

MANU/DE/0735/2002

**Equivalent Citation:** 98(2002)DLT499

**IN THE HIGH COURT OF DELHI**

I.A. No. 8882/2001 in S. No. 1971/2001

Decided On: 05.03.2002

Appellants: **Info Edge (India) Pvt. Ltd. and Anr.**  
**Vs.**

Respondent: **Shailesh Gupta and Anr.**

**Hon'ble Judges/Coram:**

Mukundakam Sharma, J.

**Counsels:**

For Appellant/Petitioner/plaintiff: Rajiv Nayar, Sr. Adv., U. Hazarika and Pratibha M. Singh, Advs

For Respondents/Defendant: Sai Krishna, Adv.

**Subject: Intellectual Property Rights**

**Acts/Rules/Orders:**

Code of Civil Procedure (CPC) - Order 39 Rules 1, Code of Civil Procedure (CPC) - Order 39 Rules 2; Trade and Merchandise Marks Act - Section 27, Trade and Merchandise Marks Act - Section 28; Lanham Act - Section 32

**Cases Referred:**

Yahoo Inc. v. Akash Arora, 1999 PTC (19) 201; Marks & Spencer v. One-in-A Million, 1998 FSR 265; Reddaway v. Banham, 1696 A.C. 1999; Ellora Industries v. Banarsi Dass and Ors., 1981 PTC 46; Card service International Inc. v. McGee, 42 USPQ 2d 1850; Rediff Communication Ltd. v. Cyberbooth and Anr., 2000 PTC 209; Acqua Minerals Limited v. Pramod Borse and Anr., 201 PTC 619 (Del); Dr. Reddy's Laboratories Limited v. Manu Kosuri and Anr., 2001 PTC 859 (Del); Erven Warnink By and Ors v. J. Townend & Sons (Hull) Ltd. and Ors., (1979) 2 All ER; Office Cleaning Services v. Westminster Window (Court of Appeal), 1944 (2) All England Report, 269 and (House of Lords) 63 RPC 39; Gujarat Bottling Co. (Ltd.) and Ors. v. Coca Cola Co. and Ors., (1995) 5 SCC 545; Manish Vij and Ors. v. Indira Chugh and Ors.; Girnar Food & Beverages Pvt. v. Godfrey Phillips India Ltd., 2001 PTC 360 (Delhi); S.M. Dyechem Ltd. v. Cadbury (India) Ltd., 2000 PTC 297 (SC); Cadila Healthcare Ltd. v. Cadila Pharmaceuticals Ltd., 2001 PTC 541 (SC)

**Case Note:**

a) In the instant case, the plaintiff was carrying business under the domain name 'Naukri.com', while the defendant begin to use a domain name 'Naukari.com' – It was held that, if two contesting parties are involved in the same area , then there is a grave and immense possibility for confusion and deception

b) It was adjudged under Sections 27(2), 29 and 106 of the Trade and Merchandise Marks Act,1958, that the domain name is ore than an internet address and is entitled to equal protection as a trade mark –Further, with the advancement an progress in technology, services rendered in internet site have also come to be recognised and are being given protection so as to protect such provider of services from passing off the services rendered by others as his services

c) In the instant case, the plaintiff was carrying business under the domain name 'Naukri.com', while the defendant begin to use a domain name 'Naukari.com' – Both were deceptively similar –It was inferred that domain name was chosen deliberately to attract interest of the users of the plaintiff – It was prima facie bad faith within the meaning of Para 4(b)(iv) of the Uniform Domain Name Dispute Resolution Policy– Thus, it was ruled that, the plaintiff had made a case for temporary injunction

d) It was adjudged under 27(2), 29 and 106 of the Trade and Merchandise Marks Act,1958, that if a product of a particular composition is marketed in a particular area under a descriptive name, that name which distinguishes it from other competing products, the goodwill in the name of those entitled to make use of it were protected against the deceptive use of same by competitors

**JUDGMENT**

**Mukundakam Sharma, J.**

1. The plaintiff by filing the present suit has sought for a decree of permanent injunction restraining the

manupatra defendants, their servants, agents from operation any business, selling, offering for sale, advertising and/or in any manner dealing in the interest services under the trademark/domain name 'NAUKRI.COM' or any other mark/domain name, which is identical or deceptively similar to the plaintiff's trade mark/domain name 'NAUKRI.COM' and also for rendition of accounts and damages. The plaintiff has also files an application under Order 39 Rules 1 & 2 of the Code of Civil Procedure praying for an ad interim injunction restraining the defendants from operating any business and/or selling or offering for sale or advertising and in any manner dealing in the aforesaid trade mark /domain name of the plaintiff or any other trade mark/domain name, which may be identical and/or deceptively similar with the aforesaid mark/name.

