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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION (L) NO. 1504 OF 2014
IN
SUIT (L) NO. 622 OF 2014

People Interactive (I) Pvt. Ltd. ...Plaintiffs
Versus
Gaurav Jerry & ors. ...Defendants

Dr. Birendra Saraf, *with Mr. Rashmin Khandekar, Mr. Rahul Dhote, Mr. Hemant Thadhani, i/b M/s. Krishna & Saurashtri Associates, for the Plaintiffs.*
None for the Defendants.

CORAM: G.S. PATEL, J
DATED: 7th July 2014

PC:-

1. This notice of motion is moved for ex-parte ad-interim reliefs. Dr. Saraf, learned advocate for the Plaintiffs tenders three affidavits of service.

(α) The first affidavit is dated 4th July 2014. It says this:
When a representative of the Plaintiffs' attorneys attempted to hand deliver copies of the notice of

motion, plaint and petition under Clause XIV of the Letters Patent at the address of the 1st Defendant at 12A, UGF, Devika Towers, Ghaziabad, Uttar Pradesh - 201 011, it was found that the office was closed. The representative learnt that the office has been shifted to the 6th floor of the same building. The Plaintiffs' attorney's representative went to that 6th floor office. He found two persons there. They refused to accept the service.

(β) The second affidavit of service is made by one Mr. Abhijit M. Nakashe, a Clerk of the Plaintiffs' attorneys. This affidavit says that three envelopes or packets, containing the plaint, notice of motion, affidavit in support and petition under Clause XIV of the Letters Patent were couriered to the Defendants. The courier service's tracking report showed that the 3rd Defendant's premises were closed and that their office had shifted. The packets sent to Defendants No. 1 and 3 are said not to have been returned. A packet was separately couriered to the 2nd Defendant in Arizona.

(χ) The third affidavit of service sets on record that one Hemant Thadhani, an advocate with the Plaintiffs' attorney's sent soft copies of all these documents to the 1st Defendant at his e-mail addresses, namely, **info@ShaadiHiShaadi.com** and **ShaadiHiShaadi@gmail.com**. An e-mail was similarly

sent to 3rd Defendant at its official e-mail ID **legal@godaddy.com**. Annexed to this affidavit are print outs of the delivery report confirming delivery by e-mail.

(δ) None appears for the Defendants.

2. In this notice of motion, the Plaintiffs seek an injunction against the 1st Defendant from using the domain name **ShaadiHiShaadi.com** or any other word or expression identical or confusingly similar to the Plaintiffs' registered trademark **Shaadi.com** and **Shadi.com** in any manner, including as part of domain name for an Internet or web-based service. An injunction is also sought to restrain 1st Defendant from passing off his website **ShaadiHiShaadi.com** as that of the Plaintiffs. The third relief sought is to restrain the 2nd and 3rd Defendants from hosing the 1st Defendant's website **ShaadiHiShaadi.com** and directing them to de-register or terminate the registration of the domain name **ShaadiHiShaadi.com**.

3. The Plaintiff belongs to the People Group of Companies. It owns several well-known domain names, websites, brands and trademarks. One of these is **Shaadi.com**. Defendant No. 1 seems to be providing a rival service under the domain name **ShaadiHiShaadi.com**. Defendants No. 2 and 3 provide domain name registration and web hosting services in the United States and India respectively. The 3rd Defendant is the Indian arm of the 2nd Defendant.

4. Sometime in 1996, one Siddharth Mehta launched an online matchmaking, matrimonial and wedding services portal under the name and mark **Shaadi.com**. Four years later in February 2000, the Plaintiff was incorporated. It was, at that time, operating another website, **sagaai.com**. By a Deed of Assignment dated 9th October 2011, the Plaintiff acquired all the right, title and interest in and to the trade mark and domain name **Shaadi.com** together with its goodwill from Siddharth Mehta for valuable consideration. From that point onward, it is the Plaintiff that has been providing matrimonial and matchmaking services under this domain name. The Plaintiff also has a bricks and mortar or physical matrimonial service originally under the name and mark "Shaadi Point", now known as "Shaadi Centre". There are various franchise and branches in different cities in India.

