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

+ CS(COMM) 818/2022

APNATIME TECH PRIVATE LIMITED
AND ANR.

..... Plaintiffs

Through: Ms. Diva Arora and
Ms. Devyani Nath, Advocates.

versus

ANIK DEV NATH AND ORS.

..... Defendants

Through: None.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

% **25.11.2022**

I.A. 19723/2022 (Exemption)

1. Subject to the Plaintiffs filing originals and certified copies of the documents with proper margins, which they may seek to place reliance on, within four weeks from today, exemption is granted.
2. Application is allowed and disposed of.

I.A. 19724/2022 (Section 12A of the Commercial Courts Act, 2015 seeking exemption from pre-institution mediation)

3. Present application has been preferred on behalf of the Plaintiffs seeking exemption from instituting pre-litigation mediation, in accordance with Section 12A of the Commercial Courts Act, 2015.
4. For the reasons stated in the application, this Court is of the opinion that Plaintiffs are entitled to consideration of the application seeking urgent relief in the present case and are, thus exempted from instituting pre-litigation mediation.
5. Application is allowed and disposed of.

I.A. 19722/2022 (seeking leave to file additional documents)

6. Present application has been preferred on behalf of the Plaintiffs seeking leave to file additional documents under Order XI Rule 1(4) CPC.

7. Plaintiffs, if they wish to file additional documents at a later stage, shall do so strictly as per the provisions of the Commercial Courts Act, 2015.

8. Application is allowed and disposed of.

I.A. 19725/2022 (Exemption from service to Defendants)

9. Since there is an urgency in the matter and the same is being heard today, Plaintiffs are exempted from serving advance notice on Defendants.

10. For the reasons stated in the application, the same is allowed and disposed of.

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11. Let plaint be registered as a suit.

12. Upon filing of process fee, issue summons to the Defendants, through all permissible modes, returnable on 13.02.2023 before the learned Joint Registrar.

13. Summons shall state that the written statement shall be filed by the Defendants within 30 days from the receipt of summons. Along with the written statement, Defendants shall also file an affidavit of admission/denial of the documents filed by the Plaintiffs.

14. Replication be filed by the Plaintiffs within 15 days of the receipt of the written statement. Along with the replication, an affidavit of admission/denial of documents filed by the Defendants, shall be filed by the Plaintiffs.

15. If any of the parties wish to seek inspection of any documents, the same shall be sought and given within the timelines.

I.A. 19721/2022 (under Order XXXIX Rules 1 and 2 CPC, by Plaintiffs)

16. Present application has been preferred by the Plaintiffs under Order XXXIX Rules 1 and 2 read with Section 151 of the Code of Civil Procedure, 1908 for grant of an *ex-parte ad-interim*

injunction.

17. Issue notice to the Defendants through all prescribed modes, returnable on 27.03.2023, before the Court.

18. Present suit has been filed seeking permanent injunction restraining Defendant No. 1 from passing off and copyright infringement.

19. It is averred that Plaintiffs adopted the mark 'APNA' as a trade name/service mark on 24.04.2019 with the incorporation of Plaintiff No. 2 in U.S.A. and thereafter incorporation of Plaintiff No. 1 in India on 09.05.2019. Plaintiffs through their unique networking platform aim to create better economic opportunities for blue/grey workforce around the world by helping job seekers to unlock unique networking and skilling opportunities and for this purpose registered the domain and launched the website www.apna.co on 06.06.2019, followed by a mobile application under the trademark 'APNAJOBSEARCH' on Goole Playstore, on 26.07.2019. Plaintiffs' mobile app is available in Hindi, English and various other languages and offers search services at the lowest cost in the industry. Plaintiffs claim to have assisted more than 1.2 million individuals to secure interviews with over 25,000 potential employers within a span of one year from their launch.

20. It is averred that Plaintiffs conceived, adopted and have continuously used the arbitrary trademark APNA which stands for 'one's own' and is today a house mark for the Plaintiffs, with several of its spin off business verticals using the mark as a prefix. Plaintiffs' portfolio of trademarks includes but is not limited to ApnaJobs ApnaChat, ApnaCircle etc. in which APNA forms a dominant part.

21. It is further averred that Plaintiffs also developed and adopted a

apna

unique and distinctive device mark  in June, 2019

with respect to their services, in addition to various other stylized

apnajobs, **apnachat**, **apnacircle**
device marks
and **apnaprofile**.

