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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS (COMM) 421/2019**

JUGGERNAUT BOOKS PVT. LTD. Plaintiff

Through: Mr. Satyajit Sarna and Mr. Rahul
Kukreja, Advocates (M:
9930245807).

versus

INKMANGO INC. AND ORS. Defendants

Through: None.

CORAM:
JUSTICE PRATHIBA M. SINGH

ORDER

% **09.08.2019**

I.A. 10905/2019 (exemption)

1. This is an application by the Plaintiff seeking exemption from filing fair typed copies of the dim documents. Exemption allowed, subject to all just exceptions.

2. I.A. is disposed of.

I.A. 10903/2019 (u/O XI Rule 1(4) CPC)

3. This is an application by the Plaintiff seeking leave to file additional documents under the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 (*hereinafter*, '*Commercial Courts Act*'). The Plaintiff, if it wishes to file additional documents at a later stage, shall do so strictly as per the provisions of the Commercial Courts Act.

4. I.A. is disposed of.

I.A. 10904/2019 (u/O XIII, Rule 1 CPC)

5. This is an application by the Plaintiff seeking exemption from filing original documents. Recording the Plaintiff's undertaking that the inspection of original documents shall be given, if demanded, or that the original documents shall be filed prior to the stage of admission/denial, the exemption is allowed.

6. I.A. is disposed of.

CS (COMM) 421/2019

7. Let the plaint be registered as a suit.

8. Issue summons to the Defendants through all modes upon filing of Process Fee including through email.

9. The summons to the Defendants shall indicate that a written statement to the plaint shall be positively filed within 30 days from date of receipt of summons. Along with the written statement, the Defendants shall also file an affidavit of admission/denial of the documents of the Plaintiff, without which the written statement shall not be taken on record.

10. Liberty is given to the Plaintiff to file a replication within 15 days of the receipt of the written statement. Along with the replication, if any, filed by the Plaintiff, an affidavit of admission/denial of documents of the Defendants, be filed by the Plaintiff, without which the replication shall not be taken on record. If any of the parties wish to seek inspection of any documents, the same shall be sought and given within the timelines prescribed under the Delhi High Court (Original Side) Rules, 2018.

11. List before the Joint Registrar for marking of exhibits on 11th October, 2019. It is made clear that any party unjustifiably denying documents would be liable to be burdened with costs.

12. List before Court on 13th November, 2019.

13. Let a copy of this order, along with the entire paperbook be served on the Defendants with the summons.

I.A. 10902/2019 (u/O XXXIX Rules 1 & 2 CPC)

14. This is a suit filed by the Plaintiff - Juggernaut Books Pvt. Ltd., seeking permanent injunction restraining infringement of trademark, passing off, dilution, unfair competition, damages, delivery up etc. The Plaintiff is a publisher of books and e-books by various well-known authors through a web-based software which is accessible from computers and smart phones on its platform - 'www.juggernaut.in'. The said platform was introduced by the Plaintiff in India in 2015. It publishes a large number of books, dictionaries, yearbooks, exam guides, etc. and also displays a short summary of the content. It also seeks to commission short books for publication. The Plaintiff claims to be one of the leaders in the 'phone publishing' space. The various books which are published by the Plaintiff have been set out in paragraph 15 of the Plaint which includes the following genres: Biography, Non-fiction, Fiction, Travel, Sports, Politics, Law, Economics and Nutrition. The books that are published include books from very well-known authors whose names are provided in paragraph 16 of the Plaint. The trademark '*JUGGERNAUT*' is registered in India in Class 16 and is pending registration in Classes 41 and 42. The Plaintiff's website is a subscription based website having a prominent presence on social media platforms, including Instagram and Twitter.

15. The Plaintiff came to know that one of the writers associated with the Plaintiff, Mr. William Dalrymple, who is a famous historian, was approached by the Defendants - The Juggernaut, to publish on their website

'www.thejuggernaut.com'. The e-mail written by the Defendants to Mr. William Dalrymple clearly represents that the Defendants have launched the platform The Juggernaut on 16th February, 2019. The extract of the said e-mail is set out below:-

*"Hi William,
Hope you're well.....*

I'm writing to you for help with a new project. We launch The Juggernaut today, a subscription-backed media publication for South Asian stories. We started with inkmango, a free, weekly newsletter to summarize South Asian news globally, and grew into the thousands. However, while summarizing news, we observed that global South Asian news lacked nuance and representation. South Asians were increasingly visible on the world stage, but there was no international publication providing smart, inclusive analysis, focusing exclusively on the region and its global community. That's how The Juggernaut started.

Out today - our first day - are two takes on Indian hip hop. The first praises Bollywood movie Gully Boy's portrayal of the emerging movement, while another journalist argues that mainstreaming Indian hip hop might kill the movement. We've also revisited Mississippi Masala, Mira Nair's 90s era film on Black-Indian love. We have many more pieces coming up, some academic, others about tech, politics and business.

