendant No. 69, its directors, partners, proprietors, officers, affiliates, servants, employees, and all others in capacity of principal or agent acting for and, on its behalf, or anyone claiming through, by or under it, to suspend the domain name registration of domain names of Defendants No. 1 to 17 by Defendant No. 68 GoDaddy and Defendants No. 18 to 19 by Defendant No. 69, PDR as already identified by the Plaintiffs in the instant suit in 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. 70 to 78, 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. 79 and 80 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 67 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 reserves its 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 costs in the present proceedings in favour of the Plaintiffs;

3. The Plaintiffs have impleaded Domain Name Registrars as the Defendant Nos. 68 and 69, various ISPs as the Defendants Nos. 70 to 78, and the concerned Departments of Government of India as Defendants Nos. 79 and 80. The Defendant nos. 68 to 80 have been impleaded for the limited relief of compliance with any directions of this Court granted in favour of the Plaintiffs. As noted hereinabove, Defendant no. 68 has since been deleted from the array of parties.



4. This Court, vide Order dated 05.07.2022 recorded that all the contesting Defendants have been served. Despite the service, no written statements have been filed by the Defendants till date. All the defendants, barring the original Defendant nos. 69 to 80 (original Defendant no. 68 had been deleted from the array of parties vide order dated 25.11.2021), were proceeded *ex-parte*. For Defendants no. 69 to 80, the learned counsel for the Plaintiffs had submitted that they have filed their affidavit(s) of compliance of the order dated 17.09.2019 of this Court and, in any case, have been impleaded only as proforma Defendants.

5. 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 downlink permissions from the Ministry of Information and Broadcasting, it has the sole and exclusive right to broadcast and distribute an extensive portfolio of 64 channels in over eight languages. The Plaintiff no.1 also produces some of the content that is broadcasted on the STAR channels.

6. The Plaintiff no.2 is the wholly owned subsidiary of the Plaintiff no.1 and is the owner of the digital platform HOTSTAR. HOTSTAR offers online streaming services accessible through mobile applications and through web browsers at www.hotstar.com. It operates as a library of general entertainment content, including 50,000 hours of television content and movies in over 8 languages.

7. The claim of the Plaintiffs is premised on the allegation of illegal and unauthorized distribution, broadcasting, rebroadcasting, transmission and streaming of the Plaintiffs' original content by the Defendant nos. 1 to 67 (hereinafter referred to as "Rogue Websites"). It is the case of the



Plaintiffs that as a result of the unauthorized transmission of their original content, the Rogue Websites infringe their copyright in the original works produced by it, which is protected under the provisions of the Act.

8. It is the case of the Plaintiffs that the Plaintiffs conducted investigations through independent investigator, which revealed the extent of the infringing activity of the Rogue Websites, inasmuch as the Rogue Websites have infringed the Plaintiffs' copyright in their original content by streaming or hosting and/or by facilitating the use of the Rogue Websites, *inter alia* by downloading and streaming the Plaintiffs' original copyrighted content.

9. It is also the case of the Plaintiffs that legal notices were served on the Rogue Websites calling upon them to cease from engaging in their infringing activities. Despite the legal notices, the Rogue Websites continued to infringe the rights of the Plaintiffs in their original content.

10. The learned counsel for the Plaintiffs presses for the prayers mentioned in paragraph no. 61 (i) to (iv) of the Plaintiff. The other reliefs as made in the Plaintiff are not pressed. The learned counsel relies upon the judgments of a Co-ordinate Bench of this Court in ***UTV Software Communication Ltd. & Ors. v. 1337X. to & Ors.***, 2019 SCC OnLine Del 8002.

11. In ***UTV Software (supra)***, the Court heard arguments on behalf of the Plaintiffs therein and also appointed an *Amicus Curiae*. As in the present case, neither the ISPs impleaded therein nor the Government of India advanced any submission on merits, since no substantive relief had been claimed against them and they had been impleaded to ensure compliance of the orders passed by this Court. In circumstances virtually



identical to the present case, the Court came to the conclusion that the concerned websites were guilty of copyright infringement under Section 51 of the Act and were not entitled to exemptions under 52 (1)(c) of the Act or Section 79 of Information Technology Act, 2000. As far as “rogue websites” are concerned, the Court 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 user.*
- 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.”*

12. The learned counsel for the Plaintiffs has drawn my attention to the Affidavit filed by Mr. Anurag Kashyap, who conducted the investigation with regard to the Defendant nos. 1 to 67 at the instance of the Plaintiffs, to contend that the said websites need to be treated as “Rogue Websites”.

13. Having perused the contents of the Plaintiff and the documents filed therewith, and as all the Defendants, except the Defendant no. 69 to 80, have been proceeded *ex-parte*, and as none of the Defendants have filed written statements nor filed their affidavit of admission/denial of plaintiffs documents, I am of the opinion that the Defendants have no real prospect of successfully defending the claim of copyright infringement and have further not chosen to contest the said claim; additionally, there is no there compelling reason as to why the present suit should not be disposed of before recording of oral evidence.

14. On the basis of the evidence placed on record, and keeping in mind the factors identified by this Court in *UTV Software (supra)*, I find that there is sufficient evidence to hold that the Defendants nos. 1-67 websites are “Rogue Websites”:

a. From the Affidavit of Mr. Anurag Kashyap, it appears that the primary purpose of the Defendants nos. 1 to 67 is to provide unauthorized and infringing content to the public.



- b. The details of the registrants of each of the websites are masked and no personal or traceable details are available either of the registrant or the user.
- c. Despite receipt of legal notices, the Defendants nos. 1 to 67 have not complied with the requests to take down the infringing content.
- d. The Defendants nos. 1 to 67 contain directories or indexes to facilitate infringement of copyright.
- e. The copyrighted content is available illegally on the websites of the Defendant nos. 1 to 67 and the same is evidenced by the screenshots placed at pages 297 to 1364 of Volume II-VII of the documents filed by the plaintiffs along with the Plaintiff.

15. Following the judgment in ***UTV Software (supra)***, the Defendant nos. 1 to 67 websites having been identified as “rogue websites”, the Plaintiffs are entitled to the prayer as sought in Prayer Clause 61(i) to (iv) of the Plaintiff.

16. In ***UTV Software (supra)***, the Court also examined the issue of grant of dynamic injunctions and permitted subsequent impleadment of mirror/redirect/phanumeric websites which provide access to the rogue websites, by filing an application under Order I Rule 10 of the CPC, before the learned Joint Registrar along with an affidavit with supporting evidence, confirming that the proposed website is mirror/redirect/phanumeric website of the injuncted Defendant websites. At the request of the counsel for the Plaintiffs, the same directions are liable to be made in this case also.



17. Accordingly, I.A. No. 13317/2022 under Order XIII (A) read with Section 151 of the CPC seeking a Summary Judgment is allowed.

18. The suit is therefore decreed in terms of Prayer Clause 61(i), 61(ii), 61 (iii) and 61(iv) of the Plaintiff, extracted above. The Plaintiffs are also permitted to implead any mirror/redirect/phanumeric websites which provide access to the Defendants nos. 1 to 67 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 impleaded as a result of such application will be subject to the same decree.

19. Decree sheet be drawn up accordingly.

20. The pending applications also stand disposed of.

NAVIN CHAWLA, J.

AUGUST 31, 2022/dj

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