22. In addition to common law rights, it is averred that Plaintiffs have filed applications to seek registrations of their trademarks in different classes, which are pending. Plaintiffs have gained immense reputation in the market in a short span of time which is apparent from the fact that their mobile application has been downloaded more than 1,00,00,000 times and their Youtube channel has over 40,000 subscribers, while Facebook page has been liked by over 83,000 people. Plaintiffs' annual expenditure for advertisement and promotion over the past years has been over Rs.1,23,68,62,097/- and towards development etc. has been over Rs. 7 crores.


23. It is stated that services offered by the Plaintiffs under the banner of APNA are availed by several leading companies such as Amazon, Big Basket, Fortis and their mobile app has been ranked amongst 'Top 100 business category apps'. Plaintiffs are also owners of copyright that vests in the layout and arrangement of the website operating on the domain name www.apna.co and the mobile application user interface which qualifies as an 'original artistic work' under Section 2(c) of the Copyright Act, 1957, granting an exclusive right to the Plaintiffs under Section 17 (c) of the said Act. Plaintiffs have vigilantly protected their intellectual property rights and have injunction orders from this Court, restraining third parties from using the mark APNA and the domain name as well as compromise decrees.

24. It is stated that Defendant No. 1 is operating a website on the impugned domain name www.apnajobs.org and is using the mark APNA JOBS, thereby infringing Plaintiffs' trademark APNA.

Defendant No. 1 is using the impugned mark and the domain names to operate a platform, which is identical to that of the Plaintiffs through which job seekers can browse and find alleged jobs opportunities and get connected to potential employers. Defendant No. 1 has copied all elements from Plaintiffs' website including literary and artistic work and is guilty of copyright infringement.

25. In October, 2022 Plaintiffs came across the impugned domain name which was also hosting a website which is a mirror copy of Plaintiffs' website and using the impugned mark APNA JOBS and

apna

Plaintiffs'  .

26. It is contended by learned counsel for the Plaintiffs that the *modus operandi* used by Defendant No. 1 is to call up customers on the pretext of offering a job and urges them to register by paying a nominal amount. However, the users after registration land up paying a huge amount and thereafter the websites operating through the impugned domain names do not direct to any active page. The acts of Defendant No. 1 are amounting to committing fraud and stealing money from the consumers and the activities are extending pan-India including Delhi. Various complaints have been received by the Plaintiffs as the consumers, on account of the deceptive similarity of the marks are confused into believing that the services of Defendant No. 1 emanate from the Plaintiffs. This is leading to immense loss of the formidable goodwill and reputation built up by the Plaintiffs through hard work.

27. It is also contended that Plaintiffs' trademark APNA is an arbitrary mark in relation to their recruitment services and inherently distinctive. Defendant No. 1's use of identical mark which is immensely reputed and that too in relation to similar services is only

with a view to take undue advantage of the goodwill of the Plaintiffs and misrepresent to the consumers that the services of Defendant No. 1 have a connection or association with the Plaintiffs. Apart from passing off its services as that of the Plaintiffs, Defendant No. 1 is also infringing Plaintiffs' copyright and ought to be enjoined.

28. Having heard learned counsel for the Plaintiffs, this Court is of the view that Plaintiffs have made out a *prima facie* case for grant of *ex parte ad-interim* injunction. Balance of convenience lies in favour of the Plaintiffs and they are likely to suffer irreparable harm in case the injunction, as prayed for, is not granted.

29. Accordingly, till the next date of hearing:

a. Defendant No. 1, its registrant, partners, directors, principal officers, servants, representatives, agents and all others acting for and on its behalf are restrained from using Plaintiff's website layout, user interface, arrangement, and/or any other artistic work in a manner that may amount to infringement of copyright of Plaintiff's artistic work; and

b. Defendant No. 1, its registrant, partners, directors, principal officers, servants, representatives, agents and all others acting for and on its behalf are restrained from using the mark APNA with or without the prefix JOBS, and/or any mark identical or deceptively similar mark to the Plaintiffs' trademarks, in a manner including but not limited to as a trademark, trade name or domain name that may amount to passing off Defendant No.1's services and businesses as those of the Plaintiffs.

30. Defendants No. 2 and 3 are directed to suspend Defendant No. 1's domain names www.apnajobs.in and www.apnajobs.org and maintain status quo of the said domain names.

31. Defendants No. 13 and 14 are directed to issue notifications calling upon various internet and telecom service providers registered under them to block access to the domain names www.apnajobs.in and www.apnajobs.org.

32. Plaintiffs shall comply with the provisions of Order XXXIX Rule 3 CPC within a period of ten days from today.

JYOTI SINGH, J

NOVEMBER 25, 2022/shivam