

MANU/DE/4293/2011

Equivalent Citation: 184(2011)DLT46, 184(2011)DLT46, 2012(127)DRJ192, MIPR2011(3)297, 2013(53)PTC568(Del)

IN THE HIGH COURT OF DELHI

CS (OS) No. 576/2007

Decided On: 17.10.2011

Appellants: **Bharti Airtel Ltd & Ors.**

Vs.

Respondent: **Mr Rajeev Kumar & Ors.**

Hon'ble Judges/Coram:

Hon'ble Mr. Justice Manmohan Singh

Counsel:

For Appellant/Petitioner/Plaintiff: Ms. Pratibha M. Singh, Adv.

For Respondents/Defendant: None

Subject: Intellectual Property Rights

Acts/Rules/Orders:

Trade Marks Act, 1999 - Section 28, Trade Marks Act, 1999 - Section 29

Cases Referred:

Bharti Televentures and Ors. vs Anil Kohli and Ors. in Suit No 103/2004; Bharti-Televenture and Ors. vs Vijay K Bharti and Ors. in CS (OS) 245/04; Bharti Televentures Ltd vs Somnath Bharti Ltd and Ors. in CS (OS) 895/2001; Bharti Airtel Ltd vs Michael welt and Ors. in CS (OS) 1101/2006; Bharti Cellular Ltd and Ors. vs Mr. Santosh Birajdar and Ors. in CS (OS) 246/2001; Bharti Televentures Ltd. vs Agri Lacusand Caelum LLCand Ors. in CS (OS) 279/2006; Bharti Televenture Ltd and Ors. vs Mr Michael Welt and Ors. in CS(OS) 1101/2006

Case Note:

Trade mark - Infringement - Section 29 of the Intellectual Property Rights, 1999 — Infringement of Registered Trade mark - Whether Defendants' were guilty of infringement of the Plaintiffs trade mark by using the trade mark "Bharati" and "Retail"?

Held, it was submitted that trade mark "Bharati" was registered in class 38 including various other classes. The application for retail business was also pending. The trade mark "Bharti" being a registered trade mark, the use of the said trade mark in relation to any similar goods or services results in infringement of the registered trade mark. The word "Bharti" combined with the word "retail" was exclusively associated with the Plaintiffs and their Group. The registration of the said domain names was in complete infringement of the rights of the Plaintiffs apart from constituting infringement of the trade marks of the Plaintiffs.

Trade mark - Passing off - Section 29 Infringement of Registered Trade mark — Whether Defendants' were liable for passing off as they have registered the trade mark which belongs to the Plaintiff?

Held, the Defendants herein had registered the domain name bhartiretail.com and bhartiretail.in illegally and without any authorisation by the Plaintiffs. The use of the combination of words Bharti and Retail was likely to cause confusion among the internet users especially in light of the fact that the Plaintiff was expanding the retail business as a separate business. The domain names would cause confusion and the internet users might think that the Defendants were associated with the Plaintiffs in some manner. If the domain name was taken by any competing interest, the same could irreparably harm the Plaintiff and its business. It was obvious that the registration of the impugned domain names were completely in bad faith as defined in the UDRP and INDRP.

Trade mark - Unfair Competition and Dilution - Section 29 Infringement of Registered Trade mark - Whether the Defendants' usage of the trade mark name 'Bharati' had constituted Unfair Competition and Dilution of trade mark?

Held, Defendants had registered the trade mark to gain monetary benefits and to unfairly compete with the Plaintiffs by selling the same to some competitor. It was in fact in the interest of the public that the Defendants was not allowed to use the mark BHARTI in any manner whatsoever, as a remote chance of confusion can be dangerous for internet users. The use of the mark "Bharati" by the Defendants was also likely to result in blurring and tarnishment. It is well established that blurring between two trade domain names results in dilution of the mark. Moreover, the Plaintiffs had carefully and vigilantly ensured that there was no illegal use of the mark "Bharati" by registering their trade marks in India. Under such circumstances, the blurring of the Plaintiffs' mark/business with the Defendant will enormously prejudice the time and effort expended by the Plaintiffs in the mark "Bharti". The same also results in dilution of the well-known Plaintiffs' mark "Bharti". Trade mark - Injunction sought - Section 29 Infringement of Registered Trade mark - Whether the Plaintiff was entitled for a permanent injunction restraining Defendants from using the trade name "Bharati"?

