



\$~35

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

+ CS(COMM) 44/2023 & I.A. 1412/2023

SPORTA TECHNOLOGIES PVT. LTD. AND ANR.

..... Plaintiffs

Through: Mr. Rohan Seth, Adv.

versus

DREAMZ11 AND ANR.

..... Defendants

Through: Ms. Tanya Choudhary, Adv. for
D-3

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

J U D G M E N T (O R A L)

%

19.10.2023

1. Of the three defendants in this suit, Defendants 1 and 2 are the only contesting defendants.

2. Defendant 3 is GoDaddy.Com LLC (hereinafter referred to as "GoDaddy"), which has been impleaded only because the plaintiffs have prayed for blocking of the domain name of Defendant 1 and for transfer of the said domain name to the plaintiffs, which has to be implemented by GoDaddy.

3. While granting *ex parte ad interim* injunction on 24 January 2023, this Court directed GoDaddy to suspend access to the domain name dreamz11.com and the website www.dreamz11.com and to produce the address and BIS details of the registrant of the said domain name.



4. Mr. Rohan Seth, learned Counsel for the plaintiffs, points out that the address of Defendant 1, as provided by GoDaddy, is the address which is already reflected in the memo of parties and that Defendant 2 is the developer of the impugned Mobile application and is not, therefore, *stricto sensu*, a contesting defendant.

5. Defendants 1 and 2 having failed to file their respective responses to this suit, despite grant of repeated opportunities, the learned Joint Registrar (Judicial), by order dated 6 July 2023, closed their right to file written statements.

6. Having perused the material on record and heard Mr. Rohan Seth, learned Counsel for the plaintiffs, I am of the opinion that this suit does not merit subsection to trial and that the suit is capable of being straight away decreed, in terms of Order VIII Rule 10 of the Code of Civil Procedure, 1908 (CPC).

7. A brief recital of facts would suffice.

8. Plaintiff 1 is a wholly-owned subsidiary of Plaintiff 2 and is the registered proprietor of the trade mark “Dream11”.

9. Plaintiffs 1 and 2 are the registered proprietor of the following trade marks:

S. No.	Trademark	Number	Classes	Date
1.	DREAM11	3802186	9, 16, 35, 41, 42	11 th April 2018



2.		3660715	9, 16, 35, 41, 42	21 st October 2017
3.		3660717	9, 16, 35, 41, 42	21 st October 2017
4.		3660851	9, 16, 35, 41, 42	22 nd October 2017
5.		3660718	9, 16, 35, 41, 42	21 st October 2017
6.		3660720	9, 16, 35, 41, 42	21 st October 2017

10. Plaintiff No. 2 is the registered proprietor of the following trademarks in India:

S. No.	Trademark	Number	Class	Date
1.	DREAM11	4863621	9, 16, 18, 28, 35, 38, 42 & 45	25 th September, 2019
2.		1823011	38	28 th May, 2009
3.		1823015	41	28 th May, 2009

11. Plaintiff 2 also operates the website www.dream11.com registered on 17 March 2008.

12. Through these trademarks, the plaintiff provides access to fantasy games. The plaintiffs are aggrieved by the act of Defendant 1 in using the trade mark “dreamz11”, through which Defendants 1 and 2 also provide the services of fantasy games.

13. The defendants operate a website www.dreamz11.com and use the following logo:



14. The plaintiffs alleges infringement as well as passing off, on the part of Defendants 1 and 2, predicated on the following contentions:



(i) The mark “dreamz11” is phonetically and even otherwise deceptively similar to the mark “dream11” which has been registered in favour of the plaintiff.

(ii) The website /domain name of the defendants www.dreamz11.com is also confusingly and deceptively similar to the domain names of the plaintiffs’ website www.dream11.com.


