

**Legal Issues
in**

CPC in the context of IP Enforcement

Module 2- Legality of John Doe Orders and Website Blocking Injunctions

Relevant Provisions of The Code of Civil Procedure, 1908

❖ Section 151 – Saving of inherent powers of Court:

- “**Nothing** in this Code **shall** be deemed to **limit** or otherwise **affect** the **inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.**”
(emphasis supplied)

❖ Order I Rule 8 - One person may sue or defend on behalf of all in same interest

❖ Order XXXIX - Temporary Injunctions and Interlocutory Orders:

- Rule 1 - Cases in which temporary injunction may be granted
- Rule 2 - Injunction to restrain repetition or continuance of breach
- Rule 3 - Before granting injunction, Court to direct notice to opposite party

Taj Television Ltd. & Anr. vs. Rajan Mandal & Ors., [[2003] F.S.R. 22]

- ❖ Plaintiffs, through their channel “Ten Sports” owned exclusive broadcast rights to telecast the 2002 World Cup Football matches in India, as envisaged under Section 37, Copyright Act, 1957.
- ❖ Some of the defendants, being cable operators, started unauthorizedly transmitting the Ten Sports channel in India.
- ❖ Plaintiffs contented that *“owning to the unique nature of cable piracy and the unstructured nature of the cable industry, enforcement of rights against cable operators is a virtual nightmare. It hardly takes a few minutes for cable operators who unauthorisedly transmit signals to destroy evidence of such unauthorised transmission”*
- ❖ The first to sixth defendants were identified as cable operators operating cable networks in specific cities/regions of India. The seventh to twentieth defendants were unknown entities who are likely to unauthorizedly transmit the plaintiff’s television channel *via* their networks without a license.

Taj Television Ltd. & Anr. vs. Rajan Mandal & Ors., (Contd.)

- ❖ The plaintiffs, accordingly, prayed that the Court invoke the inherent powers of under Section 151 of the CPC “...to evolve a fair and reasonable procedure to meet the exigencies of the present situation which is consistent with the international “John Doe” practice as also India's TRIPS obligation to effectively enforce all sorts of IPRs...”.
- ❖ The Court, taking into account the practical life span of the plaintiff’s IP rights, invoked the inherent powers under Section 151 of the CPC and appointed a Commissioner who was authorized to search the premises of not only the first to sixth defendant but to enter the premises of other cable operators and collect necessary evidence.

Ardath Tobacco Company Ltd.v. Munna Bhai and Ors., [2009 (39) PTC 208 (Del)]

- ❖ The plaintiffs, manufacturers of the cigarettes STATE EXPRESS 555, instituted a suit for restraining defendant nos. 1-6 vendors/stockists of cigarettes in Calcutta and Delhi from dealing in the cigarettes under packaging and trade dress which was identical/deceptively similar to the plaintiffs'. The plaintiffs sought a 'John Doe' type Order, and defendant nos. 7 to 23 were impleaded as Ashok Kumars.
- ❖ Vide an ex parte interim Order, the Court had appointed two court commissioners, one for visiting the premises of the defendants in Calcutta and Delhi as well as any other premises where the impugned goods were suspected to be stocked.
- ❖ The Court eventually decreed the suit only against the identified defendants stating the plaintiff had not brought any other person against whom the order may be extended.

Indian Performing Right Society Ltd. v. Badal Dhar Chowdhry and Ors., [2010 (43) PTC 332 (Del)]

- ❖ Defendant No. 1 is an organizer of live shows involving the public performance of literary and musical works and the defendants 2 and 3 have premises which are leased out to defendant No. 1.
- ❖ The plaintiff contended that the defendants cannot play music in which the plaintiff owns copyright without authorization from and payment to the plaintiff.
- ❖ An ex-parte interim Order was passed restraining the defendants from using their premises to communicate musical works in violation of the plaintiff's copyright and without the plaintiff's approval.
- ❖ *“...ought not issue an injunction which is vague or indefinite. Breach of injunction has serious consequences for the violator... A vague injunction can be an abuse of the process of the court and such a vague and general injunction of anticipatory nature can never be granted.”*

6

ESPN Software India Private Ltd. v. Tudu Enterprise and Ors., CS (OS) 384/2011

- ❖ The plaintiff had the exclusive rights for telecast of the ICC Cricket World Cup 2011 in India and other territories. The defendants were identified and unidentified Multi Systems Operator (MSO) and /or Local Cable Operators (LCOs) who had been unauthorizedly transmitting the channels of the plaintiff.
- ❖ The Court, in this case, found that it has the jurisdiction to pass a John Doe Order.
- ❖ The interim injunction was, therefore, extended to the unnamed and undisclosed persons and the SHO/Superintendent of the concerned police station(s) were directed to render assistance to the plaintiff for enforcement of the present Order.

