

TRAVEL.INDIATIMES V. INDIATIMETRAVELS
[TIMES INTERNET LTD. V. M/S BELIZE DOMAIN WHOIS
SERVICE]

COURT: High Court of Delhi

CITATION: CS (OS) No. 1289 of 2008

DECIDED ON: 10 November 2010

BENCH: MR. JUSTICE V.K. JAIN

LAW APPLIED: [Copyright Act, 1957](#) and [Trademark Act, 1999](#).

FACTS OF THE CASE:

1. Bennett Coleman and company limited (The Plaintiff) is a company in the field of e-commerce and created indiatimes.com/indiatimes portal which has also coined many publications namely Times of India, The Economic Times, Navbharat Times, Delhi Times and Bombay Times. The portal was registered as "indiatimes" in 1996. As for the registration of domain name expires on November 2016.
2. The logo "indiatimes" was designed to be different from other logos by using a unique layout, colour and features. Thus, plaintiff claims that due to these embedded unique features into the logo of the indiatimes this will constitute as a original and artistic work under section 2(c) of the Copyrights Act, 1957.
3. It has introduced a new portal domain name travel.indiatimes.com which deals with travel services, the trademark was registered under the plaintiff name with effect from 7th June 2000.
4. This portal was advertised by the plaintiff in the homepages of the indiatimes.com web by providing links for the travel.indiatimes.com.

5. Indiatimetravel.com the defendant's, M/s Belize Domain Whois Service Ltd & Others, portal for carrying out sponsored links. It was registered for trademark in 2005. And its domain name registration will expire in July, 2008.
6. The portal of the defendant does not deal in any travel business or services and it only deals with carrying out sponsored links, where clicking on the links gives revenue to the domain users i.e. the defendants, without providing any real services.
7. Later the plaintiff got to know about the portal of the defendant and claimed that the defendant has opted for the same as indiatimes for taking the advantage of the branding and promotional initiatives of the plaintiff's domain name
8. The plaintiff files a lawsuit, and when the court sent summons to the defendant, the defendant did not respond for the same.

ISSUES RAISED:

1. The plaintiff seeks for permanent injunction restraining the defendant from operating its business, products and services with reference to or under the mark/domain name/website "indiatimes.com" or any other mark or device or logo likely to deceive and cause confusion and/or passing off the defendant business as that of the plaintiff
2. Order permanent injunction over the use of similar domain name as the plaintiff's portal "indiatimes.com" or any other mark or logo which may cause confusion or deceive and/or passing off the defendant's business as the plaintiff,
3. An order for delivery of all rights and files which have the mark or name of indiatimetravel.com to the plaintiff.

RULE APPLIED:

1. [Section 2\(c\), of the Copyright Act, 1957](#),¹
artistic work means, —
any drawings (anything which has a diagram, map, chart, plan etc.) or a sculpture or a painting or an engraving or photograph, it doesn't matter if that work possesses any artistic quality or not,
[\(ii\)](#) a 4[work of architecture]; and 1[work of architecture]; and"
[\(iii\)](#) any other work of artistic craftsmanship

¹ Section 2(c), of the Copyright Act, 1957, Parliament of India Act, 1957

2. [Section 2\(z\), of the Copyrights Act, 1957](#),²

“work of joint authorship” it means that a work which is produced by two or more people by working together where the contribution of the author does not vary from contribution of other author.

3. *Cadila Health Care Ltd. vs. Cadila Pharmaceuticals Ltd.*³

"the Supreme Court, inter alia, saw that its choices over the most recent four decades had obviously set out that what must be found on account of a going off activity was the comparability between the contending marks and to decide if there was probability of trickiness or creating turmoil."

4. *Satyam Infoway Ltd. vs. Sifynet Solutions Pvt. Ltd.*⁴

"a domain name is picked as an instrument of business endeavor not just on the grounds that it encourages the capacity of buyers to explore the Internet to discover sites they are searching for, yet additionally simultaneously, serves to recognize and recognize the business itself, or its merchandise or benefits, and to indicate its relating on the web Internet domain. Thus, an domain name as a location must, of need, be impossible to miss and one of a kind and where a domain name is utilized regarding a business, the benefit of keeping up a selective personality gets basic." Comparing both the domain name and the brand name, Supreme Court held that an domain name can have all the attributes of a brand name. In like manner, domain names can be ensured under Trademarks Act, 1999.

