

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
INTERIM APPLICATION NO. 1 OF 2020
IN
LC-VC-GSP-24 OF 2020
COMMERCIAL IP SUIT (L) NO. ____ OF 2019
(To be renumbered subsequently)**

Hindustan Unilever Limited ...Plaintiff
Versus
Endurance Domains Technology LLP & Ors ...Defendants

Mr Viraag Tulzapurkar, Senior Advocate, with MR Raj Panchmatia, Mr Peshwan Jehangir, Ms Jyoti Sinha, Mr Anindya Basarkod & Ms Anumeha Karnatak, for the Plaintiff.
Dr Birendra Saraf, Senior Advocate, with Ms Gowree Gokhale, Ms Aparna Gaur, i/b Nishith Desai, for Defendants Nos. 1 & 3.
Mr Jayesh Desai, i/b Singhi & Co, for Defendant No. 6.
Mr Vakul Sharma, with Ms Rajlaxmi Punjabi, for Respondents Nos. 14 & 15.
Ms Vinita Hombalkar, i/b Orbit Law Services, for Defendant No. 13-IDBI Bank.
Mr Shantanu Sahay, with Mr Aashish Somasi, Ms Imon Roy, for proposed Respondent No. 1 (Defendant No. 16), GoDaddy LLC.

**CORAM: G.S. PATEL, J
(Through Video Conference)**

DATED: 12th June 2020

PC:-

1. Heard by video conferencing.
2. Mr Tulzapurkar appears for the Plaintiff in support of the Interim Application.
3. The 1st Defendant, Endurance Domains Technology LLP, is an Indian Domain Name Registrar and has been authorised to so function by Defendant No. 15, the National Internet Exchange of India or NIEI. Endurance Domains provides inter alia registrations of India-specific domains apart from other more commonly used and known top-level domains such as .com, .net, etc. Defendants Nos. 2 and 3 are partners of Endurance Domains. The 4th Defendant is said to be an erstwhile partner.
4. Defendants Nos. 6 to 11 and 13 are all banks.
5. The 5th Defendant is described as Ashok Kumar, an unknown Defendant.
6. Defendant No. 15 is the .in Registry, a Government registry of domains registered with the .in domain name.
7. There are two other domain name registrars joined to the IA and whose addition I have separately allowed in an application for amendment. These are GoDaddy LLC, now Defendant No. 16

(Respondent No.1 to this IA) and Porkbun LLC, Defendant No. 20 (Respondent No. 5 to this IA). I will refer to the parties by their names or abbreviations.

8. It is not necessary at this stage to set out at any great length what it is the Plaintiff complained of. Hindustan Unilever Limited, or HUL, the Plaintiff, is one of India's largest companies. It has registration of a number of valuable trade marks covering a range of products. In the Plaintiff and in a previous application it has been pointed out that its name is also part of its official corporate online identity. Principally, the Plaintiff has the domain name www.hul.co.in. Its global parent is at www.unilever.com.

9. The 5th Defendant and various person and persons unknown have been using variants of HUL's domain name to register fake and fraudulent domain names and to set up websites. They do this to entice and lure the unsuspecting public into parting with significant amounts of money on a completely false promise of being made authorised dealers of HUL products. The Plaintiff sets out considerable details, some of which are in fact shocking.

10. I have today separately allowed a substantial amendment to the Plaintiff, take into account subsequent events. I have also granted leave under Clause XII against additional Respondents who have been added. Among these are GoDaddy and Porkbun. They have their head offices overseas in America. GoDaddy certainly has a presence in India.

11. The Interim Application sets out the number of fraudulent domain names that have come to be registered and been fraudulently and deceitfully used. These domains name registrations have been effected through Endurance Domains, GoDaddy or Porkbun.

12. I have no manner of doubt that the registration of these domains is entirely mala fide, not in good faith, constitutes an infringement of the Plaintiff's valuable statutory and common law rights and invites an immediate injunction. The question is what form that injunction should take.

13. The relief against Defendants Nos. 14 and 15, the dot-IN registry and NIEI at least to the extent of asking that they be ordered to de-register or block access is misdirected. Neither of these is a registrar. Neither of these receives registration consideration. Neither of these registers any domain name. The reliefs against them cannot therefore be granted. At best, the dot-in registry may have some information; but that information is already with the three domain name registrars.

