

Legal Issues in ‘Territorial Jurisdiction’

Topic: Whether mere accessibility of infringing products on e-commerce platforms confers jurisdiction over a Court?

Relevant Legal Provisions

❖ Section 134(1), Trade Marks Act, 1999 –

*“No suit--- (a) for the infringement of a registered trade mark: or (b) relating to any right in a registered trade mark : or (c) for passing off arising out of the use by the defendant of any trade mark which is identical with or deceptively similar to the plaintiff’s trade mark, whether registered or unregistered **shall be instituted in any court inferior to a District Court having jurisdiction to try the suit.***

(2) For the purpose of clauses (a) and (b) of sub-section (1) a “District court having jurisdiction” shall notwithstanding anything contained in the Code of Civil Procedure, 1908 or any other law for the time being in force, include a district Court within the local limits of whose jurisdiction, at the time of the institution of the suit or other proceeding the person instituting the suit or proceeding or where are more than one such persons any of them, actually and voluntarily resides or carries on business or personally works for gain.

❖ Order VII Rule 10. Return of plaint.—

“(1) Subject to the provisions of rule 10A, the plaint shall] at any stage of the suit be returned to be presented to the Court in which the suit should have been instituted.” [Emphasis supplied]

Relevant Legal Provisions (Contd.)

❖ Section 20, Code of Civil Procedure, 1908

“Other suits to be instituted where defendants reside or cause of action arise – Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction —

(a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or

(b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally works for gain, as aforesaid, acquiesce in such institution; or

(c) The cause of action, wholly or in part, arises.

[Explanation].—A corporation shall be deemed to carry on business at its sole or principal office in [India] or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place.” [Emphasis supplied]

Relevant Legal Provisions (Contd.)

❖ Section 29, Trademarks Act, 1999

Infringement of registered trade marks.*—(1) A registered trade mark is infringed by a person who, not being a registered proprietor or a person using by way of permitted use, uses in the course of trade, a mark which is identical with, or deceptively similar to, the trade mark in relation to goods or services in respect of which the trade mark is registered and **in such manner as to render the use of the mark likely to be taken as being used as a trade mark.*

(6) For the purposes of this section, a person uses a registered mark, if, in particular, he— (a) affixes it to goods or the packaging thereof; (b) **offers or exposes goods for sale, puts them on the market, or stocks them for those purposes under the registered trade mark, or offers or supplies services under the registered trade mark;** (c) imports or exports goods under the mark; or (d) **uses the registered trade mark on business papers or in advertising.** [Emphasis supplied]

Relevant Case Laws

❖ *Banyan Tree Holding (P) Limited v. A. Murali Krishna Reddy and Ors. CS (OS) No.894/2008*

*“2...A peculiar feature of the present suit which is an action for passing of is that **neither the plaintiff nor the Defendants is located within the territorial jurisdiction of this Court.** The plaintiff is a company having its registered office at Singapore whereas the Defendants 1 and 2 are at Hyderabad....The Plaintiff has since 1994 adopted and used the word mark "Banyan Tree and also the banyan tree device...the plaintiff maintains its two websites since 1996 which are accessible in India.”*

“4...The Plaintiff learnt that the Defendants had initiated work on a project under the name "Banyan Tree Retreat", the plaintiff has averred that the word mark and the device adopted by the Defendants in relation to their retreat are deceptively similar to that of the plaintiff and the Defendants have advertised their project on their website...”
“plaintiff has claimed that this Court has the territorial jurisdiction under Section 20 of the CPC. According to the plaintiff, the Defendants solicit business through use of the impugned mark in Delhi.”. “The Defendants have presence in Delhi through their website which is accessible in Delhi and is not a passive website. It not only provides contact information but also seeks feedback and inputs from its customers through an interactive web-page...also, there was at least one instance of the Defendants' brochure being sent to a Delhi resident for the purposes of sale of property. Thus the services of the Defendants are being offered to the customers in Delhi” [Emphasis supplied]

Relevant Case Laws (Contd.)

❖ *Banyan Tree Holding (P) Limited v. A. Murali Krishna Reddy and Ors. CS (OS) No.894/2008*

58. We summarise our findings on the questions referred for our opinion as under:

Question (i): For the purposes of a passing off action, or an infringement action where the plaintiff is not carrying on business within the jurisdiction of a court, in what circumstances can it be said that the hosting of a universally accessible website by the Defendants lends jurisdiction to such Court where such suit is filed ("the forum court")

*Answer: For the purposes of a passing off action, or an infringement action where the plaintiff is not carrying on business within the jurisdiction of a court, and in the absence of a long-arm statute, in order to satisfy the forum court that it has jurisdiction to entertain the suit, the plaintiff would have to show that the Defendant availed itself of the jurisdiction of the forum court. **For this it would have to be prima facie shown that the nature of the activity indulged in by the Defendant by the use of the website was with an intention to conclude a commercial transaction with the website user and that the specific targeting of the forum state by the Defendant resulted in an injury or harm to the plaintiff within the forum state.** [Emphasis supplied]*

Relevant Case Laws (Contd.)

❖ *Banyan Tree Holding (P) Limited v. A. Murali Krishna Reddy and Ors. CS (OS) No.894/2008*

Question (ii): In a passing off or infringement action, where the defendant is sought to be sued on the basis that its website is accessible in the forum state, what is the extent of the burden on the plaintiff to prima facie establish that the forum court has jurisdiction to entertain the suit?