2. The plaintiff adopted the name 'NAUKRI.COM' on 27.3.1997 and since then the plaintiff is carrying on its business under the aforesaid domain name, which according to the plaintiff has become one of the leading websites in India. The plaintiff has contended that the said domain name has assumed a distinctiveness as the plaintiff has chosen a Hindi word and use the same in the English script as early as in the March, 1997 in the internet world, which is dominated by the English domain names. The plaintiff has also put on record many press-clippings and write-ups to indicate that the plaintiff has established an enviable reputation, because of which the said domain name has also assumed a secondary meaning. Consequently, it is stated that in view of such advertisements and publications by the plaintiff, the said domain name 'NAUKRI.COM' has become completely associated with the plaintiff and in the internet parlance and when used with the suffix .com, the word NAUKRI has attained a secondary meaning to connote and denote the services offered by the plaintiff. The plaintiff also contended that the defendant's website jobsourceindia.com, offers similar services as that of the plaintiff's site NAUKRI.COM and, accordingly, the defendant is carrying on business in the same field and is a competitor of the plaintiff and, Therefore, with a view to damage the plaintiff's business and to capitalise on the goodwill of NAUKRI.COM, the defendant began using a similar domain name similar to the plaintiff, under the name and style NAUKRI.COM. It is alleged that the aforesaid use by the defendant of a similar domain name as that of the plaintiff was dishonest and was done with bad faith, particularly in view of the fact that the said NAUKRI.COM was merely being used as a hyperlink i.e. a link to lead any user who types NAUKRI.COM to JOBSOURCEINDIA.COM. According to the plaintiff, the said dishonest and bad faith on the part of the defendant is evident from the fact that though the defendant had registered both the domain names JOBSOURCEINDIA.COM & NAUKRI.COM in 1999 itself, it designed its home site under the name JOBSOURCEINDIA.COM and also decided to adopt and use NAUKRI.COM to attract web-surfers & innocent users for diverting the traffic to the website JOBSOURCEINDIA.COM as any user, who by mistake types NAUKRI.COM instead of NAUKRI.COM, would automatically reach the website JOBSOURCEINDIA.COM. By adopting the said diversion of traffic from the website of the plaintiff to the website of the defendant, huge loss is suffered by the plaintiff, who had invested time, money and effort in creating, developing and establishing the domain name NAUKRI.COM

3. Mr. Rajiv Nayar, Senior Advocate appearing for the plaintiff submitted that there is passing off the services and goods of the defendant as that of the plaintiff's trade mark NAUKRI.COM, which is identical to or deceptively similar to the plaintiff's said trademark/domain name. He submitted that the domain name/trade mark adopted by the defendant is deceptively similar to the domain name/trademark of the plaintiff and that the defendant is copying verbatim the format and the name of the plaintiff and that the said defendant being in the same business and field of activity as that of the plaintiff, there is grave and immense possibility of confusion and deception and, Therefore, the trade mark/domain name of the plaintiff is required to be protected and an injunction is required to be issued in terms of the prayer in the application filed by the plaintiff under Order 39 Rules 1 & 2 of the Code of Civil Procedure. It was also submitted that the defendant registered both the domain names i.e JOBSOURCEINDIA.COM and NAUKRI.COM after two years of the plaintiff registering its domain name and, Therefore, dishonesty is writ large as confusion is sought to be created by the defendant by diverting the internet traffic from the website of the plaintiff to the website of the defendant. He also stated that the facts alleged in the plaint had in the application, coupled with the documentary evidence placed on record, would reveal the dishonest intention of the defendant and that it is a case of bad faith and, Therefore, the plaintiff is entitled for grant of a temporary injunction.