14. Before I turn to the prayers and the relief, I should set out the contours of the underlying technology. This is necessary because the plaint and the IA seem to muddle distinct technical aspects. A domain name is simply an easy-to-remember or mnemonic for an internet protocol address. The IP address is a string of numbers in four sets separated by a period. Each set can be of up to three digits. Domain Name Servers or DNS are the internet equivalent of a telephone directory. They maintain a list of domain names and translate these

to IP addresses. The name servers have different types of ‘records’ and these are used to re-direct internet traffic appropriately. CName records, for instance, will redirect web traffic; MX records will deal with email and messaging traffic and so on. Now domain names are, typically, never ‘owned’. They are always registered for a fee and for a specified time, typically a one-year minimum. The process of registering a domain name is trivial. One only has to look up availability of a combination of words and choose a desired top-level or other domain (.in, .com, .net, etc). The entire process of registration is automated and requires no manual intervention. Certainly there is no human element involved in overseeing or assessing the legitimacy of any chosen domain name. Once the domain name is registered, it must point somewhere to be effective. Left idle, it defaults to the domain name registrar’s name servers. If a domain name is to be used to point to a website, certain records have to be changed to match those of the webhost — an entity such as GoDaddy, for instance. It is entirely possible to combine multiple records under a single domain name, so that emails under that domain name are hosted by one entity (say, Google), while the website is hosted elsewhere. The technical reality is far more complex than this, but this much is enough to understand something fundamental: a domain name may have its registration suspended, but the domain name registrar cannot ‘block access’ to that domain name. Blocking access is another matter altogether. It is an instruction, usually under directions of a government agency such as our Department of Telecommunications, issued to internet service providers — those intermediaries who provide internet connectivity — not to honour access requests to that domain name or URL. This is important because it means that it is entirely unworkable to ask a

domain name registrar to 'block access' to a domain name. The registrar can only be asked to suspend the registration. A webhost may be ordered to take down a website, i.e. to withdraw shared or dedicated web hosting services. But this again is not the same as 'blocking access'.

15. The relevance of this is apparent from a look at the prayers. Prayer clauses (a) to (o) of this Application read thus:

(a) That pending the final hearing and disposal of the Suit, this Hon'ble Court be pleased to direct the Defendant No. 1 forthwith **to suspend and ensure the continued suspension of and block access** to: (i) Fraudulent Domain Name 2 i.e. 'hulcare.co.in' and associated e-mail address 'info@hulcare.co.in' (ii) Fraudulent Domain Name 3 i.e. 'unilevercare.co.in' and associated e-mail address 'info@unilevercare.co.in'; (iii) Fraudulent Domain Name 4 i.e. 'unilevercare.org.in' and associated e-mail address 'info@unilevercare.org.in'; and (iv) Fraudulent Domain Name 9 i.e. 'www.unilevercare.co.in'

(b) That pending the final hearing and disposal of the Suit, this Hon'ble Court be pleased to direct the Respondent No. 1 forthwith to **suspend and ensure continued suspension of and block access** to:

(i) Fraudulent Domain Name 1 i.e. 'hul.org.in' and associated e-mail address 'info@hul.org.in';

(ii) Fraudulent Domain Name 5 i.e. 'unilevercare.in' and associated e-mail address 'info@unilevercare.in',

(iii) Fraudulent Domain Name 6 i.e. 'unilevers.in' and

(iv) Fraudulent Domain Name 7 i.e.