7

Viacom 18 Motion Pictures v. Jyoti Cable Network and Ors., [CS(OS) 1373/2012]

- ❖ The plaintiff is engaged in the business of production and distribution of cinematograph films and other entertainment businesses. It is a co-producer and co-owner of copyright in a film ‘DEPARTMENT’
- ❖ The plaintiff contended that that it apprehends use of advanced-technology to copy and distribute the film in the market on DVDs/CDs as also exhibited on cable and internet by the defendants and other unknown persons who have been impleaded as Ashok Kumar.
- ❖ An ex-parte ad interim injunction was granted in favour of the plaintiff restraining the defendants and other unidentified persons, stating that the plaintiff will suffer irreparable loss and injury if CDs/DVDs, etc. are made and the film is copied and uploaded on internet and distributed and shown on cable TV, DTH, internet, etc., and the purpose of filing of the suit shall be defeated.

Balaji Motion Pictures Ltd. and Ors. v. Bharat Sanchar Nigam Ltd. and Ors., [Notice of Motion (L) No. 1783 of 2016 in Suit (L) No. 633 of 2016]

- ❖ An urgent application was moved by the plaintiffs against a number of defendants, including ISPs, cable operators; and some are unknown persons, seeking restraint against potential damage and loss on account of pirated and illicit copies of its film ‘Udta Punjab’ being made available online.
- ❖ It was submitted on behalf of one of the ISPs arraigned as defendant that it is unreasonable to expect any of the intermediaries or cable operators to block entire websites. The suggestion, implicit in the plaint, that all these 800 websites have only illicit content and that they have no permissible or legitimate content, is unwarranted and without disclosed basis.
- ❖ The court noted that previous orders granted by it providing overbroad relief was a mistake.
- ❖ The Court noted that “...*internet service providers cannot be expected to police the Internet or to monitor the contents of every single website. They only provide connectivity. Internet service providers, like all intermediaries, have sufficient statutory protection.*”

Tata Sky Ltd. v. Nimble TV Inc. and Ors., [2016 (66) PTC 251 (Del)]

- ❖ Suit filed by plaintiff seeking a decree of permanent injunction restraining the defendants and other known and unknown parties from associating with, connecting or linking through any technological means including internet switches/handles/protocols/web-tools, with the plaintiff's DTH services and the plaintiff's website "www.tatasky.com".
- ❖ The case of the plaintiff is that the defendants, in an illegal manner have on the website www.watch.nimbletv.com provided a link which redirects to the website of the plaintiff. It is also apprehended that the defendants may be unauthorizedly using/connecting/linking/associating with the television signals of the plaintiffs by making it available in any illegal and an unauthorized manner.
- ❖ A permanent injunction was granted in favour of the plaintiff restraining the defendants and other unknown persons from associating with, connecting or linking through any technological means including internet switches/handles/protocols/web- tools, with the plaintiff's services and twebsite.

Januki Kumari and Ors. v. Ashok Kumar and Ors., [2017 (71) PTC 200 (Del)]

- ❖ Plaintiffs sought an ex-parte injunction against Ashok Kumar and other defendants allegedly in the business of manufacturing counterfeit products in Meerut under its registered trademark GOLDSTAR. The Court heard the arguments on two counts i.e., maintainability of the suit and grant of ex-parte ad interim injunction against unknown persons.
- ❖ The Court found that it did not have the jurisdiction to adjudicate upon the instant case since the plaintiffs were based out of Nepal, the whereabouts of defendant no.1 (Ashok Kumar) were unknown and defendant no. 2 operated out of Meerut.
- ❖ *“Grant of ex-parte injunction...feels like issuing a blank civil search warrant against unknown/unnamed infringers and thereby allowing the plaintiffs to enter any premises, any shop in search of the counterfeit articles....It is not that the plaintiffs are remediless against unknown persons...the remedy is available in the Trademark Act itself by way of criminal complaint....under Section 115 of the Trademark Act.”.*

UTV Software Communication Ltd. and Ors. v. 1337X to and Ors., [2019 (78) PTC 375 (Del)]

- ❖ The plaintiffs are engaged in the business of creating content, producing and distributing cinematographic films.
- ❖ Four classes of defendants impleaded in the present matters:
 - (i) certain identifiable websites; (ii) John Doe defendants, including registrants of the defendant websites, uploaders, creators of the redirect / mirror / alphanumeric websites, etc.; (iii) ISPs; and (iv) Department of Telecommunication (DoT) and Ministry of Electronics & Information Technology (MEITY)
- ❖ Relief sought by the plaintiffs:
 - Permanent injunction restraining the defendants from hosting, communicating, making available, etc. the original content of the plaintiffs on their website.
 - Order ISPs to block access to the websites of the defendants.
 - Order directing defendant-websites' Registrars to disclose their contact details and other relevant details.

UTV Software Communication Ltd. and Ors. v. 1337X to and Ors., (Contd.)

❖ Issues for consideration before the court:

- Whether an infringer of copyright on the internet is to be treated differently from an infringer in the physical world?
- Whether seeking blocking of a website dedicated to piracy makes one an opponent of a free and open internet?
- What is a 'Rogue Website' ?
- Whether the test for determining a 'Rogue Website' is a qualitative or a quantitative one?
- Whether the defendant-websites fall in the category of 'Rogue Websites'?
- Whether this Court would be justified to pass directions to block the 'Rogue Websites' in their entirety?
- How should the Court deal with the 'hydra headed' 'Rogue Websites' who on being blocked actually multiply and resurface as redirect or mirror or alphanumeric websites?

THANK YOU!

Questions?

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