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IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CS(COMM) 1211/2018& I.A.No.15013/2018

MAKEMY TRIP (INDIA) PRIVATE LIMITED Plaintiff

Through Mr. Mohit Goel, Mr. Sidhant
Goel, Mr. Abhishek Kotnala,
Ms. Malika Nandkloyer and
Mr. Deepankar Mishra,
Advocates.

versus

M/S MAKE MY HAPPY JOURNEY Defendant

Through None

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Date of Decision: 08th February, 2019

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J: (Oral)

1. Present suit has been filed for permanent injunction restraining infringement of trademarks, copyrights, passing off, dilution of goodwill, unfair competition, rendition of accounts of profits, damages, delivery up etc. The prayer clause is reproduced hereinbelow:-

“58. In the circumstances aforesaid, the Plaintiff most respectfully prays that this Hon’ble Court may be pleased to pass:

(a) Decree for permanent injunction restraining the Defendant, its partners, directors, shareholders or proprietor as the

case may be, its assigns in business, franchisees, affiliates, subsidiaries, licensees and agents from using in manner whatsoever, selling, offering for sale, advertising, directly or indirectly dealing in any products or services under, the Infringing Marks, namely MakeMyHappyJourney (word per se),

<www.makemyhappyjourney.com>andMakeMyHappyJour

ney Logo, that is  or any other trade mark/trade name/trade dress or logo/device, which is identical to and/or deceptively similar to and/or includes the Plaintiff's well known MakeMyTrip Marks, namely, MakeMyTrip (word mark), MakeMyTrip Logo Marks (as set out in the Complaint) amounting to infringement of the Plaintiffs' registered trade marks as detailed hereinabove.

(b) Decree for permanent injunction restraining the Defendant, its partners, directors, shareholders or proprietor as the case may be, its assigns in business, franchisees, affiliates, subsidiaries, licensees and agents from using in manner whatsoever, selling, offering for sale, advertising, directly or indirectly dealing in any products or services under, the Infringing Marks, namely MakeMyHappyJourney (word per se), <www.makemyhappyjourney.com> and

MakeMyHappyJourney Logo, that is  or any other trade mark/trade name/trade dress or logo/device, which is identical to and/or deceptively similar to and/or includes the Plaintiff's well known MakeMyTrip Marks, namely, MakeMyTrip (word mark), MakeMyTrip Logo Marks (as set out in the Complaint) and MakeMyTrip Domain Names (as set out in the Complaint) amounting to passing off of its services as those of the Plaintiffs'.

(c) Decree for permanent injunction restraining the Defendant, its partners, directors, shareholders or proprietor as the case may be, its assigns in business, franchisees, affiliates,

subsidiaries, licensees and agents from using in manner whatsoever, selling, offering for sale, advertising, directly or indirectly dealing in any products or services under, the Infringing MakeMyHappyJourney Logo, that is



or any other logo/device, which is identical to and/or deceptively similar to and/or includes the Plaintiffs' well known MakeMyTrip Logo Marks (as set out in the Plaint) amounting to infringement of the Plaintiffs' copyrights in the MakeMyTrip Logo Marks.

(d) A decree of mandatory injunction directing the Defendant to transfer the domain name <www.makemyhappyjourney.com> in favour of the Plaintiff and/or any other domain name deceptively similar to the Plaintiff's which the Defendant has separately registered;

(e) A decree for delivery up of all products and material including stationery, visiting cards, bill boards, brochures, promotional material, letter-heads, cash memos, sign boards, sign posts, leaflets, cartons or any other items of whatsoever, bearing the Infringing Marks, MakeMyHappyJourney (word per se), and <www.makemyhappyjourney.com> and



MakeMyHappyJourney Logo, that is or any other trade mark/trade name/trade dress or logo/device, which is identical to and/or deceptively similar to and/or includes the Plaintiffs' well known MakeMyTrip Marks.

(f) A decree for damages amounting to Rs.2,00,00,000/- (Rupees Two Crore only) or any such amount as found due in favour of the Plaintiff.

(g) An order for rendition of accounts of profits in favour of the Plaintiff and against the Defendant to ascertain the profits made by Defendant on account infringement and passing

off. The Court fees as and when the accounts of profit are determined precisely and accurately in the course of trial, and upon disclosure of profits made by the Defendant.