Held, it appeared that Plaintiffs were the lawful owners and proprietor of the marks "Bharati" and thus the only legitimate claimants to the domain names "bharatiretail.com" and "bharatiretail.in". Under such circumstances, the Defendants were liable to be restrained by an order of permanent injunction as prayed for by the Plaintiffs.

Ratio Decidendi:

"If a mark is the exclusive property of the Plaintiffs then no other party has a right to adopt the said mark or any other mark either as a trade mark, or as a domain name or as a name of any company/firm. "

JUDGMENT

Manmohan Singh, J.

1. Plaintiff No. 1 is Bharti Airtel Ltd. (earlier known as Bharti Televenture Ltd.). The plaintiff No. 2 is Bharti Overseas Trading Company now known as Bharti Enterprises is a registered partnership firm. The plaintiff No. 3 is Bharti Retail Pvt. Ltd.

2. The plaintiffs have filed the present suit for permanent injunction restraining infringement of registered trade mark "BHARTI" by registration of domain names "BHARTIRETAIL.COM" and "BHATIRETAIL.IN" and for passing off, acts of unfair competition, dilution and damages against the defendants.

CASE OF THE PLAINTIFFS

3. The plaintiffs are a part of the business group known as the Bharti group of Companies.

4. The Mark BHARTI was adopted by the plaintiffs in the year 1983 and the same has been in continuous use since then. The total numbers of companies at the time of filing of the present suit with the word/mark "Bharti" as the prominent part of the trading style/corporate name are more than fifteen.

5. The details of names of the said companies and the respective date of incorporation are as under:-

Bharti Overseas Trading Company	1980
BhartiInfotel Private Ltd (formely known as Bharti Enterprises Pvt Ltd and name changed to BhartiInfotelPvt w.e.f 3.6.2006	4.3.1983
Bharti Telecom Ltd.	29.7.1985
Bharti Cellular Ltd (merged with BhartiAirtel Ltd w.e.f 2005)	20.3.1992
Bharti Broadband Ltd (formely known as Comnet Max Limited and name changed to Bharti Broadband Limited w.e.f 23.6.2005)	10.11.1993
BhartiHexacom Limited	28.4.1995
BhartiAirtel Limited (formerly known as Bharti Tele-Ventures Limited and name changed to BhartiAirtel Limited w.e.f. 24.4.2006)	7.7.1995
Bharti Global Ltd	2.9.1997
BhartiComtel Ltd	5.12.1997
BhartiTeletech ltd	30.3.1999
BhartiTelesoft Ltd	7.5.1999
BhartiAquanet Ltd	3.10.2000
BhartiAxa Life Insurance Company Ltd	27.10.2005
BhartiTelemedia Ltd	30.11.2006

BhartiInfratel Ltd	30.11.2006
Bharti Retail Pvt Ltd	7.2.2007
Bharti Resources Pvt Ltd	7.2.2007

6. It is submitted by the plaintiffs that the Bharti Group of Companies is one of the leading private sector companies in the country. Its businesses vary from telecommunications, insurance, manufacture of telephone equipment, information technology, Agri-products exports etc.

7. The trade mark "Bharti" after adoption in 1983 and has since then formed a prominent, inalienable and important part of the plaintiffs' group and its businesses.

8. The Bharti Group is a leader in the field of telecommunications in India with more than 37.25 million customers. The plaintiffs group provides various kinds of telecommunication services including cellular services, landline services. It also provides broad-band and internet services. The plaintiffs' business and growth is one of the success stories of Indian business and the Group is now expanding from telecommunications in India to international operations as also following into various other businesses.

9. Apart from incorporating the company i.e., plaintiff No.3, the plaintiffs also registered the domain name "bharti-retail.com" and "bharti-retail.in". The original printouts of WHOIS search result of the plaintiffs' domain name "bharti-retail.com" and "bharti-retail.in" have already been filed. These were created on 20.02.2007. The same have now been renewed as well and, therefore, the original print of WHOIS search result showing the present position of plaintiffs' domain name "bharti-retail.com" and "bharti-retail.in" have been filed.

