

\$~8

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

+ CS(COMM) 272/2021 & I.A. 7235/2021

CABLE NEWS NETWORK INCPlaintiff

Through: Mr. Dhruv Anand, Ms. Udita
Patro & Ms. Nimrat Singh, Advs.

versus

CITY NEWS NETWORK & ORS.Defendants

Through: Mr. Rishikesh Kumar, Mr.
Sudhir, Mr. Sumit Choudhary, Mr. Sudhir
Kumar Shukla and Ms. Sheenu, Advs. For
Defendant 2

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

JUDGMENT (ORAL)

04.12.2023

%

1. This suit can be decreed, qua both defendants, as under.


Qua Defendant 2

2. The dispute in this matter stands settled with Defendant 2 with the intervention of the Delhi High Court Mediation and Conciliation Centre. Settlement agreement between the plaintiff and Defendant 2 dated 3 August 2023 has been placed on record.

3. The terms of settlement read thus:

“i. The DefendantNo.2 herein undertakes to suffer a decree of permanent injunction against it in terms of paragraph48(a-e) of the Plaintiff;

ii. The Defendant.No.2 herein acknowledges the Plaintiff to be the proprietor of the registered CNN trademarks as mentioned in paragraph 16 of the Plaintiff;

iii. The Defendant No.2 also acknowledges that the  mark of the Plaintiff as well as the associated trademarks are well-known trademarks under Section 2(1) (zg) of the Trade Marks Act, 1999;

iv. The Defendant No.2 undertakes to this Hon'ble Court not to use the Plaintiffs CNN trademarks as a trading name, domain name or to render any services, relating to content, news or information which is identical with or deceptively similar to Plaintiffs CNN trademarks including those set out in the plaintiff, as the same may cause or be likely to cause confusion or deception amounting to infringement of the Plaintiffs registered trademarks;

v. The Defendant No.2 undertakes to remove and delete all links on the internet including across all channels, other social media pages, blogs, trade listings etc., bearing the mark CNN or any other or any other mark, name, logo, monogram or label including the impugned trademarks CNN that is or may be identical with or deceptively similar to Plaintiffs CNN trademarks;

vi. The Defendant No.2 undertakes to remove all videos and/or content/information published and/or uploaded on the Internet on any link including the links as mentioned in paragraph 21 of the Plaintiff;

vii. The Defendant No.2 undertakes to this Hon'ble Court not to do any other act amounting to passing off of his service as those originating from the Plaintiff;

viii. The undertakings given herein shall also be binding on all the legal heirs, representatives and assigns-in-business of the Defendant No.2 herein. A breach of this undertaking shall automatically entitle the Plaintiff to claim for the damages prayed for in the suit;

ix. In consideration of the abovementioned undertaking by the Defendant No.2, the Plaintiff or egos its claim for, delivery up, rendition of accounts, costs and damages under paragraphs 48(f-h) of the Plaintiff; and

x. It is therefore prayed that this Hon'ble Court may decree the

suit in terms of Paragraphs 48(a-e) of the Plaint and record this Settlement Agreement with the Defendant No.2 as lawful and incorporate the present Settlement Agreement as a part of its decree.”





4. The plaintiff and Defendant 2 are represented by learned Counsel, who undertake on behalf of their clients to remain bound by the aforesaid terms of settlement.
5. The Court has perused the terms of settlement and find them to be lawful and in order.
6. As such, the dispute between the plaintiff and Defendant 2 does not survive for consideration.
7. The suit stands decreed *qua* Defendant 2 in accordance with the aforesaid terms of settlement.
8. Let a decree sheet be drawn up accordingly.
9. The plaintiff would be entitled to refund of 50% court fees to the extent it is paid *qua* Defendant 2.

Qua Defendant 1

10. Insofar as Defendant 1 is concerned, the order dated 8 August 2023 passed by the learned Joint Registrar records the fact that Defendant 1 was served on 24 September 2022. There has, however, been no appearance on behalf of Defendant 1 at any stage of the proceedings. Even today, Defendant 1 is unrepresented. Nor has any

written statement been filed by Defendant 1. By the aforementioned order dated 8 August 2023, the right of Defendant 1 to file written statement stands closed.

11. Having perused the material on record, and heard Mr. Anand, learned Counsel for the plaintiff, I am of the opinion that the present case eminently qualifies for decreeing the suit in terms of Order VIII Rule 10 of the Code of Civil Procedure, 1908 (CPC), without keeping this matter lingering on any further.