*Answer: For the purposes of Section 20(c) CPC, in order to show that some part of the cause of action has arisen in the forum state by the use of the internet by the Defendant the plaintiff will have to show prima facie that the said website, whether euphemistically termed as "passive plus" or "interactive", was specifically targeted at viewers in the forum state for commercial transactions. **The plaintiff would have to plead this and produce material to prima facie show that some commercial transaction using the website was entered into by the Defendant with a user of its website within the forum state resulting in an injury or harm to the plaintiff within the forum state.** [Emphasis supplied]*

Relevant Case Laws (Contd.)

❖ *Marico Limited vs Mr. Mukesh Kumar & Ors. CS(COMM) 1569/2016*

“..66. This Court finds that the plaintiff has positively asserted in its plaint that the defendants are selling their products within the jurisdiction of this Court through the departmental store „Big Bazar“. The plaintiff has also placed on record a printout of the defendants” website, which specifically states that the defendants” products are available on various e-commerce websites including „Big Bazar“. It is an admitted position that „Big Bazar“ has outlets in Delhi...

*67. The plaintiff has further asserted in its plaint that the defendants are indulging in online sale of the impugned product in Delhi through another website Indiamart. Printouts of the Indiamart website showing the defendants products range have been filed. A perusal of the Indiamart website prima facie shows that it is an interactive website inasmuch as it permits the viewers to ask for price and specifically states "before dispatching the product, they are firmly tested and checked by the team of quality controllers". Accordingly, in the present case the "purposeful availment" as well as "sliding scale" and "effects" tests as stipulated in *Banyan Tree Holding (P) Limited Vs. A. Murali Krishna Reddy and Anr., 2010 (42) PTC 361 (Del)* are satisfied...” [Emphasis supplied]*

Relevant Case Laws (Contd.)

❖ *Shakthi Fashion & Anr. vs Burberry Limited, CRP-IPD 2/2022*

“12... The Court has perused the pleadings and documents. The first and the foremost feature in this case is the website of IndiaMart where the Defendant No.1's business is clearly advertised as 'Shakti Fashion, Bengaluru, Bommanahalli, Bengaluru, Karnataka'. Furthermore, IndiaMart clearly permits enquiries for the garments which are advertised on the said website. It is possible to obtain information about the said products, such as the price and details of garments, girls garments, ladies fashion garments and ladies woven garments. Defendant No.1's listing also has the feature of 'get touch with us', 'about us', 'contact us', 'send e-mail', 'view mobile number', 'submit requirements', etc...” [Emphasis supplied]

Relevant Case Laws (Contd.)

❖ *M/S Kohinoor Seed Fields India Pvt Ltd vs M/S Veda Seed Sciences Pvt Ltd. CS(COMM) 828/2022*

34. *A perusal of India Mart listing of the defendant's product filed along with the plaint would show that the said listing has not been made by the defendant. It appears from the listing that it has been made by one "Shiva Agro Agency" having its address in Karnataka. The listing does not display any option for placing an order of delivery of goods to Delhi. It is not the case of the plaintiff that the said "Shiva Agro Agency" is selling the products of the plaintiff in Delhi.*

36. *The listing on India Mart does not show an option of placing an order for delivery of goods to Delhi. The tab "find related products near you" also does not show any listing of the defendant's product.*

42. *In the present case, no averments have been made in the plaint, nor have any documents been filed along with the plaint fulfilling the aforesaid criteria laid down by the Division Bench. It is not the case of plaintiff that the defendant has a website for selling its own products. **The listings on the ecommerce websites like, 'India Mart' and 'Kalgudi' have been put by the third-party sellers and not by the defendant. Therefore, even if the defendant's products are shown available on IndiaMart and Kalgudi, the defendant cannot be held responsible for the same.** [Emphasis supplied]*

Relevant Case Laws (Contd.)

❖ *Impressario Entertainment & Hospitality v S&D Hospitality [(CS(COMM) 111/2017)]*

“19... even if the defendant has been able to attract customers from other jurisdiction including by way of Zomato and Dine-Out, the services of defendant cannot be availed unless the customers go to Hyderabad. Thus, through Zomato and Dine-Out the customers will only be able to invite customers and reserve a table at the restaurant of the defendant at Hyderabad. The commercial transaction will take place only at Hyderabad once the defendant avails the services there. Merely booking at Delhi for availing the services of defendant at Hyderabad will not give rise to cause of action at Delhi resulting in jurisdiction to the plaintiff on the said ground as the plaintiff does not have its registered office at Delhi nor the cause of action has arisen in Delhi.” [Emphasis supplied]

CONCLUSION

- ❖ The mere accessibility or listing of products on e-commerce platforms like Indiamart does not, by itself, confer jurisdiction upon a Court. Jurisdiction must be established through a clear nexus between the defendant's activities and the forum state.
- ❖ Courts in decisions such as *Banyan Tree* have consistently held that “purposeful availment” and targeting of customers in the forum state, demonstrated by interactive features or actual commercial transactions, are essential. Passive listings or general accessibility, without more, are insufficient to establish cause of action.
- ❖ Thus, each case turns on its facts: jurisdiction cannot be vested through clever drafting or by citing mere online listings. Only where the defendant's conduct shows specific targeting and commercial engagement within the forum will jurisdiction be sustained.

THANK YOU!
Questions?

Manish Kumar
Associate

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