10. It is alleged by the plaintiffs that the plaintiffs are the proprietors of the mark BHARTI since the year 1983. The plaintiffs have spent enormous amounts of money in advertising and promoting their activities under the name/ mark BHARTI and have sponsored numerous events including cricket matches. The mark BHARTI is the most essential and prominent feature of the complainant's/plaintiffs' trade and corporate name. The word BHARTI has become synonymous with the business of the plaintiffs and is associated exclusively with them. The said word BHARTI has in the context of any business in India acquired a secondary meaning and is exclusively associated with the plaintiffs.

11. The mark BHARTI is the exclusive property of the plaintiffs and no other party has a right to adopt the said mark or any other mark either as a trademark, or as a domain name or as a name of any company/firm. The plaintiffs have applied for the registration of the trademark BHARTI under various classes and the same are now registered. It is further submitted that the details of the trade mark registrations in the mark "BHARTI" in various classes in favour of the plaintiffs' are as follows:-

S.No	T.M. No	Particulars	Class	Date	STATUS
1.	890359	I'm PROUD TO BE A BHARTI-Label	9	7.12.1999	Registered
2.	993500	BHARTI(label New Corporate logo)	5	28.2.2001	Registered
3.	993494	BHARTI(label New Corporate logo)	9	28.2.2001	Registered
4.	993498	BHARTI(label New Corporate logo)	16	28.2.2001	Registered
5.	993501	BHARTI	28	28.2.2001	Registered
6.	993495	BHARTI (label) building telecom- building partnerships	9	28.2.2001	Registered
7.	993499	BHARTI	16	28.2.2001	Registered
8.	993502	BHARTI	28	28.2.2001	Registered
9.	1256049	BHARTI	38	18.12.2003	Registered
10.	1291327	BHART LIVE-word per se	38	21.6.2004	Registered

12. It is stated that the use of the mark BHARTI by any third party constitutes infringement of trademark under section 28, 29 of the Trade Marks Act, 1999. The plaintiffs not only have common law rights but also a statutory right to protect the mark BHARTI.

13. As per plaintiffs, they also have various domain name registrations in their favour which consist of the word BHARTI. Original printout of WHOIS search of plaintiffs; domain name www.bharti.com has already been filed. The same has now been renewed as well and therefore, the original printout of WHOIS search showing present position of the said domain name have been annexed.

14. A list of few such domain names of the plaintiffs are set out hereunder:

S.No	Name
1.	Bharti.com
2.	Bhartient.com
3.	Bhartitelesoft.com
4.	Bhartienterprises.com
5.	Bhartigroup.com

6.	Bharticellular.com
7.	Bhartimobile.com
8.	Bhartifoundation.com
9.	Bhartihealthcare.com
10.	Bharti Televentures.com
11.	Bhartiindiaone.com
12.	Bhartiinfotrac.com
13.	Bhartiinfotech.com
14.	Bhartibroadband.com
15.	Bharti-infotel.com
16.	Bhartiteletech.net
17.	Bharti-indiaone.com.
18.	Bhartifoundation.org
19.	Bhartienterprises.info
20.	Bhartitelesonic.com
21.	Bharti.co.in
22.	Bharti.in
23.	Bhartilive.in
24.	Bhartifoundation.net
25.	Bhartifoundation.in
26.	Bhartifoundation.org.in
27.	Bhartiartel.in
28.	bhartiartel.co.in
29.	bhartiartel.org
30.	bhartiartel.org.in
31.	bhartiartel.net
32.	bhartiartel.net.in
33.	bharti-airtel.in
34.	bharti-airtel.co.in
35.	bharti-airtel.org
36.	bharti-airtel.org.in
37.	bharti-airtel.net
38.	bharti-airtel.net.in
39.	Bhartiarteltd.in
40.	Bhartiarteltd.com
41.	Bhartiarteltd.co.in
42.	Bhartiarteltd.org
43.	Bhartiarteltd.org.in
44.	Bhartiarteltd.net
45.	Bhartiarteltd.net.in
46.	Bharti-comtel.in
47.	Bharticomtel.in
48.	Bharticomtel.co.in
49.	Bharticomtel.net
50.	Bharti-retail.com
51.	Bharti-retail.in

