

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

*Reserved on: 10.11.2022*

*Date of decision: 25.11.2022*

+ **CS(COMM) 59/2020 & I.A.1688/2020**

**SPORTA TECHNOLOGIES PVT. LTD. & ANR. .... Plaintiffs**

Through: Mr.Prithvi Singh, Mr.Rohan  
Krishna Sethi and Ms.Parkhi Rai,  
Advs.

versus

**VIRAT SAXENA**

..... Defendant

Through: None.

**CORAM:**

**HON'BLE MR. JUSTICE NAVIN CHAWLA**

1. The present suit has been filed seeking a decree of permanent injunction restraining the defendant, its proprietor, employees, partners, representatives and/or others acting for and on their behalf from using the mark '**Dream11**' or any deceptively similar variant thereof, as a trade mark, trade name or domain name www.dream11.bet or on social media, email addresses or in any other manner, which amounts to the infringement of and/or passing off the plaintiffs' trade marks as listed in

the complaint, such as '**Dream11**' /  / **DREAM11** / 

 /  (hereinafter referred to as '**Dream11 Marks**').

**FACTUAL BACKGROUND**

2. The plaintiff no. 1 is a private limited company incorporated on 21.06.2007 and later underwent a change of name from 'Adwaiya Realtors Private Limited' to 'Dream11 Fantasy Private Limited' in the year 2013. The plaintiff no. 2 is a company incorporated under the laws of the State of Delaware, the United States of America. The plaintiff no. 1 is a wholly-owned subsidiary of the plaintiff no. 2.

3. The plaintiffs' fantasy sports platform under the trade mark/trade name '**Dream11**' (adopted in the year 2012), is an online multi-player game where the participants draft imaginary and virtual teams of real players of a professional sport. The teams so drafted get points based on the performance of the players in actual games, where the underlying real-world games provide statistics for the virtual teams so created and the players earn points based on these statistics. The top teams of each contest are rewarded monetarily from a Prize Pool, where the amount won can be withdrawn by a participant from their verified Bank Account, subject to the submission of their Permanent Account Number and its due verification.

4. The plaintiffs have been the '*Official Fantasy Partners*' of all International Cricket Council (in short, 'ICC') events starting from the year 2018, wherein their website/mobile application bearing the '**Dream11 Marks**' have been partners for events such as the Vivo Indian Premier League (in short, 'IPL'), KFC BBL, Hero CPL T20, NBA, Vivo Pro Kabaddi, International Hockey Federation, Hero Indian Super League and T20 Mumbai.






5. The plaintiffs have signed a Central Sponsorship contract with the Board of Cricket Control of India (in short, 'BCCI') for the IPL for four years, starting in the year 2019. The plaintiffs also have a long-term 'Official Fantasy Sports Provider' deal with the ICC for all the tournaments, which were particularly widespread during the ICC Men's Cricket World Cup 2019. For both tournaments, the plaintiffs organised daily contests and season-long fantasy games for fan engagement utilizing their services bearing the '**Dream11 Marks**'.

6. The services of the plaintiffs bearing the '**Dream11 Marks**' have been promoted by eminent Indian cricketers such as Mahendra Singh Dhoni, Harsha Bhogle, R Ashwin, Jasprit Bumrah, Rishabh Pant, Dinesh Karthik and Ajinkya Rahane; as also international players such as AB De Villiers, Andre Russell, Kane Williamson and Ben Stokes.



7. As on the date of filing of the Suit, it is the contention of the plaintiffs that their online and mobile platform bearing the '**Dream11 Marks**' have over 7.5 Crore subscribers, who use the platform to participate in various fantasy games.

8. The plaintiff no. 1 is the registered proprietor of trade marks, which have been accorded protection under the provisions of the Trade Marks Act, 1999 (in short, 'the Act'), the details whereof are as follows:

S. No.	Trade Mark	Number	Class(es)	Date
1	DREAM11 CHAMPIONS	3847330	16 and 41	30 <sup>th</sup> May, 2018

2		3802186	9, 16, 35, 41, 42	11 <sup>th</sup> April, 2018
3		3802185	9, 16, 35, 41, 42	11 <sup>th</sup> April, 2018
4		3660715	9, 16, 35, 41, 42	21 <sup>st</sup> October, 2017
5		3660717	9, 16, 35, 41, 42	21 <sup>st</sup> October, 2017
6		3660851	9, 16, 35, 41, 42	22 <sup>nd</sup> October, 2017