I'd love to have you write for us. Our community is smart, sharp, curious and would benefit so much from reading your thoughts. If writing seems a tall task, I'd love to interview you and guarantee that I would do it justice. I'm most interested in hearing you speak about the Anarchy and some of the

pathways that led you to write it. Let me know!
Meghna”

16. Since the said author was associated with the Plaintiff for a long time, he brought this email to the notice of the Plaintiff. Further inquiries were thereafter made by the Plaintiff which revealed that the impugned website, ‘www.thejuggernaut.com’, was being operated by Defendant No. 1 - a company by the name of Ink Mango. This company itself was registered on 5th December, 2018 in New York and also has a website by the name of ‘www.inkmango.com’. The subscription publication is promoted through the InkMango website and has a large number of references to The Juggernaut. The earliest screenshot available of the Defendants’ product on the website ‘<http://web.archive.org>’ is of 12th March, 2019. The ‘WhoIs’ details of ‘www.thejuggernaut.com’ show that the registration name is privacy protected, however, the website is registered through a company by the name NameCheap, Inc., which is Defendant No. 17. The print out of ‘*The Wayback machine*’ extracted at page 244 of the Plaintiff’s documents shows that the domain name, though registered in 2003, was dormant all these years and it was only in 2019 that there is usage of the domain name. The Defendants also have a presence on LinkedIn, Twitter, Instagram and other related social media platforms.

17. Mr. Satyajit Sarna, Id. Counsel, points out to this Court that on some of the social media platforms, there is already confusion that has been created between the Plaintiff and the Defendants’ business. The submission is that the Defendants have deliberately targeted India and Delhi based customers as the entire website of the Defendants is meant for customers from the South Asian community. He submits that this is clear from the fact

that a perusal of the website shows that almost all the articles are either related to India or its neighbouring countries.

18. Under these circumstances, the submission of ld. counsel for the Plaintiff, on the basis of the judgments in *Banyan Tree Holding (P) Limited v. A. Murali Krishna Reddy & Anr.* [CS (OS) No. 894/2008, decided on 23rd November, 2009], *Millennium and Copthorne International Limited v. Aryans Plaza Services Private Limited & Ors.* [CS (COMM) 774/2016, decided on 5th March, 2018], *World Wrestling Entertainment, Inc. v. M/s Reshma Collection & Ors.* [FAO (OS) 506/2013, decided on 15th October, 2019] and *Exxon Mobil Corporation v. Exxoncorp Private Limited* [CS (COMM) 111/2019, decided on 16th July, 2019], is that since the Defendants have deliberately availed of the forum, i.e., India and Delhi, their website is fully accessible in Delhi and subscription can be obtained in Delhi, the Delhi High Court has the jurisdiction to hear this matter.

19. This Court has heard the ld. counsel for the Plaintiff and seen the documents on record. The first issue that arises is of jurisdiction as all the Defendants are residents of a foreign country. A perusal of the website clearly shows that the Defendants are targeting customers based in India or publishing in India, as is evident from the email addressed to Mr. William Dalrymple. The articles published by the Defendants also have a connection with India, Indian authors, Indian movies, Indian actors etc. The Defendants are clearly targeting Indian customers and are trying to promote their platform in India. The Defendants run a digital publishing website just like the Plaintiff. The Plaintiff is clearly the prior user of the mark, 'Juggernaut' for digital publishing and Defendants are using the name 'The Juggernaut'. The confusion, especially on the internet, is evident from the material placed

on record where the Plaintiff's website is showing up on the Defendant's search page and vice versa. The Defendants' portal is very recent and despite two notices being written, no reply was forthcoming. Moreover, in the internet world, confusion can be worse as the names are identical, the service being provided is identical and the target customer base is identical. Various users have made comments on the social media pages of the Defendants' portal which establishes that there is confusion already being created between the two portals.

20. As per the judgment in *Banyan Tree (supra)* and other judgments relied upon by the Plaintiff, if an internet based platform targets a particular jurisdiction or uses a mark in a particular jurisdiction, in relation to goods or services for which the mark is registered, there is infringement of trade mark and passing off. Relevant portions of the said judgments are set out below:

Banyan Tree Holding (P) Limited v. A. Murali Krishna Reddy & Anr. [CS (OS) No. 894/2008, decided on 23rd November, 2009]

“42. This Court holds that jurisdiction of the forum court does not get attracted merely on the basis of interactivity of the website which is accessible in the forum state. The degree of the interactivity apart, the nature of the activity permissible and whether it results in a commercial transaction has to be examined. For the ‘effects’ test to apply, the Plaintiff must necessarily plead and show prima facie that the specific targeting of the forum state by the Defendant resulted in an injury or harm to the Plaintiff within the forum state. For the purposes of a passing off or an infringement action (where the plaintiff is not located within the jurisdiction of the court), the injurious effect on the Plaintiff's business, goodwill

or reputation within the forum state as a result of the Defendant's website being accessed in the forum state would have to be shown. Naturally therefore, this would require the presence of the Plaintiff in the forum state and not merely the possibility of such presence in the future. Secondly, to show that an injurious effect has been felt by the Plaintiff it would have to be shown that viewers in the forum state were specifically targeted. Therefore the 'effects' test would have to be applied in conjunction with the "sliding scale" test to determine if the forum court has jurisdiction to try a suit concerning internet based disputes."