15. It is submitted by the plaintiffs that the trade mark "Bharti" has also achieved a huge goodwill and reputation in view of the large section of the public which has invested in the company which is also a listed company on the Bombay Stock Exchange and the National Stock Exchange. The turnover of the plaintiffs' Group for the last financial year (i.e. year ended March 31, 2006) exceeded Rs.11,725.50 crores. The corresponding expenditure on marketing and sales for last year is approximately Rs.833.5 crores.

16. The trade mark "Bharti" and "Bharti" logo is used almost in all the advertisement and the publicity material, corporate brochures, etc. The mention of the word "Bharti" today clearly associates with the plaintiffs' group and its businesses. Even the first page of the Google search on the words "Bharti" and "Bharti Retail" shows direct association with the plaintiffs group companies.

17. The plaintiffs' Bharti group have partnership /business ventures/ alliances with several world leaders in the field of IT and telecommunications. These include Seimens, Singapore Telecom, IBM, Nokia, etc. The plaintiffs have also entered into agreements for cash and carry business with Wal-Mart, which is the 2nd biggest retail corporation in the world.

18. The case against the defendants as alleged by the plaintiffs is that in February 2007, when the plaintiffs were in the process of trying to register domain names for the retail business they were shocked and surprised to see that the defendant No.1 had registered the 2 domain names with the words "Bharti" and "Retail" viz. "bhartiretail.com" and "bhartiretail.in". This came to the knowledge of the plaintiffs in the 2nd week of February and immediately on 19.02.2007 the plaintiffs addressed a notice to the defendant No.1 calling upon him to transfer the domain names to the plaintiffs. Original Print outs of the first notice vide e-mail dated 19.2.2007 sent to the defendant No.1 along with original letter/envelope received from the post office with the inscription "Addressee Refused" are already on record.

19. Later on the plaintiffs received a one line reply from the defendants on 05.03.2007 that the defendant No.1 will reply through his legal counsel. Original Printout of the said e-mail is already on record. However, no such reply through his legal counsel has been received till date.

20. It is alleged by the plaintiffs that the plaintiffs' legal manager also spoke to the defendant No.1 on a couple of occasions; however, despite repeated attempts no progress had been made in relation to the transfer. Original printouts of the e-mails dated 16.3.2007 and 22.3.2007 addressed in this regard by the plaintiff to the defendant No.1 have been filed. The defendant No.1 has expressed his intention of demanding a huge sum of money for transferring the domain names.

21. It is submitted by the plaintiffs that defendant No. 1 is an illegal and unauthorized holder/squatter of two domain names "bhartiretail.com" and "bhartiretail.in". "Bhartiretail.com" is registered by defendant No. 1 through defendant No. 2 which is the registering authority. Bhartiretail.in has been registered through defendant No. 3 which is the National Internet Exchange of India, located at Delhi.

22. It is also alleged that the Bad Faith in the registration of this domain name "bhartiretail.com" is also evident from the fact that though initially the defendant No.1 was shown as the registrant of this domain name, after receiving the notice from the plaintiff, the defendant No.1 has chosen for a privacy scheme by which his contact details on the said domain name were hidden. The original print out of WHOIS search result of the domain name "bhartiretail.com" registered by defendant No. 1 is already on record.

23. It is averred by the plaintiffs that though WHOIS search today does not reveal the defendant No.1's name as the registrant but the plaintiffs have clear knowledge of the fact that the defendant No.1 had registered it and the plaintiffs had, in fact, addressed a notice based on this. This is not even denied by the defendants in their one line reply. On typing Bhartiretail.com, one reaches to the website which is hosted by Netfirms.

24. It is stated that no bonafide use is being made by the defendants of the said two domain names. The defendant No.1 is obviously a squatter who is expecting to make money by squatting on the two domain names. Such squatting and blocking of domain names is completely illegal and unlawful. The same is illegal not only under the common law of passing-off but also under the well know Dispute Resolution Policy which is applicable to all.com domain names(UDRP) and also under the INDRP under which the.in are registered.

