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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CS(COMM) 260/2019

POLICYBAZAAR INSURANCE WEB  
AGGREGATOR & ANR.

..... Plaintiffs

Through: Mr. Amit Sibal, Senior Advocate with  
Mr. Mohit Goel, Mr. Abhishek  
Kotnala, Mr. Deepankar Mishra and  
Mr. Ambar Bhushan, Advocates.

versus

ACKO GENERAL INSURANCE LTD. & ORS.

..... Defendants

Through: Mr. Sandeep Sethi, Sr. Advocate with  
Mr. Brijesh, Mr. Peeyoosh Kalra,  
Ms. V. Mohini and Mr. Udayvir  
Rana, Advocates for D-1.  
Mr. Aditya Gupta and Mr. Raunaq  
Kamath, Advocates for D-2.  
Mr. Ankit Relan, Mr. Vihan Dang,  
Ms. Ekta Sharma and Ms. P. Vennela,  
Advocates for D-3/Google LLC.

**CORAM:**  
**HON'BLE MR. JUSTICE SANJEEV NARULA**

**ORDER**

% **28.05.2019**

**I.A. 8003/2019 (application on behalf of Defendant no. 1 under Order 39 Rule 4 read with Section 151 CPC for vacation of ex-parte order of interim injunction dated May 16, 2019 passed by this Hon'ble Court)**

1. Issue notice. Mr. Mohit Goel learned counsel for the Plaintiff accepts notice. Reply to the application be filed within a period of four weeks.

Rejoinder, if any, be filed within a period of two weeks thereafter.

2. The Plaintiffs have approached this court seeking permanent injunction restraining infringement of trademarks, passing off, dilution of goodwill, unfair competition, delivery up, rendition of profits/ damages, delivery up etc. On the basis of the submissions of the Plaintiff, this court on 16<sup>th</sup> May 2019, while issuing summons in the suit, granted *exparte ad-interim* injunction, restraining Defendant No. 1 from bidding for Plaintiff's trademark as keyword on Defendant Nos. 2 and 3's AdWord Program. The relevant portion of the said order reads as under:

"21. For the foregoing reasons, the Court is satisfied that the Plaintiffs have made a *prima facie* case for infringement of trademarks, passing off in their favour and the balance convenience also lies in their favour. Further, irreparable harm and injury would be caused to the Plaintiffs in case interim injunction order is not passed. Consequently, till the next date of hearing Defendant No. 1 its Partners, Directors, Shareholders assigns in business, affiliates, subsidiaries, agents, broadcasters, representatives, advertisers, franchisees, licensees and/or all other persons acting on its behalf are **restrained from adopting and using Plaintiffs' "Policybazaar Word Marks" trademarks ("Policy Bazaar", "PolicyBazaar", "PolicyBazar" and 'Policy Bazar'), in any manner, form, variation and/or combination, as an AdWord or Ad Word Program or any other ad word/key word program through Google in any manner whatsoever.**"

3. The present application has been filed seeking vacation of the aforesaid injunction order alleging that Plaintiffs have no cause of action against Defendant No.1 and the case set up by the Plaintiffs does not merit the grant

of any equitable relief in their favour, as they have concealed and distorted material facts, made misrepresentations and false statements before this Hon'ble Court in order to obtain the order of ex-parte ad-interim injunction.

4. The case of the Applicant/Defendant No.1 is that it is a company duly incorporated under the Companies Act, 2013 regulated by the Insurance Regulatory and Development Authority in India. It operates in two segments i.e. automobile (cars and two-wheelers) and micro-insurance, which includes rider insurance, mobile and appliance protection and ticket cancellations. Defendant No. 1 and its Group company uses the trade/service marks '**ACKO**'/ '**ACKO GENERAL INSURANCE LIMITED**' and '**ACKO TECHNOLOGY & SERVICES PRIVATE LIMITED**' in respect of their products/services ever since its adoption and the said marks are exclusively associated with Defendant No. 1/its Group company and none else. The details of trade/service marks of Defendant No. 1/its Group company have been provided in Para 11 of the application.

5. Defendant No.1 claims that it has extensive presence in terms of geographical spread across India and is well-recognized in the industry for its products/services under trade/service marks '**ACKO**'/



' '**ACKO GENERAL INSURANCE LIMITED**' and '**ACKO TECHNOLOGY & SERVICES PRIVATE LIMITED**'. It also has

several registered domain names comprising the mark/name ACKO including 'acko.com', 'acko.tech' and 'ackodrive.com'. All these registrations have been renewed from time to time and the same are valid and subsisting as on date. It is also claimed that significant sums of money, tremendous time, effort and energy in marketing, promoting and popularizing their products/services under the aforementioned trade/service marks have been incurred. Defendant has also availed the services of Defendant No. 2 and Defendant No. 3 for advertisement and promotion of its products/services viz. the Google Ad-Words Program.

