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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ C.O.(COMM.IPD-CR) 1/2024 I.A. 3142/2024 I.A. 3143/2024

HMD MOBILE INDIA PRIVATE LIMITED Petitioner

Through: Mr. Sagar Chandra, Ms. Ankita Seth
& Ms. Kriti Ramudamu, Advocates.

versus

MR RAJAN AGGARWAL & ANR. Respondents

Through: Mr. Ajay Kumar Chopra and
Mr. Mudit Talesara, Advs. for R-1
Mr. Harish Vaidyanathan Shankar,
CGSC, Mr. Srish Kumar Mishra, &
Mr. Alexander Mathai Paikaday,
Advocates

CORAM:

HON'BLE MR. JUSTICE ANISH DAYAL

ORDER

% **14.05.2024**

1. Pursuant to the previous order dated 28th February 2024, Mr. Harish Vaidyanathan Shankar, CGSC states that there is nothing which needs to be placed on record regarding the discrepancy report of 19th November 2015, as has been noted in para nos. 2 and 4 of the said order.

2. Mr. Sagar Chandra, counsel for petitioner presses his rectification petition to be adjudicated first. The rectification petition was filed under Section 50 of the Copyright Act, 1957, [*the Act*] read with Rule 71 of the Copyright Rules, 2013 [*the Rules*] for expunging the impugned copyright registration in favour of respondent No.1 [*subject registration*]:

PARTICULARS

TITLE

AUTHOR

CLASS OF WORK

IMPUGNED COPYRIGHT

‘ADVERTISEMENT’

Mr. Rajan Aggarwal

Literary/Dramatic



DIARY NO.	7755/2015-CO/L
DATE OF APPLICATION	30 th July 2015
REGISTRATION NO.	L-63365/2016
DATE OF REGISTRATION	23 rd February 2016

3. Petitioner is a company incorporated in India and is the subsidiary of a Finnish Company 'HMD Group Oy', which has the licence from Nokia Corporation *inter alia* for use of brand name '**NOKIA**' in relation to mobile phones and other related accessories.

4. The issue arose in relation to its advertisement /promotion for launch of Nokia products through a small clip stating '*Coming Soon*', followed by the Nokia mark and the tune which has been associated with that mark. However, in this respect, respondent No.1 filed a suit bearing No. **CS (COMM) 213/2022** titled **Mr. Rajan Aggarwal v. Nokia Solutions and Networks India Pvt. Ltd. & Ors.** before the District Court, Karkardooma claiming the right in the subject registration. The registration which is relied upon by respondent No.1, is reproduced below:



*"Name of the Title: Advertisement
Author: Rajan Aggarwal
Diary No: 7755/2015-CO/L*

*The work "Advertisement" has been created by me (Rajan).
In this advertisement, icons used by me (Rajan) are "COMING SOON" and companies logo (name). It will be presented like, icon "COMING SOON" on the black screen or paper either on television or newspaper and the name of the company will be seen either corner or centre of that black screen or paper. In the past, icon "COMING SOON" always used as when the product or the movie or the serial is coming. But I have tried it to use in a different way of promoting a product. I will don't use it in the same manner as when it is coming. I will use it as "WHAT" is coming in the nearer future.*

Benefits

The benefit to the company is that they can capture the market in a different form. It can create a pressure on competitors. This idea is an initiative by the company which can increase their market value and brand value (by site visit). This idea can creates a curiosity in customers and competitors about the product or services which the company is going to launch.

The ways to present

If we use this on the television the name of the company appears on black screen with sound effect playing in the background or any 3D visual effects. That can compliment the idea and after

that with any animated effect the phrase "COMING SOON" replaces the logo of the company.

The other way to present it in newspaper by using this phrase "COMING SOON" written with white color in the black portion of the newspaper. On the first day the advertisement will be on the last page of newspaper and till the launch of product or services the advertisement will shift from last to first page with decreasing countdown of days and increasing the size of the advertisement only if company wants."

5. Counsel for petitioner states that initially they were not a party to the said suit, however, they have moved an application under Order I Rule 10, Code of Civil Procedure, 1908 [***CPC***] to be impleaded in the suit, since the



original defendant was Nokia Solutions & Networks India Pvt. Ltd. and another party.

6. Surprised with the registration being given for the above statement titled as “*Advertisement*”, the petitioner carried out a search and sought to verify the legitimacy of the said copyright registration by applying for inspection of documents and further, also visited the Copyright office on 22nd December, 2023. Upon inspection, a digital record was shown to the petitioner’s representatives, of a discrepancy report dated 19th November, 2015 [‘**Discrepancy Report**’] where the Deputy Registrar of Copyrights had raised an objection calling upon the applicant / respondent No.1 to clarify ‘*how an idea can be copyrighted*’. However, there was no subsequent communication which was shown or evident from the inspection to bear out that there was a response filed by the applicant/ respondent No.1 to the Discrepancy Report.