Millennium and Cophorne International Limited v. Aryans Plaza Services Private Limited & Ors. [CS (COMM) 774/2016, decided on 5th March, 2018]

"20. The counsel for the plaintiff has also referred to World Wrestling Entertainment, Inc. v. Reshma Collection, 2014 SCC OnLine Del 2031 (DB) particularly to paras 2, 6, 8, 17, 18 and 22 to 25 thereof, where an order of return of plaint was set aside and it was inter alia held that with the advent of e-commerce, the expression 'carries on business' at a certain place, has been impacted and is much wider than the other expressions used in Section 20 of the CPC.

...
24. In continuation of what was held by the Division Bench in World Wrestling Entertainment, Inc., I may state that the mode of booking/reserving rooms and other facilities particularly of dining therein, in hotels/resorts/spas, has changed over the years with maximum number of bookings/reservations being made through such third party websites, so much so that the rates available on the third party

websites are also found to be considerably lower than the rates offered through traditional mode of agents or offices in major cities. Judicial notice can be taken of the fact that much of the volume of businesses of hotels is now through such third party websites, in comparison to the business through direct bookings and/or through travel agents. Thus, if the Courts at Delhi will have jurisdiction over subject matter of suit owing to defendants having interactive website accessible at Delhi and enabling defendants situated outside Delhi to carry on business at Delhi, I see no reason to hold that it will not be so where the defendants, instead of hosting its own interactive website, avails the service of third party websites to carry on business at Delhi. There is no rationale for carving out such a distinction. Certainly, making a booking/reservation, even if the same does not subsequently materialise, is part of carrying on business, inasmuch as the hotel which has taken the booking, even if has not received any payment, being unable to turn back a customer if shows up in pursuance to such booking. The defendants, by showing on their websites, their location to be at Delhi, are also found to be attracting and luring the customers, otherwise intending to visit Delhi, into believing that the hotels and resorts of the defendants are at Delhi, though actually, territorially speaking, outside Delhi. The defendants, cannot be permitted to take different stand/position while carrying on business than before this Court. In any case, such acts of the defendants amount to specifically targeting the viewers at Delhi, within the meaning of Banyan Tree Holding (P) Ltd. supra.”

Exxon Mobil Corporation v. Exxoncorp Private Limited [CS (COMM) 111/2019, decided on 16th

July, 2019]

“23. The judgment in Millennium & Cophorne International Limited v. Aryans Plaza Services Private Limited (supra) also clarifies the application of the ‘effects’ test and the ‘sliding scale’ test referred to in Banyan Tree (supra) for determining whether the forum Court had jurisdiction to try an internet based dispute. As regards the ‘effects test’, the Court in Banyan Tree (supra) has held that: “For the ‘effects’ test to apply, the Plaintiff must necessarily plead and show prima facie that the specific targeting of the forum state by the Defendant resulted in an injury or harm to the Plaintiff within the forum state.” As per the judgment in Banyan Tree followed by Millennium (supra) the Plaintiff satisfies the ingredients of Section 20 CPC.

...

27. The Defendant clearly reached out not only to Indian customers but global customers as well. A perusal of the website extract and the social media platforms representations clearly show that the Defendant was offering its services and IT products across the country and globally.”

Ld. Counsel for the Plaintiff submits that the historian Mr. William Darlymple works out of Delhi for a considerable portion of the year. The email of the Defendant has been written to Mr. Darlymple. The articles that are published have a close connection with India and thus there is specific targeting of India and India-based customers. Subscription is being offered and can be obtained by any customer based in Delhi or in any other part of India. The Plaintiff’s registered office is also in Delhi. By way of example documents have been placed on record to demonstrate that subscriptions can

be taken for the Defendants' platform, by customers based in Delhi. Thus, there is purposeful availment of Delhi and the Defendants are clearly carrying on business in Delhi. The cause of action has also arisen in Delhi.

21. Under these circumstances, the Defendants and anyone acting for and on their behalf, are restrained from using the mark/word '*Juggernaut*' including the domain name 'www.thejuggernaut.com' or any other mark/name that is similar to the Plaintiff's trademark 'JUGGERNAUT' for the purposes of digital publishing, publication of articles, books and other content or any other form of publishing services including in online platforms, social media platforms such as Facebook, Twitter, LinkedIn etc., so as to result in infringement of the Plaintiff's registered trademark and passing off of the Defendants' services as that of the Plaintiff.

22. Defendant No. 4 - NameCheap, Inc. is directed to disclose the details of the Registrant of the Defendants' domain name and is directed to block the domain name 'www.thejuggernaut.com' till the next date.

23. Compliance of Order XXXIX Rule 3 CPC be done by e-mail within one week. Service of summons and notices is also permitted by e-mail.

24. List before Court on 13th November, 2019.

25. *Dasti*.

PRATHIBA M. SINGH, J.

AUGUST 09, 2019
MR