5. The Plaintiff has been vigorous in promoting and publicising its brand, mark and services, **Shaadi.com / Shadi.com / Shaadi Centre**. There has been much publicity in the form of printed material, television and print advertisements, online advertisements etc. Some samples of this advertising material has been placed on record. The Plaintiff claims to be the first in the country to provide online matrimonial services in this manner. It has used its marks openly, continuously, exclusively and extensively in respect of such matrimonial and matchmaking services, wedding planning services and the like for a considerable period of time. Its domain name is very well known amongst the subscribers and in the public. The two marks **Shaadi.com** and **Shadi.com** are both pronounced identically. Both are associated, identified and recognized as belonging to the Plaintiff and are exclusively associated with the

Plaintiff. The Plaintiff has, over time, established a significant database: it has 20 million registered users in its online and offline matrimonial services. It claims to have matched more than 3.2 million members. Since February 2007, its main website **www.shaadi.com** has had 11.1 billion recorded visitors or hits. Since 2004, about 17.39 lakh people have subscribed to its service online and offline. Its turnover in the year 2012-2013 was approximately Rs. 91.7 crores, a significant rise from its turnover in 2005-2006 of approximately Rs. 26.6 crores. The total annual sales for this period from 2005-2006 to 2012-2013 are about Rs. 430 crores. During this very period, the Plaintiffs have spent an amount of Rs. 172 crores on publicity, promotion and advertising. Annexed to the plaint are various documents establishing these figures.

6. There seems to be little doubt on a reading of the plaint and the documents annexed to it that the Plaintiffs' web property has today achieved a unique status. It has a significant reputation and goodwill. The phrase **shaadi.com**, its proprietary mark, is uniquely identified with the Plaintiff's services. The Plaintiff has received widespread recognition and won several awards. Some of these are listed in paragraph 13 of the plaint. There are also several innovations provided in its online services. It has, thus, acquired a very high brand equity, something that has been augmented by its participation on widely viewed television programmes. Today, its offline matrimonial centres number more than 100, spread across 70 cities in this country.

7. In paragraph 17 of the plaint, the Plaintiffs have set out the various trade marks registered to it. All are variations on the words

Shaadi. For the present purposes, we are concerned with the domain name Shaadi.com and Shadi.com. In both of these, the Plaintiff has statutory, proprietary and common law rights. Among this is the right to restrain the others from using names or marks that are deceptively or confusingly similar to those of the Plaintiffs'.

8. In October 2013, the Plaintiffs found that a domain name **www.ShaadiHiShaadi.com** had been registered in respect of identical services: online matchmaking / matrimonial services, wedding planning, dating services etc. The Plaintiffs' took a search. They found that the domain name was registered by the 1st Defendant through the domain name registration services offered by the 2nd Defendant and that the site was hosted by the 3rd Defendant.

9. Dr. Saraf draws attention to the print-outs of the Plaintiffs' website at Exhibit "G" and of the 1st Defendant's competing website at Exhibit "H". The comparison is startling. The services offered are identical. The spelling of the word *shaadi* is identical. Although the web page, banner, lay out and look-and-feel may not be exact, this makes very little difference; indeed, it makes no difference at all. For, apart from anything else, on the Plaintiffs' website below the words **shaadi.com** clearly said to be a registered trade mark with the appropriate symbol, is the tagline "*The World's Largest Matrimonial Service*". On the 1st Defendant's website below the domain name **ShaadiHiShaadi.com** appears an almost identical tagline "*World's Biggest Matrimonial Service*". It is obvious that this claim by the 1st Defendant is entirely incorrect and cannot possibly have any factual basis. It is mere puffery. It has not enjoyed

the reputation, longevity, goodwill or publicity that the Plaintiffs have. This statement is clearly intended to deceive and cause confusion. Any person visiting the 1st Defendant's website is bound to mistake it for a branch, division or variation of the Plaintiffs' website. That the similarity is close is beyond doubt. That it is deceptive and confusing is also beyond doubt.

