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

% *Date of decision: 13th February, 2025*

+ CS(COMM) 419/2024, I.A. 29729/2024, I.A. 35874/2024 & I.A. 41465/2024

TATA POWER SOLAR SYSTEMS LIMITED & ANR.

.....Plaintiffs

Through: Mr. Peeyoosh Kalra, Mr. C.A. Briges, Ms. Krisna Gambhir & Ms. Simranjot Kaur, Advocates.

versus

WWW.TATAPOWERSOLARDEALERSHIP.CO.IN & ORS.

.....Defendants

Through: Ms. Aishwarya Kane, Advocate for D-4.
Mr. Rishabh Dev Mishra, Advocate for D-5.
Mr. Arvind Singh Negi, Advocate for D-6.
Mr. Aayushmaan Vatsyayana, Advocate for D-7.
Mr. Kishan Rawat, Advocate for D-8.
Mr. Sagar Aggarwal & Ms. Kanika Baweja, Advocates for D-9.
Mr. Santosh Kumar Rout, Standing Counsel for PNB with Ms. Dharna Veragi, Mr. B.N. Mishra & Ms. Shilpa Chaurasia, Advocates for D-11.
Ms. Shivani Shah, Mr. Amandeep Singh & Mr. Dev Bhardwaj, Advocates for D-12.
Mr. Krishna Kumar Sharma, Mr.

Manokul Chandra & Ms. Srishti Guha, Advocates for D-13.

Mr. Sarfaraz Khan, Advocate for D-14.

Ms. Mrinal Ojha, Mr. Debarsh Dutta, Ms. Nikita Rathi & Mr. Arjun Mookerjee, Advocates for D-19.

CORAM:

HON'BLE MR. JUSTICE AMIT BANSAL

AMIT BANSAL, J. (Oral)

1. The present suit has been filed seeking relief of permanent injunction restraining the defendants from infringing the trademark of the plaintiffs, passing off their goods and services as that of the plaintiffs, along with other ancillary reliefs.

PLEADINGS IN THE PLAINT

2. Plaintiff no.1, Tata Power Solar Systems Limited, was incorporated in 1989 and is the one of the largest solar company in India specializing in high efficiency photovoltaic (PV) module manufacturing and comprehensive engineering, procurement and construction (EPC) solutions. Plaintiff no.1 is the subsidiary of Tata Power Renewable Energy Limited, which is itself a subsidiary of Tata Power Company Limited ('TPCL').

3. Plaintiff no. 2 was established through its predecessor-in-title in the year 1917 as a body corporate. The plaintiff no. 2 is the promoter and principal investment holding company of various TATA Companies including TPCL which are engaged in business of wide-range of products and services. On 14th September, 2012, the plaintiff no.1 entered into a Brand Equity and Business Promotion agreement with the plaintiff no.2 to

pool their resources and make a co-operative effort to promote a unified common 'TATA' brand.

4. It is asserted in the plaint that the trademark 'TATA' derived from the surname of the plaintiff no.2's founder is distinctive in nature. Due to its continuous and extensive use since 1917, the said mark has acquired a secondary meaning, associating it exclusively with the conglomeration of 'TATA' Companies.

5. The plaintiffs have been using 'TATA' and 'TATA POWER SOLAR' formative trademarks since February, 2020. The plaintiff no.2 is the registered proprietor of the trademark 'TATA POWER SOLAR' and its formative marks under different classes in India. The relevant trademark registrations of the plaintiffs as given in paragraph 9 of the plaint are set out below:

Registration no.	Trademark	Classes	Date of Application/ User Date	Valid Upto
839726	TATA (Word Mark)	9	03.02.1999	03.02.2029
838425		9	27.01.1999	27.01.2029
4159218	TATA POWER (Word Mark)	9, 11 and 37	26.04.2019	26.04.2029

5460092		4, 9, 19, 37, 40 and 42	24.05.2022	24.05.2032
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The Certificates of Registrations are filed as documents no. 16, 17 and 18 of the documents filed along with the plaint. All the aforesaid trademark registrations remain valid and subsisting.

6. The products of the plaintiffs bearing ‘TATA POWER SOLAR’ formative trademarks are advertised through the plaintiffs’ website, ‘www.tatapowersolar.com’. The domain name ‘www.tatapowersolar.com’ was registered on 13th June, 2012. Since then, the plaintiffs have been using the said domain name continuously and uninterruptedly.

