**IN THE COURT OF MS. KIRAN GUPTA,
ADDITIONAL DISTRICT JUDGE-01,
SOUTH WEST DISTRICT, DWARKA COURTS, DELHI**

CS No. 1004/21

Usha Martin University .....Plaintiff

Versus

**Getmyuni Education Services Pvt. Ltd.
..... Defendant**

ORDER

1. Vide this order, I shall decide the application of the plaintiff under Order 39 Rule 1 and 2 CPC, wherein it is prayed that the defendant be restrained from using the name, information and details of plaintiff university on its website www.getmyuni.com. It is further prayed that defendant be directed to delete the name, information and details about plaintiff university on its website www.getmyuni.com during the pendency of the suit.

BRIEF FACTS AS STATED IN THE PLAINT

2. The case of the plaintiff that it is a private university established under the Usha Martin University Act, 2012 vide Gazette Notification dated 16.07.2013. It is one of the most premier institutes for higher education in the State of Jharkhand. Students across the globe take admission in various courses offered by it. That on account of long and continuous use and receipt of numerous awards and accolades from some of the most prominent institution and accreditation agencies in India, it has acquired formidable goodwill and reputation amongst members of the public which symbolizes, distinguishes, signifies, connotes and denotes source and high quality of education provided by it.

2.1. That in the month of December 2019, it came to know that defendant is displaying information and details about the courses offered by it including eligibilty criteria, fees structure, student ratings, affiliation/ accreditation, facilities on its website without its consent. That due to the act of the defendant, whenever, the name of plaintiff university is searched on the internet through the search engine www.google.co.in, the link to the

defendant's website is displayed at the very top on the second page of search results. That by displaying information and details about the courses offered at the plaintiff university, the defendant is generating traffic on its website.

2.2. It is stated that defendant claims to provide services to its users about admission, fees, infrastructure, placement and courses offered by different universities on its website. There is no mechanism to check the authenticity of different details provided on the website. Whenever the name of plaintiff university is searched, the users get lured into other universities enumerated at the bottom of the search results. That on being confronted, the defendant vide email dated 18.01.2020 proposed an agreement of 6 months with it, whereby it would generate leads for admission in academic session 2020-21 on consideration of fixed monthly payment. The defendant had proposed that it would ensure brand awareness and visibility in target audience through Top Search Listing, content blogs, emails and leads and responses. The defendant through email dated 29.02.2020 had again proposed to generate lead for numerous courses offered

by plaintiff university for total consideration of Rs. 12 lacs + taxes. The defendant again sent a reminder vide email dated 30.03.2020. Vide email dated 04.05.2020, defendant proposed certain marketing schemes for the plaintiff for brand building and connecting with the target audience.

2.3. It is stated that plaintiff does not want to either directly or indirectly associate itself with the defendant, whose model is to connect educational institution with the target audience and generate illicit profits from the same. The free services provided by the defendant to the users of its website is nothing but the advertisement on behalf of its clients, to lure students into taking admission in such universities.

2.4. That the plaintiff had sent an email dated 26.06.2020 on the IDs displayed on the website of defendant, indicating its intention of not having any kind of business connections with the defendant. It had asked the defendant to remove each and every link / content and information pertaining to it. It had also sent legal notice dated 17.07.2020 to the defendant to not to use

the name ‘Usha Martin’ or ‘Usha Martin University’ or any information / details concerning the same. The said notice was replied by the defendant vide reply dated 05.08.2020.

2.5. It is alleged that defendant is commercially using the name of the plaintiff university to generate traffic on its website and thereafter providing lead to other universities who pay to the defendant for its services. It had assessed the loss caused to it from the conduct of the defendant @ Rs. 10 lacs, hence the present suit for recovery of damages alongwith the relief of permanent injunction.