25. It is also stated that the use of mark BHARTI by the defendants or any third party constitutes passing-off of the defendants website as being associate with the plaintiffs. The plaintiffs are the lawful owners and proprietors of the mark "Bharti" and thus they are the only legitimate claimants to the domain names "bhartiretail.com" and "bhartiretail.in".

26. The present suit was filed on 29.03.2007 and on 30.03.2007 an ad interim ex-parte injunction order was passed in favour of the plaintiffs and against the defendants. Thereafter, vide order dated 03.11.2008 the said interim order dated 30.03.2007 was made absolute and the defendant No.1 was proceeded ex-parte and on 08.09.2008 the learned counsel for the plaintiffs Ms. Pratibha M. Singh had also made a statement in court that the claim would not be pressed against the defendant Nos. 2 and 3. The plaintiffs filed the ex-parte evidence by way of affidavit of PW-1 Ms Vijaya Sampath.

27. In her affidavit which is marked as Ex. PW-1/A, PW-1 Ms. Vijaya Sampath has proved the following documents:

(a) Copy of certificate of change of name of Plaintiff No 2 company. Exhibit PW1/1.

(b) Certified true copy of Board of Resolution authorizing Ms Vijaya Sampath, Director(Legal) on behalf of Plaintiff No 1. Exhibit PW1/2.

(c) Copy of Board of Resolution authorizing Vijaya Sampath on behalf of Plaintiff No 3, Exhibit PW1/3.

(d) Copy of Power of Attorney authorizing Vijaya Sampath on behalf of Plaintiff No 2, Exhibit PW1/4.

(e) Various coloured copies of press clippings and original print outs evidencing the national and international acclaim and expansion of business relating to the Plaintiff and its group companies including the retailing business. Exhibit PW1/5.

(f) Copy of Certificate of Incorporation of Bharti Retail Pvt. Ltd along with Memorandum of Association and Article of Association. Exhibit PW1/6.

(g) Original printout of WHO IS Search result of the Plaintiffs domain name bharti-retail.com and bharti-retail.in. Exhibit PW1/7.

(h) Original printout of WHO IS search result showing the present position of Plaintiffs domain name bharti-retail.in i.e. after renewal, Exhibit PW1/8.

(i) Original printout of WHO IS search result showing the present position of Plaintiffs domain name bharti-retail.in i.e. after renewal, Exhibit PW1/9.

(j) Copies of trade mark registration certificates and various applications of the Plaintiffs containing the trade mark BHARTI(already on record- pgs 2 to 9 of the list of documents) Exhibit PW1/10(colly)

(k) Some of the copies of trade mark registration certificates of the Plaintiffs, a legal processing certificate along with original printouts of trade mark application status showing Plaintiffs registered trade mark "BHARTI"(annexed) Exhibit PW1/11(colly)

(l) Original printout of WHO IS search report of plaintiffs domain name bharti.com(already on record-pgs 10 to 12 of the list of documents) Exhibit PW1/12

(m) Original printout of WHO IS search showing the present position of Plaintiffs domain name bharti.com(annexed) Exhibit PW1/13

(n) Original printouts from the Plaintiffs website bhartiartel.in (already on record- pgs 13 to 15 of the list of documents) Exhibit PW1/14(colly)

(o) Original printout of first page of google search on Bharti and Bharti Retail (already on record-pgs 112 to 113 of the list of documents) Exhibit PW1/15(colly)

(p) Original printout of the first notice vide e-mail dated 19-2-2007 addressed to the defendant no 1 along with original letter/envelope sent and received from the post office with the inscription "Addressee Refused" (already on record - pgs 116 to 119 of the list of documents) Exhibit PW1/16(colly)

(q) Original printout of the reply vide e-mail dated 5.3.2007 by defendant no 1 to the notice of the plaintiff (already on record - pgs 120 to 122 of the list of documents) Exhibit PW1/17

(r) Original printouts of the e-mails sent by the plaintiff dated 16.3.2007 and 22.3.2007 to the defendant no 1 (already on record- pgs 123 to 128 of the list of document) Exhibit PW1/18(colly)