'dailyproductscare.in' and associated e-mail address
'support @ dailyproductscare.in';

(c) That pending the final hearing and disposal of the Suit, this Hon'ble Court be pleased to direct the Defendants No. 14 and 15, **to suspend and ensure continued suspension of and block access** to Fraudulent Domain Name i.e. 'hul.org.in' and associated e-mail address 'info@hul.org.in',

(d) That pending the final hearing and disposal of the Suit, this Hon'ble Court be pleased to direct the Defendants No. 14 and 15, to **forthwith suspend and ensure continued suspension of and block access to:**

(i) Fraudulent Domain Name 5 i.e. 'unilevercare.in' and associated e-mail address 'info@unilevercare.in',

(ii) Fraudulent Domain Name 6 i.e. 'unilevers.in' and

(iii) Fraudulent Domain Name 7 i.e. 'dailyproductscare.in' and associated e-mail address 'support @dailyproductscare.in';

(e) That pending the final hearing and disposal of the Suit, this Hon'ble Court be pleased to direct the Respondent No. 5 to **forthwith suspend and ensure the continued suspension** of 'www.hul.co' i.e., Fraudulent Domain Name 8 **and block access thereto.**

(f) That pending hearing and final disposal of the present suit, this Hon'ble Court be pleased to pass an order directing Defendants No. 1, 14 and 15 forthwith to provide all particulars including registrant names /administrative/technical/billing/customer and ancillary details of the registrant(s) of 'www.unilevercare.co.in' and 'www.unilevercare.org.in' i.e., Fraudulent Domain Name 3, and 4, respectively and associated fraudulent email addresses (info@unilevercare.co.in and

info@unilevercare.org.in, respectively) registered with the Defendant No.1;

(g) That pending hearing and final disposal of the present suit, this Hon'ble Court be pleased to pass an order directing Defendants No. 14 and 15 and Respondent No. 1 forthwith to provide all particulars including registrant names/ administrative/ technical/ billing/ customer and ancillary details of the registrant(s) of fraudulent domain names Fraudulent Domain Name 1 i.e. '*hul.org.in*', Fraudulent Domain Name 5 i.e. '*unilevercare.in*', Fraudulent Domain Name 6 i.e. '*unilevers.in*' and Fraudulent Domain Name 7 i.e. '*dailyproductscare.in*' registered with the Respondent No.1;

(h) That pending hearing and final disposal of the present suit, this Hon'ble Court be pleased to pass an order directing Respondent No. 5 forthwith to provide all particulars including registrant names / administrative / technical / billing / customer and ancillary details of the registrant of fraudulent domain name *www.hul.co* i.e., Fraudulent Domain Name 8 registered with the Respondent No.5;

(i) That pending hearing and final disposal of the present suit, this Hon'ble Court be pleased to pass an order directing Defendants No. 7 and 11 Respondents No. 2 to 4 forthwith to freeze the accounts and suspend all operations in the accounts fraudulently opened by the Defendant No.5 in the name of the Applicant, as set out in '**Exhibit QQ**' hereto;

(j) That pending hearing and final disposal of the present Suit, this Hon'ble Court be pleased to pass an order directing Defendants No. 7 and 11 and Respondents No. 2 to 4 forthwith to disclose on oath before this Hon'ble Court:

i. all details, documents and particulars including KYC and other details pertaining to the

fraudulent bank accounts set out in 'Exhibit QQ' hereto;

ii. all details / documents pertaining to the due diligence and verification process undertaken by them before opening of the fraudulent bank accounts set out in 'Exhibit QQ' hereto; and

iii. details of all transactions undertaken in respect of the fraudulent bank accounts set out in 'Exhibit QQ' hereto;

(k) That pending hearing and final disposal of the present suit, this Hon'ble Court be pleased to restrain the Defendants No.1, 14 and 15 and Respondents No. 1 and 5 from registering or allowing the continued registration of any domain names/websites which contain the names / expressions/word/s 'hul', 'hindustanunilever', 'hindustan lever' 'unilever', 'unilever', 'lever' or parts thereof by themselves or in combination with each other or parts thereof or any combination thereof or with any other name(s)/expressions/word/s that are identical with or deceptively similar to the Applicant's domain names bearing these terms or any combination thereof including any domain names/websites which contain any of the names or parts thereof as, or are deceptively similar to those, set out in the list annexed at Exhibit at para 24B of the Complaint, the list annexed at Exhibit A to the Complaint and at 'Exhibit PP' hereto;

(l) That pending hearing and final disposal of the present Suit, this Hon'ble Court be pleased to pass an order directing the Respondent No 6 (Police) to take necessary steps to expeditiously investigate the FIR registered on the Applicant's complaint relating to the fraudulent domain names and apprehend the Defendant No. 5 and take further steps/action thereon;

(m) That pending the hearing and final disposal of the Suit, this Hon'ble Court be pleased to **devise a suitable mechanism, as stated in paras 32 to 36 hereinabove, and pass appropriate orders to effectively deal with further fraudulent domain names/websites/email addresses/id's encountered by the Plaintiff.**

(n) Ad-interim reliefs in terms of prayer clauses (a) to (m) above.