WRITTEN STATEMENT ON BEHALF OF DEFENDANT

3. In the WS filed on behalf of defendant, it is stated that it is an education technology based startup that provides an online search platform through its website to help potential candidates to choose the right educational institution as per their needs. It lists a number of reputed educational institutions from all across the country on its website. The listing of these institutions is

based on publicly available information, reviews and feedbacks obtained from students. It had listed the information about the plaintiff university in a bonafide manner to help interested students to know about it better and deeper. It only provides an interactive platform for students where they are kept updated about the latest news and information regarding preferred colleges, exams and courses.

3.1. It is stated that it is merely putting out publicly the information available regarding the plaintiff university on its website in an attempt to provide exhaustive knowledge to the students of the available universities providing their desired courses at one platform so that they can make an informed decision from the number of universities all over India. It merely puts out information concerning colleges and universities and had never tried to show or give an impression of any kind of ill founded association between it and the plaintiff university. It is stated that it merely intends to bridge the gap between students and universities and the information put by it on its website is protected by the principle of fair dealing under the Copyright Law. The information being publicly

available and easily accessible is being used for a completely different objective to that of the plaintiff university. The principle of 'Nominative Fair Dealing' protects its ability to refer to the plaintiff's trademark for services for purposes of reporting , commentary, criticism, parody as well as comparative advertising.

3.2. It is stated that it had merely used publicly available information about the plaintiff university on its website in a bonafide manner which does not violate any intellectual property rights of the plaintiff. It is stated that it does not seek to solicit the students into getting admission in a certain university but only seeks to provide a consolidated list of colleges / universities operating in the spectrum in respect of the desired courses for them to make an opinion. It had denied the contents of plaint. It is prayed that the application be dismissed.

ARGUMENTS ON BEHALF OF PLAINTIFF

4. It is argued by counsel for plaintiff that plaintiff has prima facie shown that the defendant demanded money from it for showing the plaintiff university in Top

Search results and to give good ratings and when it refused, the website of defendant is showing the plaintiff university at 24 /25 number and on third / fourth page of the search. It is submitted that the act of defendant of showing the university of plaintiff at the last of the search, is causing a lot of loss to the plaintiff in terms of reputation and monetary consideration. It is further argued that irreparable loss shall be caused to the plaintiff, if, the defendant is not restrained from using the information of plaintiff and advertising it on its website without its consent.

ARGUMENTS ON BEHALF OF DEFENDANT

5. Per contra, it has been argued by the counsel for defendant that the plaintiff in the garb of interim relief is seeking the main relief which is not permissible and cannot be granted at this stage. It is argued that plaintiff has failed to prove / show any injury leave aside irreparable injury which is caused to it due to its name being present on the website of defendant, which is an information based platform and uses algorithms to present publicly available data for the benefit of the students. The

emails attached by the plaintiff of defendant appears to be a unilateral communication. The said emails were sent to the plaintiff pursuant to a mutual discussion with the representative of plaintiff and were not unilateral at all. It is further argued that defendant is covered by the exception of 'Fair Dealing' and 'Nominative Fair Dealing' under the Copyright Act, and Trademark Act, 1999

5.1. It is further argued that Google is a necessary party as plaintiff is mainly aggrieved by the Google results as its name is being shown on the second page, when searched on www.google.com. The plaintiff intentionally has not impleaded Google as party to the suit. It is further submitted that irreparable loss shall be caused to the defendant in the event the relief is granted to the plaintiff as the entire business model of the defendant is dependent upon displaying publicly available information of the universities on its website in furtherance of public interest of disseminating holistic information of universities to their perspective students. It is also against the fundamental right of the defendant company as enshrined under Article 19(1) (g) of the Constitution of India.

FINDINGS

6. Heard ld. counsel for all the parties and perused the entire record file. There is no dispute to the fact that the defendant who claims itself to be an education technology based startup is showing the information about the plaintiff university and the courses offered by it on its website www.getmyuni.com. The plaintiff is aggrieved of the said act of the defendant on the ground that the name of the plaintiff university is shown at a very later stage of the search i.e. at 24 / 25 number and on third / fourth page of the search engine. The grievance of plaintiff is that due to the listing of its university at such a later stage is causing negative publicity and loss to it. The same is refuted by the defendant on the ground that the listing of a particular institution is based on the reviews and ratings given by the users / students of their website and on the basis of the courses offered, infrastructure of the institution and the other facilities provided by the institution.