10. On 15th October 2013, the Plaintiffs' sent a cease and desist notice to the 1st Defendant. There is no reply to this notice.

11. The Plaintiffs conducted a web analysis of the 1st Defendant's infringing domain name **ShaadiHiShaadi.com**. They found that the 1st Defendant has used the Plaintiffs' proprietary mark **shaadi.com** and its domain name **www.shaadi.com** as part of the "meta-tags" in the 1st Defendant's domain name. Meta tags are special lines of code embedded in web pages. All HTML (hyper text markup language), used in coding web pages, uses tags. Meta tags are a special type of tag. They do not affect page display. Instead, they provide additional information: the author of the web page, the frequency of updation, a general description of the contents, keywords, copyright notices and so on. They provide structured data (actually, meta-data) about the web page in question. Meta tags are always used in a web-pages '**<head>... </head>**' section, before the display section that begins with the tag '**<body>... .. </body>**'. For instance, the Bombay High Court's main website, www.bombayhighcourt.nic.in, uses these meta tags among others:

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<head>
  <meta http-equiv="Content-type"
    content="text/html; charset=UTF-8" />
  <meta name="keywords" content="High Court of
    Bombay, Bombay High Court, Mumbai High
    Court, Maharashtra Judiciary, Maharashtra
    Courts, Courts, Judiciary" />
  <meta name="description" content="Official
    website of the High Court of Bombay." />
  ... ..
</head>
```

12. Meta-tags are routinely used by the search engines and search engine robots to assess webpage contents and other relevant material relating to a webpage in the building of search engine indices. This is where an illicit use of meta tags can be severely damaging. For, if in the meta tags of one website a person uses the domain name or other unique identifying marks, characters or name of another, a search engine, being robotized, is bound to confuse the two, and to report that the first and the second are the same. A search for the latter (the original, the victim) is very likely to yield results for the former, the one that has pirated the identifying marks or name. Now if any individual was to run up a web site and use this Court's "keywords" or "description" meta tag contents, a search engine robot would identify that illicit website as being the "official website of the Bombay High Court."

13. This is precisely what seems to have happened in this case. The Plaintiffs' analysis showed that by illicitly plugging the Plaintiffs' mark and domain name into his website's web pages' meta-tags, the 1st Defendant succeeded in diverting as much as 10.33% and 4.67% of the Internet traffic away from the Plaintiffs to himself. There could be no better evidence of passing off, confusion

and deception. This is, plainly, hijacking the Plaintiffs' reputation and goodwill and riding piggyback on the Plaintiffs' valuable intellectual property.

14. I believe the Plaintiffs have made out not just a strong, but an overwhelming *prima facie* case. Dishonesty is writ large on the actions of the 1st Defendant. He has used the Plaintiffs' mark **shaadi.com** as a suffix to another expression. He has attempted to misappropriate the Plaintiffs' mark. He has made false claims regarding the extent and size of his service. He has, plainly, hijacked Internet traffic from the Plaintiffs' site by a thoroughly dishonest and *mala fide* use of the Plaintiffs' mark and name in the meta tags of his own rival website. The distinctive character of the Plaintiffs' mark is thus diluted and compromised by the actions of the Defendant. The 1st Defendant's action is nothing but online piracy. It cannot be permitted to continue.

15. The Plaintiffs have, by abundant caution sought leave of this Court under Clause XIV of the Letters Patent. That may or may not be necessary. It is for the Plaintiffs to move their Leave Petition as and when they desire. *Prima facie* I am of the view that since the 1st Defendant has a website that is globally accessible, not territorially limited, and is, moreover, an interactive website, a combined action for infringement and passing off in this Court will lie even without such leave.