12. The plaintiff has registrations for the device mark . The  label stands registered in favour of the plaintiff under classes 9 and 16 with effect from 31 December 1991 and in classes 38 and 41 with effect from 23 February 2004. The plaintiff runs a news channel under the above mark, which may justifiably be said to constitute standard and stable viewing in most urban households in the country. The marks ,  and “CNN” (“the CNN marks”) are prominently displayed whenever the plaintiff’s news channel is on air. The assertion, in the plaint, that the CNN marks have become source identifiers of the plaintiff and are indelibly associated with the services provided by the plaintiff is, therefore, clearly justified on facts. It is also clear that “CNN”, which is an acronym for cable news network constitutes the entire body of the aforementioned registered device marks.

13. The mark CNN has also been declared as a well-known

trademark within the meaning of Section 2(1) (zg) of the Trade Marks Act, 1999 by this Court in *Cable News Network, Inc. v. Anshu Jain*¹.

14. Defendant 1, *qua* whom alone the dispute survives, is an entity located in Lucknow. It operates a website under the marks



and



. It also operates the website



<https://citynewsnetworks.in/>.

15. The plaint alleges that Defendant 1's marks  and




infringe the plaintiff's registered trademarks and that, inasmuch as they are identical to the plaintiff's registered trademarks, there is every likelihood of confusion in the minds of the viewing public between the marks of the plaintiff and Defendant 1.

16. It is on this basis that the plaintiff has approached this Court by means of the present suit, seeking a decree of permanent injunction, restraining Defendant 1 (as the suit stands settled with Defendant 2)

from using the impugned marks  and , or any other mark which is deceptively similar to the plaintiff's registered CNN marks, either as a word mark or as a logo.



17. The plaintiff clearly has a case. Though the plaintiff does not possess any word mark registration for CNN, "CNN" constitutes the

¹ (2017) SCC OnLine Del 11885

entirety of the  registered device mark of the plaintiff which is merely “CNN” represented in a particular and peculiar pictorial fashion.

18. The plaintiff is, therefore, clearly entitled to a monopoly for use of the acronym CNN, especially where the acronym is used in respect of a news channels or in connection with dissemination of news or for providing any other allied or cognate services.

19. The plaintiff has been using its CNN mark in India since 1989. The plaintiff, therefore, clearly has priority of user of the mark over Defendant 1.







20. Defendant 1 is using the marks  and  for providing services which are identical to those provided by the plaintiff. The marks of Defendant 1 clearly infringe the plaintiff’s registered trademarks within the meaning of Section 29(2)² of the Trade Marks Act. Clause (b) of Section 29(2) envisages infringement as taking place where the plaintiff’s and Defendant 1’s marks are similar and are used in respect of goods or services which are identical or similar in nature. Clause (c) envisages infringement as taking place

² (2) A registered trade mark is infringed by a person who, not being a registered proprietor or a person using by way of permitted use, uses in the course of trade, a mark which because of –

- (a) its identity with the registered trade mark and the similarity of the goods or services covered by such registered trade mark; or
- (b) its similarity to the registered trade mark and the identity or similarity of the goods or services covered by such registered trade mark; or
- (c) its identity with the registered trade mark and the identity of the goods or services covered by such registered trade mark,

is likely to cause confusion on the part of the public, or which is likely to have an association with the registered trade mark.

where the marks as well as the goods and services in respect of which rival marks are used are identical. In either case, for infringement to be found to occur, the use of the marks and goods or services in respect of which they are used must result in likelihood or confusion in the public or a likelihood of the public believing an association between the mark of the defendant and the mark of the plaintiff. Where the marks are identical, i.e. where they fall within Section 29(2)(c) of the Trade Marks Act, Section 29(3)³ engrafts a statutory presumption that a likelihood of confusion exists.

21. If one is to take the textual component of the marks of Defendant 1 and the plaintiff, insofar as the mark  is concerned, the plaintiff may well be entitled to the statutory presumption contained in Section 29(2)(c) read with Section 29(3) of the Trade Marks Act, as the textual component of Defendant 1's mark and the plaintiff's mark, i.e. "CNN", is identical. A viewer would clearly associate the mark "CNN" with the plaintiff. In any event, both the impugned marks of Defendant 1 clearly infringe the plaintiff's registered  mark, as they are provided in respect of services which are identical to those provided by the plaintiff. For the lay viewer, there is every likelihood of his, at the very least, believing an association between the  CITY NEWS NETWORK, and  marks of the defendant and the  and  marks of the plaintiff.

³ (3) In any case falling under clause (c) of sub-section (2), the court shall presume that it is likely to cause confusion on the part of the public.

22. At the very least, such a viewer would, on seeing Defendant 1's mark, pause to reflect whether it is not associated with the mark of the plaintiff, both being "CNN" and both being used for broadcasting news services.



23. That "state of wonderment" by itself would *prima facie* constitute infringement within the meaning of Section 29(2)(b) and Section 29(2)(c) of the Trade Marks Act⁴.

