

INDIAN COURT GRANTS PUNITIVE DAMAGE FOR TRADE MARK VIOLATION

The Delhi High Court, in a decision dated January 3, 2005, perhaps for the very first time, has granted punitive damages of Rs. 500,000 (US\$ 11,000) in a trade mark dispute. In the case of *Time Inc. v Lokesh Srivastava*, Justice R.C.Chopra of the Delhi High Court held :

“This court is of the considered view that a distinction has to be drawn between compensatory damages and punitive damages. The award of compensatory damages to a plaintiff is aimed at compensating him for the loss suffered by him whereas punitive damages are aimed at deterring a wrong doer and the like minded from indulging in such unlawful activities. Whenever an action has criminal propensity also, the punitive damages are clearly called for so that the tendency to violate the laws and infringe the rights of others with a view to make money is curbed. The punitive damages are founded on the philosophy of corrective justice and as such, in appropriate cases these must be awarded to give a signal to the wrong doers that law does not take a breach merely as a matter between rival parties but feels concerned about those also who are not party to the lis but suffer on account of the breach. In the case in hand itself it is not only the plaintiff who has suffered on account of the infringement of its trade mark and magazine design but a large number of readers of the defendants' Magazine 'TIME ASIA SANSKARAN' also have suffered by purchasing the defendants' Magazines under an impression that the same are from the reputed publishing house of the plaintiff company.

This Court has no hesitation a saying that the time has come when the courts dealing actions for infringement of trade mark, copyrights, patents etc. should not only grant compensatory damages but award punitive damages also with a view to discourage and dishearten law breakers who indulge in violations with impunity out of lust for money so that they realize that in case they are caught, they would be liable not only to reimburse the aggrieved party but would be liable to pay

LALL & SETHI
ADVOCATES

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January 21, 2005**

OFFICES

Head Office

M-19A, South Extension – II,
New Delhi – 1100 49
Ph: 91-11- 5289 9999
Fax: 91-11- 5289 9900
E-M : info@IndiaIP.com

Branch Office

Flat No – 501 A
5th Floor, Amrit Building
Plot No – 15
Carter Road, Khar (West)
Mumbai - 400 052
Ph : 91-22- 2646 5707
Fax : 91-22- 2646 5712
E-M : Mumbai@IndiaIP.com

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punitive damages also which may spell financial disaster for them. In *Mathias Vs. Accor Econimy Lodging, Inc.* reported in 347 F. 3d 672 (7th Clr. 2003) the factors underlying the grant of punitive damages were discussed and it was observed that one function of punitive damages is to relieve the pressure on an overloaded system of criminal justice by providing a civil alternative to criminal prosecution of minor crimes. It was further observed that the award of punitive damages serves the additional purpose of limiting the defendant's ability to profit from its fraud by escaping detection and prosecution. If a tortfeasor is caught only half the time he commits torts, then when he is caught he should be punished twice as heavily in order to make up for the times he gets away. This Court feels that this approach is necessitated further for the reason that it is very difficult for a plaintiff to give proof of actual damages suffered by him as the defendants who indulge in such activities never maintain proper accounts of their transactions since they know that the same are objectionable and unlawful. In the present case, the claim of punitive damages is of Rs. 500,000 only which can be safely awarded. Had it been higher even, this court would not have hesitated in awarding the same. This court is of the view that the punitive damages should be really punitive and not flee bite and quantum thereof should depend upon the flagrancy of infringement. "

The court accordingly granted a decree of permanent injunction restraining use of TIME as also a decree of Rs. 500,000/-.

Though this is a decision in which the defendant did not contest the matter, it is an indicator that Indian courts are increasingly showing a propensity to grant damages in favour of the intellectual property rights owners. One can only hope that the precedent is followed by other courts as well, and even in contested matters.

Chander M. Lall
Lall & Sethi

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