4. Mr. Sai Krishna, appearing for the defendant, on the other hand, submitted that trade mark NAUKRI.COM of the plaintiff, is generic and, Therefore, it could not and is incapable of achieving the trademark significance or secondary meaning. He also submitted that the plaintiff cannot claim any protection in respect of trademark NAUKRI.COM as such domain names are incapable of performing trademark function. It was also contended that since it is a case of the plaintiff that the plaintiff's trade mark has assumed a secondary meaning, the same is required to be proved by leading evidence as the same is purely a question of fact and could be determined only after trial is over and evidence is recorded. He also submitted that since the trademark/domain name of the plaintiff could not have assumed any protection under the trademark law, Therefore, the intention of the defendant, in adopting the trade mark with a generic expression is neither deception nor there is any bad faith involved in the present case.

5. In the light of the aforesaid submissions of the counsel appearing for the plaintiff as also the counsel appearing for the defendant, I may now proceed to dispose of the application filed by the plaintiff seeking for protection under Order 39 Rules 1 & 2 of the Code of Civil Procedure on close scrutiny of the records.

6. A name used to identify an internet service is called a domain name. It is held in the decision of YAHOO.COM v. AKASH ARORA reported in 1999 (19) PTC 201 that the domain name serves the same

manupatra function as the trademark and is not a mere address or like finding number on the internet but is also entitled to equal protection as a trademark. In this connection, reference may be made to the following passage from the aforesaid decision of this court:-

"The word 'yahoo' used as a trademark/domain name by the plaintiff is to identify their internet services, which acquired distinctiveness and reputation in relation to such services. The defendant used the Yahooindia.Com as trade mark/domain name in relation to their internet services."

7. In the said case in interim injunction was granted by this court. While coming to the aforesaid decision, this court relied upon and referred to a number of decisions. Reference was also made to the case of MARKS & SPENCER v. ONE-IN-A MILLION reported in 1998 FSR 265 wherein it was held that any person, who deliberately registers a domain name on account of its similarity to the name, brand name or trademark of an unconnected commercial organisation must, expect to find himself on the receiving end of an injunction to restrain the threat of passing off, and the injunction will be in terms which will make the name commercially useless to the dealer. It was also held in the said decision that the name 'marksandspencer' could not have been chosen for any other reason than that it was associated with the well-known retailing group. The said decision further goes on to say that where the value of a name consists solely in its resemblance to the name or trade mark of another enterprise, the Court will normally assume that the public is likely to be deceived, for why else would the defendants choose it. It was also held that someone seeking or coming upon a website called <http://marksandspencer.co.uk> would naturally assume that it was that of the plaintiff.

8. It is true that under Sections 27 & 28 of the Trade and Merchandise Marks Act, the word 'services' did not find mention but the services rendered have come to be recognised for an action of passing off. However, with the enactment of a New Trade & Merchandise Act, the services rendered has been given a statutory recognition. The said new Act is yet to be notified and is yet to be enforced. Law of passing off is an action under the common law which also is given a statutory recognition in the Trade Mark Act. In the decision of Yahoo Inc. (supra), it was held that in the context and light of the various decisions and the development in the concept of law of passing off, it is too late in the day to submit that passing off action cannot be maintained as against service as it could be maintained for goods.

9. The aforesaid principle of law laid down in the case of Yahoo Inc. (supra) was followed in several other decisions of this court and other courts, to which reference shall be made during the course of the discussion herein.

10. Lord Halsbury defined the tort of passing off in Reddaway v. Banham reported in 1696 A.C. 1999. In paragraph 31 of the decision of this Court in Ellora Industries v. Banarsi Dass and Ors. reported in 1981 PTC 46, it was held that it is not always necessary that there must be in existence goods of that other man with which the defendant seeks to confuse his own. Reference in the said decision was also made to the observation of Lord Greene M.R. who, observed that "passing off may occur in cases where the plaintiffs do not in fact deal with the offending goods."

11. In Yahoo Inc. (supra) reference was also made to the aforesaid two decisions and it was held that it is obvious that where the parties are engaged in common or overlapping field of activity, the competition would take place and that if the two contesting parties are involved in the same line or similar line of business, there is grave and immense possibility for confusion and deception and, Therefore, there is probability of sufferance of damage. In Yahoo Inc. (supra) the plaintiff and the defendant were operating in the common field of activity and they were operating on the website and providing information almost similar in nature. The facts of the present case, Therefore, are somewhat similar with Yahoo Inc. (supra).

