

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

% Decided on: 27th February 2020

+ **CS(COMM) 430/2019**

MAKEMYTRIP (INDIA) PRIVATE LIMITED Plaintiff
Represented by: Mr. Deepankar Mishra, Advocate.

versus


MTB TRAVEL PLANNER PRIVATE
LIMITED AND ANR.Defendant
Represented by: None.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. Summons in the present suit were issued vide order dated 14th August 2019. Defendants entered appearance on 11th December 2019. Defendant no. 2 was proceeded ex-parte vide order dated 19th February 2020. Written statement was not filed by defendant no. 1 and his right to file written statement was closed vide order dated 19th February 2020. None has appeared on behalf of defendant no. 1 even today.

2. By the present suit the plaintiff, inter alia, prays for a decree of permanent injunction restraining the defendant no.1, its partners, directors, shareholders or proprietors as the case may be, its assigns in business, franchises, affiliates, subsidiaries, license and agents from using in any manner whatsoever, selling, offering for sale, advertising, directly or indirectly dealing in any products or services under the Infringing Marks namely MYTRIPBAZAAR (word per se) and MYTRIPBAZAAR LOGO

that is  or any other mark similar to plaintiff's well known MakeMyTrip Marks or any domain name identical or deceptively similar to the plaintiff's, passing off, amounting to infringement of plaintiff's registered trademark and copyright, unfair competition, mandatory injunction directing defendant no. 1 to transfer the domain name <www.mytripbazaar.com> in favour of plaintiff or any other similar domain name separately registered, rendition of accounts, delivery up, damages to the tune of ₹ 2,00,01,000/- and costs.

3. Plaintiff company was incorporated in the year 2000 under the Companies Act, 1956. with the trade name "Travel by Web Private Limited" and later changed its trade name to "Makemytrip.com Pvt. Ltd." vide Certificate of Incorporation dated 2nd August 2000. Thereafter, on 28th June 2002, it changed its name to "MakeMyTrip (India) Pvt. Ltd." which is its existing name. It started with airline ticket bookings alone but has become one of the largest travel companies in India having presence all across India and in various other countries around the world including the United States of America, the United Arab Emirates and Mauritius, European Union, Australia, United Kingdom amongst others.


4. Plaintiff through its primary website that is <www.makemytrip.com> and other platforms including mobile applications etc., offers a wide range of travel services and products in India as well as abroad. Plaintiff's services include booking air tickets, rail tickets, bus tickets, hotel reservations, car hire, domestic and international holiday packages and ancillary travel requirements like facilitating access to travel insurance, visa assistance, foreign exchange, experiences etc.


5. On 8th May 2000, the plaintiff got the domain name <makemytrip.com> registered in the name of its founder namely Mr. Deep Kalra. Further, plaintiff's holding company that is MakeMyTrip Limited in order to raise funds for further expansion made an Initial Public Offer of its shares in the United States of America. On 12th August 2010, it got listed at NASDAQ being the second-largest exchange in the world and is still listed on the said exchange.

6. Plaintiff changed its trade name to "MakeMyTrip" on 2nd August 2000 and has earned immense reputation and goodwill and is in continuous use of MakeMyTrip mark including MakeMyTrip word marks, MakeMyTrip logo marks and domain names <www.makemytrip.com>, <www.makemytrip.net.in> and <www.makemytripindia.in>. The said MakeMyTrip mark of the plaintiff is an invented mark which is an essential feature of all its composite label or logo marks. Plaintiff is the first company to conceptualize and ideate the use of three different words to phonetically, visually and structurally form one word and further use "MY" as a connecting element between the other two words.

7. MakeMyTrip Marks are in continuous use for over nineteen years and are linked with the high standards of quality of the services provided by the plaintiff. The "MY" device used in a stylized manner with other artistic elements and colour combinations of MakeMyTrip Logo is highly distinctive. The said MakeMyTrip logo marks is used in various unique and stylized forms by the plaintiff as shown below:



8. Various efforts have been made by the plaintiff to use the “” in an artistic, unique and catchy manner. The “MakeMyTrip” logo is being used by the plaintiff in conjunction with unique and distinctive artistic elements, such as, the words “MakeMyTrip” in each logo are written in a specific and uniform colour combination of dark blue and deep red while “MY” is written in white colour with background of deep red colour, the words “Make” and “Trip” are written in dark blue colour

9. Other words forming a part of the said logo are also written in the same colours. In addition to the said logo, the plaintiff uses “” in isolation and conjunction with other marks in the following manner:



10. Owing to the prolonged use of the 'MY' logo mark and the goodwill earned thereafter by the plaintiff, any word used with it is associated with the plaintiff by public and trade. Plaintiff has become a household name in India and in the other parts of the world. The said marks have enjoyed a desirable reputation in the travel and hospitality industry. The plaintiff has obtained registration of the said marks in various classes being 09, 16, 35, 36, 38, 39, 41, 42 and 43 and any unauthorized use of the said marks would therefore violate the plaintiff's statutory and common law rights along with goodwill earned by plaintiff in the said marks.