7. Over the years, the plaintiff no.1 has earned various awards and accolades on account of its ambitious approach towards creating innovative solutions to meet the growing energy demands while reducing carbon footprints. The plaintiffs also have presence on various social media platforms such as Facebook, Instagram, YouTube, etc. As a result of their online presence and several awards earned by the plaintiffs in the past four years, the trademark ‘TATA POWER SOLAR’ and other registered trademarks of the plaintiffs enjoy immense reputation and goodwill among consumers.

8. During the period between 2020-2024, the sales and advertising expenses of the plaintiffs’ products under the brand ‘TATA POWER SOLAR’ are given in paragraph 19 of the plaint. The sales turnover of the plaintiffs’ products sold under ‘TATA POWER SOLAR’ brand for the financial year 2023-2024 amounts to Rs. 1907 crores (approx.) and the

advertising expenses for the same period amount to Rs. 23 crores.

9. Defendant no.1 is the registrant of the impostor domain name 'www.tatapowersolardealership.co.in' and the defendant no.2 is the registrant of the impostor domain name 'www.tatapowersolars.com'. Defendant no. 17 is the registrant of the impostor domain name 'www.tatapowersolars.org' and the defendant no. 18 is the registrant of the impostor domain name 'www.tatapowersolarroof.com' (collectively referred to as 'impugned domain names'). Defendant no.3 is Ashok Kumar/ John Doe.

10. The defendant no. 4, Hosting Concepts B.V., is the Domain Name Registrar for the impugned domain names of the defendant no. 1 and of the defendant no. 2. The defendant no. 19, GoDaddy.com LLC, is the Domain Name Registrar for the impugned domain name of the defendant no. 17. The defendant no. 20, INWX GmbH & Co. KG, is the Domain Name Registrar for the impugned domain name of the defendant no.18.

11. The defendants no. 5-14 are Telecom Service Providers (TSPs) and Head Offices of Banks wherein the defendants no.1-2 and the defendants no.17-18 (hereinafter 'imposter defendants') have their bank accounts. The defendants no. 15 and 16 are the Department of Telecommunications ('DoT') and Ministry of Electronics and Information Technology ('MEITY') respectively.

12. Between February, 2024 to April, 2024, the plaintiffs were alerted that the impostor defendants are duping many innocent persons. The imposter defendants are infringing the trademark 'TATA' and 'TATA SOLAR POWER' formative trademarks of the plaintiffs. The imposter

defendants are using the plaintiffs' marks as trade names, as part of their domain name, email address (info@tatapowersolardealership.co.in; help@tatapowersolars.com; info@tatapowersolars.com; sales@tatapowersolars.com; and official@tatapowersolars.com, subsidy@tatapowersolarroof.com) etc.

13. It is the case of the plaintiffs that the imposter defendants are contacting the prospective customers of the plaintiffs *via* calls through their mobile numbers +91-9109840660 ; +91-7384040589 ; +91-7501191497 and +91-9163594301, +91-7761081072; +91-7773055096 and +91-8420553761, and messages through WhatsApp claiming themselves to be employees of the plaintiff no.1 company and collecting various sums of money as well as duping innocent customers under the promise of providing services and/or dealerships of the plaintiffs.

14. Accordingly, the plaintiffs filed the present suit on 16th May, 2024 seeking to restrain the defendants from carrying on their infringing activities.

PROCEEDINGS IN THE SUIT

15. On 20th May, 2024, while issuing summons in the suit, this Court granted an *ex-parte ad interim* injunction in favour of the plaintiffs and restrained the defendants no. 1 to 3 from using the marks 'TATA', 'TATA



POWER', 'TATA POWER SOLAR ROOF', or any other formative marks of the plaintiffs. Further, this Court issued directions to the defendants no.4 to 16 in respect of the domain names/ mobile numbers/ bank accounts of the defendants no. 1 to 3.

16. Subsequently, the plaintiffs' moved two fresh applications, i.e. I.A. 35874/2024 under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908 (hereinafter "CPC") as well as I.A. 35875/2024 under Order I Rule 10 (2) of CPC. *Vide* order dated 8th August, 2024, the plaintiffs' impleadment application being I.A. 35875/2024 was allowed and the defendants no.17-20 were impleaded as defendants in the present suit.