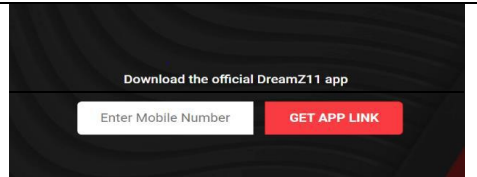
(iii) The plaintiffs, on their website, show five players, at two levels, three at the lower level and two at the upper level. The same arrangement of players has been adopted by the defendants. A comparison is thus provided in the plaint:

Arrangement of players on Plaintiffs’ website	Arrangement of players on Defendant’s website
---	---



	
<p>The Plaintiffs' website's home page contains a picture of five players in groups of two (on top) and then three at the bottom.</p>	<p>Defendant No.1's website shows a similar portrayal of five players in groups of two and three. Defendant No. 1 have also used the images of Rishabh Pant, Rohit Sharma, Hardik Pandaya, who are also part of the Plaintiff's group of players.</p>

(iv) Access to the fantasy games app provided by the defendants is also allowed, on the defendants' website, in a manner similar to that of the plaintiffs'. A comparative screenshot of the two websites is thus provided:

Plaintiffs' website	Defendant's website
	

(v) The step by step process which is to be followed for downloading the defendant's games on the defendant's website is also identical to that of the plaintiff. A comparison is thus provided in the plaint:

Plaintiffs' website:



It's easy to start playing on Dream11

Play Fantasy Cricket on Dream11 and win big!

Enter into the thrilling world of Fantasy sports, a strategy-based online sports game wherein you can create a virtual team of real players playing in real life matches. Create your team to win points based on all the players' performance in a live game.

1

Select A Match

Choose an upcoming match that you want to play

2

Create Team

Use your skills to pick the right players

3

Join Contests

Choose between different contests and compete

Defendant's website

It's easy to start playing on DreamZ11

1

Select A Match

Choose an upcoming match that you want to play.

2

Create Team

Create your team with the best players using your skills.

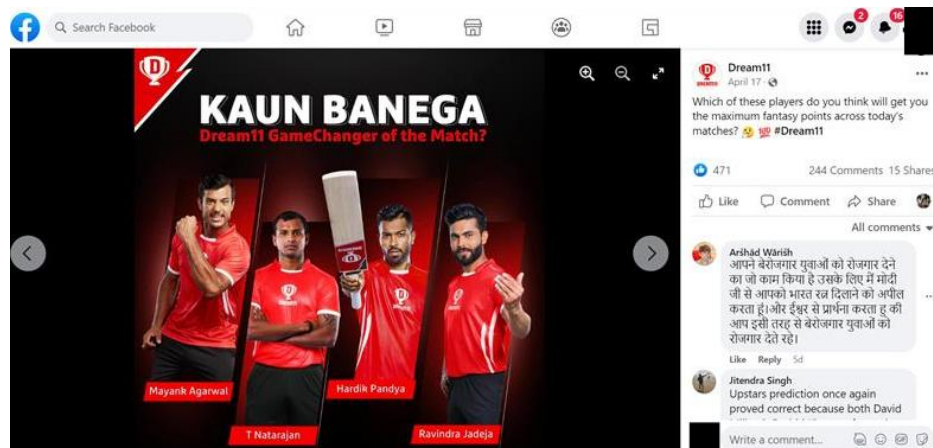
3

Join Contests

Choose between different contests and win money.

