

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.09.2019

Coram

The Honourable Mr.Justice N.SATHISH KUMAR

**C.S.No.848 of 2017
and O.A.Nos.1083 to 1085 of 2017**

Flipkart Internet Private Limited,
Vaishnavi Summit,
7th Main, 80 Feet Road, 3rd Block,
Koramangala Industrial Layout,
Bangalore – 560 034, Karnataka,
India., rep. its Authorised Signatory
Mr.Aneesh Garg

...Plaintiff

Versus

Somasundaram Ramkumar

...Defendant

This suit is filed under Order VII Rule 1 C.P.C r/w. Order IV Rule 1 of the Original Side Rules of the Madras High Court and Sections 11, 27, 29, 134, 135 of the Trade Marks Act for the following reliefs:

(i) To grant permanent injunction restraining the defendant, his partners, directors, franchisees, licensees, employees, officers, servants, successors, heirs, agents, and all others acting for and on his behalf from, selling, distributing, advertising, exporting, offering for sale, launching and in any other manner, directly or indirectly, dealing in any services or products using the mark FLIPPINGKART or

any other name/mark deceptively similar/identical to plaintiff's mark 'FLIPKART' in any manner whatsoever, including in relation to his online email and/or telecommunication and/or retail services and/or any other business, including all use of the plaintiff's trademark as part of his trademark, logo, business cards, labels, promotional materials, advertisements, domain names, company names, trading styles, URLs, e-mail addresses, screen names, user names, website contents (whether or not visible), transportation vehicles, documents, reports, data, invoices, receipts, stationery and on any other materials, and things on which he is using the mark FLIPPINGKART or any other mark identical or similar to plaintiff's mark "FLIPKART", amounting to infringement of plaintiff's registered "FLIPKART" trademarks as set out in paragraph 19 of the plaint;

(b) To grant permanent injunction restraining the defendant, his partners, directors, franchisees, licensees, employees, officers, servants, successors, heirs, agents and all others acting for and on his behalf from, selling, distributing, advertising, exporting, offering for sale, launching and in any other manner, directly, or indirectly, dealing in any services or products using the mark FLIPPINGKART or any other name/mark deceptively similar/identical to plaintiff's mark, "FLIPKART" in any manner whatsoever, including in relation to his online email and/or telecommunication and/or retail services and/or any other business, including all use of the plaintiff's trademark as part of his trademark, logo, business cards, labels, promotional materials, advertisements, domain names, company names, trading styles, URLs, e-mail addresses, screen names, user names, website contents (whether or not visible), transportation

vehicles, documents, reports, date, invoices, receipts, stationery and on any other materials, and things on which he is using the mark FLIPPINGKART or any other mark identical or similar to plaintiff's mark "FLIPKART", amounting to passing off the defendant's goods or business or services as those of plaintiff;

(c) to grant a permanent injunction restraining the defendant from selling, alienating, transferring to any party the domain name "FlippingKart.com" and the URL www.FlippingKart.com.

(d) To declare the plaintiff's trademark "FLIPKART" as a well-known Trademark;

(e) To grant order of delivery up of any brochures/printed material and/or any material which infringes plaintiff's registered trademark "FLIPKART".

(f) To direct the defendant for rendition of accounts in respect of his alleged activities and business especially services rendered and goods sold under the mark "FLIPPINGKART".

(g) Costs of the suit.

For Plaintiff : Mr.K.Premchandar

For Defendant : Set *ex parte*
vide order dated 18.06.2019

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The present Suit has been filed by the plaintiff for the reliefs, morefully described in the prayer portion of this Judgment.

2. The present suit has been admitted on 31.10.2017, and the substituted service was effected on the sole defendant by way of Paper Publication by the learned Master. However, when the matter was called on 03.07.2018, none appeared on behalf of the defendant. Hence, the sole defendant was set *ex parte* by this Court, thereafter, when the matter was listed before the learned Additional Master-I, for recording the *ex parte* evidence, the plaintiff filed the Proof Affidavit and on the side of the plaintiff, only one witness was examined viz., P.W.1, Mr.Sukant Dukhande and 154 documents were marked viz., Ex.P1 to Ex.P154.