17. *Vide* order dated 21st August, 2024, the Joint Registrar noted that the defendants no.1 to 3 were duly served through email on 16th July, 2024. Despite this, the defendants no.1 to 3 did not enter appearance and no written statement(s) were filed on behalf of the defendants no.1 to 3.

18. *Vide* order dated 12th September, 2024, the plaintiffs' I.A. 39284/2024 under Order VI Rule 17 of CPC for amendment of plaint was allowed. On the same date, *ex-parte ad interim* injunction was granted in favour of the plaintiffs and the newly impleaded defendants no. 17-18 were restrained from using the marks 'TATA', 'TATA POWER', 'TATA POWER



SOLAROOF', or any other formative marks of the plaintiffs. Further, this Court issued directions to the defendants no.19-20 in respect of the domain names/ email address of the defendants no.17-18.

19. This Court *vide* order dated 19th September, 2024 modified the *ex-parte ad interim* injunction order dated 12th September, 2024.

20. *Vide* order dated 24th October, 2024, notice was issued in I.A. 41465/2024 under Order XIII-A of the Commercial Courts Act, 2015 for summary judgment.

21. The Joint Registrar recorded in the order dated 6th December, 2024

that the defendants no.17-18 had been served through email on 29th October 2024. Further, the right of the defendants no.1 to 3 to file written statement(s) was closed.

22. Despite service, neither the defendants no.1-3 and 17-18 entered appearance nor did they file a written statement.

23. Counsel for the plaintiffs submits that this is a fit case where a summary judgment in terms of Order XIII-A of the Code of Civil Procedure, 1908 (CPC) as applicable to commercial disputes of a specified value, read with Rule 27 of the Delhi High Court Intellectual Property Rights Division Rules, 2022, deserves to be passed in favour of the plaintiffs and against the defendants.

ANALYSIS AND FINDINGS

24. I have heard the submissions of the counsel for the plaintiffs and perused the material on record.

25. The plaint has been duly verified and is also supported by the affidavit of the plaintiffs. In view of the fact that no written statement has been filed on behalf of the defendants no.1-3 and 17-18, all the averments made in the plaint have to be taken to be admitted. Further, since no affidavit of admission/denial has been filed on behalf of the defendants no.1-3 and 17-18 in respect of the documents filed with the plaint, in terms of Rule 3 of the Delhi High Court (Original Side) Rules 2018, the same are deemed to have been admitted.

26. Therefore, I am of the opinion that no purpose would be served by directing the plaintiffs to lead *ex parte* evidence by filing an affidavit of examination in chief and the plaintiffs are entitled to a summary judgment.

27. From the averments made in the plaint and the evidence on record, the plaintiffs have been able to prove that the plaintiffs are the registered proprietor of the mark 'TATA' and 'TATA POWER SOLAR' formative marks.

28. A bare perusal of the impugned domain names and email addresses used by the defendants no.1-3 and 17-18 makes it apparent that the said defendants have slavishly copied the plaintiffs' registered and well-reputed trademark 'TATA' and 'TATA POWER SOLAR' formative marks and the products of the said defendants bearing the impugned marks are being used for identical services, i.e. solar energy solutions.

29. Based on the discussion above, a clear case of infringement of trademarks is made out. The plaintiffs, through their annual turnover and promotional expenses, have also been able to show their goodwill and reputation in respect of the aforesaid trademarks among the members of the trade and public. The defendants no.1-3 and 17-18 have taken unfair advantage of the reputation and goodwill of the plaintiffs' trademarks and have also deceived the unwary consumers of their association with the plaintiffs by dishonestly adopting the plaintiffs' registered marks without any plausible explanation. Therefore, the plaintiffs have established a case of passing off as well.

30. At this stage, it may be relevant to note that the defendants no.1-3 and 17-18 did not appear before the Court, despite service of summons. Further, no communication on behalf of the defendants no.1-3 and 17-18 have been placed on record in respect of the allegations of the plaintiffs in this suit.

31. Since the defendants no.1-3 and 17-18 have failed to take any

requisite steps to contest the present suit, despite having suffered an *ad interim* injunction order, it is evident that the defendants no.1-3 and 17-18 have no defence to put forth on merits.