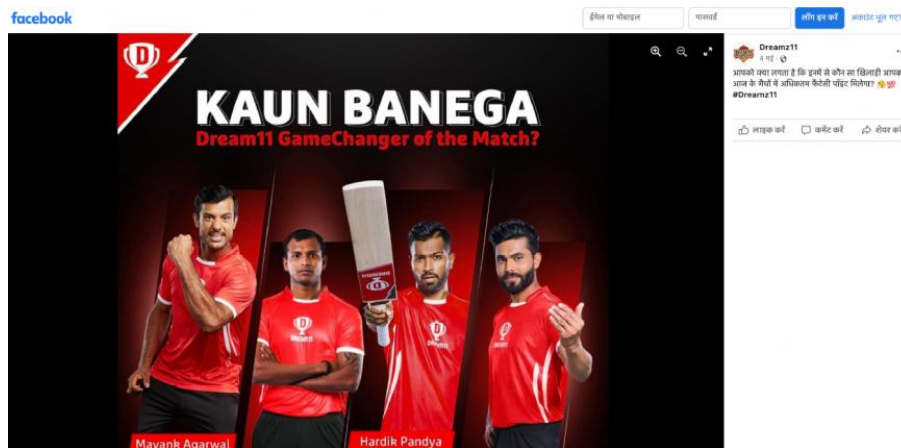
(vi) the defendants have also copied the plaintiffs' Facebook posts on its Facebook page, in support of which the plaintiffs have provided the defendant's Facebook post dated 4 May 2022 vis-à-vis the plaintiff's Facebook post dated 17 April 2022 thus:

Plaintiffs' Facebook post





Defendants' Facebook Post



15. In these circumstances, the plaintiffs addressed a notice to the defendants on 3 November 2022, calling on the defendants to cease and desist from infringing the plaintiffs' registered trade mark and adopting a website design and configuration which was identical or deceptively similar to that of the plaintiffs'.

16. No response having been received, a reminder was sent on 11 November 2022 to which, too, there was no response.

17. The facts of the case clearly indicate infringement as well as passing off, by the defendant. The mark "www.dreamz11.com" is phonetically similar to the plaintiff's mark www.dream11.com. On the aspect of phonetic similarity, the test which has to be adopted is that which was enunciated in the *Re: Pianotist Application*¹ (generally known as "the *Pianotist* test"), which read thus:

"You must take the two words. You must judge of them, both by their look and by their sound. You must consider the goods to

¹ (1906) 23 RPC 774



which they are to be applied. You must consider the nature and kind of customer who would be likely to buy those goods. In fact, you must consider all the surrounding circumstances; and you must further consider what is likely to happen if each of those trade marks is used in a normal way as a trade mark for the goods of the respective owners of the marks. If, considering all those circumstances, you come to the conclusion that there will be a confusion—that is to say, not necessarily that one man will be injured and the other will gain illicit benefit, but that there will be a confusion in the mind of the public which will lead to confusion in the goods—then you may refuse the registration, or rather you must refuse the registration in that case.”

18. If we apply the aforesaid test, given the fact that the plaintiffs’ and defendants’ services are both accessed by persons who want to participate in fantasy games, there is every likelihood of confusion, in the mind of such persons, between the marks “dream11.com” and “dreamz11.com”, the only difference the two marks being the terminal “z”. The website are even more confusing, being www.dream11.com and www.dreamz11.com.

19. The confusion is exacerbated by the look and feel of the defendants’ website which has, obviously, deliberately and intentionally, been made to copy the plaintiffs’ website. The defendants have also used the motif of five players in two levels, three at the lower level and two at the upper level. Three of the players are even wearing an attire which is similar to the attire worn by the players on the plaintiffs’ website.

20. The manner in which the respective Apps is to be downloaded is also same. The step-by-step guide provided on the website to avail the services of the plaintiffs and defendants are also similarly



arranged.

21. The defendants have even gone to the extent of even copying the plaintiffs' Facebook posts.

22. There is, therefore, clear and transparent intent, on the part of the defendants, to imitate the plaintiffs. The case calls for invocation of the following principle laid down by Lord Justice Lindley in *Slanzenger & Sons v. Feltham & Co*²:

"One must exercise one's common sense, and, if you are driven to the conclusion that what is intended to be done is to deceive if possible, I do not think it is stretching the imagination very much to credit the man with occasional success or possible success. Why should we be astute to say that he cannot succeed in doing that which he is straining every nerve to do?"