9. The plaintiff no. 2, vide assignment from 'Clover Media Private Limited', is the registered proprietor of the domain name [www.dream11.com](http://www.dream11.com) as also the registered proprietor of the following trade marks in India:

S. No.	Trade Mark	Number	Class(es)	Date
1		1823011	38	28 <sup>th</sup> May, 2009
2		1823015	41	28 <sup>th</sup> May, 2009

10. It is the case of the plaintiffs that in December, 2019, the plaintiffs learnt of the domain name [www.dream11.bet](http://www.dream11.bet) being operated by the defendant as also a YouTube Channel, which contained match-prediction videos and two videos which openly touted the website with the domain

name [www.dream11.bet](http://www.dream11.bet) to be a gambling website, and offered phone numbers and contact details in order to enable users to obtain the necessary login credentials to place bets.

11. Upon an investigation being conducted by the plaintiff, a person on the other end helped the investigator set up his account after the transfer of Rs. 5000/-. Using the login credentials, the investigator was able to access the defendant's website which contained the '**Dream11 Marks**' of the plaintiffs and was revealed to be a betting/gambling platform.

12. Complaining the acts of the defendant amount to infringement of the plaintiffs' trade marks as also passing off, the plaintiffs filed the present suit *inter-alia* praying for a decree of permanent injunction against the defendant.

13. Initially, the plaintiffs had impleaded '*GoDaddy.com,LLC*', the Domain Name Registrar, as the defendant no. 2 for ensuring effective implementation of any relief that this Court may grant in favour of the plaintiffs and against the defendant.

14. Later, vide order dated 24.11.2020 passed by the learned Joint Registrar (Judicial), I.A. 3400/2020, the defendant no. 2 was deleted from the array of parties as it had furnished particulars of the defendant and made compliance with the directions issued by this Court vide order dated 06.02.2020.

#### **COURT PROCEEDINGS IN THE MATTER**

15. This Court vide its order dated 06.02.2020 *inter alia* directed '*GoDaddy.com, LLC*' and/or '*GoDaddy India Web Service Pvt. Ltd.*' to immediately disable and suspend the website [www.dream11.bet](http://www.dream11.bet). A

direction was also issued to YouTube LLC to suspend/remove/take down the channel 'Dream11.bet' from its platform.

16. As noted herein above, vide order dated 24.11.2020, 'GoDaddy.com, LLC' was deleted from the array of parties.

17. As the defendant failed to file its Written Statement, its right to file the same was closed by the learned Joint Registrar (Judicial) vide order dated 14.07.2022.

18. Vide order of this Court dated 10.11.2022, the defendant no. 1 was proceeded *ex-parte*.

**SUBMISSIONS ON BEHALF OF THE LEARNED COUNSEL FOR THE PLAINTIFFS**

19. The learned counsel for the plaintiffs submits that the acts of the defendant, which primarily include the adoption of the plaintiffs' '**Dream11 Marks**', amounts to infringement of the registered trade marks of the plaintiffs as also passing off the services of the defendant as those of the plaintiff. He states that the adoption of the '**Dream11 Marks**' as a part of their trade name and domain name has been by the defendant is *mala fide* and is intended to trade upon the reputation and goodwill of the plaintiffs.

20. The learned counsels for the plaintiffs assert that the adoption of the '**Dream11 Marks**' by the defendant for the activities of betting and gambling are illegal under statutes, including but not limited to the Public Gambling Act, 1867. The use of the '**Dream11 Marks**' by the defendant would be contrary to the judgments of the High Court of Punjab and Haryana in *Varun Gumber v. Union Territory of Chandigarh*, 2017 SCC OnLine P&H 5372 and of the Division Bench of the High Court of

Bombay in *Gurdeep Singh Sachar v. Union of India and Ors.*, 2019 SCC OnLine Bom 13059, wherein it was held that the business carried out by the plaintiffs, that is of fantasy games, have an element of skill and, thus, were held to be legal.

21. The learned counsel for the plaintiffs, placing reliance on the judgment of this Court in *Satya Infrastructure Ltd. and Ors. v. Satya Infra & Estates Pvt. Ltd.*, 2013 SCC OnLine Del 508, submits that as the defendant has failed to appear in the proceedings and voluntarily chosen not to respond to the plaint, it is indicative of the fact that the defendant has nothing substantial to urge by way of a response to the allegations in the plaint. He submits that this is a fit case where a Summary Judgment in terms of Order XIII-A of the CPC, as applicable to commercial disputes of a specified value, read with Rule 27 of the Delhi High Court Intellectual Property Rights Division Rules, 2022 (in short, 'IPD Rules') deserves to be passed in favour of the plaintiffs and against the defendant.

