(2001) 4 AD 583 : (2001) 58 DRJ 241 : (2001) 3 RAJ 122

Delhi High Court

Case No: Suit No. 317/99

Dr. Reddy''s Laboratories Limited		APPELLANT
	Vs	
Manu Kosuri and Another		RESPONDENT

Date of Decision: Feb. 28, 2001

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 39 Rule 1, Order 39 Rule 2
- Trade and Merchandise Marks Act, 1958 - Section 29

Citation: (2001) 4 AD 583 : (2001) 58 DRJ 241 : (2001) 3 RAJ 122

Hon'ble Judges: N.G. Nandi, J

Bench: Single Bench

Advocate: Praveen Anand, for the Appellant;

Judgement

N.G. Nandi, J.

In this suit, the plaintiff pray for relief of permanent injunction restraining the defendants from registering a domain name or operating any business and/or selling, offering for sale, advertising and in any manner dealing in any services or goods on the internet or otherwise under the trade mark/domain name ''drreddyslab.com'' or any other mark/domain name which is identical or deceptively similar to the plaintiffs trade mark DR. REDDY''S or that contains the said word as an essential or dominant feature thereof and from doing any other thing as is likely to lead to passing off of the business and goods of the defendants as the business and goods of the plaintiff. Also for the relief of permanent injunction restraining the defendants from using the trade mark/domain name ''drreddyslab.com'' or any other mark/domain name which is identical with or deceptively similar to the plaintiffs trade mark DR. REDDY''S for internet related services or any other business as may lead to dilution of the distinctiveness of the said trademark of the plaintiff; Also praying for damages to be paid to the plaintiff by the defendants on account of the use of the impugned mark as a domain name BESIDES rendition of accounts of

profit earned by the defendants by the use of the impugned domain name AND ALSO for relief of delivery up of all impugned materials of the defendants, including brochures, stationery and other printed matter bearing the impugned name.

2. After filing of the suit, summons were issued to the defendants. Both the defendants despite service of summons, did not appear. There is no written statement on behalf of the defendants in the suit. Vide order dated 28.10.1999, suit was ordered to be proceeded ex-parte against the defendants. plaintiff was permitted to file affidavit by way of ex-parte evidence and pursuant thereto, plaintiff filed affidavit and also the original documents.

3. In order to substantiate the averments in the plaint, Mr. Santosh Kumar Nair, Company Secretary of the plaintiff company filed affidavit and testified that he is duly authorised by the plaintiff company through a Board Resolution to sign and verify the pleadings and to institute the suit; that he has access to the books/records of the plaintiff company and is fully conversant with all spheres of its business activities; that the company was established in the year 1984 for research and development activity in the field of medicine and has over above 15 years grown into a fully integrated pharmaceutical organisation with an annual turnover of over US $ 100 million or approximately Rs. 400 crores; that the plaintiff company has a strong distribution network in India and extensive operations overseas; that the company has subsidiaries in USA (Reddy Cheminor, Inc), France (Reddy Cheminor S.A.), Singapore (Reddy Pharmaceuticals Singapore Pte. Ltd) and Hong Kong (Reddy Pharmaceuticals Hong King Ltd) and has a network of associates in more than 50 countries to market bulk pharmaceuticals and finished dosages; that the plaintiff company is a leader in organic synthesis and its products cover analgesics, antiulcerants, antimetics, X-ray contrast agents, antitussives, antihypertensives, antibacterials, anesthetics, anti-cancer compounds and lipid lowering agents among others; that the plaintiff company is also the proprietor of the trademark "DR. REDDY"S" by virtue of priority in adoption, continuous and extensive use and advertising and the reputation consequently accruing thereto in the course of trade; that the plaintiff company and its group companies have exclusively used DR. REDDY"S as a trademark so that DR. REDDY"S is always perceived as indicative of the source of the company and its other group companies; that the trade mark DR. REDDY"S is a personal name of plaintiff company"s founder and its use as a trademark in relation to pharmaceuticals is completely arbitrary; that the trademark DR. REDDY"S is a highly valuable intangible asset of plaintiff company which has the capacity to clearly distinguish its activities from those of other traders; that the application for registration of trademark DR. REDDY"S by the company is pending and the plaintiff company has a registered domain name "drreddys.com" a print out showing the record of Internet with regard to the said domain name registration is filed; that in the month of January, 1999, the plaintiff company was informed about the activities of defendant No. 1, who is apparently the Managing Director of defendant No. 2; that defendants are in the business of registering domain name in India and their purpose of existence appears to be to block well known trademark and

even names of well-known personalities on the Internet. Having once registered as domain names, the defendants offer them for sale for large amounts; that such a practice is patently unethical and commercially unfair and it is evident that the defendants do not have any connection with the parties whose marks/names they have registered; that the registration procedure of domain names of the internet is on a "first come first served" basic and is a mere recordal without any opposition or notice to third parties; that the said domain name registrations would enable the defendants to take the next effective step of opening a website on the internet where their business profile and objectives would appear. In fact, when the plaintiff company first accessed the website on the internet to investigate the defendants activities, it was learnt that their home page bearing the domain address www.drreddyslab.com shows a clock and the following caption :- "welcome to the future Website of drreddyslab.com"; that the function of a domain name is akin to a trade mark on the Internet and it is of vital importance in e-commerce. Therefore, on account of the increasing world wide use of the internet and its reach and implications on trade, the potential for confusion or deception being caused on account of the adoption of the impugned trademark/name by the defendants and the likelihood of damage to plaintiffs company business, goodwill and reputation by the operation of a website under the impugned domain name by them is enormous; that the defendants use of the impugned trademark/domain name DR. REDDY''S is thus aimed at diverting the business of plaintiff company and to earn easy, illegal and underserved profits by appropriating to themselves the goodwill, reputation and business of plaintiff company. The Company''s losses and damage to its business would run into several lakhs of rupees on account of the fact that commercial transactions can take place through the Internet itself. The conduct of the defendants in registering domain names which are identical to the well-known trademarks and personalities names shows mala fides on their part; that the defendants threatened use of highly distinctive trademark of plaintiff company will irreparably damage its reputation and goodwill and dilute the distinctiveness of the said trademark and that the defendants unauthorised registration of the domain name containing the trademark DR. REDDY''S and unlicensed use of the trademark DR. REDDY''S on the internet or otherwise will cause irreparable loss, damage and injury to the goodwill and reputation of plaintiff company by passing off the defendants goods and business as and for those of plaintiff company or associated with it in some manner or the other.