12. In Card service International Inc. v. McGEE; reported in 42 USPQ 1850, it was held that the domain name serves the same function as the trade mark and is not a mere address or like finding number on the Internet and, Therefore, it is entitled to equal protection as trademark. It was further held that the domain name is more than a mere Internet address for it also identifies the Internet site to those who reach it, much like a person's name identifies a particular person or more relevant to trade mark disputes and a company's name identifies a specific company. Accordingly, in the said case, the court granted the injunction upon consideration of the relevant law, namely, Section 32 of the Lanham Act. In the facts of the said case, it was held that Card service International's customers, who wish to take advantage of its Internet service, but do not know its domain name are likely to assume that "Card service.com" belongs to Card service International. It was further held that those customers would instead reach McGee and see a home page for "Card Service" and thereby may would assume that they have reached Card service International.

13. The ratio of the principle laid down in Yahoo Inc. (supra) was followed in several subsequent decisions, one of which is Rediff Communication Ltd v. Cyberbooth and Anr. reported in 2000 PTC 209. Reference also could be made to the decision of this court in Acqua Minerals Limited v. Pramod Borse and Anr. reported in 2001 PTC 619 and the decision in Dr. Reddy's Laboratories Limited v. Manu Kosuri and Anr. reported in 2001 PTC 859 (Del). In Rediff Communication (supra), the Bombay High Court examined the records and upon scrutinising the same, the court held that since the two websites of the plaintiff are widely publicised in the newspapers and magazines, Therefore, there is always a possibility of the first user accessing the

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defendants' website believing it to be the plaintiffs' website because of the close similarity in the domain names. It was also held that the potential users and existing users, talk about such website, products and services, and it is entirely possible and likely that on potential user being told to access the site "Rediff", he may get misled on accessing the website "Rediff" when he is looking for the website "Rediff". It was also noted that from May, 1998 to January, 1999, the same web page and services were offered by the defendants on the website "Indian Service.Com" and even at the time of deciding the aforesaid matter, the defendant continued to have an identical web page and services on "Indian Service.Com" and, Therefore, it was found that the defendant adopted the domain name Rediff with the intention to trade on the plaintiff's reputation.

14. In the said case, reference and reliance was place in the decisions of Marks & Spencer (supra) and Card service International Inc. (supra). The aforesaid decision clearly laid down the principle that the internet domain names and valuable properties and are of importance to the parties registering the same and the same is held to be valuable corporate asset.

15. A domain name is more than an Internet address and is entitled to the equal protection as that of trade mark. In internet service a particular internet site could be reached by anyone from anywhere in the world, who proposes to reach the said website. With the advancement and progress in the technology, the services rendered in the Internet site have also come to be recognised and accepted and are being given protection so as to protect such provider of service from passing off the services rendered by others as his services. In Yahoo Inc. (supra) it was held that in a matter where services rendered through the domain name in the Internet, a very alert vigil is necessary and a strict view is to be taken for its easy access and reach by anyone from any corner of the globe. It was also held that when both the domain names are identical, there is every possibility of an Internet user being confused and deceived in believing that both the domain names belong to one common source and connection, although the two belong to two different concerns.

16. It is a settled legal position that when a defendant does business under a name, which is sufficiently close to the name under which the plaintiff is trading and that name has acquired a reputation, the public at large is likely to be deceived and misled that the defendant's business is the business of the plaintiff or is a branch or department of the plaintiff.

17. In the background of the aforesaid legal position settled by various decisions of this court and other courts including the Supreme Court of the United States, let me now proceed to decide the issues raised before me in the light of the facts of the present case. The plaintiff herein adopted the domain name NAUKRI.COM on 27.3.97. Since then the plaintiff has developed the said domain name and the website. There is definitely peculiarity in the aforesaid domain as the plaintiff has adopted a Hindi word with English script. Thus, a distinctiveness could be attributed to the said domain name of the plaintiff. The plaintiff has also placed on record various clippings and write-ups in support of its claim of popularity, goodwill and reputation. I have been taken through all those press clippings and write-ups, which clearly indicate that the plaintiff has been able to establish a goodwill and reputation in its particular field of activity. The documents placed on record show that it is a very practical site focused on just one objective: Employment. It is reported therein that it is the sort of site that just had to go online, which is created by Info Edge, the plaintiff herein and that the site already flaunts hundreds of items including advertisements from companies and from people wanting job, and resumes of prospecting candidates. In another journal, it was reported that Naukri.Com could well develop into a favorite hang-out for placement agencies, personnel managers, persons looking for job switches and the unemployed. It was further reported that the guys at Info Edge (India) seems to have got their foot in firmly alright with Naukri.Com and that perhaps that is the first Indian website dedicating itself entirely to jobs and careers in India. There are similar other press reports and write-ups placed on record, which indicate that the website of the plaintiff is of the unique and distinctive character and has assumed a reputation in the market.

