

(2014) 12 MAD CK 0364

Madras High Court

Case No: C.S. No. 412 of 2012 and A. No. 504 of 2012

Amoha Education (P)
Ltd.

APPELLANT

Vs

G. Sathish Kumar

RESPONDENT

Date of Decision: Dec. 15, 2014

Citation: (2015) 64 PTC 504

Hon'ble Judges: Pushpa Sathyanarayana, J

Bench: Single Bench

Judgement

Pushpa Sathyanarayana, J.

The plaintiff M/s/ Amoha Education (P) Ltd., formerly known as Vivekananda Kalvi Nilayam Pvt. Ltd., has filed the suit for perpetual injunction restraining the defendant from in any manner infringing their trademark "Veta" or any other mark deceptively similar to their trademarks, for direction to the defendant to surrender to them all their teaching, resource, technical know how, study and course materials and for liquidated damages of Rs. 5 Lakhs with interest.

2. The defendant is one Satishkumar who is carrying on business in the name and style of M/s Vidhya Easy Spoken Academy in Arakonam.

3. The case of the plaintiff, as narrated in the plaint, is as follows:-

(a) The plaintiff is in the business of imparting training in English communication skills amongst other activities and had been marketing their services and products under the name Vivekananda Institute's Spoken English Training Course and marketing such products under the brand name "Veta" which has been registered as a trademark under the Trade Marks Act, 1999 in Class 41 under No. 1280828 on 26.4.2004 in respect of education services which is valid for a period of ten years and is renewable. The plaintiff also had made an additional representation dated 12.9.2008 for the use of the trade mark "Veta One" under the acknowledgement No. 1731089.

(b) While so, the defendant had approached the plaintiff for establishing a Franchise centre using the goodwill, reputation, services and the products of the plaintiff for providing training in English communication skills and requested the plaintiff to grant a franchise. Accordingly, the plaintiff also agreed for the defendant to run a training centre in the name of M/s Vidhya Easy Spoken English Academy at No. 5 Railway Police Line Street, Arakonam, Vellore, and the agreement was reduced to writing on 08.12.2009.

(c) As per the Franchise Agreement, the defendant was permitted to use the trade name, reputation and goodwill of the plaintiff in the business of conducting training in English communication skills. The defendant also paid a security deposit of Rs. 50,000/- as per Clause 5 of the agreement and non-refundable Franchise Fee of Rs. 1 Lakh. It is stated that as per Clause 6 of the agreement, the defendant has to pay a sum of Rs.12,000/- per month with Service Tax to the plaintiff as royalty which was subject to annual increase and though it was agreed by the defendant, he had defaulted in paying the royalty amount from June 2011.

(d) Therefore, the plaintiff issued a termination notice dated 24.9.2011 terminating the Franchise Agreement and calling upon the defendant to pay the dues of Rs.42,995/- which was due after adjusting the study materials advance amount. The plaintiff also had called upon the defendant to hand over the teaching, course and technical know how material. According to the plaintiff, Clause 27 of the Franchise Agreement restrains the defendant from setting up any similar centre in the same territory or the district within the radius of 100 Kms. from the territory for a period of 2 years from the termination of the Agreement and in the event of violation of the said clause, the franchisee shall be liable to pay the liquidated damages of Rs. 5 Lakhs to the franchisor.

(e) The further allegation of the plaintiff is that though they had terminated the franchise on 24.9.2011, the defendant continued to use the plaintiff's trade mark brand name, goodwill, course material, printed matter, advertisements, etc. and therefore, they issued another letter dated 25.10.2011 enclosing the statement of accounts and calling upon the defendant to pay a sum of Rs. 42,995/- towards royalty dues. The plaintiff further stated that the defendant is continuing the institute in the same place at Arakkonam even after termination and also started a new Institute at No. 4, PJN Street, near State Bank of India, Arakkonam and also running another Institute at Sholinghur, all under the same name "Veta", which is the registered trade mark of the plaintiff.

(f) Not stopping with that, the defendant had also issued advertisements in the newspapers with the plaintiff's trademark "Veta". The fee receipts issued by the defendant also carry the trade mark of the plaintiff. The defendant is also continuing to admit students for their English course using the plaintiff's trademark "Veta" in utter violation of the confidentiality clause of the Franchise Agreement and infringement of the trade mark of the plaintiff. As the customers of the plaintiff

identified them only with the trade mark "Veta", the act of the defendant using the same trade mark in his advertisements and the course study materials, mislead the plaintiff's customers and also the students and public to believe that the defendant is continuing the franchise of the plaintiff.

(g) The defendant is also unjustly enriching himself by unauthorisedly using the same trade mark and deceiving the student community. The plaintiff is the registered owner of the trademark "Veta" and the use of the same name by the defendant has caused confusion in the minds of the customers, which has consequently reflected on the business of the plaintiff and their franchisees in the area.

(h) Alleging irreparable loss and damages to the reputation and goodwill, the plaintiff also claimed a sum of Rs.5 Lakhs as liquidated damages from the defendant as per the Franchise Agreement with interest at 18% per annum.

4. From the materials available on record, it is seen that the plaintiff also had filed Application No. 2684 of 2012 seeking appointment of Commissioner to inspect the three spoken English Institutes / Academy run by the defendant in Arakonam and Sholinghur and this Court, by order dated 29.6.2012 appointed one Mr. J. Bharathi Raja, Advocate, as Commissioner to inspect the premises, note down the advertisements, materials, fee receipts, study materials used by the defendant infringing the registered trade mark "Veta" of the plaintiff, to seize such offending materials used by the defendant infringing the registered trade mark of the plaintiff and to file a report.

