

IN THE HIGH COURT OF DELHI AT NEW DELHI**CS(OS) 384/2011**

**ESPN SOFTWARE INDIA PRIVATE LTD Plaintiff
Through Mr. C.A. Sundaram, Sr. Adv. with Ms. Nanju Ganpathy and Mr. Kartik
Yadav, Adv.**

versus

**M/S TUDU ENTERPRISE and OTHERS Defendant
Through Ms. Pratibha M. Singh, Mr. Vadivelu Deenadayalan, Adv. for D-91**

**CORAM:
HON'BLE MS. JUSTICE GITA MITTAL**

**O R D E R
18.02.2011**

IA No. 2562/2011**1. Exemption allowed subject to just exceptions.****CS(OS) 384/2011****2. Learned senior counsel appearing for the plaintiff makes a prayer for seeking deletion of defendant no. 91 from the array of parties.****It is so directed.****3. Subject to the plaintiffs taking steps within one week, issue summons in the suit to the defendants by ordinary process, registered cover and through approved courier, returnable on 19th May, 2011 before the Joint Registrar.****4. The summons to the defendants shall indicate that a written****- 2 -**

statement to the plaint shall be positively filed within four weeks of the receipt of the summons. Liberty is given to the plaintiff to file replication and rejoinder within two weeks of the receipt of the advance copy of the written statement and reply.

In case the written statement is not filed within the time stipulated above, the same shall be taken on record only subject to payment of costs of Rs.30,000/- and if filed within a period of four weeks thereafter.

5. The parties shall file all original documents in support of their respective claims alongwith their respective pleadings. In case parties are placing reliance on a document which is not in their power and possession, its details and source shall be mentioned in the list of reliance which shall be also filed within the pleadings.

6. Admission/denial of documents shall be filed on affidavit by the parties within two weeks of the completion of the pleadings. The affidavit shall include the list of the documents of the other party. The deponent shall indicate its position with regard to the documents against the particulars of each document.

7. Learned counsel for the plaintiff submits that his client would be

willing to explore the possibility of settlement by mediation.

8. The summons shall indicate that it is open to the parties to

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access the facility of negotiating a settlement with the other side before the Delhi High Court Mediation and Conciliation Centre in the court complex. In case the defendants are so desirous of pursuing negotiations, it shall be open to them to do so. Such participation in the mediation shall be without prejudice to their rights and contentions in the suit.

9. In such eventuality, the defendant shall inform the plaintiff as well as his counsel of the same by a written notice. Such written notices shall be treated as consent of the parties to the mediation process. The plaintiff and/or defendants may then approach the Delhi High Court Mediation and Conciliation Centre for facilitating mediation in the matter and proceeding in accordance with the rules of the Centre.

10. The parties shall place the copy of this order as well as the written notice before the Delhi High Court Mediation and Conciliation Centre.

11. During the course of mediation, it shall be open to the mediator to join any other person(s) considered necessary for effective mediation and dispute resolution.

12. The Registry shall enclose the information brochure published by Samadhan ? the Delhi High Court Mediation and Conciliation Centre with the summons.

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13. The parties shall appear before the Joint Registrar for marking of exhibits on 19th May, 2011.

14. The matter shall be fixed before the court for reporting outcome of the mediation/framing of issues on 12th August, 2011.

15. The schedule fixed by this order shall not be interdicted by the pendency of the matter in mediation.

IA No. 2561/2011

16. Issue notice, returnable on 12th August, 2011.

17. The case of the plaintiff is that it has the exclusive rights for India and other territories for telecast of the ICC Cricket World Cup 2011, cricket matches being played in India, Sri Lanka and Bangladesh. The Plaintiff obtained these exclusive rights from the International Cricket Council (ICC).