5. [The Trademark Act, 1999](#)⁵,

"An Act to change and merge the law identifying with exchange/trademarks, to accommodate enrollment and better insurance of exchange/trademarks for merchandise and enterprises and for the prevention of the utilization of fake trademarks"

ANALYSIS OF THE CASE:

The first aim of a domain name was to give a location to PCs on the web. In any case, the web has made from an irrelevant technique for correspondence to a strategy for carrying on business activity. With the extension of business activity on the web, a domain name is furthermore used as a business identifier. Thusly, the domain name not simply fills in as a domain for web

² Section 2(z), of the Copyright Act, 1957, Parliament of India Act, 1957

³ *Cadila Health Care Ltd. vs. Cadila Pharmaceuticals Ltd.* (2001) 5 SCC 573

⁴ In *Satyam Infoway Ltd. vs. Sifynet Solutions Pvt. Ltd.* 2004 (28) PTC 566 (SC)

⁵ The Trademark Act, 1999, the parliament of India Act, 1999

correspondence yet furthermore recognizes the specific web website page. In the business field, each domain name owner gives information/organizations which are connected with such domain name. Thusly a domain name may identify with game plan of organizations inside the noteworthiness of Section 2(z). An domain name is definitely not hard to recall and use, and is picked as an instrument of business try not simply considering the way that it energizes the limit of customers to investigate the Internet to find destinations they are scanning for, anyway in like manner all the while, serves to perceive and perceive the business itself, or its product or benefits, and to decide its relating on the web Internet domain. Along these lines, a domain name as an domain must, of need, be difficult to miss and exceptional and where a domain name is used with respect to a business, the estimation of keeping up a prohibitive character gets fundamental. As progressively undertakings trade or advance their substance on the web, domain names have gotten progressively significant and the potential for banter is high.

The usage of a same or equivalent domain name will cause a redirection of customers, which as a result customer using the wrong domain name instead of the one, they intend to use. This mostly occurs in electronic business due to its brisk headway & second (and theoretically unfathomable) accessibility to customers and likely customers and particularly so in regions of express spread. Normally consumers/customers intended to remember the website by its functions and not by its domain name and if the users come across a similar domain name and find out that no services are provided the consumers will be confused. Such customers could well induce that the central domain name owner had mis-addressed its items or organizations through its exceptional activities and the fundamental domain owner would in this way lose their custom. It is clear that a domain name may have all the characteristics of a brand name or trademark and could found a movement for going off.

Most definitely, in India there is no expressly defined legislation which deals with disputes related to domain name. However, in spite of the fact that the activity of the Trade Marks Act, 1999 itself isn't additional regional and may not take into account satisfactory insurance of domain names, this doesn't imply that domain names are not to be lawfully secured to the degree conceivable under the laws identifying with going off.

Apparently by utilizing the web name "indiatimetravel.com", litigant needs to exploit the tremendous use acquired by the offended party organization and its antecedent on building and advancing the name "indiatimes". As noted before, litigant having not decided not to show up

under the watchful eye of this Court, there will never be a way out from the end that the web name got enrolled by respondent was got enlisted by it with a ulterior thought process and was not in compliance with common decency.

The utilization of the web name "indiatimetravel.com" is, along these lines, liable to bring about disarray in the brain of web client because of tricky comparability in the web name "indiatimes" and "indiatimetravel.com" by virtue of the words "indiatimes" being a fundamental element of both the web names. In the event that the items and administrations which are publicized on the web-based interface of litigant are not comparable to the items and administrations publicized on the online interface of offended party organization, taking into account that the name "indiatimes" has come to be related with the offended party organization because of its broad use and the costs brought about on advancing and building this name, utilization of the reprimanded web name by respondent may likewise bring about bringing down the notoriety and picture of the offended party organization among the web clients.

It is, in this way, hard to question the conflict of the offended party that the domain name received and got enrolled by respondent being indistinguishable from the instituted domain name of the offended party because of utilization of the words "indiatimes" in it, it is an away from of giving and litigant isn't qualified for keep utilizing the domain name "indiatimetravel.com". Since the option to utilize the words "indiatimes" vests just with the offended party, respondent is obliged to move the domain name received and got enrolled with it by litigant to the offended party.

CONCLUSION:

The court held that: An individual is well inside his entitlement to sell his products or render administrations utilizing any business trademark for the reason. With the progression of time the merchandise sold or the administrations delivered by him, all things considered, may obtain certain notoriety or altruism in the market which turns into the property of that individual and should be secured by the court. It isn't reasonable for some other individual to begin selling merchandise or delivering administrations either utilizing a similar name or mirroring that name in order to make injury that individual and advance himself at the expense of the individual who had just been utilizing that name and had obtained a specific notoriety with the progression of time and by virtue of the nature of the products sold or benefits delivered by

him. Any endeavor with respect to an individual to improve upon the generosity created by some other individual should be checked by the court at whatever point drew nearer by the distressed party in such manner. Regardless of whether the individual utilizing or copying the exchange imprint or altruism of someone else is yet to begin his business exercises his untrustworthy aim to utilize the imprint and name of the other party will be evident from the very use or impersonation of the imprint and generosity of the other individual and, in this way, it ought not be a safeguard to state that there has so far been no utilization of the culpable corporate name or imprint.



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