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

+ CS(COMM) 193/2022 & I.A. 4841/2022

LIVING MEDIA INDIA LIMITED & ANR. Plaintiffs

Through: Mr. Hrishikesh Baruah, Mr. Anurag Mishra, Mr.Kumar Kshitij and Ms. Radhika Gupta, Advs.

versus

AABTAK CHANNEL.COM (JOHN DOES) & ORS.

..... Defendants

Through: Ms. Mamta Rani Jha Mr. Rohan and Ms. Shruttima Ehersa Advs. for D-31 Mr. Deepak Gogia and Mr. Aadhar Nautiyal, Advs, for D-33

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT (ORAL)

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06.09.2023

I.A. 4841/2022 [under Order XXXIX Rules 1 & 2, CPC]

1. Plaintiff 1 is the proprietor of the registered trademark , registered in its favour in Class 38 *vide* Registration No. 1242922 and in Class 41 *vide* Registration No. 1242921. Plaintiff 1 licensed the aforesaid marks to Plaintiff 2 *vide* license agreement dated 1 October 2003. Plaintiff 2 runs a well known online news channel under the said mark, and also uses it for its YouTube channel and its social media webpages on Facebook, Instagram and Twitter.

2. Consequent on the aforesaid registrations, the plaintiffs submit



that they have devised several marks with the “TAK” suffix, such as 'Yoga Tak', 'Tech Tak', 'Sports Tak', 'Mobile Tak', 'News Tak', 'Astro Tak', 'Duniya Tak', 'Punjab Tak', 'U.P. Tak', 'M.P. Tak', 'Crime Tak', 'Gujarat Tak' etc. *Vide* order dated 30 March 2022, the directions qua each of the defendants were issued in a tabular fashion, thus:

Defendant No.	Impugned names	Impugned marks	Plaintiffs' Trade Mark(s) and Artistic Work(s)	Directions
Defendant No. 1	AABTAK NEWS CHANNEL (YouTube Channel)	 AABTAK NEWS CHANNEL	AAJ TAK    	Defendant No.1 is a YouTube channel using the name 'AabTak'. This YouTube channel shall be taken down.
Defendant No. 2	Rajasthan TAK (YouTube Channel)	 Rajasthan TAK	AAJ TAK  	Defendant No.2 is a YouTube channel using the name 'Rajasthan Tak'. This YouTube channel shall be taken down.



Defendant No. 3	Aap TAK (Youtube Channel)	<p>Aap Tak</p>	<p>AAJ TAK</p> <p>सबसे तेज़</p>	Insofar as Defendant Nos.3, 4, 5, 6, 7 and 8 are concerned, these YouTube channels, Facebook page, and Instagram pages are using the name 'Aap Tak'. These YouTube channels, Facebook page, and Instagram pages shall be taken down.
Defendant No. 4	AapTAK news Channel (Facebook Page)	<p>Aaptaknews Channel</p>	<p>AAJ TAK</p> <p>सबसे तेज़</p>	
Defendant No. 5	Aap Tak News Channel (Instagram Page)	<p>Aap TAK News Channel</p>	<p>AAJ TAK</p> <p>सबसे तेज़</p>	
Defendant No. 6	Aap TAK Network (YouTube Channel)	<p>Aap TAK Network</p>	<p>AAJ TAK</p> <p>सबसे तेज़</p>	



				
Defendant No. 7	Aap Tak (Facebook Page)	 Aap TAK	       	



Defendant No. 8	Aap Tak (Instagram Page)	 AapTAK	AAJ TAK      	
Defendant No. 9	Haryana Tak (Facebook page)	 Haryana TAK	AAJ TAK  HARYANA TAK	Defendant Nos.9 and 10 are Facebook page and YouTube channel respectively, using the mark 'Haryana Tak'. The Facebook page and the YouTube channel



Defendant No. 10	Haryana Tak (YouTube channel)	 Haryana TAK	AAJ TAK  HARYANA TAK	shall be taken down.
Defendant No. 11	Samay Tak News (Facebook Page)	 शहर से संसद तक Samay TAK News	AAJ TAK       	Defendant Nos. 11,12,13 and 14 are Facebook page, YouTube channels, and website, using the mark 'Samay Tak' and logo which are identical to Plaintiffs' mark and logo. The Facebook page, YouTube channels, and the website shall be taken down.



