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

+ CS(COMM) 328/2019

GATI LIMITED

..... Petitioner

Through: Mr. Akshay Sapre, Mr. Tarbez
Malawat, Ms. Ankita Bafna and Mr.
Mohit Raj, Advocates

versus

GATI FOUNDATION & ORS

..... Respondents

Through: (Appearance not given)

CORAM:

HON'BLE MR. JUSTICE TALWANT SINGH

ORDER

% **14.06.2019**

I.A. No. 8548/2019(Exemption)

Exemption allowed subject to all just exceptions.

CS(COMM) 328/2019

The plaintiff has filed the present suit praying for a decree of permanent injunction against defendant for infringement of the trademark and copyright, passing off and also seeking rendition of accounts and damages on the ground that defendants are guilty of unlawful/wrongful adoption and use/advertisement of trade name 'Gati' of the plaintiff as a part of their entity named 'Gati Foundation'.

Moreover the e-mail address and domain name of the defendants is identical and deceptively similar to that of the registered trade name of the plaintiff being 'Gati Limited'.

Issue summons of the suit to the defendant by all means for 16th July, 2019.

I.A. No. 8549/2019 (u/s 149, CPC)

By way of this application, the plaintiff has sought enlargement of time for filing Court fees. The said application is allowed for the reasons stated therein. The Court fees be filed within two weeks from today.

The application stands disposed off.

I.A. No. 8547/2019 (u/o XXXIX Rule 1 &2 CPC)

In this application, the plaintiff has reiterated the contents of the suit in short and has submitted that defendant nos. 2 and 3 are running defendant no.1, which is an NGO under the name and style of 'Gati Foundation' and the proforma defendant is the Federation of Indian Chambers of Commerce and Industry (FICCI). The plaintiff is stated to be an Indian Multinational Courier Delivery Service and is a leader in Supply Chain Solutions being founded in 1989. It has got strong presence in India as well as in Asia Pacific Region and SAARC countries. It covers almost all the districts in India. Defendant no.1 is stated to be an NGO based in Dehradun working in the area of environment and it is organizing an event alongwith the proforma defendant on 17th and 18th June, 2019 which is expected to be attended by esteemed people. As per plaintiff, the defendants have infringed their trademark i.e. 'Gati Limited' by unlawfully using it as a part of its corporate name 'Gati Foundation' and have also used similar e-mail i.e. reach.gati@gmail.com and domain name www.gatifoundation.org. The trade name 'Gati' was registered on 20.09.2005 under the Trademarks Act, CS(COMM) 3280/2019

1999 and over the years 'Gati' and its associated trade names have acquired highly distinctive and well known position amongst its customers.

It is the case of the plaintiff that in June, 2019 it received various messages of social media and communication from its peer group enquiring about setting up of an NGO name 'Gati Foundation' which is conducting Circular Economy Symposium in collaboration with FICCI on 17th and 18th June, 2019 at Federation House, Tansen Marg, New Delhi. On making enquiries, it came to the notice of the plaintiff that defendant no.1 was incorporated in 2017 as an NGO and it is wrongfully using the registered trade name of the plaintiff as part of its corporate name. The use of the trade name 'Gati' creates a false impression about with the plaintiff in the minds of people desirous to associate or invest in the organization of the defendants based on the goodwill of the plaintiff. Moreover, it creates confusion and deception in the minds of common people that defendants' activities are part of the plaintiff's group. It has been also averred that the defendants are aware of the goodwill and reputation of the plaintiff's trademark 'Gati' and the acts of the defendants of using the said name as part of their corporate name is causing irreparable loss and injury to the reputation of the plaintiff's goodwill. On these basis, ad-interim ex-parte injunction has been paid.

I have heard the counsel for the plaintiff who has reiterated the above averments during his arguments and has also referred to Section 29(8) of the Trademarks Act, 1999, which reads as under:-

29. Infringement of registered trade marks.—

(8) A registered trade mark is infringed by any advertising of that trade mark if such advertising—

(a) takes unfair advantage of and is contrary to honest practices in industrial or commercial matters;

or

(b) is detrimental to its distinctive character; or

(c) is against the reputation of the trade mark.”

Keeping in view, the fact that the trademark of the plaintiff company was registered in the year 2005 and since then, it is extensively used by the plaintiff, so prima facie defendants have no right, title or interest to use the name ‘Gati’ as part of their corporate name ‘Gati Foundtion’, I hereby issue an ex-parte ad-interim injunction restraining the defendants and its agents/representatives from using, advertising, promoting in any manner, the trademark ‘Gati’ till the next date of hearing.

It is clarified that the event scheduled for 17th and 18th June, 2019 known as Circular Economy Symposium in collaboration with proforma defendant (FICCI) may be held but the plaintiff’s trademark ‘Gati’ be not used in any pamphlets, booklets, advertisement in print media, in social media, electronic media as part of any panel or backdrop or in any press release or in any form till the next date of hearing.

Compliance under order XXXIX Rule 3 of CPC be made within two days as per law.

Notice of this application be issued to the defendants by all means

including e-mail i.e. reach.gati@gmail.com.

Copy of this order be given dasti under signatures of the Court Master.

**TALWANT SINGH
(VACATION JUDGE)**

JUNE 14, 2019/rr