3. Today(13.09.2019), when the matter is taken up for final disposal, the learned counsel for plaintiff is present.

4.1. The plaintiff is a Electronic Commerce Company registered under the Companies Act, 1956 headquartered in Bangalore, Karnataka, India which includes its predecessor in title and its group companies. The trademark of the plaintiff Company is "FLIPKART" which came into being in the year 2007 with the

establishment of the website www.flipkart.com by the plaintiff's promoters/founders, Mr.Sachin Bansal and Mr.Binny Bansal. The said website was created in October 2008, with the objective of making shopping convenient for everyone who had internet access in India. On 01.10.2012, the plaintiff Company was incorporated as Flipkart Marketplace Private Limited and subsequently, on 27.11.2012, the plaintiff Company changed its name as Flipkart Internet Private Limited. On 31.12.2012, the plaintiff Company purchased Flipkart India Limited's business relating to Information Technology Platform (which included the website www.flipkart.com) along with the brand name, trademark and support services for consideration.

4.2. The plaintiff's website www.flipkart.com is a fully automated, topically arranged and easy-to-use online services that seek to provide availability 24 hours a day, seven days a week, enabling buyers to locate the items for sale in fixed-price formats, facilitating buyers to purchase items of interest, and all "FLIPKART" users to browse through listed items from any place in the world at any time. The plaintiff has spent substantial sums of money in

advertising and in 2016-17, its expenditure was INR 7,211,184,598 in promoting and advertising their e-commerce website www.flipkart.com.

4.3. The plaintiff is the registered proprietor of the trademark "FLIPKART", "FLIPCART" and "FLIPKART.COM" in classes 02, 03, 05, 06, 07, 10, 12, 14, 15, 16, 18, 20, 21, 26, 35, 38, 41, 42 & 45 and the said marks are valid and subsisting. By virtue of prior adoption, continuous and extensive use, widespread advertising and the tremendous reputation accruing thereto in the course of trade, the trademark, "FLIPKART" is exclusively associated with the plaintiff. The plaintiff holds prior trademark registrations for the trademark "FLIPKART", "FLIPCART", and "FLIPKART.COM" both in word format and in stylized format. The earliest registration for the mark, 'FLIPKART' dates back to 13.11.2009, in India. The plaintiff and its Group/Associate Companies have several non-exhaustive trademark registrations in India, over the trademarks, FLIPKART and other FLIPKART formatted marks. The plaintiff is the owner of copyright in the stylized manner of representation of its labels/logos/artistic works as set out below:



4.4. The plaintiff is also the owner of the following domain names listed hereunder-

- (a) FLIPKART.COM
- (b) FLIPKART.IN
- (c) FLIPKART.JOBS
- (d) FLIPKART.MOM
- (e) FLIPKART.NET
- (f) FLIPKART.ORG
- (g) FLIPKART.BIZ
- (h) FLIPKART.CAREERS
- (i) FLIPKART.CO.IN
- (j) FLIPKART.COM
- (k) FLIPKART.SG

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4.5. The plaintiff also owns and operates the website www.flipkart.com which was opened/operated by its promoters/Associate/Group companies since 2007. The trademark 'FLIPKART' is the highest selling brand of the plaintiff.