18. The Plaintiff is claiming to be the sole and exclusive distributor of three pay channels, namely, ESPN, STAR Sports and STAR cricket Channels in India (?the Channel(s)?) having obtained the exclusive right from ESPN STAR Sports (?ESS?) the defendant no.174 herein, who in turn obtained the same from ESPN (Mauritius) Limited (EML). EML has obtained from ICC Development (International) Limited (ICC) the exclusive right to televise in India till the year 2015 all

ICC events including the said ICC Cricket World Cup 2011, being fifty overs International cricket matches, being played in India, Sri Lanka and

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Bangladesh from February 19, 2011 to April 2, 2011. The plaintiff also has the exclusive right to televise in India various other international live sporting events including the French Open, Wimbeldon, Confederation Cup, FI, Moto GP, various Golfing events, the Olympics events.

19. It is urged that the feed/signal is transmitted/telecast by a satellite through the Singapore facilities of ESS ? defendant no. 174 through leased satellite space to the various homes through different modes of transmission such as DTH, IPTV, CAS and Non-CAS cable in India and other contracted territories. It is in respect of this composite package/programme that the Plaintiff claims broadcast reproduction right from ESS .

20. The event organizer(s) merely provide access to the venue and facilitate the broadcast by ESS by providing requisite space to them for installing their cameras, lighting, parking their OB Van and other equipment and commentary box etc. and add their own graphics and commentary to the live feed which is ultimately televised in the territories in respect of which ESS has obtained rights to televise. The plaintiff claims broadcast reproduction rights in respect of the ESS channels so produced and licensed to the Plaintiff for distribution in India.

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21. In compliance with the downlinking guidelines issued by the Ministry of Information and Broadcasting on November 11, 2005 the plaintiff has obtained the downlinking permission for ESPN, STAR Sports STAR Cricket Channels by the date prescribed under the said guidelines.

22. No other person, entity and/or Cable Operators can broadcast/telecast in India, the said events therefore without a license from the plaintiff.

23. It is stated that the said ICC Cricket World Cup 2011 matches are to be televised on STAR Cricket, ESPN and STAR Sports. Approximately 6500 Cable Operators/Multi System Operators across India are claimed to have entered into contracts with the plaintiff for the right to access the channels of the plaintiff. Pursuant to these contracts, the Local Cable Operators (LCO?s) and Multi Systems Operators (MSO?s) are granted a license to transmit the channels of the plaintiff depending upon their respective subscriber base.

24. The defendants are Multi Systems Operator (MSO) and /or Local Cable Operators (LCOs) having their respective Head end(s)/cable network(s) in the cities as set out in the cause title. These defendants have been unauthorisedly and without entering into contracts either with the distributor of the plaintiff or with the plaintiff itself are

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transmitting over their respective cable networks the channels of the plaintiff and showing the events to their subscribers on payment and thereby, violating the plaintiff?s broadcast reproducing right granted under the Copyright Act, 1957.

The practice matches for the ICC World Cup 2011 were held between 13th to 16th February, 2011. As per reports received by the official(s) of the plaintiff from the plaintiffs? field staff/representatives/ distributors all over India. During these matches there was rampant piracy indulged in by the defendants named in the suit in different locations/ parts of the country and several unknown persons.

The plaintiff received faxes and other communications dated 14th, 15th and 16th February, 2011 from the field staff from different parts of the country addressed to their respective regional and corporate office of the plaintiff in this regard. The actions of the defendants in distributing the plaintiff?s signals to other cable operators and cable homes without any license in this

regard from the plaintiff are unlawful and violative of the plaintiff?s

broadcast reproduction right.

25. Learned senior counsel for the plaintiff has contended that despite best efforts, it has not been able to obtain full particulars of the persons who have been detailed at serial nos. 145 to 173 who have

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been collectively mentioned as 'Mr. Raj Sharma'. It is submitted that these are unknown entities who being unlicensed are likely to unauthorisedly transmit the plaintiff's television channel via their network without a licence and a prayer is made to invoke the inherent powers of this court under Section 151 of the CPC to evolve a fair and reasonable procedure to address the peculiar facts and circumstances over the violations pleaded by the defendant.

26. In this regard, reliance is placed on the internationally adopted 'John Doe' practice as well as this country's obligation under the TRIPPS agreement to effectively enforce IPR rights of parties including those as in the present one.