7. For seeking temporary injunction, the plaintiff has to show prima facie case in its favor, balance of convenience and that irreparable loss shall be caused to the plaintiff. The plaintiff also has to show that it has a legal right and there was an invasion of that right. The object of the temporary injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action, if, the uncertainty were resolved in his favor at the trial. The need for such protection has to be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated. Thus, the existence of prima facie right and infraction of the enjoyment of his property or the right is a precondition for the grant of temporary injunction.

8. In the present case, the plaintiff has placed on record the search results of its university on the website of the defendant. The plaintiff has also filed the emails dated 18.01.2020, 28.02.2020, 03.03.2020, 04.05.2020 and

26.06.2020. It had been argued by counsel for plaintiff that when the plaintiff objected to the defendant for showing its university at a very later stage of the search engine on its website, the defendant demanded amount from it in order to show the plaintiff university in “Top Search Listing”. It is submitted that in the garb of providing information, the defendant is infact earning by advertising on behalf of its clients after taking some money / charges for displaying their information on its website. It is submitted that despite the service of the legal notice by the plaintiff to the defendant not to advertise /display information about its university on its website, the defendant is still continuing to advertise / display information about plaintiff university at a very lower number in the search engine without its consent. It is submitted that when the plaintiff denied for paying the charges to the defendant for showing its university in “Top Search Listing” and for “Leads and Responses”, the defendant is showing the plaintiff university at a much later stage of the search i.e. at 24 / 25 number and on the third / fourth page of the search engine.

9. I have perused the emails relied upon by the counsel for plaintiff. As per one of the emails, it is stated that *"PFA the proposal for lead generation for Usha Martin University, Ranchi and Mangalayatan University, Aligarh for admission session 2020"*. Just below the same, the cost for each element, description and its duration alongwith quantity and visuals in mentioned. Even in the email dated 29.02.2020, defendant had proposed to the plaintiff the details of "Deliverables" on payment of cost of Rs. 12,00,000/-. On perusal of the details of the "Deliverables", it is evident that defendant has demanded money from plaintiff for "Top Search Listing" of the plaintiff university and "Leads and Responses" etc.

10. The defendant in its WS has stated that it is merely putting up publicly the information available regarding the plaintiff university on its website in an attempt to provide exhaustive knowledge to the students of the available universities and the courses provided by them. During arguments, it had been argued by counsel for defendant that the information is provided free of cost and the listing is based on the available information, reviews and feedbacks obtained from the students.

However, the contents of the emails relied upon by the counsel for plaintiff are contrary to the submissions made by the counsel for defendant. It is clarified that the said emails have not been denied by the defendant. On perusal of all the emails, it is evident that the defendant has sent the proposal to the plaintiff for payment of certain charges/ cost for "Deliverables" which includes "Top Search Listing" & "Leads and Responses" for its university on the website of the defendant. Thus, the listing of the university at a particular level / stage on the search engine is not purely based on the reviews and feedbacks obtained from the students as stated in the written statement and submitted by counsel for defendant, but, it also has monetary component / consideration i.e. any institution on payment of certain charges can get its institution listed on the top number / top search listings, thereby putting the said institution on an advantage as compared to the other institutions. Thus, it is a form of advertising of a particular institution on the website of the defendant.

11. The counsel for plaintiff has duly submitted that it had requested the defendant not to advertise / display information of its university on its website, but, the

defendant refused and is still continuing to show the plaintiff university on its website without its consent at a very later stage / level on the search engine. The counsel for defendant has denied the claim of the plaintiff on the ground that the display of information of the plaintiff University on its website is protected under Section 52 of the Copyright Act which talks about Fair Dealing and under the Trademarks Act which talks about Nominative Fair Dealing.