11. Plaintiff also has trademark registrations/ applications pending in various countries worldwide for its MakeMyTrip marks. The MakeMyTrip marks of the plaintiff are already registered in several other countries including Australia, Bhutan, Canada, Indonesia, Malaysia, Mauritius, Nepal, Singapore, Taiwan and the United Arab Emirates. Plaintiff also has pending applications for the said marks in countries including Bahrain, European Union, Kuwait, Qatar, Oman, Saudi Arabia, Sri Lanka, United Kingdom and United States of America.

12. Plaintiff's MakeMyTrip logo marks including but not limited to the



also constitute original artistic works within the meaning of the Copyright Act, 1957. Plaintiff is the sole and lawful owners of the copyright vested in the MakeMyTrip marks including its stylistic

arrangement, colour schemes, get up, layout/arrangement and has obtained copyright registrations in the said marks.

13. The sales turnover of the plaintiff in India runs in several crores of Rupees. The gross value of bookings taken on by the plaintiff for the years 2017 to 2018 amount to approximately ₹ 18,109 Crores. The Net Sales Turnover of the plaintiff has increased from ₹ 35 Lakhs in the year 2000 to ₹ 2,75,907 Lakhs in the year 2018. Further, the plaintiff has undertaken an expenditure of around ₹ 3,31,956 Lakhs over years towards advertisement and promotion of its MakeMyTrip marks in India.

14. The plaintiff has also sponsored various national and international events including Tripalong in the year 2012, Indian Premiere League Franchisee “Sunrisers Hyderabad” in the year 2013, Indian Premiere League 2016 to 2018. Additionally, numerous articles relating to the plaintiff have been posted on several third-party websites.

15. Furthermore, plaintiff has also received various awards including the Best Travel Innovator – Travel Distribution World Asia Award in the year 2004, Most Visited Travel Website – comScore in the year 2005, Asia’s Hottest Technology Start Up – Red Herring in the year 2006, Best Online Travel Company – Galileo Express Travel World in the year 2007 etc. Plaintiff’s business has also been bestowed with the title “SUPERBRAND” in the year 2008-2009 by Superbrands India.

16. Plaintiff has been a part of various renowned national and international trade associations like the International Air Transport Association (IATA), Indian Association of Tour Operators (IATO), Travel Agents Federation of India (TAFI), Travel Agents Association of India (TAAI) and Ministry of Tourism, Government of India. It has also entered

into collaboration agreements with a number of travel companies, hotels, airlines etc. including British Airways, Turkish Airlines, Gulf Air, Singapore Airlines, Etihad Airways etc.

17. Plaintiff has also been conferred with various accolades by its partners which include Singapore Airlines – Top Agent Award in the year 2010-2011, Malaysia Airlines – Top Agent Award in the years 2010, 2009 and 2007 etc. Plaintiff has further also acquired and invested in various well-known brands on the industry including its merger with Ibibo Group in the year 2017, investment of \$5 million in Bona Vita Technologies in the month of July 2015 etc.

18. The plaintiff has a huge presence on various social media platforms including Facebook, Twitter, YouTube and Instagram. It also has an official YouTube channel having over forty thousand followers and more than forty crore views. Plaintiff's website <www.makemytrip.com> is one of the most accessed and used online travel booking and planning portals in India. The number of internet hits and bookings on the plaintiff's website has increased overtime being a total of 20,38,32,586 and 1,18,96,287 till June 2019 respectively. Further, the plaintiff also has a total of 11,161,356 mobile app downloads till June 2019.

19. Plaintiff has previously also undertaken legal actions by filing civil suits, trade mark oppositions, cease and desist notices etc. to protect its statutory and common law rights in the event of infringement. In *Makemytrip (India) Pvt. Ltd. v. Shree Ganesh Enterprises and Anr. bearing C.S. (OS) No. 1902 of 2013*, the Hon'ble Court vide its order dated 1st October 2013 granted an ex-parte ad-interim injunction restraining the

defendant from using the mark  and  ogos.