6. Mr. Sandeep Sethi, learned senior counsel for the Defendant contends that by misleading and concealment of information, in a surreptitious manner, the Plaintiffs have obtained the ex parte injunction and the same is liable to be vacated with a heavy hand. Mr. Sethi contends that Plaintiffs are guilty of *suppressio veri unitalicize suggestio falsi*, as Plaintiffs have clandestinely approached this Court alleging infringement on the part of Defendant No. 1 for making reference to 'POLICYBAZAAR' as a keyword when Plaintiffs themselves are making reference to Defendant No. 1/its Group company's registered trade mark '**ACKO**' as a keyword. The fact that Plaintiffs have been bidding for Defendant No. 1's registered trademark '**ACKO**' as a key word is validated by Defendant No. 1's Google AdWord Program Account Database. The auction report therein evidences that Plaintiffs have been bidding for the registered trade/ service mark '**ACKO**' and hence Plaintiff's website [www.policybazaar.com](http://www.policybazaar.com) for Google is listed as a sponsored link for the search engine of Defendant Nos. 2 and 3. These results have been reproduced herein below:

Display URL domain	Impression share	Avg position	Click share	Position above rate	Top of page rate	Abs. Top of page rate	Outranking share
acko.com	92.3%	1.9	92.5%	93.6%	93.9%	92.9%	92.0%
July 2018	88.6%	2.0	81.2%	9.6%	92.5%	3.2%	91.6%
August 2018	91.6%	2.0	82.3%	4.6%	93.9%	4.9%	93.7%
September 2018	92.0%	1.9	92.4%	14.2%	93.9%	12.9%	91.6%
October 2018	91.0%	1.9	81.2%	14.6%	92.9%	14.4%	87.0%
November 2018	91.9%	1.7	82.3%	21.6%	93.9%	16.0%	92.4%
December 2018	87.9%	2.0	82.3%	4.6%	93.9%	4.9%	93.7%
January 2019	49.7%	2.0	41.6%	2.2%	93.9%	2.1%	93.2%
February 2019	16.6%	2.0	15.5%	1.0%	92.9%	1.2%	92.6%
March 2019	16.6%	2.0	15.2%	3.1%	93.9%	3.6%	93.0%
April 2019	14.0%	2.0	14.0%	3.0%	93.9%	3.0%	93.0%
May 2019	4.1%	1.9	3.2%	0.0%	100.0%	1.0%	93.2%

acko X

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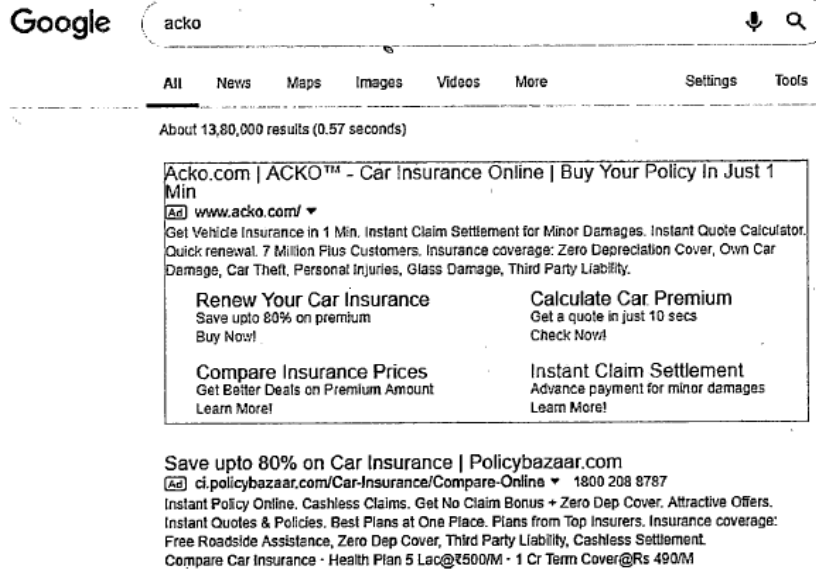
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7. Mr. Sandeep Sethi also relies upon the judgement of this Court in *Standipack Pvt. Ltd. v Oswal Trading Co. AIR 2000 Del 23* and presses for vacation of the injunction order.