18. On the other hand, the defendant registered two domain names, one with the name of JOBSOURCEINDIA.COM and NAUKARI.COM, somewhere in 1999, by which time the plaintiff had assumed and achieved in its field of activity a great reputation to its credit. Both the aforesaid domain names were started by the defendant in 1999. They offer similar services as that of the plaintiff site Naukri.Com and, Therefore, to that extent the defendant is a direct competitor of the plaintiff and they work and compete with each other for getting an edge over the other.

19. It was sought to be submitted by the counsel appearing for the defendant that the word 'Naukri' cannot assume a significance of a trademark, as the same is generic. The word 'Naukri', would be a descriptive word as it denotes and describes the nature of work and business offered by the plaintiff. The plaintiff has chosen to use the domain name 'Naukri.Com', which is descriptive of the business, the plaintiff carries on i.e. it gives information to its subscribers about the availability of jobs and employment in various establishments, concerns and offices and the manner in which request for employment could be made and, Therefore, it is a service offered by the plaintiff relating to job opportunity and situation and giving guidance thereto and, Therefore, the same is a descriptive word. It is also a settled law that the distinction between the generic word and descriptive word is very thin and such word could also assume a secondary meaning by its long user by a person, who establishes his reputation in the market.

20. If a product of a particular character or composition is marketed in a particular area or place under a descriptive name and gained a reputation there under, that name which distinguished it from competing

products of different composition, the goodwill in the name of those entitled to make use of it there was protected against deceptive use there of the name of competitors. In Erven Warnink by and Ors. v. J. Townsend & Sons (Hull) Ltd. and Ors. reported in (1979) 2 All ER, it was held that whether the name denoted a product made from ingredients from a particular locality or whether the goodwill in the name was the result of the product being made from particular ingredients regardless of their provenance, since it was the reputation that the product itself had gained in the market by reason of its recognisable and distinctive qualities which had generated the relevant goodwill. In the said case, the trademark was the name of a spirit-based product called ADVOCAAT. The said product had gained a reputation and goodwill for that name in the English market and the defendants were seeking to take advantage of that name by misrepresenting that their wine-based product was of the same type as ADVOCAAT.

21. In OFFICE CLEANING SERVICES v. WESTMINSTER WINDOW (COURT OF APPEAL). 1944 (2) All E R 269 and (House of Lords) 63 RPC 39, the word 'office cleaning' was held to be a descriptive word, for it is a descriptive of the business they carry on. It was held that the plaintiff could assume or establish monopoly on the said word only when they show that they have acquired a secondary or subsidiary meaning. The aforesaid legal principle is well-settled and even the counsel for the defendant did not dispute the aforesaid position. In Halsbury's Laws of England, Volume 48 Fourth edition at page 190, it is stated that it is possible for a word or phrase, which is wholly descriptive of the goods or services concerned, to become so associated with the goods or services of a particular trader that its use by another trader is capable of amounting to a representation that his goods or services are those of the first trader and that although the primary meaning of the words is descriptive, they have acquired a secondary meaning as indicating the products of a particular trader. In McCarthy on Trademarks and Unfair Competition Vol. 2 3rd Edition in para 12.5 (2) it is stated that in order to obtain some form of relief on a "passing off" claim, the user of a generic term must prove some false or confusing usage by the newcomer above and beyond mere use of generic name.

22. The contention of the defendant is that adjectives are normally descriptive words and nouns are generic word. However, McCarthy has said that the said "part of speech" test does not accurately describes the case law results. Therefore, such a criteria cannot be accepted as a safe and sound basis to ascertain as to whether a particular name is generic or descriptive. Besides, even assuming that the said word is generic yet if it is found by the court that such a mark has attained distinctiveness and is associated with the business of the plaintiff for considerable time and thereafter the defendant adopts a similar word as one of his two marks to induce innocent internet users to come to the website of the defendant, which establishes dishonest intention and bad faith, would the court still be not granting injunction to protect the business of the plaintiff? The answer to the said question has to be an emphatic 'No'. User of similar word by a competitor coupled with dishonest intention and bad faith would empower a court to restrain such user/misuser to do equitable justice to the aggrieved party. In this regard reliance can be placed on the decision of Gujarat Bottling Co. (Ltd.) and Ors. v. Coca Cola Co. and Ors., MANU/SC/0472/1995 : AIR1995SC2372 . In paragraph 47 of the said judgment, it was said that injunction being an equitable relief, the party approaching the Court for grant of it and the party opposing it must be fair and honest and in absence of it in respect of one party, the other party could be given the relief.