4. Through the aforesaid affidavit, the plaintiff has produced Board Resolution as Exhibit P-1, Annual Report for the year 1997-98 as Exhibit P-2, Corporate Report 1996-97, Certified copy of memorandum and articles of association of plaintiff company as Exhibit P-4, Letter dated 25 1.1999 from Zezan Marketing Pvt. Ltd., about registration of plaintiffs domain name Exhibit P-54, Computer print out of plaintiffs domain name registration as Exhibit P-5, List of domain names blocked by defendants as Exhibit P-6, printout of defendants home page for the impugned domain name/website as Exhibit P-7 and papers suggesting authority and control of the plaintiff over the disputed domain name as Exhibit P-8.

5. As observed above, the defendants have not chosen to appear and contest the reliefs claimed in the suit nor there is anything to controvert the documents produced and proved by the plaintiff referred to above. Admittedly, the plaintiff trademark is still not registered by the authority under The Trade and Merchandise Marks Act, 1958. plaintiffs application for registration of trademark is pending registration.

6. It will be seen from the above that the plaintiffs trade mark is "DR. REDDY"S" and the defendants trade mark/domain name is "drreddyslab.com". plaintiff is the proprietor of the trade mark "DR. REDDY"S" by virtue of priority in adoption, continuous and extensive use and advertising and the reputation and the said mark has been used as trade mark; that the defendants are in the business of registering domain names in India and defendants offer them for sale for amounts. It is suggested that defendants home page bearing the domain address "www.drreddyslab.com" shows the captain "welcome to the future Website on drreddyslab.com". It appears that function of a domain name is akin to a trade mark on the Internet and it is of vital importance in e-commerce. Therefore, on account of the increasing world wide use of the internet and its reach and implications on trade, the potential for confusion or deception being caused on account of adoption of the impugned trade name/domain name by the defendants and the likelihood of damage to plaintiffs company business, goodwill and reputation by the operation of a website under the impugned domain name by the defendants can be well appreciated.

7. It is a settled legal position that when a defendant does business under a name which is sufficiently close to the name under which the plaintiff is trading and that name has acquired a reputation the public at large is likely to be misled that the defendant"s business is the business of the plaintiff or is a branch or department of the plaintiff, the defendant is liable for an action in passing off and it is always not necessary that there must be in existence goods of the plaintiff with which the defendant seeks to confuse his own domain name passing off may occur in cases where the plaintiffs do not in fact deal with the offending goods. When the plaintiffs and defendants are engaged in common or overlapping fields of activity, the competition would take place and there is grave and immense possibility for confusion and deception and, Therefore, there is probability of sufferance of damage. plaintiff and defendants are operating on the Website. The domain name serve same function as the trademark and is not a mere address or like finding number of the Internet and, Therefore, plaintiff is entitled to equal protection as trade mark. The domain name is more than a mere Internet address for it also identifies the Internet site to those who reach it. In an Internet service, a particular Internet site could be reached by anyone anywhere in the world who proposes to visit the said Internet site. In a matter where services rendered through the domain name in the Internet, a very alert vigil is necessary and a strict view needs to be taken for its easy access and reach by anyone from any corner of the world. The trademarks/domain name "DR. REDDY"S" of the plaintiff and "drreddyslab.com" of the defendants are almost similar except for use of the suffix "lab.com" in the defendants domain use. The degree of the similarity of the marks usually is vitally important and significant in an action for passing off as in such a case,

there is every possibility and likelihood of confusion and deception being caused. Considering both the domains'' name, it is clear that two names being almost identical or similar in nature, there is every possibility of an Internet user being confused and deceived in believing that both the domain names belong to plaintiff although the two domain names belong to two different concerns.

8. In view of the above on preponderance of probablities, I am of the view that the plaintiffs has been able to establish the averments in the plaint and defendants needs to be restrained by suitable orders.

In the result, suit is decreed.

Defendants are restrained by a permanent injunction from registering a domain name or operating any business and/or selling, offering for sale, advertising and in any manner dealing in any services or goods on the internet or otherwise under the trade mark/domain name ''drreddyslab.com'' or any other mark/domain name which is identical without deceptively similar to the plaintiffs trade mark ''DR. REDDY''S'' and from doing any other thing as is likely to lead to passing off of the business and goods of the defendants as the business and goods of the plaintiff.

The defendants are also restrained by permanent injunction from using the trade mark/domain ''drreddyslab.com'' or any other mark/domain name which is identical with or deceptively similar to the plaintiffs trade mark ''DR. REDDY''S'' for internet related services or any business which may lead to dilution of distinctiveness of the plaintiffs trademark ''DR. REDDY''S''. Defendants are also directed to transfer the domain name ''drreddyslab.com'' to the plaintiff and shall deliver all impugned material including brochures, stationary and other printed matters bearing the impugned name ''drreddyslab.com''.

Defendants shall pay cost of the suit to the plaintiff and bear their own.