12. The term Fair Dealing is not defined in the Copy Right Act, 1957. It is a legal notion that enables a person to make limited use of a copyrighted work without the owner's consent. Section 52 enumerates specific activities or works that are not deemed infringement of Copy Right, including fair dealing with a literary, dramatic, musical or aesthetic work that is not a computer programme. The fair nature of the dealing depends upon the purpose of use; the nature of the work; the amount of the work used and the effect of use of the work on the original. Thus, the legal doctrine of fair dealing permits a person to use any work which is protected under the Act with limited usage of such work so as to maintain the sanctity and originality

of such work as well as the registered proprietor of the work. Fair dealing is a significant limitation on the exclusive right of the copyright owner but where the economic impact is significant, the use may not constitute a fair deal. Similarly, Nominative Fair Use relates to use of a registered trademark by a person in relation to goods adapted, to form part of, or to be accessories, provided it is reasonably necessary in order to indicate that the goods so adapted are compatible with the goods sold under the trademark. Normative use refers to use of another's trademark to identify one's own goods or services.

13. In the present case, the plaintiff has prayed that the defendant be restrained from displaying the information of plaintiff university on its website. The plaintiff is not seeking protection of any sort of Intellectual Property Rights against the defendant. The act of defendant of advertising / providing information about the university of plaintiff on its website without the consent of plaintiff is neither protected under Fair Dealing and Nominative Fair Use as argued by the counsel for defendant. The said argument of the counsel for defendant is mis-conceived and not tenable and the

concept of Fair Dealing and Nominative Fair Dealing is not applicable in the present case.

14. On the basis of above discussion, the plaintiff has thus shown that it has prima facie case in its favor to exercise its right to "Opt Out Option" for advertisement / providing of information about its university on the portal / website of the defendant. From the various emails placed on record by the plaintiff, it is evident that the defendant asked about the cost of "Deliverables" including "Top Search Listing", "Leads and Responses", of the plaintiff university. The apprehension of the plaintiff that due to non-payment of the cost of deliverables by it to the defendant has resulted in showing its university at a much lower stage of the search engine is well explained. The plaintiff has the legal right to protect its institution from negative publicity in comparison to the other universities who pay to the defendant for its services for top listing.

15. The balance of convenience also lies in favor of the plaintiff and against the defendant because due to listing of the plaintiff university at a later stage of the search engine, is causing loss to the plaintiff in monetary terms as the person / student searching for the university

would not scroll the list till the last page and might get attracted to the universities shown in the top listing search itself. The plaintiff has made out a strong case for protection against the defendant for using its name on its website for its own economic gain and causing loss to the plaintiff in terms of negative publicity by showing it at a later stage of the search engine.

16. The plaintiff has shown that it would suffer irreparable loss and injury, in case the defendant is not restrained from showing the plaintiff university at a much lower stage of the search. On the other hand, the defendant would not suffer any irreparable loss because it has deliberately and willfully chosen to provide the information of the plaintiff university on its website without the consent of the plaintiff and despite the fact that the plaintiff had exercised its right to "Opt Out Option". Further, the listing of a particular institution on the website of the defendant is also based on the cost of "Deliverables" which are paid by the institutions to the defendant.

17. In view of the above discussion, the application of the plaintiff under Order 39 rule 1 and 2 CPC

is allowed and the defendant is hereby restrained from using the name, information and details of plaintiff university on its website www.getmyuni.com. The defendant is further directed to delete the name, information and details about plaintiff university on its website www.getmyuni.com during the pendency of the suit.

The observations made hereinabove are prima facie and shall not constitute any expression of final opinion on the issues involved and shall have no bearing on the merits of this case.

ANNOUNCED IN THE OPEN COURT ON 28.03.2023

(KIRAN GUPTA)
ADDITIONAL DISTRICT JUDGE-01
SOUTH WEST DISTRICT
DWARKA COURTS, DELHI