7. Counsel for the petitioner has stressed that *ex facie* the said statement titled as “*Advertisement*” cannot possibly be an original work and does not pass muster the standards of originality as laid down in the Act. The subject registration is also evidently an idea, at best, which is also apparent from the statement which was about the concept of promotion relating to “*Coming Soon*”, which could be potentially used by any company for its launch. It is stated as part of the registered statement that, “*this idea can create a curiosity in customers and competitors about the product or services which the company is going to launch*”.

8. Further, it was stated in the registered statement by respondent No.1, extracted as under:



"This idea is an initiative by the company -which can increase their market value and brand value... This idea can creates a curiosity in customers and competitors about the product or services... sound effect playing in the backend or any visual effects, that can compliment the idea..."



prescribed fee. The relevant rules in this regard are resident in Chapter XIII of the Rules, in particular Rule 70. The prescribed form in which particulars are provided is Form XIV where details have to be provided by applicants in “*Statement of Particulars*” and “*Statement of Further Particulars*”.

13. In *Informa Markets (supra)*, this Court had also examined the Practice

and Procedure Manual issued by the Copyright Office, Government

(“*the Manual*”) which reflected general practices and procedure

applied by the Copyright Office for examination and registration of Works. The Court had also provided an overview of the inter perspective in respect of registration of copyright as applied in countries. In order not to reinvent the wheel, the said aspects are not repeated here and articulation in *Informa Markets (supra)* may itself be a useful reference.

14. Based upon these aspects, the Court had observed that “*filtration process*” must be done at the stage of examination of the application, informed by guidance in the Manual, which in turn ought to be updated on an intelligent and accurate basis.

15. Applying this to the facts of the instant case, it transpires that the application was filed for the subject registration by respondent No.1. A Discrepancy Report was penned on 19th November 2015 by the Registrar of Copyrights raising an objection, calling upon respondent No.1 to clarify “*how an idea can be copyrighted?*”. However, there was no subsequent communication which would bear out that there was any response filed by respondent No.1. Counsel for respondent No.1 has also not been able to throw any light on this issue and, in fact, does not contest the fact that the Discrepancy Report had been issued.

16. This Discrepancy Report had been noted in the record which has been shown to the Court by Mr. Hemant Khosla, Deputy Registrar of Copyrights.



on 28th February 2024. Needless to state, the Discrepancy Report was right in raising an objection to registration of the impugned copyright. However, despite the same, why the registration was granted is clouded in mystery.

17. Without going into the issue as to what procedure was adopted pursuant to issuance of the Discrepancy Report, it would be better to consider the impugned copyright on its own merits in light of the rectification petition.

18. Pursuant to registration, respondent No.1 filed the suit CS(COMM) 213/2022 before the District Court in Delhi on the basis of said registration alleging that advertisement by petitioner on YouTube (Nokia advertisement) infringed his registered copyright. The said advertisement was effectively promoting a launch of a product of Nokia portfolio of the petitioner. In this view of the matter, petitioner would be a person aggrieved under Section 50 of the Act.

19. The impugned copyright itself is obscure and abstract in its narration and is titled as '*Advertisement*', at best expressing an idea or a concept. It is *ex facie* clear from the text of the impugned copyright that it is a generic idea which only narrates the concept behind advertisements which launches products and are titled as '*Coming Soon*'. Needless to state that this is an expression which is used extensively by most companies promoting their products and is, therefore, widely disseminated and available in the public domain. This strikes at the very root of the originality of the said literary work since that is a *sine qua non* of Section 13(1)(a) of the Act. Even if it is treated as an expression of an idea, this idea itself cannot be expressed in any multiple forms in order to provide potential for creativity than what is stated in the impugned copyright. Neither is there any degree or modicum of creativity, but it is merely a short narration without any detail, without any investment, labour and sweat, and simply plucked out of public domain and expressed on a piece of paper.



20. Reliance has also been placed on documents filed by the petitioner in this regard showing third party advertisements available on YouTube depicting the use of the concept / idea of '*Coming Soon*'.

21. Applying the decisions as noted above in ***Informa Markets*** (*supra*), this Court is of the view that such registration is no more than a generic description of '*Coming Soon*' category of advertisements and, therefore, cannot be considered as copyrightable, and which was rightly objected to in the Discrepancy Report.

22. In these facts and circumstances, the impugned copyright registration is directed to be removed from the Register of Copyright and the Register be accordingly rectified. The same be done within a period of 4 weeks.

23. Petition is allowed and stands disposed of accordingly.

24. Pending applications, except *I.A. 4704/2024* as mentioned hereinbelow, are rendered infructuous.

I.A. 4704/2024 (seeking consolidation with civil suit)

1. In this view of the matter, this application seeking consolidation with the civil suit filed before the District Court under Rule 26 of the Delhi High Court Intellectual Property Rights, 2022, counsel for the petitioner seeks leave to withdraw the same.

2. Since the rectification petition itself has been dismissed, issue of consolidation does not arise.

3. Leave granted.

4. Petitioner is at liberty to place a copy of this order before the District Court in the suit and seek appropriate remedy accordingly.

5. Order be uploaded on the website of this Court.

ANISH DAYAL, J

MAY 14, 2024/sm/sc