

Infosys Technologies Limited vs Akhil Gupta (2005)

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JUDGMENT A.K. Sikri, J. (Delhi High Court)

1. This suit has come up for ex-parte hearing today. Defendants were served and on 22.10.2003, defendant No. 1 appeared in-person and stated that defendant No. 2 is his wife and he is the sole proprietor of defendant No. 3. He further stated that a settlement was arrived at between the parties and they would be filing application under Order XXIII Rule 3 of the CPC. This application was filed by the parties. But after the filing of the application, defendants did not appear. On 17.12.2003, defendants were proceeded ex-parte and plaintiff was directed to file evidence by way of affidavit. The plaintiff has filed the same and I have heard counsel for the plaintiff.
2. The suit filed by the plaintiff is for permanent injunction, infringement of trade mark, passing off, delivery up, damages etc. The averments made in the plaint are stated in the affidavit of Mr. Nithyanandan Radhakrishnan, which is filed by way of evidence and, therefore, the averments in this affidavit can safely be noted, which would reflect the case of the petitioner.
3. The main business activities of the plaintiff relate to customised software development, re-engineering services, maintenance work, dedicated offshore software development services, marketing of computer software in India and in foreign countries. The plaintiff is also involved in the computer hardware business. The plaintiff company was incorporated in the year 1981 and has earned a very high degree of goodwill in India and abroad on account of its excellent performance. During the last twenty one years, the unique software programs invented by the plaintiff have earned international reputation and recognition. By hard work and dedicated customer service, the plaintiff has acquired the status of one of the leading exporters of computer software from India and the expression INFOSYS has become a symbol of excellence at the global level. The turnover of the plaintiff company for the year 1999-2000 was approximately Rs. 921.47 crores.
4. The promoters of the plaintiff coined and adopted the word INFOSYS as the key and principal part of its corporate name and trade mark in 1981 in order to distinguish its business and goods. Under the said corporate name, the plaintiff company is maintaining its corporate identity, and its products/services are sold in the market all over the world under the trademark INFOSYS. The word INFOSYS is being used openly, continuously and extensively by the plaintiff in the course of trade as its trade mark as also as its trade identity and corporate name for more than last two decades. The expression INFOSYS, which is inherently capable of distinguishing the plaintiff's trade identity, goods and services by virtue of its extensive use, has become distinctive of the plaintiff. The software developed by the plaintiff has acquired considerable recognition in the international and domestic markets vis-a-vis the mark INFOSYS. The plaintiff, for better consumer services, has its regional offices and sales outlets at various places in India including Delhi. To cater to its international needs, the plaintiff company has overseas sales offices at over 10 centres in the US and also in Canada, Germany, Japan, U.K. and the Netherlands, Australia, Singapore, Muscat and Dubai. A few of the clients of the plaintiff include General Electric, Reebok, Nestle, Nortel, Canara Bank, ICICI Bank and State Bank of Mysore. The plaintiff presently employs more than 8250 high caliber software professionals.
5. Under the trademark INFOSYS, internationally acclaimed packages targeted towards the banking sector, telecommunications, manufacturing and distributing, are developed and marketed by the plaintiff. The plaintiff is rated one of the fastest growing companies for Information Technology in India. The entire range of commercial activities of the plaintiff company are carried on under its trade mark INFOSYS and the corporate name of the plaintiff company Infosys Technologies Ltd. has become internationally recognised. For the high standards of quality maintained for its products, the plaintiff has been awarded ISO 9001 and Tick IT certificates in 1993. The company has earned a worldwide reputation for its products and services and has been awarded the SEI CMM Level V Certification, a level of quality achieved by only 18 companies worldwide. As a result, the trade mark/name INFOSYS has become distinctive of the plaintiff. The consumers in India as well as in other parts of the world exclusively associate the mark/name INFOSYS with the plaintiff and none else.
6. In order to accord statutory protection to the plaintiff's trade mark, the plaintiff has applied for and obtained registration for the trade mark INFOSYS in the following classes:

Trade Mark Regn. No. 475269

Date of Registration: 15.7.1987

Class: 16

Goods: Computer stationery, computer manuals, printed matter for computer instructions and teaching materials

Trade Mark Regn. No. 475267

Date of Registration: 15.7.1987

Class: 9

Goods: Computer hardware, computer interface, peripherals, electronics telex interface

Trade Mark Regn. No. 484837

Date of Registration: 27.1.1988

Class: 7

Goods: Machines, machine tools, and motors (not for land vehicles)

7. It is also claimed that plaintiff has been spending considerable amounts of money for advertisements and sale promotional activities. The worldwide revenue of the plaintiff in the year 1993-94 was Rs. 28.9 crores which has risen to Rs. 3607.72 crores by 2002-2003. The promotional expenditure incurred by the plaintiff in 1993-94 was Rs. 22,67,000/-, which has progressively increased over a period of time and in 2002-03, the expenditure under this head was Rs. 266,34,00,000/-. It is stated that because of extensive sales as well as sale promotion, the mark/name INFOSYS has become distinctive of the plaintiff and the mark/name has become inextricably linked with the plaintiff in the eyes of general purchasing public all over the world.

8. The defendants are also engaged in computer business and are selling computer products and services. It is alleged that towards the beginning of June 2003, the plaintiff for the first time became aware from the website hosted by the defendants under the domain name www.blitzerinfosys.com that the defendants were carrying on a business under the trade mark/trade name/corporate name INFOSYS. The plaintiff subsequently conducted an investigation and discovered that the defendants were conducting its business and selling its goods/offering its services under the trade mark/name INFOSYS. In these circumstances, legal notice dated 18.6.2003, which is marked as Ex.P-3, was issued. The defendants vide letter dated 30.6.2003, which is marked as Ex.P-4, refused to comply with the aforesaid requests. The plaintiff allowed sufficient time and opportunity to the defendants to rectify their unlawful acts in infringing the plaintiff's trade mark and common law rights. Thereafter, plaintiff made inquiries and came to learn that the defendants were attracting customers inter alia through their website www.blitzerinfosys.com and the mark INFOSYS was posted on such website prominently. Treating it as deliberate and mala fide intention on the part of the defendants, who had adopted trade mark/name INFOSYS to trade upon the goodwill and reputation of the plaintiff, the plaintiff was constrained to file the present suit. Along with the suit, the plaintiff also filed application under Order XXXIX Rule 1 and 2 in which ad interim injunction was granted on 22.9.2003. On receiving summons of the suit, the defendants, as noted above, did not contest the matter and rather settled the matter whereby they agreed to suffer the decree and even application under Order XXIII Rule 3 was filed which is duly signed by the defendant Nos. 1 and 2 and also supported by their affidavits. However, thereafter, they did not appear and, therefore, plaintiff has filed his evidence.

9. In view of the aforesaid clinching evidence, un rebutted testimony and conduct of the defendants in filing the application under Order XXIII Rule 3 CPC admitting the case of the plaintiff, it is clear that the defendants' use of trade mark/name INFOSYS amounts to infringement of the plaintiff's registered trademark numbers. The plaintiff is, therefore, entitled to the decree as prayed. Decree in terms of the prayer clause (i) to (iii) of para 29 of the petition is passed in favor of the plaintiff. In view of the conduct of the defendants, compensatory damages in the sum of Rs. 3,00,000/- are also granted in favor of the plaintiff and against the defendant, going by the dicta laid down by this Court in *Microsoft Corporation v. Deepak Raval* being CS (OS) No. 529/2003 decided on 16.6.2006. The plaintiff shall also be entitled to costs.

10. Decree be drawn accordingly.