Thereafter the parties agreed to resolve the matter amicably and the suit was decreed in terms of settlement arrived at between the parties. In *Make My Trip (India) Pvt. Ltd. v. Make My Tours Pvt. Ltd. & Ors. bearing CS (OS.) No. 4039 of 2014*, the Hon'ble Court granted an ad-interim injunction in favour of the plaintiff. The Court referred to plaintiff's abbreviated version of the MakeMyTrip mark that is "MMT" and also observed that its marks are well known. The suit was decreed in favour of the plaintiff.

20. In *MakeMyTrip (India) Private Limited v. Orbit Corporation Leisure Travels (I) Private Limited bearing CS (COMM) 643 of 2017*, the plaintiff was successful in settling the matter with the defendant and accordingly the suit was decreed in terms of settlement between the parties. Thereafter, in *MakeMyTrip (India) Pvt. Ltd. v. MAKEMYTRAVEL (India) Private Ltd. bearing CS (COMM) No. 889 of 2018*, the Hon'ble court granted an ex-parte injunction in favour of the plaintiff. In another suit filed by the plaintiff titled *MakeMyTrip (India) Pvt. Ltd. v. HappyEasyGo India Private Ltd bearing CS (COMM) 916 of 2018*, the Hon'ble Court had granted an ex-parte injunction in favour of the plaintiff. The said suit was filed for infringement and passing off of the plaintiff's MakeMyTrip Word Mark by illegally bidding for the same.

21. Further, the plaintiff was also granted an ex-parte injunction in *MakeMyTrip (India) Pvt. Ltd. v. Priyadarshani Airwings Pvt. Ltd. bearing CS (COMM) 1210 of 2018. MakeMyTrip (India) Pvt. Ltd. v. M/s MakeMyHappyJourney bearing CS (COMM) 1211 of 2018, MakeMyTrip (India) Pvt. Ltd. v. Dot Eventures Pvt. Ltd. bearing CS (COMM) 1268 of*

2018 and MakeMyTrip (India) Pvt. Ltd. v. Easy Trip Planners Pvt. Ltd. and Ors. bearing CS (COMM) 1287 of 2018.

22. Plaintiff has previously also filed various domain name complaints in order to safeguard its domain name (s) containing its widely popular MMT trademarks, logos and catch phrases/ punch marks with the World Intellectual Property Organization (WIPO) through the Uniform Domain Name Resolution Policy (UDRP) and with the National Internet Exchange of India (NIXI) under the .IN Domain Name Dispute Resolution Policy (INDRP).

23. Defendant no. 1 that is MTB Travel Planner Private Limited is also a company providing alike travel related services including but not limited to booking and selling air tickets, hotel reservations, arranging trips in India and abroad under the infringing marks. Defendant no. 1 is conducting its business through <www.mytripbazaar.com> being the infringing domain name which is identical in layout, get up and design to that of the plaintiff.


24. Defendant no. 2 that is GoDaddy.com, LLC is involved in web hosting and domain registration services. It conducts its business from 14455 North Hayden Road Suit 219 Scottsdale, AZ 85260, United States. Defendant no. 1 herein registered the infringing domain name with defendant no. 2.

25. Plaintiff gained awareness about defendant no. 1 and its infringing





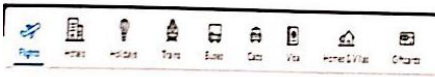

marks that is MYTRIPBAZAAR  and domain name in the month of March 2019. Further, investigation was carried out whereby plaintiff came across the website of defendant no. 1 <<https://www.mytripbazaar.com/>> being hosted on the infringing domain

name wherein defendant no. 1 was also offering travel booking services. The infringing logo mark and domain name of the defendant are identical in layout and artistic design of its website to that of the plaintiff.

26. Furthermore, the infringing marks are also phonetically, visually, conceptually and structurally identical and/or deceptively and confusingly similar to the plaintiff's mark. The infringing mark consists of plaintiff's MakeMyTrip marks and defendant no. 1 has adopted it dishonestly in order to pass off its services as those of the plaintiff herein. Defendant no. 1 has used the word "MYTRIP" in its logo mark and domain name in a stylized manner so as to make it an essential feature of its Infringing Marks.

27. Plaintiff noted that defendant no. 1 on its website has also used the infringing logo mark being  which is deceptively similar to plaintiff's logo marks especially the way in which the essential element "MY" has been depicted being identical to the plaintiff's MakeMyTrip Logo marks. The colour scheme used by the defendant is almost identical to that of the plaintiff's MakeMyTrip logo marks.