8. Mr. Amit Sibal learned senior counsel for the Plaintiffs who appears on advance notice, seeks time to file reply to the present application and submits that the aforestated judgment pertains to vacation of stay at the final stage and it is thus not applicable to the present case.

9. On instructions, he admits the fact that the Plaintiffs were involved in the bidding for the trademark 'ACKO', however he states that the Plaintiffs have discontinued doing so since 23<sup>rd</sup> April 2019 and on the date of filing of the suit, Plaintiffs were not bidding for the trademark of the Defendant. It is also argued that the Defendant has deliberately not given the time-stamp of

the screen shot and are trying to give a false impression to the court that the Plaintiffs are still continuing to bid for Defendant No.1's trademark/keyword "ACKO". Mr. Sibal submits that the Plaintiffs are willing to file an affidavit undertaking to the Court that it will not bid for the trademark 'ACKO' at any time during the pendency of the present suit and will render an unconditional apology to the Court.

10. I have given my thoughtful consideration to the facts before me. Certainly, at the time of hearing the *ex-parte* injunction, the facts that have been canvassed by the Defendant were not brought to my notice. The entire pleadings in the suit are silent on this aspect. Plaintiffs have very cleverly made an insignificant mention in para No. 63 of the plaint to the following effect :

“For completeness, it is submitted that the Plaintiffs are not currently using Defendant No.1’s trade name/trade mark as a keyword for promoting their business activities through the Google Ads Program of Defendant No.2 and Defendant No.3.”

11. This insertion as part of a paragraph was evidently done just to meet the eventuality of the Defendant raising an objection of concealment. The Plaintiffs ought to have made true, correct and complete disclosure of the material facts. Today in view of the facts narrated in the application, it emerges that the Plaintiffs were themselves indulging in the same activity that has been complained of in the present suit. Though it is argued that now as a policy decision, Plaintiffs have stopped doing so, but it remains an unimpeachable fact that just close to the filing of the suit, Plaintiffs indulged

in the activity that is alleged to be “infringement of the trademarks”. The auction report hereinabove, clearly evidences that Plaintiffs have been bidding for 'ACKO' as a keyword atleast since July 2018. The non-disclosure of relevant facts and its active concealment, for seeking an injunction cannot be countenanced. It is well settled law that the Plaintiff ought to come clean to the Court with full disclosure of facts. (*Gujrat Bottling Co. Pvt. Ltd v. Coca Cola Co., (1995) 5 SCC 545 and Oswal Fats & Oils Ltd v. Additional Commisiioner (Administration), 2010 4 SCC 728.*)

12. Mr. Sandeep Sethi is also correct in reminding the court that it must uphold its majesty and dignity. The stature of a party or enormity of the claim should not be a constraint for the court to advance the cause of justice. Courts should not allow a party to get away with concealment of material facts when it comes to matters relating to grant of reliefs that are founded on principles of equity. I have no hesitation to say that the concealment has been deliberate in this case. Plaintiffs could have easily mentioned the true and correct facts before the court. Plaintiffs ought to have candidly disclosed all material facts which have a bearing on the issues of the present case. Moreover, Plaintiffs owed a duty to the court and concealment of facts amounts to making an attempt to pollute the pure stream of justice. Courts have repeatedly instructed that a party who doesn't disclose all material facts doesn't have a right to be heard. The maxim "*he who seeks equity must also do equity*" would also be applicable. Plaintiffs themselves for nearly one year were bidding for Defendant's trademark 'ACKO' and were therefore acting in an unfair manner. This critical factor would have certainly weighed



upon the court while granting ex-parte ad-interim injunction. By concealment of this material fact, Plaintiff has taken unfair advantage over the Defendant. The Court was certainly deprived of this valuable and critical information on 16<sup>th</sup> May 2019. For the foregoing reasons, and since the application for injunction is yet to be heard, at this stage, the court imposes a cost of Rs. 10 lacs on the Plaintiff- Rs. 5 lacs be deposited with the Prime Ministers Relief Fund and Rs. 5 lakhs with Delhi Legal-Aid Services Authority. It is further directed that the order of injunction shall remain suspended till the next date of hearing.

13. The court at this stage has not examined the merits of the case relating to the rights of the parties under the Trade Marks Act, 1999 ('the Act') and the same shall be considered at the stage of final hearing of the injunction application. The date of hearing is advanced. List the matter on 11<sup>th</sup> July 2019.

**MAY 28, 2019**

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**SANJEEV NARULA, J**