(s) Original printout of WHO IS search result of defendants impugned domain name bhartiretail.com(already on record-pgs 141 to 142 of the list of documents) Exhibit PW1/19

(t) Original Printout of WHO IS search result showing the present position of defendants impugned domain name bhartiretail.com i.e. after renewal (annexed) Exhibit PW1/20

(u) Original Printout on Domain Privacy Group Inc(already on record- pgs 129 to 134 of the list of documents) Exhibit PW 1/21

(v) Original Printout of the status of the website bhartiretail.com which shows the opening page of net firms (already on record - pg 114 of the list of document) Exhibit PW1/22

(w) Original Printout of WHOIS Search result of the defendants impugned domain name bhartiretail.in (already on record - pg 143 of the list of documents) Exhibit PW1/23

(x) Original printout of the WHOIS Search Result showing the present position of the defendants impugned domain name bhartiretail.in i.e. after renewal (annexed) Exhibit PW1/24

(y) Original printout of status of bhartiretail.in where the website is under construction (already on record - pg 115 of the list of documents) Exhibit PW1/25

(z) UDRP Policy (already on record- 135 to 140 of the list of documents) Exhibit PW1/26

(aa) Original printout of INDRP Policy (annexed)) Exhibit PW1/27

(bb) Certified copy of the order in Suit No 103/2004, Bharti Televentures and Ors. v Anil Kohli and Ors. (annexed) Exhibit PW1/28

(cc) Copy of the Judgment in CS(OS) 245/04, Bharti- Televenture and Ors. v Vijay K Bharti and

(dd) Certified copy of the order dated 2nd March 01 in CS(OS) 246/2001, Bharti Cellular Ltd and Ors. v Mr Santosh Birajdar and Ors.(annexed) Exhibit PW1/30

(ee) Certified copy of the order dated 29.11.2002 in CS(OS)895/2001, Bharti Televentures Ltd v Somnath Bharti Ltd and Ors.(annexed) Exhibit PW1/31

(ff) Certified copy of the order and judgment dated 15th March 2007 in CS(OS)279/2006 Bharti Televentures Pvt Ltd v Agri, Lacus and CaelmLLC and Anr.(annexed) Exhibit PW1/32

(gg) Certified copy of the order dated 21.8.2006 in CS(OS) 1101/2006 Bharti Airtel Ltd v Michael welt and Ors.(annexed) Exhibit PW 1/33

(hh) Copy of the letter dated 7th May 2007 from counsel for defendant no 2 to the counsel for Plaintiffs(annexed) Exhibit PW1/34

28. The defendant No.3 has also been proceeded ex parte vide order dated 02.11.2007 of this Court. Learned counsel for the plaintiffs received a letter dated 07.05.2007 on behalf of counsel for defendant No.2, stating that they are ready to abide by any orders passed by this Court.

29. Despite service, the defendants chose not to appear in the Court neither they have filed the written statement. The ex-parte evidence advanced by the plaintiffs has gone unrebutted, as the defendants have failed to cross-examine the plaintiffs' witness. Thus, the case of the plaintiffs is taken as proved.

30. No doubt, the trade mark "Bharti" is a well known mark in India and abroad. The reputation of the said mark is unquestioned. Any illegal use of the mark is liable to be curbed by the orders of this Court. The use of the word "Bharti" results in violation of the statutory rights and the common law rights of the plaintiffs. Such use constitutes :

- (a) Infringement of the registered trade mark;
- (b) Passing-off and bad faith registrations; and
- (c) Unfair Competition and Dilution.

31. Infringement of registered trade mark: It is submitted that the trade mark "Bharti" is registered in class 38 including various other classes. The application for retail business is also pending. The trade mark "Bharti" being a registered trade mark, the use of the said trade mark in relation to any similar goods or services results in infringement of the registered trade mark. The word "Bharti" combined with the word "retail" is exclusively associated with the plaintiffs and their Group. The registration of the said domain names is in complete infringement of the rights of the plaintiffs apart from constituting infringement of the trade marks of the plaintiffs.