27. In support of this submission, my attention has been drawn to a judgment dated 14th June, 2002 passed in CS(OS) No. 1072/2002 Taj Television Ltd. and Ors. vs. Rajan Mandal and Ors. wherein the court on similar facts, this court had held as follows :-

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Mr. Anand submitted that conduct of various unscrupulous cable channel companies/distributors such as the defendants is well known. The aspect of channel is being illegally aired on the local cable networks has almost taken on a regular feature. He prayed that in the facts and circumstances apart from giving necessary directions be also given for defendant Nos. 7 to 20, in other words, the court may pass 'John Doe' orders.

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Mr. Anand placed reliance on Trade Marks Law of Canada in which it is mentioned that 'John Doe' orders enabling the order to be served upon persons whose identity is unknown to the plaintiff at the time the action was commenced, but whose activity falls within the scope of the action. This form of naming a party is considered a mere 'misnomer', and as long as the 'litigating finger' is pointed at such person then the misnomer is not fatal. This proposition has been taken from Jackson v/s Bubels (1972) 28 DLT. (3d) 500 (B.C.C.A.) and Dukoff vs. Toronto General Hospital (1986),54,O.R.(2d) 50(H.C.).

Mr. Anand submitted that 'John Doe' orders are passed by American, English, Canadian and Australian Courts frequently. He further submitted that this court also possesses enormous inherent powers to formulate the orders which are necessary to meet the peculiar facts and peculiar situations., In the first U.S. Federal 'John Doe' order, Shaw vs Various John Does, No 80 Civ,722 (S.D.N.Y.Fe,6,1980) the court held that a court of equity was always free to fashion a decree in keeping with the needs of the litigants. Similarly, in Billy Joel vs. Various John Does, 1980 U.S. Dist LEXIS 12841 the Court held:

' Were the Injunction to be denied, Plaintiffs would be without any legal means to prevent what is clearly a blatant infringement of their valid property rights. While the proposed remedy s. Novel, that in itself should not weigh against its adoption by this court. A court of equity is free to fashion whatever remedies will adequately protect the rights for the parties before it.'

Mr. Anand placed reliance on the judgment of the Supreme Court in Manohar Lal Chopra vs. Rai Bahadur Rao Raja Seth Hiralal, AIR 1962 SC 527. The Court held that the inherent powers of the Court are in addition to the powers specifically conferred on the Court by the Code. They are complementary to

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those powers and therefore, it must be held that the court is free to exercise them for the purposes mentioned in Section 151 of the Code when the exercise of those powers is not in any way in conflict with what has been expressly provided in the Code or against the intentions of the legislature.

Mr. Anand placed reliance on EMI Records Ltd . v. Kudhail and others (1985) FSR 36, (1983) Com LR 280.

Mr. Anand , Learned counsel for the plaintiffs, has made references to a large number of Canadian, Australian, English and American cases but I would not like to burden this order with all the judgments on which reliance has been placed at this stage. Since ?John Doe? orders are passed in the court of Canada, America, England, Australia and in some other countries. The judicial systems of all these countries have basic similarity with our judicial system. Therefore, looking to the extra ordinary facts and circumstances of the case, in the interest of justice the courts in India would also be justified in passing ?john Doe? orders.

It is noteworthy that after such finding keeping in view the peculiar facts of the CS(OS) No. 1072/2002, a John Doe order was not passed.

28. My attention has also been drawn to an order dated 24th November, 2006 in CS(OS) No. 2189/2006 wherein the court has granted an injunction order in terms of the above observations. This court as such has the jurisdiction to pass an order in the nature of a John Doe order injunction unknown persons in circumstances as have been pleaded by the plaintiff in the present case.

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29. The plaintiff has approached this court to seek protection of its valuable rights against such unwarranted, unauthorized and illegal actions of the defendants nos. 1 to 90, 92 to 144 as well as the Mr. Raj Sharmas' arrayed as defendant nos. 145 to 173 which tend to violate and dilute the exclusive broadcast reproduction rights vested with the Plaintiff in respect of such events for the territories including India which also impact financially the operations of the plaintiff herein.