28. Defendant no. 1 has used the "MY" element and stylized it differently to create confusion. The website of defendant no. 1 also seems to be a mirror image of the plaintiff's website as it contains identical artistic features, get up, layout/ arrangement of features and designing as that of the plaintiff's website. The infringing domain name bears the same concept and idea as that of the plaintiff's mark and its business activities. The aforementioned actions of defendant no. 1 lead to infringement of copyright in the original artistic work of the plaintiff's website.

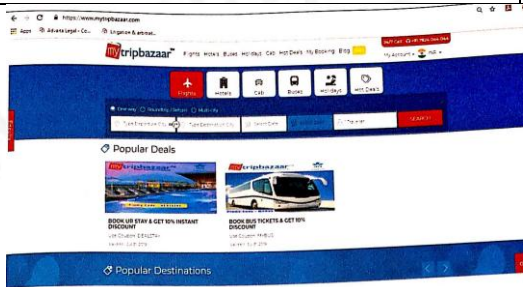
S.No	Plaintiff's Website	Defendant no. 1's website	Comparison
1.			<p>Colour theme of both the websites is identical that is red, blue and white. Some portions of the main page appear with a blue background while the remaining is in white background. Logos of both the parties appear in red colour.</p>
2.			<p>Layout, arrangement and position of the logos that is at the extreme left corner of both the websites.</p>
3.			<p>The manner of representation of services that is booking flights, hotels, cabs etc offered by both the parties is identical.</p>

4.



The search tab with dropdown menu for booking ticket with multiple options of one way, round trip and multi city are almost identical.

5.




The position, arrangement and layout of the hyperlink for 'super offers' that is the offers and discounts offered by the plaintiff, is just below the search boxed with the dropdown menu. Defendant no. 1 has also placed its 'Popular deals' in a similar manner that is just below the search with the dropdown menu.

29. Due to the actions of defendant no. 1, the goodwill and reputation of the plaintiff is hampered. Both plaintiff and defendant no. 1 are into identical services that is online and offline travel and booking services leading to probability of confusion and deception. Actions of defendant no. 1 constitute infringement as well as violation of the common law rights of the plaintiff in its MakeMyTrip Marks, MakeMyTrip Domain Name and its website.

30. Case of the plaintiff is that apart from causing significant damage to the reputation and goodwill of the plaintiff in its MakeMyTrip marks, defendant no. 1 has also caused major financial loss to the plaintiff. The infringing activities of the defendant has also resulted in a decrease in the number of orders made on the plaintiff's website due to which the plaintiff spent more funds for advertising its marks.

31. Plaintiff through its counsel, issued a cease and desist notice dated 23rd March 2019 to defendant no. 1 whereby the plaintiff requisitioned defendant no. 1 to cease the use of infringing marks and use of the website hosted on the infringing domain name, the designing and layout of which was identical to that of the plaintiff. The said notice was delivered to defendant no. 1 but no response to it was received.

32. Defendant no. 1 received more bookings and earned more money by using the infringing mark leading to lesser revenue for the plaintiff as the internet users on searching for plaintiff's its MakeMyTrip Word Mark as well as its website, end up seeing defendant no. 1's website and mistakenly believe that defendant no. 1's website is in some way related to the plaintiff and accesses that the same and make their bookings.

33. From the pleadings of the plaintiff in the plaint as also the documents enclosed with the plaint along with the necessary certificate, in view of the deceptive similarity in the use of the mark  by defendant with that of the plaintiff, the plaintiffs have clearly made out a case for grant of injunction in terms of prayer (a), (b), (c) and (d) of para 68 as the defendant no. 1 is violating the rights of the plaintiff in its trademark as well as copyright. A decree of mandatory injunction is granted in favour of plaintiff and against defendant no. 2 in terms of prayers (d) and (e) of the plaint.

34. Learned counsel for the plaintiff does not press the prayers (f), (g) and (h). Hence no decree in terms of prayer (f), (g) and (h) can be passed.

35. As regards cost, the plaintiff has not filed an affidavit indicating the actual cost incurred by him, however the court-fee paid by the plaintiff amounts to ₹2,02,000.

36. Suit is accordingly decreed in terms of prayer (a), (b), (c), (d) and (e) of para 68 of the plaint in favour of the plaintiff. Cost of ₹2,02,000 is awarded in favour of the plaintiffs and against the defendants.

I.A. 11092/2019 (u/O XXXIX R 1&2 CPC)

Disposed of as infructuous.

**(MUKTA GUPTA)
JUDGE**

**FEBRUARY 27, 2020
'MV'**