Defendant No. 12	Samay Tak News (YouTube Channel)	 Samay TAK News	AAJ TAK       	
Defendant No. 13	Samaytakn ews.com (Website)	 Samay TAK News	AAJ TAK 	



Defendant No. 14	Samay Tak (YouTube Channel)	 Samay TAK	AAJ TAK 	
Defendant No. 15	sachtaknews.com (Website)	 sachTAKnews.com	AAJ TAK	No order at this stage.



			 <p>SAHITYA TAK</p>	
Defendant No. 16	Sach Tak News (Youtube Channel)	 <p>Sach TAK News</p>	<p>AAJ TAK</p>  <p>SAHITYA TAK</p>	No order at this stage.
Defendant No. 17	Sach Tak News (Facebook page)	 <p>Sach TAK News</p>	<p>AAJ TAK</p>  <p>SAHITYA TAK</p>	No order at this stage.
Defendant No. 18	Sach Tak News (Instagram Page)	 <p>Sach TAK News</p>	<p>AAJ TAK</p>  <p>SAHITYA TAK</p>	No order at this stage.
Defendant No. 19	Sach Tak News (Twitter Page)	 <p>Sach TAK</p>	<p>AAJ TAK</p>  <p>सबसे तेज़</p>	No order at this stage.



		News	 SAHITYA TAK	
Defendant No. 20	Kal Tak (Facebook Page)	 Kal TAK	AAJ TAK  सबसे तेज़ 	Defendant No.20 is a Facebook page which is using the name 'Kal Tak'. This Facebook page shall be taken down.
Defendant No. 21	Ab Tak TV News Channel (Facebook Page)	 Ab TAK TV News Channel	AAJ TAK   सबसे तेज़   	Defendant Nos.21, 22, 23, 24, 25, 26 and 27 are Facebook pages, Instagram page, website, Twitter page, YouTube channel and Google Play Store mobile application using the name 'Ab Tak'. These Facebook pages, Instagram page, website, Twitter page, YouTube channel and Google Play Store mobile application shall be taken down.



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Defendant No. 22	Ab Tak Breaking News (Facebook Page)	<p>Ab TAK Breaking News</p>	<p>AAJ TAK</p>	



				
Defendant No. 23	abtaktvlive .com (Website)	 Ab TAK TV India	AAJ TAK       	



				
<p>Defendant No. 24</p>	<p>Ab Tak Tv News Channel (Instagram Page)</p>	 <p>Ab TAK Tv News Channel</p>	<p>AAJ TAK</p>        	
<p>Defendant No. 25</p>	<p>Ab Tak TV News Channel (Twitter Page)</p>	 <p>Ab TAK Tv</p>	<p>AAJ TAK</p>	

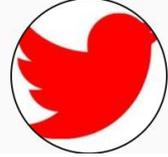


		News Channel	      	
Defendant No. 26	Ab Tak TV News Channel Pvt. Ltd. (YouTube Channel)	 Ab TAK TV News Channel Pvt Ltd	AAJ TAK 	



			     
Defendant No. 27	Ab Tak TV Live (Google Play Store Mobile Application)		<p>AAJ TAK</p>   



			    	
Defendant no. 28	Twitter tak Website		'AAJ TAK' 	Defendant Nos.28, 29 and 30 are website, twitter page, and Instagram page, using the mark 'Twitter Tak'. This name would not just be violative of Plaintiff's rights but also the Defendant No.33's rights in the mark 'TWITTER'. The adoption clearly appears to be dishonest. The said website, Twitter page, and Instagram page shall be taken down.
Defendant no. 29	Twitter tak twitter page		'AAJ TAK' 	
Defendant No. 30	Twitter tak Instagram page		'AAJ TAK' 	

3. Defendants 31 to 36 were directed to effect taking down of the aforementioned webpages of Defendants 1 to 14 and Defendants 20 to 30 and to provide the Basic Subscriber Information (BSI) details of the



holders of the said accounts, which has been provided.