#### **ANALYSIS AND FINDINGS**

22. I have considered the submissions of the learned counsel for the plaintiffs.

23. From the averments made in the plaint and the documents filed therewith, the plaintiffs have been able to prove that they are the registered proprietor of the '**Dream11 Marks**', the details whereof are given herein above. The plaintiffs have also been able to show their goodwill and reputation in the '**Dream11 Marks**' not only in India but across the globe. The domain name adopted by the defendant, that is, [www.dream11.bet](http://www.dream11.bet) is deceptively similar to that of the plaintiffs and is



clearly intended to ride on the goodwill and reputation of the marks of the plaintiffs.

24. The adoption of the domain name [www.dream11.bet](http://www.dream11.bet) is a clear case of infringement of the marks of the plaintiffs and amounts to passing off the services of the defendant as that of the plaintiffs. The defendant not only intends to take unfair advantage of the marks of the plaintiffs and ride on the reputation of the plaintiffs' marks, but also deceive unwary consumer of their association with the plaintiffs. Such acts of the defendant would also lead to dilution of the mark of the plaintiffs.

25. In *Anugya Gupta v. Ajay Kumar and Anr.*, 2022 SCC OnLine Del 1922, this Court has held that the right of a proprietor in a domain name is entitled to equal protection, applying the principles of the trade mark law. The use of the same or similar domain name may lead to diversion of users, which could result from such users mistakenly accessing one domain name instead of another. Therefore, a domain name may have all the characteristics of a trade mark and could found an action for passing off.

26. In the present case, the defendant has chosen neither to file its written statements nor to enter appearance in the suit to defend the same. In my opinion, therefore, this is a fit case where a Summary Judgment in terms of Order XIII-A of the CPC, as applicable to commercial disputes of a specified value, read with Rule 27 of the IPD Rules deserves to be passed in favour of the plaintiffs and against the defendant. This Court, in *Su-Kam Power Systems Ltd. v. Kunwer Sachdev and Another*, 2019 SCC OnLine Del 10764 has held as under:



*“90. To reiterate, the intent behind incorporating the summary judgment procedure in the Commercial Court Act, 2015 is to ensure disposal of commercial disputes in a time-bound manner. In fact, the applicability of Order XIII A, CPC to commercial disputes, demonstrates that the trial is no longer the default procedure/norm.*

*91. Rule 3 of Order XIII A, CPC, as applicable to commercial disputes, empowers the Court to grant a summary judgement against the defendant where the Court considers that the defendant has no real prospects of successfully defending the claim and there is no other compelling reason why the claim should not be disposed of before recording of oral evidence. The expression “real” directs the Court to examine whether there is a “realistic” as opposed to “fanciful” prospects of success. This Court is of the view that the expression “no genuine issue requiring a trial” in Ontario Rules of Civil Procedure and “no other compelling reason..... for trial” in Commercial Courts Act can be read mutatis mutandis. Consequently, Order XIII A, CPC would be attracted if the Court, while hearing such an application, can make the necessary finding of fact, apply the law to the facts and the same is a proportionate, more expeditious and less expensive means of achieving a fair and just result.*

*92. Accordingly, unlike ordinary suits, Courts need not hold trial in commercial suits, even if there are disputed questions of fact as held by the Canadian Supreme Court in Robert Hryniak v. Fred Mauldin, 2014 SCC OnLine Can SC 53, in the event, the Court comes to the conclusion that the defendant lacks a real prospect of successfully defending the claim.”*

**RELIEF**

27. In view of the above, the plaintiffs have been able to make out a case for grant of prayers made in paragraph nos. 33 (A) and (B) of the plaint.

*Neutral Citation Number: 2022/DHC/005141*

28. The Suit is decreed in favour of the plaintiffs and against the defendant in terms of prayers made in paragraph nos. 33 (A) and (B) of the plaint. The plaintiff is also held entitled to the costs of the Suit.

29. Let a decree-sheet be drawn up accordingly.

**NAVIN CHAWLA, J.**

**NOVEMBER 25, 2022/AB**

HIGH COURT OF DELHI



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