16. As to the order against Defendants No. 2 and 3, while they may be themselves all innocent of any wrong doing, once it is found that the 1st Defendant's registration of his domain name is illicit

and that he is not entitled to operate a website under that domain name, Defendants No. 2 and 3 must be required to immediately take steps not only to cancel the registration of their domain name **ShaadiHiShaadi.com** but also to suspend and cancel of web hosting services that they may be offering to the 1st Defendant.

17. Not only have the Plaintiffs made out a overwhelming *prima facie* case, they have also established that irretrievable prejudice will be caused to them if reliefs as sought are not granted, and that the balance of convenience is in their favour. I must note that despite several attempts, including sending of the cease and desist notice, the Defendants have not once bothered to respond to the Plaintiffs.

18. In that view of the matter, there will be an ad-interim injunction in terms of prayer clauses (a), (b) and (c) of the Notice of Motion, which read as follows:

“(a) that pending the hearing and final disposal of suit the Defendants by itself, through its partners, proprietors, servants and agents and/or otherwise howsoever be restrained by an order and injunction of this Hon’ble Court from in any manner whatsoever using the trade mark ShaadiHiShaadi.com and/or any other word / expression identical with and/or deceptively similar thereto, including by using it as part of domain name or use in meta-tags or any other such form of use in relation to matrimonial / matchmaking service and/or allied matrimonial services so as to infringe the Plaintiff’s registered trade mark Shaadi.com / Shadi.com bearing Nos. 1874286 and/or 1267772 and/or 1874287 and/or 1283243 and/or 1899390 and/or 1338034 and/or

1248589 and/or 1627525 and/or 1346525 being Exhibit "D1" to "D9" hereto.

(b) that pending the hearing and final disposal of suit the Defendants by themselves, through their partners, proprietors, servants and agents and/or otherwise howsoever be restrained by an order and injunction of this Hon'ble Court from using in any manner whatsoever, including by using it as part of domain name or use in meta-tags or otherwise on the internet or any other such form of use, the mark ShaadiHiShaadi.com and/or any other word / expression identical with and/or deceptively similar thereto in relation to matrimonial / matchmaking service, dating service and/or allied matrimonial services, so as to pass off and/or enable others to pass off the Defendant No. 1's impugned services and/or business and/or commercial activities of Defendant No. 1 bearing the impugned trade mark as and for that of the Plaintiff.

(c) that pending the hearing and final disposal of the suit, that the Defendant Nos. 2 and 3 by themselves, their employees, agents, officers, assigns and representatives be restrained by an order and injunction from hosting the impugned website www.shaadihishaadi.com of Defendant No. 1 and directing Defendant Nos. 2 and 3 to deregister and/or terminate Defendant No. 1's said website www.shaadihishaadi.com.

19. Although the Plaintiffs have given notice before making this application, they shall, so as to leave no room for controversy, once again comply with the provisions of Order XXIX Rule 3 of the Code of Civil Procedure, 1908 within a period of two weeks from today.

20. Liberty to the Defendants to apply for variation, modification or recall of this order with 72 hours' prior written notice to the Plaintiffs.

21. The Plaintiffs' advocates shall be at liberty to serve an authenticated copy of this order on the Defendant not only by hand delivery, courier, fax, and regular mail but also by email.

22. Affidavit in reply to be filed on or before 21st July 2014. Affidavit in rejoinder, if any, to be filed and served on or before 24th July 2014.

23. List the notice of motion peremptorily for hearing and final disposal on Monday, 28th July 2014 at 3.00 p.m.

24. In the meantime, Defendants to file and serve their written statements on or before 30th July 2014. Discovery and inspection to be completed on or before 14th August 2014. Suit to be placed for framing issues on 19th August 2014.

(G. S. PATEL, J.)