30. The plaintiff has asserted violation of its rights and violations of the Copyright Act, 1957, the Cable Network (Regulation) Act, 1995 before this court. It is urged that unauthorized cable transmission of the plaintiff's channel shall result in irreparable loss and damage to the plaintiff including subscription loss as well as advertisement revenues in addition, it would encourage other cable operators who have currently procured licenses from the plaintiff and possessed valid licenses to also transmit unauthorized signals without making necessary payments. It would appear that public interest would also suffered on account of poor programme quality. There is prima facie substance in the plaintiff's contention that the same would impact the plaintiffs reputation as well. In support of the grievance that the damage would be irreparable, it is pointed out that the cable industry has an

unstructured compensation and it would be impossible to

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assess the damages which may result on account of unauthorized telecast/broadcast/distribution.

31. The material placed before this court would show that the plaintiff's channels are paid channels not meant to be viewed by persons who are not subscribers through authorized cable operators. Only authorized licenses can use/distribute the encrypted channels. The licensed cable operators use a decoder or a decryption device which have unique numbers given by the plaintiff to its licensed cable operators. Unauthorised cable operators indulge in

illegal capturing of sports signals of the plaintiff which are the illegally transmitted. The modus operandi adopted by dishonest cable operators including the defendants is detailed in para 17 and 19 of the plaint. Such illegally and unauthorisedly captured signals are then distributed to through their respective network surreptitiously to cable homes attached to them.

32. There is therefore substance that unlicensed broadcast of the reproduction rights vested in the plaintiff by operating signals, transmit to India in the foregoing manner is illegal, unfair and deserves to be prohibited.

33. The plaintiff has specifically averred that the defendants in the suit have not signed any licensed agreement and/or direct that the

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plaintiff's distributors and as such are not authorized to distribute the channels over their cable operators. As such transmission of these channels is violative of section 37(3) of the Copyright Act.

34. The events of ICC Cricket World Cup 2011 to be held in India, SriLanka and Bangladesh will last only till April 2, 2011 and it is contended that unless injunction as prayed for is granted by this court, the events would be over and the business of the plaintiff herein would have been severely impacted.

35. Having perused the plaint, application and documents, I am satisfied that the plaintiff has made out a prima facie case for grant of ad interim orders. Grave and irreparable loss and damage would enure to the plaintiff in case interim protection is not granted. Balance of convenience and interest of justice are in favour of the plaintiff and against the defendants.

36. It is accordingly directed as follows :-

(i) that the defendants/their agents, representatives, franchisees, sub-operators, head ends and/or anyone claiming under them are hereby restrained from distributing, telecasting and broadcasting/rebroadcasting or in any other manner communicating to the viewing public/subscribers either by means of wireless diffusion or by wire or in any other manner the ICC Cricket World Cup, 2011 being

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telecast on the STAR Cricket, ESPN and Star Sports channels and/or in any other manner infringing the copyright/re-broadcast right of the plaintiff by downloading any other channels not registered under the downlinking guidelines till further orders.

(ii) It is further directed that till the present order is vacated or

modified, the direction shall operate against the defendants, their agents, representatives, franchises, sub-operators or any person claiming under them an injunction.

(iii) Further injunction in terms of serial no. (i) above is passed against un-named and undisclosed persons who may be likewise committing breach of the rights of the plaintiff by resorting to illegal tapping of DTH connections by linking the same to the distribution networks.

(iv). The SHO/Superintendent of the concerned police station(s) are directed to render assistance to the plaintiff should any be required for purposes of enforcement of the present order as it the obligation of the police authorities and the state to enforce judicial orders passed.

(v) The plaintiff shall comply with the provisions of the proviso to rule 3 of order 39 of the CPC within a period of one week from today.

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IA no.2563/2011 (U/O.26 Rules (and 12 CPC)

37. Issue notice, returnable on 12th August, 2011.

Copy of this order be given to counsel for the plaintiff dasti under signatures of the Court Master.

**GITA MITTAL,J
FEBRUARY 18, 2011
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