32. In ***Su-Kam Power Systems Ltd. v. Kunwer Sachdev***, 2019 SCC OnLine Del 10764, this Court has observed as under:

“90. To reiterate, the intent behind incorporating the summary judgment procedure in the Commercial Court Act, 2015 is to ensure disposal of commercial disputes in a time-bound manner. In fact, the applicability of Order XIII A, CPC to commercial disputes, demonstrates that the trial is no longer the default procedure/norm.

91. Rule 3 of Order XIII A, CPC, as applicable to commercial disputes, empowers the Court to grant a summary judgement against the defendant where the Court considers that the defendant has no real prospects of successfully defending the claim and there is no other compelling reason why the claim should not be disposed of before recording of oral evidence. The expression “real” directs the Court to examine whether there is a “realistic” as opposed to “fanciful” prospects of success. This Court is of the view that the expression “no genuine issue requiring a trial” in Ontario Rules of Civil Procedure and “no other compelling reason....for trial” in Commercial Courts Act can be read mutatis mutandis. Consequently, Order XIII A, CPC would be attracted if the Court, while hearing such an application, can make the necessary finding of fact, apply the law to the facts and the same is a proportionate, more expeditious and less expensive means of achieving a fair and just result.

92. Accordingly, unlike ordinary suits, Courts need not hold trial in commercial suits, even if there are disputed questions of fact as held by the Canadian Supreme Court in Robert Hryniak (supra), in the event, the Court comes to the conclusion that the defendant lacks a real prospect of successfully defending the claim.”

33. The aforesaid principles are fully applicable in the facts and circumstances of the present case. As elaborated above, the defendants no.1-

3 and 17-18 have no real prospect of successfully defending the claims in the present suit. Further, taking into account that the defendants no.1-3 and 17-18 have not set up any defence, there is no compelling reason for the recording of oral evidence.

34. Therefore, this is a fit case where a summary judgment in terms of Order XIII-A of CPC can be passed in favour of the plaintiffs and against the defendants no.1-3 and 17-18.

RELIEF

35. In view of the foregoing analysis, a decree of permanent injunction is passed in favour of the plaintiffs and against the defendants no.1-3 and 17-18 in terms of prayer clauses 32 (a) and 32 (b) of the amended plaint.

36. The decree is passed in favour of the plaintiffs and against the defendant no. 20, directing it to suspend the domain name 'www.tatapowersolarroof.com'.

37. The defendants no.4 and 19 submit that they have complied with the directions of the Court and have suspended the domain names 'www.tatapowersolardealership.co.in', 'www.tatapowersolars.com' and 'www.tatapowersolars.org' respectively.

37.1. In view thereof, the reliefs sought against the aforesaid defendants stand satisfied.

38. Similarly, reliefs claimed under clauses 32 (d) and 32 (f) stand satisfied as per orders dated 20th May, 2024 and 19th September, 2024.

39. Insofar as prayer clause 32 (e) is concerned, the defendants no. 6 to 14/ Banks are directed to freeze all the bank accounts mentioned below:

<u>ACCOUNT NUMBER</u>	<u>RESPECTIVE BANKS</u>
400519210000006	Bank of India (D6)
110161081084	Canara Bank (D7)
110177058203	Canara Bank (D7)
110182430078	Canara Bank (D7)
5540938159	Central Bank of India (D8)
219401000007090	Indian Overseas Bank (D9)
18290100048682	Federal Bank of India (D10)
0569000100543045	Punjab National Bank (D11)
5866000100059983	Punjab National Bank (D11)
219401000007090	Indian Overseas Bank (D9)
60483735630	Bank of Maharashtra (D12)
60484882211	Bank of Maharashtra (D12)
41394259006	State Bank of India (D13)
23563211005858	UCO Bank (D14)

40. After freezing the said bank accounts, the defendants no. 6 to 14 are directed to transfer the funds in the aforesaid bank accounts to Reserve Bank of India's Depositor and Education Awareness Fund, within four (4) weeks from today.

41. Let an affidavit of compliance be filed on behalf of the defendants no. 6 to 14/ Banks, within six (6) weeks from today.

42. The counsel for the plaintiffs does not press for the remaining reliefs prayed for in the suit.

43. Let the decree sheet be drawn up accordingly.

44. The pending applications stand disposed of.

AMIT BANSAL, J

FEBRUARY 13, 2025

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