23. Though there may be minor differences between the plaintiffs' and defendants' website, those differences are miniscule compared to the overall similarities between the two. Even otherwise, applying the following principle laid down by Kekewich, J., in *Munday v. Carey*³, the Court has, in such circumstance, to concentrate on similarities rather than dissimilarities:

"Where you see dishonesty, then even though the similarity were less than it is here, you ought, I think, to pay great attention to the items of similarity, and less to the items of dissimilarity."

24. In view of the similarities between the plaintiffs' and defendants' marks, the fact that they are used for providing identical

² (1889) 6 R.P.C 531

³ (1905) 22 R.P.C 273



services and the consequent likelihood of confusion on the part of the consumer, a clear case of infringement within the meaning of Section 29(2)(b)⁴ of the Trade Marks Act 1999 is made out.

25. The case is also calls for invocation of the triple identity test, as the marks are deceptively similar, the client/customer base to which they cater is the same and both the marks are provided on internet websites so that they are available through the same source. This is additionally a ground for the court to return a finding of infringement.

26. The manner in which the Defendants 1 and 2 have copied the plaintiff's mark and adopted an identical look and feel for their website also indicate that the defendants are consciously seeking to confuse persons into accessing the defendant's website instead of the plaintiff.

27. A case of passing off is also, therefore, made out.

28. The fact that Defendants 1 and 2 have not chosen to respond to the present suit indicates that they are aware that they have no defence to lead. The averments in the plaint have gone unrebutted and are,

⁴ **29. Infringement of registered trade marks.—**

(2) A registered trade mark is infringed by a person who, not being a registered proprietor or a person using by way of permitted use, uses in the course of trade, a mark which because of—

(a) its identity with the registered trade mark and the similarity of the goods or services covered by such registered trade mark; or

(b) its similarity to the registered trade mark and the identity or similarity of the goods or services covered by such registered trade mark; or

(c) its identity with the registered trade mark and the identity of the goods or services covered by such registered trade mark,

is likely to cause confusion on the part of the public, or which is likely to have an association with the registered trade mark.



therefore, deemed to be admitted applying the principle of non-traverse.

29. The facts stated in the plaint are clear and un rebutted. No such contentious issue exists as would require leading of evidence. The right of the defendants to file written statements already stand struck off. In fact, Defendants 1 and 2 have remained unrepresented throughout and are unrepresented today as well, though Defendant 3 is represented by Ms. Tanya Choudhary.

30. In view of the aforesaid, the plaintiffs are entitled to a decree in its favour. Accordingly, this suit shall stand decreed in the following terms.

(i) There shall be a decree of permanent injunction restraining the defendants as well as all others acting on their behalf from using the mark “dreamz11” or any similar variant thereof, as a trade mark, trade name, domain name, part of their e-mail ID or in any other manner.

(ii) The Defendants 1 and 2 shall also stand restrained from using the domain name “dreamz11.com” or operating the website www.dreamz11.com.

(iii) Insofar as the domain name “dreamz11.com” is concerned, Ms. Tanya Choudhary submits that it has already expired. In view thereof, Defendant 3 shall not, hereinafter, register the domain name “dreamz11.com”.



31. Mr. Seth does not press for damages but prays for actual costs.
32. In view of the fact that this is a clear cut case of infringement and passing off, the plaintiff would be entitled to actual costs in this case.
33. In these circumstances, let the matter be listed before the concerned Taxation Officer of this Court on 10 November 2023, before whom the plaintiffs would appear and provide the statement of costs. The taxation officer would compute the actual costs incurred by the plaintiffs, to which the plaintiffs would be entitled from the Defendants 1 and 2.
34. Costs as computed by the Taxation Officer would be paid within a period of four weeks of computation.
35. The suit stands decreed in the aforesaid terms.
36. Let a decree sheet be drawn up by the Registry.

C. HARI SHANKAR, J.

OCTOBER 19, 2023

dsn

Click here to check corrigendum, if any