4. Defendants 1 to 14 and Defendants 20 to 30 have remained absent from these proceedings.

5. Consequent to providing of the BSI details in respect of Defendants 1 to 30 by Defendants 31 to 36, an amended memo of parties was filed by the plaintiffs representing Defendants 1 to 30 through the BSI details which were provided and process fees was also filed for effecting service on the said defendants. Consequent thereupon, however, Defendants 15 to 19 alone have chosen to prosecute this matter and filed a written statement. There is no response from Defendants 1 to 14 and Defendants 20 to 30.

6. Insofar as Defendants 15 to 19 are concerned, the written statement filed by them merely evokes the principle of anti-dissection, relatable to Section 17(2) of the Trade Marks Act, by urging that, as no separate registration had been obtained by the plaintiffs in respect

of the “TAK” suffix of the mark , the plaintiffs could not claim exclusivity only in respect of the said suffix or plead that marks which were common with the plaintiffs only in so far as they used the said suffix were infringing in nature.

7. The judgment of the Division Bench of this Court in *South India Beverages Pvt Ltd v. General Mills Marketing Inc.*¹ now

¹ (2015) 61 PTC 231



constitutes *stare decisis* on this issue. The decision crafted an exception to the anti-dissection rule by providing that, if a part of a composite mark was dominant, the plaintiffs could plead infringement on the ground that the dominant part of the mark was copied or replicated.

8. The contention of Defendants 15 to 19 in the written statement is that the “TAK” suffix cannot be treated as the dominant part of the

plaintiffs’ mark  and that, therefore, the plaintiffs could not plead exclusivity of the “TAK” suffix. Once it was determined that the plaintiffs could not plead exclusivity of the “TAK” suffix of the

 mark, the similarity between the plaintiffs’ mark and the defendants’ marks, they is sought to be submitted in the written statement, vanishes.

9. Mr. Barua, learned Counsel for the plaintiffs submits, *per contra*, that the plaintiffs have a family of marks, all of which contain the suffix “TAK” and that, therefore, the suffix “TAK” was clearly the dominant, determinative and identifying mark part of the plaintiffs’ marks, which acted as a source identifier of the plaintiffs.

10. There has been no appearance on behalf of Defendants 1 to 14 and Defendants 20 to 30, since inception.

11. They are, therefore, proceeded *ex parte*.



12. It is clear that, as they use the suffix “TAK” and are also used in respect of services which are analogous, or identical, to the services provided by the plaintiffs, the marks of Defendants 1 to 14 and 20 to 30 are *ex facie* infringing of the plaintiffs’ registered  mark.

13. As Defendants 1 to 14 and Defendants 20 to 30 have not entered appearance in these proceedings and have not chosen to file any written statement, and given the aforesaid facts, I am of the opinion that the suit can straight away be decreed *qua* the said defendants. No triable issue remains.

14. There shall, therefore, be a decree of permanent injunction, restraining Defendants 1 to 14 and Defendants 20 to 30 from using any of the marks noted alongside the said Defendants in the table in para 2 *supra*, or any other mark which is confusingly or deceptively

similar to the mark “AAJ TAK”/  of the plaintiffs, either as a word mark or as a logo, or any other mark which is confusingly similar to the plaintiff’s marks, for running any online channel or for any other goods or services which may be regarded as allied or cognate thereto.

15. The suit stands decreed, *qua* Defendants 1 to 14 and 20 to 30 in the aforesaid terms.

16. Insofar as Defendants 15 to 19 are concerned, they have remained absent on the last date of hearing and have not appeared



today either, despite the matter having been called out twice.