24. The use, by the Defendant 1, of the expanded form "CITY NEWS NETWORK" would actually exacerbate the possibility of confusion. The aspect of likelihood of confusion has to be examined from the perspective of the consumer of average intelligence and imperfect recollection.⁵ It has to be examined, moreover, from the point of view of the immediate initial impression created in the mind of such a consumer who sees the defendant's mark. All that is needed for the Defendant 1's mark to be treated as infringing is *likelihood of confusion*. Actual confusion need not be shown to exist. Applying these principles, the identity of the textual components of the plaintiff's and Defendant 1's marks, i.e. "CNN", when coupled with the similarity in the expanded forms of the acronyms – "CABLE NEWS NETWORK" and "CITY NEWS NETWORK" – is bound to result in confusion, howsoever momentary, in the mind of the lay viewer.

⁴ Refer *Shree Nath Heritage v. Allied Blender & Distillers*

⁵ Refer *Amritdhara Pharmacy v. Satya Deo Gupta, Kaviraj Pandit Durga Dutt Sharma v. Navaratna Pharmaceutical Laboratories, K.R. Chinna Krishna Chettiar v. Shri Ambal & Co.*

25. The fact that Defendant 1 is providing news services under its CNN marks, also justifies the allegation, of the plaintiff, that the use of the aforementioned marks by Defendant 1 is bound to confuse the consumers into treating the services provided by Defendant 1 as those provided by the plaintiff. Even though the two logos are visually dissimilar, that by itself may not mitigate the possibility of such confusion, as it is a matter of common knowledge that logos change from time to time. If, therefore, a viewer were to come across Defendant 1's CNN mark, in the context of the services that Defendant 1 provides, the viewer may be led to believe that the services are in fact being provided by the plaintiff, and that, possibly, the plaintiff may have changed its logo.

26. The use, by Defendant 1, of the impugned  , and  logos also, therefore, results in the possibility of the defendant's services being passed off as those of the plaintiff.

27. The facts, therefore, also make out a clear case of passing off, by Defendant 1, by use of the impugned marks, of its services as those of the plaintiff. It is well settled that proof of *mala fide* intent is not necessary for passing off to be found to exist, even though, classically, passing off is regarded as a "tort of deceit".⁶

28. Where infringement and passing off are found to exist, an

⁶ Refer S. Syed Mohideen v. P. Sulochana Bai

injunction must follow as held by the Supreme Court in *Laxmikant V. Patel v. Chetanbhai Shah*⁷ and in *Midas Hygiene Industries P. Ltd. v. Sudhir Bhatia*⁸ among other cases.

29. Mr. Anand is therefore entitled to a decree of permanent injunction as sought in the suit.




30. Mr. Anand also presses for costs. Defendant 1 is using a clearly infringing mark for providing services identical to those provided by the plaintiff. Defendant 1 has also obviously monetarily benefited by using the impugned mark. That Defendant 1 has no sustainable defence to offer is apparent from the fact that it has not even chosen to contest the present suit. The plaintiff would, therefore, be entitled to be compensated by costs.

31. The amounts earned by Defendant 1 by use of the impugned marks are not forthcoming, as Defendant 1 has not chosen to enter appearance. The plaintiff has, however, placed on record a statement of costs, which indicates that, in prosecuting the present litigation, the plaintiff has incurred costs of Rs. 13,52,798.55. Defendant 1 having not chosen to enter appearance, this statement of costs has also gone unrebutted. It would, therefore, be entitled to proportionately reimburse the plaintiff with costs.

32. In view of the aforesaid, the suit is decreed *qua* Defendant 1 in the following terms:

⁷ 2002 3 SCC 65

⁸ (2004) 3 SCC 90

(i) Defendant 1 shall stand restrained from using the impugned marks  and  or the mark “CNN” or any other mark which may be deceptively similar to the registered  device mark of the plaintiff, either for providing news services or in connection with any other goods or services which may be allied or cognate thereto.

(ii) Defendant 1 is directed, forthwith, to remove/disband the following websites/social media web pages:

- a. <https://citynewsnetworks.in>,
- b. <https://www.youtube.com/channel/UCGk4DP59-MEUsCHyAwe90pg>,
- c. <https://www.facebook.com/cnncitynewsnetwork>
- d. <https://vidooly.com/youtube/channel-stats/UCGk4DP59-MEUsCHyAwe90pg>

(iii) Defendant 1 is directed to pay costs of ₹ 7 lakhs to the plaintiff. The said costs shall be payable within a period of four weeks from today.

33. The suit stands decreed in the aforesaid terms qua Defendant 1. Let a decree sheet be drawn by the Registry, accordingly.

C.HARI SHANKAR, J

DECEMBER 4, 2023

ar

[Click here to check corrigendum, if any](#)