(o) That the Plaintiff be allowed to serve soft copies of any orders that this Hon'ble Court may pass, on the Defendants and Respondents.”

(Emphasis added)

16. So far as prayer clause (a) is concerned, it is directed against Endurance Domains. Dr Saraf states that Endurance Domains has already substantially complied with the request made by HUL in respect of the domain names listed in this prayer; if not, it will do so at the earliest.

17. Dr Saraf points out that it is however not possible to 'ensure continued suspensions and block access to these domain names'. As I have pointed out, this prayer actually muddles two different concepts of suspending registration and blocking access.

18. **There are other avenues for blocking access.** They are of seriously doubtful efficacy. The internet is a network of networks. Every machine linked to any network has an IP address. Internet service providers assign these IP addresses and these may be static or dynamic (changing with each login). When this happens, the login

being provided by an ISP, it is always possible to determine the country where the login originates. An 'access blocking' instructions only serves to block access to a remote website or server (possibly overseas) from an IP address of domestic origin, i.e. from the country ordering the block. Any such 'block' is easily circumvented by masking the originating country IP of the user. He or she only needs to use any of the commonly available VPN products. A VPN is a Virtual Private Network. A VPN user establishes a secure connection to another network over the internet, thus by-passing region-restrictions, shielding browsing activity and so on. In its simplest form, a VPN connect an internet-enabled device to a remote server, and allows the VPN user to use that remote server's internet connection. If that remote server is outside jurisdiction, then for all intents and purposes the region-restriction is by-passed: an Indian internet-user could masquerade his or her IP as originating say, in the USA or in Fiji, by accessing a remote server located there. The user will then be 'seen' to be accessing the so-called 'blocked' site from the USA or Fiji; and India-specific access restrictions imposed on domestic internet service providers fail. Now I understand the argument that access to such bypassing technology is still not common, and the average user may not know about it or even how to use it. But VPN products are available for mobile phone platforms as well now. Therefore, other than lulling an applicant into a completely hollow and faux sense of safety (and conceivably giving some ill-informed government functionary an entirely unwarranted sense of power or authority), blocking access achieves next to nothing.

19. So much for blocking access. But to ask for the 'continued suspension' of domain name registration is also technically incorrect.

Any domain name Registrar can always suspend a domain that is registered. But the entire process of registration itself is entirely automated and machine-driven. No domain name registrar can put any domain names on a black list or a block list. The notion that domain name registrar's have a person or a team of persons scanning and checking every domain name application betrays a wholesale lack of understanding of how domain name registration actually works. If a user wanted to register, say, *chroniclesofwastedtime.com*, there is no individual at any domain name registrar to question, to ask why, what for or anything. If the domain name is free, the applicant can take it to registration. That is all there is to it. That registration will continue until suspension or expiry.

20. A 'continued suspension' is therefore not possible or practicable at least in the current technology. In other words, as Dr Saraf points out, once the present registration is suspended, that suspension will continue until the end of the registration period. Upon that end of registration period, there is a further period of two to three weeks as a cooling-off period for the registrant to apply for re-registration in case the registration has inadvertently lapsed. Obviously, that cooling-off period would also be covered by the present order. However, once the domain name is released from registration by one domain name registrar then it is released worldwide across the entire cyber system and network of the internet. This means that any person can then attempt and will succeed in getting a registration through any other registrar or even the very same registrar by a process that is entirely automated and requires no manual intervention.

21. Given that this is the state of the technology it is therefore not possible to allow the prayer clause (a) to include the words 'ensure continue suspension of and block access to'. This will conceivably put the Defendant No.1 in a state of being constantly in threat of contempt proceedings. Therefore, those words will be excluded.

22. Dr Saraf states that the registration of domain name unilevercare.co.in has already expired in May 2020. The statement is noted.