17. I have heard Mr. Barua, learned Counsel for the plaintiffs and have also perused the written statement filed by the said defendants.

18. Defendants 15 to 19, in their written statement, do not urge any ground which would entitle them to be treated differently from Defendants 1 to 14 and 20 to 30. The only ground taken by Defendants 15 to 19 in their written statement is that the plaintiffs

could not dissect the registered  mark and claim exclusivity over the “TAK” suffix inasmuch as the “TAK” suffix has not been separately registered as a mark. The judgment of a Division Bench of this Court in *South India Beverages¹* is a complete answer to the said contention. In *South India Beverages¹*, the Division Bench of this Court has engrafted an exception to the anti-dissection rule contained in Section 17(2) of the Trade Marks Act, where the common part of the rival marks can be treated as a dominant part. In that event, the Division Bench has held that, on the basis of commonality of the dominant part of the marks, the Court can arrive at a finding that the marks are deceptively similar to each other. The Court has also observed that, by so holding, the Court is not transgressing the mandate of Section 17 of the Trade Marks Act, as the dominant part of the rival marks is being used as representative of the marks as a whole.

19. In the present case, as has already been noted, the plaintiffs have a family of marks all of which used the “TAK” suffix. Clearly,



therefore, the “TAK” suffix has become a source identifier of the marks of the plaintiffs and is, therefore, the dominant part of the marks. Applying the principles enunciated in *South India Beverages¹*,

therefore, the impugned  mark of Defendants 15 to 19 is also liable to be regarded as *prima facie* infringing of the plaintiffs’

registered  mark as are the remaining impugned marks in the present case. The colour scheme, and the font used in the two marks are also nearly identical. A lay viewer who views the channel, or social media webpage, of Defendants 15 to 19, is bound to regard it as another channel of the plaintiffs.

20. However, as Defendants 15 to 19 have filed a written statement, it is not possible for this Court to straight away decree the suit against them under Order VIII Rule 10 of the Code of Civil Procedure, 1908 (CPC).

21. In the circumstances, the *ad interim* injunction granted by this Court *vide* order dated 30 March 2022 shall stand extended to the



mark of Defendants 15 to 19 as well.

22. Defendants 15 to 19 are directed, therefore, to take down the

websites/social media pages in which the infringing  mark figures, of which the following URLs have been provided in para 58



of the plaint.

Sl. No.	NAME AND LOGO	WEB LINKS (URLs)	INFORMATION
15.	 sachtaknews.com	https://sachTAKnews.com/	Website
16.	 Sach Tak News	https://www.YouTube.com/c/SACHTAKNEWS	YouTube Channel
17.	 Sach Tak News	https://www.facebook.com/SachTANews/	Facebook Page
18.	 Sach Tak News	https://www.instagram.com/sachTAKno1/	Instagram Page
19.	 Sach Tak News	https://twitter.com/SachTAKno1	Twitter Page

23. In the event that Defendants 15 to 19 fail to take down the aforementioned web pages and social media handles within a week from today, Defendants 31 to 34 are directed to do so pending disposal of the suit.

24. IA 4841/2022 which survives only *qua* Defendants 15 to 19



stands disposed of accordingly.

25. The suit stands decreed *qua* Defendants 1 to 14 and Defendants 20 to 30 in terms of paras 14 and 15 *supra*.

26. Let a decree sheet be drawn up accordingly.

27. Mr. Barua submits that he would move an appropriate application under Order XIII A of the CPC as amended by the Commercial Courts Act, for decreeing of the suit *qua* Defendants 15 to 19 as well.

28. Accordingly, re-notify on 9 October 2023.

29. Mr. Gogia points out, at this juncture, that Defendant 33, which so far has been represented as Twitten Inc. would have to be represented as X Corp., as Twitter Inc has merged with X Corp. The Memo of Parties filed with the suit shall be deemed to have been amended accordingly.

C.HARI SHANKAR, J

SEPTEMBER 6, 2023

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