

'Acquired Distinctiveness' of Infosys Trademark

February 17, 2019

This post was first published on 18th November, 2011.

Infosys Technologies Ltd vs Adinath Infosys Pvt. Ltd & Ors, High Court of Delhi

Facts:

The plaintiff-company Infosys Technologies Private Limited is engaged in the business of providing IT services, solutions, consulting and business process management. INFOSYS is the registered trademark/service mark of the plaintiff-company in various Classes including Class 16 in respect of computer software. The Plaintiffs have strongly contended that owing to their excellent services offered by them, continuous, extensive and substantial use, the mark INFOSYS has acquired distinctiveness. The plaintiff contends that use of the mark INFOSYS implies that the goods/services being offered under this mark are originating from the plaintiff and the user of this mark is in some manner or the other associated with the plaintiff company.

The defendant company is engaged in the business of website development and offers web design & management, besides providing computer training. Further, the business of the defendant relates directly to the plaintiffs business.

The crux of the case is that the defendants have used the mark INFOSYS as a part of its corporate name. Moreover, the website of the defendant also uses the mark INFOSYS as a part of its domain name. The main issue involved in the instant case is whether the act of the defendant constitutes an infringement of the plaintiff's mark.

Judgment and Reasoning

The Court has categorically stated that on account of the extensive and high quality of services offered by the Plaintiff, their mark INFOSYS has become a distinctive mark. The plaintiff has also taken considerable effort and time to promote its brand name and goodwill. In doing so, the Plaintiff has incurred huge expenses as well. The services that the Plaintiff company offers under its brand name is also much sought after by various companies and organizations and hence, their services have also become distinctive.

The Court has stated thus: *“a person who is offered IT related services under a brand name which includes the expression INFOSYS as its key component is likely to presume that either the defendant-company is in some manner or the other associated with the plaintiff-company or has been licensed by it to provide such services and that is why the expression INFOSYS is being used as a key component of the corporate name/brand name of the defendant-company. This impression is likely to cause confusion in the mind of the customer as regards the source of the services being offered to him. Hence, use of the expression INFOSYS by the defendant-company while offering IT related services also constitute infringement within the meaning of Section 29(2) of the Trademarks Act.”*

It is to be noted that during the pendency of the suit, the defendant has changed its name from ADITECH INFOSYS PRIVATE LIMITED to ADITECH INFOTECH PRIVATE LIMITED on 25th May, 2008. The previous name of Defendant company was ADITECH INFOSYS PRIVATE LIMITED, the name having been changed only on 12th January, 2008. Taking this fact into consideration, the Court opined, *“it is obvious that the plaintiff-company had a cause of action when it filed the present suit on 22nd January, 2008”*

The Court added, *“Section 29(5) of the Trade Marks Act*

provided that a registered trademark is infringed by a person if he uses such registered trademark, as his trade name or part of his trade name, or name of his business concern or part of name of his business concern dealing in goods or services in respect to which the trademark is registered. Therefore, by using the word INFOSYS which is the registered trademark of the plaintiff as the key feature of its corporate name, the defendant has clearly infringed the registered trademark of the plaintiff"

In the instant case, the Court has referred to *Montari Overseas Ltd. vs. Montari Industries Ltd.* 1996 PTC (16). In the said case, the Court had laid down that copying of a trade name amounts to making a false representation to the public from which they have to be protected.

The Defendants were restrained from using the expression INFOSYS or any other expression which is identical or deceptively similar to the trademark INFOSYS as a part of its corporate name or for providing any of the services in which the plaintiff-company is engaged. However, no damages were awarded to the Plaintiff.

In my opinion, the Court has come to the right conclusion. Trademark of a company is its valuable asset and the same needs to be protected against infringement so that the goodwill and reputation of the company are not harmed. This goes a long way in the company's business. Trademark protection and its implementation has to be strong and stringent.

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