(h) An order awarding costs of this suit to the Plaintiff;

2. Vide order dated 31st October, 2018, this Court had granted an *ex parte ad interim* injunction in favour of the plaintiff and against the defendant. The relevant portion of the *ex-parte* injunction order is reproduced hereinbelow:-

“Consequently, till further orders, the defendant, its partner, directors, shareholders or proprietors as the case may be, its assigns in business, franchisees, affiliates, subsidiaries, licencees and agents are restrained from using in manner whatsoever, selling, offering for sale, advertising directly or indirectly dealing in any products or services under the infringing marks, namely MakeMyHappyJourney (word per se), <www.makemyhappyjourney.com> and

MakeMyHappyJourney Logos that is or any other trade mark/trade name/trade dress or logo/device, which is identical to and/or deceptively similar to and/or includes the plaintiff’s MakeMyTrip Marks, namely, MakeMyTrip (word mark), MakeMyTrip Logo marks (as set out in the plaint) and MakeMyTrip Domain Names (as set out in the plaint), in any manner whatsoever.”



3. On 01st February, 2019, the defendant was served by way of publication in newspapers. However, since despite service, none has appeared for the defendant, it is proceeded *ex parte*.

4. At this stage, learned counsel for the plaintiff gives up prayers 58 (e), (f), (g) of the prayer to the suit. The statement made by learned

counsel for plaintiff is accepted by this Court and plaintiffs held bound by the same.

5. This Court is also of the view that the present suit can be disposed of without any further delay. A Coordinate Bench of this Court in ***Satya Infrastructure Ltd. and Ors. Vs. Satya Infra & Estates Pvt. Ltd., 2013 SCC OnLine Del 508*** has held as under:-

“I am of the opinion that no purpose will be served in such cases by directing the plaintiffs to lead ex parte evidence in the form of affidavit by way of examination-in-chief and which invariably is a repetition of the contents of the plaint. The plaint otherwise, as per the amended CPC, besides being verified, is also supported by affidavits of the plaintiffs. I fail to fathom any reason for according any additional sanctity to the affidavit by way of examination-in-chief than to the affidavit in support of the plaint or to any exhibit marks being put on the documents which have been filed by the plaintiffs and are already on record. I have therefore heard the counsel for the plaintiffs on merits qua the relief of injunction.”

6. In the plaint, it is stated that the plaintiff company was incorporated in the year 2000, and started its business initially with airline booking and is today one of the largest travel companies in India and has expanded into range of products and services beyond online and travel booking. It is stated that the plaintiff was originally incorporated with the name ‘Travel by web Private Limited’ and subsequently, on 02nd August, 2000, changed its name to ‘MakeMyTrip Pvt. Ltd.’ and on 28th June, 2002, the plaintiff changed its name to its current name i.e. ‘MakeMyTrip (India) Pvt. Ltd.’ It is stated that the plaintiff is a pioneer

of the Indian online travel industry and has carved out a niche name for itself within the travel industry.

7. It is also averred that the plaintiffs primarily work through its website, www.makemytrip.com., and mobile applications. It is stated that the domain name [makemytrip.com](http://www.makemytrip.com) was registered on 08th May, 2000 in the name of the founder of the plaintiff company. It is stated that the plaintiff has continuously and uninterruptedly been using the marks MakeMyTrip (hereinafter referred to as “MakeMyTrip Word Mark”, “MakeMyTrip logo marks”) and the domain names <www.makemytrip.com>, <www.makemytrip.net.in>, <www.makemytripindia.in> (herein after collectively referred as “MakeMyTrip domain names”). It is stated that that the MakeMyTrip marks are invented marks and have earned immense reputation and goodwill.

8. It is averred in the plaint that the plaintiff is the registered proprietor of at least 15 MakeMyTrip marks under various Classes of the Trade Marks Act, 1999 over and above several foreign registrations. Learned counsel for the plaintiff states that during the pendency of the present suit, the plaintiff also acquired registration for the trademark “MakeMy” bearing application nos. 3869251 and 3869255 in Classes 09 and 43 under the Trade Marks Act, 1999.

9. It is stated that the plaintiff has made concerted and conscious effort to depict and use “MY” formative element of the MakeMyTrip marks in a unique and catchy manner. It is stated that the said efforts are evidenced by the prominent depiction of the “MY” element in various MakeMyTrip marks.