23. The same considerations will apply in respect of GoDaddy in terms of prayer clause (b) and to Porkbun in respect of prayer clause (e).

24. Prayer clauses (c) and (d), for the reasons I have already outlined against NEIE and the Dot In Registry cannot be granted.

25. As far as prayer clauses (f), (g) and (h) are concerned, these call for a disclosure of registrant information from Endurance Domains, GoDaddy and Porkbun as also from the .in registry and NEIE in respect of the offending registration. I will grant that relief only against Endurance Domains, GoDaddy and Porkbun, not against the .in registry and NEIE.

26. I come next to the next set of prayer clauses directed against the banks. I cannot grant the blanket injunction in terms of prayer clause (i) to these accounts. But I will grant an order in terms of prayer

clause (j) for a disclosure because the amounts involved are significant.

27. As regards prayer clause (k), for the technical reasons I have outlined above, it is not possible to pass an order granting an injunction operating either dynamically or otherwise in future in this fashion. The very technology behind domain name registration does not permit this. There is a technical distinction between blocking a website or access to a website and blocking the registration of a domain name. It is the technology governing the latter that makes the grant of prayer clause (k) unfeasible.

28. That said, it is always open to the Plaintiffs to communicate with Endurance Domains, GoDaddy and Porkbun and request without intervention of the Court relief for the suspension of any infringing domain name registrations and the suspension of any web hosting privileges. The domain name registrars or webhosts are not bound to accede to any such request, but are only required to consider it. If they believe the request to be valid and justified, they may act on it. I am, however, making it clear that if any innocent third-party is prejudiced by these actions, then the Plaintiff and the domain name registrar in question will certainly be held to account.

29. Mr Tulzapurkar then wants an order in terms of prayer clause (m). That prayer rejects itself for ad interim relief. Mr Tulzapurkar says the Plaintiff cannot be expected to constantly make applications every time a new domain name is discovered. I do not see why not. The Plaintiff is not short of resources and skills, even in the legal

department; and the Plaintiff is a well-known and well-established litigant. HUL has more than enough resources, not the least of which is Mr Tulzapurkar himself. He is always welcome in this Court so I see no difficulty in allowing him to making repeated applications. Eternal vigilance is not just the price of liberty; it is also the cost of doing large-volume business. I do not think it is for any court to come up with mechanisms to protect the Plaintiff's interest at low or no cost, or by turning a plaintiff into judge, jury and executioner, let alone sub-contracting out what I believe to be a serious judicial function of assessing and balancing rival merits. What should or should not be suspended (or blocked) is for a government to decide, not some litigant. There are no shortcuts. All this: prima facie; two mantra words that seem to have become some sort of balm in the frenzied jurisprudence of interim and ad interim litigation.

30. There is, however, another consideration: the court's time. Requiring formal interim applications puts a strain on our resources. I will therefore permit HUL as an exceptional case, if it is unable to get the negotiated relief that it seeks directly from one of the domain name registrars who are already parties to suit, to file an Affidavit listing the domain names in questions and to approach the Court after serving a copy of that affidavit on the domain name registrar in question. I am doing away only with the requirement of a formal IA, not the requirement of coming to Court; and this is only done to ease the burden on the Court. This part of the order is, obviously, liable to be reviewed, modified or recalled at any time.

31. It is my considered view that so far as Endurance Domains, GoDaddy and Porkbun are concerned, this is a matter that should lend itself to a structured resolution that would result in no longer requiring these parties to continue as party defendants to the Suit. What needs to be established is a working protocol within the limits of what the technology can do and what the law permits. I would encourage all three parties to explore such a settlement so that these disputes between HUL on one side and the domain name registrars on the other do not come in the way of the real objective, which is to find the culprits behind these offending websites — currently represented in the generic name of Defendant No. 5.

32. Affidavits in Reply, if any, to the amended Plaint to be filed and served on or before 13th July 2020. Affidavits in Rejoinder, if any, to be filed and served on or before 24th July 2020. List the matter before the Regular Court thereafter with liberty to the Plaintiffs to apply.

33. This order will be digitally signed by the Private Secretary of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

(G. S. PATEL, J)