4.6. While so, on 29.05.2017, the plaintiff came to know that an Application No.3052911 in Class 38 filed in the name of the defendant for registration of the mark FLIPPINGKART published in Trade Marks Journal No.1799. The plaintiff already opposed the Application which was filed by the defendant seeking to register the mark "FLIPKART" in USA under SI.No.86760783. Recently, it came to the knowledge of the plaintiff that the defendant has registered a website www.FlippingKart.com. On 01.05.2017, the defendant registered the said website illegally, without any authorization, permission or license of the plaintiff. On visiting the website, www.whoisdomaintools.com, it is clear that the domain name, "www.FlippingKart.com" is registered with GoDaddy.com Operating Company LLC (Registering Authority of the domain name) in the name of S.Ramkumar. The said registrant owner's address is identical to defendant's address as mentioned in the Trade Marks

Journal advertisement for the mark "FLIPPINGKART" under No.3052911. The defendant got registered the domain name "www.FlippingKart.com" only with an evil intention to encash upon the reputation and goodwill earned by the plaintiff among the general public over the trademark "FLIPKART" and to pass off his goods and services as that of the plaintiff. Therefore, left with no other option, the plaintiff has filed the present suit.

5.1. The learned counsel for the plaintiff fairly submitted that the plaintiff is the prior user and registered proprietor of the trademark "FLIPKART". He also submitted that the unauthorized use of the plaintiff's mark or any identical/similar mark for any goods or services by any person other than the plaintiff is illegal and the same amounts to violation of the rights of the plaintiff. He further submitted that the defendant's offending trademark, "FLIPPINGKART" is similar to the plaintiff's registered trademark, "FLIPKART". He would further submit that the plaintiff had exclusive right over the trademark "FLIPKART" and that the defendant has no right to adopt the said trademark.

5.2. The learned counsel for plaintiff would contend that in the guise of the plaintiff's trademark, the defendant is passing off the substandard goods to the general public/consumers. He would further contend that the defendant's usage of the plaintiff's registered trademark "FLIPKART" would amounts to infringement and passing off. He prayed that the defendant may be restrained from using the plaintiff's registered trademark "FLIPKART", otherwise, the plaintiff will suffer a great loss and hardship. He further submitted that the plaintiff is not pressing the prayer (e) & (f) and they are ready to given up the same. He therefore prayed that the suit may be decreed as prayed for in respect of prayer (a), (b), (c) & (d).

6. Heard the learned counsel for the plaintiff and perused the materials available on record.

7.1. In view of the submission made by the plaintiff's counsel, this Court finds that the plaintiff is the registered proprietor of the trademark, "FLIPKART/FLIPCART" and they have obtained registration of the said trademark, which is clearly evident from

Ex.P5 to Ex.P82, (Certificates for use in legal proceedings issued by the Trade Marks Registry, New Delhi in respect of the plaintiff's trademarks FLIPKART, FLIPCART formatted marks in classes 02, 03, 05, 06, 07, 10, 12, 14, 15, 16, 18, 20, 21, 26, 35, 38, 41, 42 & 45) and Ex.P83 to Ex.P135 (Registration Certificates/Current status pertaining to the E-Register of the plaintiff's various FLIPKART/FLIPCART formative marks). A perusal of Ex.P153, Screenshots of defendant's website www.flippingkart.com, shows that the defendant is using the mark "FLIPPINGKART" in online www.FlippingKart.com illegally with an evil intention to deceive the general public and to cause deception in the market. It is to be noted that the defendant has not yet produced a single contrary evidence denying the allegations framed by the plaintiff.

7.2. It is crystal clear that the defendant had adopted the registered trademark of the plaintiff only with a *mala fide* intention to spoil the immense goodwill and reputation earned by the plaintiff among the consumers/general public and therefore, the same would not only amounts to infringement of the plaintiff's registered

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trademark, "FLIPKART", but also it would amounts to passing off their goods or business or services as those of plaintiff. There is no doubt, as far as prayer (a), (b), (c) & (d) are concerned, the plaintiff proved its suit claim.

7.3. Considering the submission made by the plaintiff's counsel, this Court is inclined to decree the suit as prayed for in respect of prayer (a), (b), (c), (d). Accordingly, in respect of prayer (a), (b), (c), (d), this Civil Suit is decreed as prayed for with costs. Consequently, connected Applications are closed.

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13.09.2019

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