10. It is stated that apart from serving as a source identifier, the plaintiff's MakeMyTrip logo marks, including but not limited to the logos also constitute original artistic works within the meaning of the Copyright Act, 1957.

11. It is the case of the plaintiff that the sales turnover attributable to the MakeMyTrip marks in India for the financial year 2017-2018 was Rs. 2,75,907 lacs and the advertising expenditure incurred by the plaintiff for the promotion of its brand in the same financial year was Rs.1,26,464 lacs.

12. Learned counsel for the plaintiff states that in June, 2018, the plaintiff came to know about the defendant while browsing through the internet. He states that on further investigation the plaintiff came across the website of the defendant, <www.makemyhappyjourney.com> wherein the defendant was offering online services of booking flight tickets (and tour bookings), hotel reservations, etc., which are services identical to that of the plaintiff. He states that a perusal of the defendant's website shows that apart from using the word mark 'MakeMyHappyJourney' which is deceptively similar to the plaintiff's 'MakeMyTrip' word mark, the defendant on its impugned website is also

using an infringing logo  which contains the infringing word mark 'MakeMyHappyJourney'. A pictorial representation of the plaintiff's and defendant's marks is reproduced hereinbelow:-

Plaintiff's Mark(s)	Defendant's Mark(s)
Word Mark: MakeMyTrip	Word Mark: MakeMyHappyJourney

<p>Composite Logos:</p> <p>This Logo consists of the words MAKE, MY and TRIP. The Logo emphasizes upon the "MY" element of the Logo.</p>      	<p>Composite Logos:</p> <p>This Logo consists of the words MAKE, MY, HAPPY and JOURNEY. The Logo emphasizes upon the "MY" element of the Logo.</p> 
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DOMAIN NAME: <www.makemytrip.com> <www.makemytrip.net.in> <www.makemytripindia.in>	DOMAIN NAME: <www.makemyhappyjourney.co m>
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13. Learned counsel for the plaintiff states that on 20th June, 2018, the plaintiff issued a cease and desist notice to the defendant to stop using all the infringing marks and domain names. He states that despite delivery, no response has been received till date.

14. Learned counsel for the plaintiff states that the defendant's mark 'MakeMyHappyJourney' is phonetically, visually, structurally and conceptually similar to the plaintiff's registered mark 'MakeMyTrip'. He states that the infringing word mark, which constitutes a predominant feature of the infringing logo marks and the infringing domain name is phonetically, visually, structurally and otherwise deceptively and confusingly similar to the plaintiff's MakeMyTrip Word Mark and MakeMyTrip logo marks. He further states that the adoption of the colour scheme of the defendant's infringing logo marks is identical to that of the plaintiff's 'MakeMyTrip' logo marks.

15. Learned counsel for the plaintiff emphasizes that the "MY" formative element in the defendant's infringing marks is written and stylized in an identical manner and this makes the defendant's dishonest intent apparent. He further states that the defendant's substitution of the word 'Trip' with the word 'Happy' and 'Journey' in the infringing word mark is not enough to distinguish the plaintiff and defendant's marks.

16. Learned counsel for the plaintiff states that the defendant's adoption of the aforesaid impugned marks for identical services creates a sense of collaboration or nexus between the plaintiff and defendant in the minds of the public and will cause unwary costumers to confuse the defendant's business for the plaintiff's. He states that the defendant is brazenly attempting to usurp the dominant features of the plaintiff's MakeMyTrip marks and ride upon the reputation and goodwill of the plaintiff's MakeMyTrip marks.

17. In the opinion of this Court, the defendant has no real prospect of defending the claim, as despite service, it has neither entered appearance nor filed is written statement.

18. Further, the plaintiff is the registered owner of the trade marks in question. This Court is of the opinion that the defendants infringing marks constitute infringement under Section 29 of the Trade Marks Act, 1999 apart from constituting a violation of the statutory and common law rights of the plaintiff.

19. In view of the above, the present suit is decreed in favour of the plaintiff and against the defendant in accordance with prayer 58 (a) to (d) of the present plaint along with actual costs. The costs shall amongst others include lawyers' fees as well as the amounts spent on purchasing the Court fees. The plaintiffis given liberty to file on record the exact cost incurred by them in adjudication of the present suit, if not already filed.

20. Registry is directed to prepare a decree sheet accordingly.

21. With the aforesaid observations, present suit and pending application stand disposed of.

MANMOHAN, J

FEBRUARY 08, 2019

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