5. From the papers placed before this Court, it is seen that though the defendant had been served in the suit and appeared through counsel, subsequently, the counsel had represented that change of vakalat has been given to the defendant. Thereafter, the matter was posted under the caption "Undefended Board" for filing written statement by the defendant and as there was no representation for the defendant and no written statement was also filed, he was set ex parte by this Court on 03.12.2013.

6. One N. Thirumalai, Manager, H.R. Administration of the plaintiff Company filed proof affidavit and he was examined as P.W.1. In the Ex parte Evidence, P.W.1 marked the following documents as Exs. P.1 to P.10 as documentary evidence in order to prove the suit claim:-

7. Mr. Bharathi Raja, Advocate Commissioner, appointed by this Court was examined as P.W.2 and during the course of examination, the following documents, viz., Exs. C.1 to C.4, were marked through him. Sl. No. Exhibits Description of documents

8. Heard the learned counsel appearing for the plaintiff and perused the records.

9. The one and the only contention of the plaintiff is that the defendant continues to use their trade mark even after the termination of Franchise Agreement Ex. P.4 dated 08.12.2009, by termination letter Ex. P.5 dated 24.9.2011.
10. In this regard, Learned counsel for the plaintiff invited the attention of this Court to Clause 4 of the Franchise Agreement, which is with regard to the location of the centre. The said clause categorically restricts that the Franchisee shall change the location and name of the centre only with the prior and written consent of the Franchisor.
11. As regards payment of the franchisee, the same has been set out in Clause 5 of the Franchise Agreement. Further, Clause 27 of the Franchise Agreement enlists the restrictions of Franchisee breaching the confidentiality provisions. Clause 27(ii) restricts the Franchisee not to use the name "Veta" or "Veta One" or any similar name, in combination or as a stand alone name, for any other business in which he or his family members are associated. Sub-clause (v) of Clause 27 of the Franchise Agreement speaks with regard to the damages. For better understanding, Clause 27(v) of the Franchise Agreement is usefully extracted below:-
- The Franchisee shall not set up a similar Centre or Institute in the same territory or the District in which the territory is situated or within a radius of 100 kms from the territory for a period of 2 years from termination of this agreement. In the event of violation of this Clause by the Franchisee, it shall be liable to pay liquidated damages of Rs.5 Lakhs to the Franchisor."
12. Quoting the above Clauses in the Franchise Agreement, the learned counsel for the plaintiff contended that the defendant had violated the confidentiality provisions of the franchise agreement even after the termination of the franchise agreement. Hence, prayed for the liquidated damages of Rs. 5 Lakhs.
13. In the above factual matrix, it has to be seen whether the defendant has infringed the trade mark of the plaintiff.
14. The plaintiff has filed Ex. P.2 which is the Trade Mark Certificate registered in the name of the plaintiff and Ex. P.3 is the xerox copy of additional representation for trade mark "Veta One" applied by them. Ex. P.4 is the Franchise Agreement which has already been referred to and Ex. P.5 is the termination letter. Ex. P.5 termination letter dated 24.9.2011 issued by the plaintiff has clearly indicated that there was royalty dues since June 2011 from the defendant and as the defendant had not paid the royalty on time, the Franchise Agreement was terminated. The plaintiff had also issued Ex. P.6 which is the reminder letter to the defendant to pay the dues.
15. In order to establish the fact that the defendant was continuing to use the trade mark of the plaintiff even after termination of the Franchise Agreement on 24.9.2011, P.W.1 has produced Exs. P.7 to P.10. They are all photographs and paper advertisements exposing the name of the defendant.

16. It would also be worthwhile to refer to the report of the Advocate Commissioner, who has filed the report on inspection of the Institutes run by the defendant. A cursory glance of paragraph 4 of the report would disclose that the defendant had certain issues with the plaintiff Company in this regard. Paragraph 4 of the Commissioner's report reads as follows:-

Then Mr. Sathish Kumar came to Arakonam and I informed him about the appointment of the Advocate Commissioner to inspect the premises mentioned in the order and also seize the offending materials. Then he requested for two days time to speak to the plaintiff's company by saying that he would settle all issues with the applicant's company. But we were not agreeable for that and I directed him to cooperate with me to execute the warrant in a smooth manner."



17. From the foregoing discussion, it is clear that the defendant has been using the trade mark of the plaintiff unauthorisedly which, in the considered opinion of this Court, would definitely have a negative impact in the business of the plaintiff. Considering the oral and the documentary evidence, viz., Ex. P.1 to Ex. P.10 adduced by P.W.1 and Exs. C.1 to C.4 adduced by Advocate Commissioner, P.W.2, this Court is of the view that the Plaintiffs have proved the suit claim against the defendant and hence, the Plaintiffs are entitled for the reliefs against the defendant, as asked for.

In the result, the suit is decreed as prayed for with costs. Consequently, A. No. 504 of 2012 is closed.

List of Witnesses Examined on the side of the Plaintiff:-

P.W.1 ♦ Mr. N. Thirumalai

P.W.2 ♦ Mr . J. Bharathi Raja

List of Exhibits Marked on the side of the Plaintiff:-

List of Witnesses Examined on the side of the defendant:-

Nil

List of Exhibits Marked on the side of the defendant:-

Nil