23. Reliance by the defendant on the decision of Manish Vij and Ors. v. Indira Chugh and Ors. in S. No. 618/2000 & I.A. Nos. 3064 and 7471/2000 disposed of on 29th January, 2002 is misplaced as it was held by the Court that the said website "Kabbadibazaar" did not attain a secondary meaning. Therefore, the said case is distinguishable on facts. Similarly, the case of Girnar Food & Beverages Pvt. v. Godfrey Phillips India Ltd. reported in 2001 PTC 360 (Delhi) is also distinguishable on facts. The said judgment was rendered also on the conclusions and finding that the two products and trade dress are different, which is substantial enough to distinguish the two products. In the said decision heavy reliance was placed on the decision of S.M. Dyechem Ltd. v. Cadbury (India) Ltd. reported on 2000 PTC 297 (SC). The said decision of the Supreme Court came to be considered in a subsequent decision of the Supreme Court in Cadila Healthcare Ltd. v. Cadila Pharmaceuticals Ltd. reported in 2001 PTC 541 (SC). After noticing the said decision, the Supreme Court in the case of Cadila Healthcare Ltd. (supra) held thus:-

"These observations appear to us to be contrary to the decision of this court in Amritdhara Case (supra), where it was observed that the products will be purchased by the villagers and townfolk, literate as well as illiterate.....The purchaser cannot be equated with a purchaser of goods in England. While we agree that in trade mark matters, it is necessary to go into comparable strength, the decision on merits in S.M. Dyechem case (supra) does not, in our opinion, lay down correct law and we hold accordingly"

24. In the present case, I have already made a mention of the nature of reputation and goodwill that the plaintiff has been able to generate in the market by adopting and establishing a domain name and carrying on their business activities on the basis of the same. Thereby the trademark/domain name of the plaintiff has assumed significance and a secondary meaning.

25. It was also contended by the counsel for the defendant that there are many websites and domain names almost with similar name, which re existing and, Therefore, there cannot be any monopoly to the plaintiff and

manupatra also that the plaintiff having not proceeded against them for similar reliefs, is not entitled to proceed only against the defendant. The said contention was refuted by the plaintiff by placing on record a chart that the other websites with almost similar names are either non-functional or are foreign language websites and they have nothing to do with jobs. It is thus prima facie established that those websites/domain names stand apart and on a different footing from the domain names of the plaintiff and the defendant. There is neither any occasion nor is there any immediate necessity for the plaintiff to proceed against those websites/domain names, which are non-functional and non-relatable to the activity of employment and jobs. The plaintiff, Therefore, cannot be denied relief and an injunction only because it has not proceeded against other similar names. As a matter of fact, when action is initiated, one similar domain name has to be always the first and that cannot be the reason for denying injunction to the plaintiff.

It was further contended that consumers are discerning and intelligent people and, Therefore, they would be in a position to distinguish the various websites/domain names and, Therefore, there is no cause for any confusion. Similar contention raised in Yahoo Inc. (supra) was rejected by this court holding that even if an individual is sophisticated user of the Internet, he may be an unsophisticated consumer of information and such a person may find his/her way to the defendant's internet sites, which provide similar type of information as that of the plaintiff and thereby confusion could be created in the mind of the said person, who intends to visit the internet site of the plaintiff but, in fact, reaches the internet site of the defendant. Same consideration is also applicable to the facts of the present case and, Therefore, the same conclusions are reached. Besides, in a matter where services rendered through domain name in the internet, a very alert vigil is necessary and a strict view is to be taken for its each access and reach by anyone from any corner of the globe.