32. Passing-off and Bad Faith registrations- It is submitted that the use of the mark BHARTI by any third party constitutes passing off of the defendants' website as being associated with the plaintiffs. The defendant No.1 herein has registered the domain name bhartiretail.com and bhartiretail.in illegally and without any authorization by the plaintiffs. The use of the combination of words Bharti and Retail is likely to cause confusion among the internet users especially in light of the fact that the plaintiff is expanding the retail business as a separate business. The domain names would cause confusion and the internet users may think that the defendants are associated with the plaintiffs in some manner. If the domain name is taken by any competing interest, the same could irreparably harm the plaintiff and its business. It is obvious that the registration of the impugned domain names are completely bad faith registrations as defined in the UDRP and INDRP. It is argued that the domain names registered by the defendants can be misused in the following manner:

- i. If the domain name is taken by any competing interest, the same could irreparably harm the plaintiffs and their business.
- ii. The domain name could be used to host a website criticizing the plaintiffs or defaming the plaintiffs in some manner or the other.
- iii. The domain name could be used to hyperlink to any other website which cannot be prevented by the plaintiffs in any manner whatsoever.
- iv. Any consumer may presume that the website hosted on such a domain name belongs to the plaintiffs.

33. It is also argued that from the response of the defendant No.1 it is also evident that the defendant No.1 is expecting to monetarily gain from the domain names and he has no bonafide interest in the same. Such blocking merely for monetary gain or to block the legitimate use by the plaintiffs is a Bad Faith Registration.

34. Unfair competition and Dilution: It is stated that the use of the mark BHARTI by the defendants constitute Acts of Unfair Competition, in as much as the defendant No.1 has registered it to gain monetarily or to unfairly compete with the plaintiffs by selling the same to some competitor. It is in fact in the interest of the public that the defendant No.1 is not allowed to use the mark BHARTI in any manner whatsoever, as a remote chance of confusion can be dangerous for internet users.

35. The use of the mark BHARTI by the defendant No.1 is also likely to result in blurring and tarnishment. The defendant No.1 has no connection whatsoever with the plaintiffs. It is well established that blurring between two trade domain names results in dilution of the mark. Moreover, the plaintiffs have carefully and vigilantly ensured that there is no illegal use of the mark BHARTI by registering their trade marks in India. Under such circumstances, the blurring of the plaintiffs' mark/business with the defendant will enormously prejudice the time and effort expended by the plaintiffs in the mark BHARTI. The same also results in dilution of the well-known plaintiffs' mark BHARTI.

36. The plaintiffs have diligently protected the mark BHARTI by taking action against illegal use of the same. Details of some of such proceedings filed by the plaintiffs and their status is set out as hereunder.

S.No	Name of the Case	Relevant Domain Name	Status
1.	Bharti Televentures vs Anil Kohli	Bharti global.com	The Hon'ble High Court of Delhi granted an ex-parte injunction in favour of Bharti Group on Bhartiglobal.com on 3.5.2001. Suit was decreed as per compromise on 18.8.2005.
2.	Bharti Televentures vs Vijay Kr Bharti, Suit No 245/04	Bharti.com and Bharti.net	A final judgment was passed by S.K. Savaria , ADJ. The defendants were proceeded ex-parte and a decree of mandatory injunction was passed restraining the defendants from using the domain names BHART.COM & BHARTI.NET. The Plaintiffs were also awarded damages of Rs 5,50,000/- as well as costs.
3.	Bharti vs SantoshBirajdar, Suit No 246/2001	Bharticellular.com Bhartimobile.com Bhartifoundation.com Bhartihealthcare.com	The suit was disposed off in terms of a compromise in 2001.The domain names bharticellular.com , bhartimobile.com, bhartifoundation.com and bhartihealthcare.com were transferred to the plaintiff.
4.	Bharti Televentures vs Somnath Bharti & Ors., Suit No 895/2001	Bharti infotech.com and bharti group.com	The suit was disposed off in terms of a compromise in 2002. The domain names bharti infotech.com and bharti group.com have been transferred in the name of plaintiffs.
5.	Bharti TeleventuresPvt Ltd vs Agri, Lacus & CaelumLLC & Anr. CS(OS) 279/06	Bhartiairtel.com	Vide order dated 15th March 2007suit was decreed in favor of the Plaintiffs and against the defendant for permanent injunction restraining infringement of registered trade mark, passing off, dilution and damages in relation to the domain name "BHARTIAIRTEL.COM"
6.	Bharti TeleventuresP.Ltdvs Marco Signorini & Another CS(OS) No 272/06	Bharti-airtel.com	On 1.2.2006 Court granted injunction restraining use of the domain name bharti-airtel.com or any other domain name consisting of marks. Subsequently the suit was decreed in terms of the settlement
7.	BhartiAirtel Ltd vs Michael Welt & Ors. CS(OS) 1101/2006	Bhartilive.com	The Hon'ble High Court of Delhi passed an ex parte interim injunction on 23.5.06 restraining the defendants, or anyone who may be acting for and on his behalf in any manner from using the domain name bhartilive.com or any other domain name consisting of the marks bharti in any form whatsoever and further restrain the defendant from continuing to use the domain name for the website which is completely unconnected with Bharti. Subsequently vide order dated 21.8.2006, suit was disposed off in terms of the settlement and the impugned domain was transferred to the plaintiffs

37. The certified copies of orders in the aforementioned suits are being annexed herewith and marked as follows:-

1. Bharti Televentures and Ors. vs Anil Kohli and Ors. (Suit no 103/2004) -order dated 18-8-2005 - Exhibit PW1/28
2. Bharti Televentures Ltd and Ors. vs Sh. Vijay K Bharti and Ors.(Suit No 245/04)- judgement dated 3-1-2005- Exhibit PW1/29
3. Bharti Cellular Ltd and Ors. vs Mr Santosh Birajdar and Ors.(Suit no 246/01) - order dated 2-3-2001 - Exhibit PW1/30
4. Bharti Televentures Ltd vs Mr Somnath Bharti and Ors.(suit no 895/2001)- order dated 29-11-2002 - Exhibit PW1/31
5. Bharti Televentures Ltd vs Agri Lacus and Caelum LLC and Ors.(suit no 279/2006)- order and judgement dated 15-3-2007 - Exhibit PW1/32
6. Bharti Televenture Ltd and Ors. vs Mr Michael Welt and Ors.- order dated 21-8-2006 - Exhibit PW1/33

38. In view of the above, it appears that the plaintiffs are the lawful owners and proprietor of the marks "Bharti" and thus the only legitimate claimants to the domain name "bhartiretail.com" and "bhartiretail.in". Under such circumstances, the defendants are liable to be restrained by an order of permanent injunction as prayed for. The plaintiffs are also entitled to damages as prayed in the plaint. The said domain names are also liable to be transferred in favour of the plaintiffs.

39. Thus, the plaintiffs are entitled for a decree for permanent injunction in terms of para 30 (a) to (c) of the plaint which read as under:-

30(a) A decree of permanent injunction restraining the defendants, or anyone who may be acting for and on its behalf, in any manner, from using the domain names "bhartiretail.com" and "bhartiretail.in" or any other domain name or mark consisting of the marks "Bharti" in any form whatsoever and further restrain the defendants from continuing to use the domain names for the website which is completely unconnected with the plaintiff.

(b) A decree of permanent injunction restraining the defendant No.1 or its principal officers, servants, agents or anyone who may be acting for and on its behalf, in any manner, from transferring, alienating or offering for sale the domain names "bhartiretail.com" and "bhartiretail.in" to any third party and from creating any third party interest in the said domain names and directing the defendants No.2 and 3 to maintain status quo in relation to their respective domain names by keeping the same ON HOLD till prayer A and C are granted.

(c) An order of mandatory injunction be granted against the defendants directing them to immediately transfer the domain names "bhartiretail.com" and "bhartiretail.in" to the plaintiffs.

40. As regards the relief of damages are concerned which is claimed in para (d), this relief is disposed of with the direction that the plaintiffs are entitled for punitive damages to the tune of Rs.1 lac which is granted against defendant No.1 only. The suit is decreed with costs and the said cost would be paid by the defendant No.1. The decree be drawn accordingly. All pending applications, if any, stand disposed of.