26. The defendant registered two domain names, almost simultaneously; one being jobsourceindia.com and the other being Naukri.Com. They were working and engaged in the common and overlapping field of activity and, Therefore, they are competitors of each other. It is settled law that if two contesting parties are involved in the same area or similar line of business, there is grave and immense possibility for confusion and deception. The plaintiff developed two domain names under one website, which is an admitted position during the course of hearing although at one stage and in its pleadings also, the defendant took up the stand that it has two domain names and two websites and two IP addresses. The defendant could have carried on its business activity under the domain name jobsourceindia.com. What then is the intention with which the defendant has taken an almost similar domain name as that of the plaintiff? No reasonable Explanation could be given by the defendant for adopting such a similar domain name. It is also clear from the records placed before me that when domain name of the defendant under the name Naukari.Com was typed, at least for some length of time, there was diversion of traffic to the other domain name of the defendant i.e. jobsourceindia.com. This position is proved by documentary evidence placed on record. Thus, in the present case, there was not only a possibility but, in fact, there was deception and confusion, which is established from the records placed before me.

27. The defendant has employed minor mis-spelling of the plaintiff's mark, although it has another such mark available to it, which is also a registered domain name. Therefore, the said action indicates and establishes dishonest intention on the part of the defendant. That appears to have been done with bad faith in order to gain advantage of spelling error made by the internet user while attempting to enter into the plaintiff's internet address on their web-browser. The very purpose of having two registered domain names by the defendant only establishes the dishonest intention and bad faith on the part of the defendant. The real intention behind registering the domain names for the same purpose, of which one is deceptively similar to the domain name of the plaintiff, is to attract or induce the internet user to come to the website of the defendant first by mis-spelling the plaintiff's mark and domain name and, thereafter, taking the said internet user to the domain name of the defendant, which is jobsourceindia.com. The defendant's choice of slightly mis-spelt version of the plaintiff's domain name was deliberate in order to suit the business activities of the defendant and for the purpose of diverting traffic of the internet users to websites unrelated to the plaintiff. The traffic of the internet users to the plaintiff's domain name is sought to be diverted to the domain name and website of the defendant by confusing the internet users as to sponsorship or affiliation with a website that defendant operates for commercial gain. Such intention is deceitful and dishonest, apart from being an action on bad faith.

28. Paragraph 4(b)(iv) of the Uniform Domain Name Dispute Resolution Policy, reference to which was made by the counsel appearing for the plaintiff, lays down as to what bad faith is. It states that for the purpose of Paragraph 4(a)(iii) the following circumstances, in particular but without limitation, if found by the Panel to be present, would be evidence of the registration and use of a domain name in bad faith:-

"(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, internet users to your website or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your website or location."

29. Both the domain names "Naukri.com" of the plaintiff and "Naukri.Com" of the defendant, depicting the nature and type of business activity they carry on are identical or confusingly similar trade mark or service marks. It is also a possibility for an internet user while searching for the website of the plaintiff to enter into the

manupatra website of the defendant through only a small mis-spelling of the domain name and, in fact, such incident has occurred in the case of the plaintiff itself vis-a-vis the defendant in proof of which a documents is also placed on record. Such diversion of traffic with the sole intention of ulterior gain in the similar business activity by a competitor, requires protection. A court discharging equitable justice should come in aid and for protection of the honest user as opposed to a dishonest user acting on bad faith.

30. The website using the domain name, similar to that of the plaintiff, for commercial purposes, would lead to an inference that the domain name was chosen intentionally to attract internet users of the plaintiff. This is also established in view of the minor spelling variant to a well-known mark, without any Explanation and the same definitely creates a prima facie inference of bad faith within the meaning of paragraph 4(b)(iv) to the aforesaid Policy, which was adopted by the Internet Corporation for Assigned Names and Numbers (ICANN), on August 26, 1999.

31. In view of the aforesaid position, I am of the considered opinion that the plaintiff has been able to make out a case for grant of a temporary injunction and accordingly, I restrain the defendant, their directors, servants, agents and all other acting on their behalf from using the domain name Naukri.Com or any other mark, which is identical or deceptively similar to that of the domain name of the plaintiff and also from hyperlinking the said domain name to the defendant's website JOBSOURCEINDIA.COM., till the disposal of the suit. Application stands disposed of in terms of the aforesaid order.

32. Before parting, it is made clear that whatever views and opinions are expressed herein, are all my tentative opinions for the purpose of deciding the present application and shall not be construed to be final opinion on merit and the same shall be subject to final decision in the suit.

S.No. 1971/2001

Renotify on 23.4.2002 for further orders. dusty.

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