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

**Date of Decision: 27<sup>th</sup> May, 2024**

+ **CS(COMM) 257/2024 & I.A. 6821/2024**

**INFOSYS LIMITED**

..... Plaintiff

Through: Mr. Peeyoosh Kalra, Mr. C.A. Brijesh, Ms. V. Mohini and Mr. Ishith Arora, Advocates.

versus

**SOUTHERN INFOSYS LIMITED**

..... Defendant

Through: Mr. Piyush Kaushik, Advocate.

**CORAM:**

**HON'BLE MR. JUSTICE SANJEEV NARULA**

**JUDGMENT**

**SANJEEV NARULA, J. (Oral):**

**I.A. 6817/2024 (u/Order XXXIX Rules 1 & 2 r/w Section 151 of the Code of Civil Procedure, 1908)**

1. Infosys Limited, the registered proprietor of the trademark 'INFOSYS', has filed the present lawsuit under Section 29(5) of the Trademarks Act, 1999,<sup>1</sup> to prohibit the Defendant from using the said trademark as part of its trade/corporate name 'Southern Infosys Limited'. They seek to protect their intellectual property rights and contend that by adopting the 'INFOSYS' mark within its corporate identity, the Defendant risks misleading consumers and eroding the unique brand equity that Infosys

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<sup>1</sup> 'the Act'



Limited has meticulously built over the years.

**PLAINTIFF'S CASE:**

2. Mr. Peeyoosh Kalra, counsel for the Plaintiff, has presented the following contentions and grounds for an *ad-interim* injunction:

2.1. The Plaintiff is a global leader in information technology and consulting services, having market capitalization of approximately 93.6 Billion USD. Established in 1981, over the years, the Plaintiff has built a formidable reputation and a proven track record of delivering innovative solutions that yield tangible business benefits. The Plaintiff has consistently been honoured with various awards and recognitions by customers, industry bodies, media, and influencers. Employing over 2,79,000 individuals across more than 50 countries, the Plaintiff provides a wide array of services, including business and technology consulting, custom application development, infrastructure management services, maintenance and production support, package enabled consulting and implementation, enterprise solutions, product engineering and lifecycle solutions, systems integration, validation solutions, business process management, and software-as-a-service related solutions. Detailed in the plaint are the revenue figures spanning from 2010 to 2023, which highlight the Plaintiff's financial strength and reputation.<sup>2</sup> This financial trajectory demonstrates the Plaintiff's market influence and the potential risks posed by any unauthorized use of its trademark.

2.2. The trademark 'INFOSYS' coined and adopted in 1981, has been in continuous and uninterrupted use. Through relentless and extensive publicity

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<sup>2</sup> Paragraph 10 of the Plaintiff



and promotional efforts, the trademark ‘INFOSYS’ has amassed formidable goodwill and an outstanding reputation both within India and on the international stage. As a result, the term ‘INFOSYS’ has become exclusively associated with the Plaintiff, particularly recognized as a hallmark in the technology sector.

2.3. The Plaintiff has secured multiple registrations for the mark ‘INFOSYS’ and its variants, details whereof are mentioned in Paragraph No. 15 of the Plaint.<sup>3</sup> The first registration of the word mark ‘INFOSYS’ was secured under registration no. 475267 in Class 9, dating back to 15<sup>th</sup> July, 1987. Since then, the Plaintiff’s trademark portfolio has grown substantially, now featuring nearly 30 registrations of ‘INFOSYS’ formative marks across various classes in India. This extensive portfolio not only underscores the Plaintiff’s commitment to protecting its intellectual property, but also highlights the strategic efforts undertaken to maintain and defend its brand identity against potential infringements. These registrations provide a strong legal framework that supports the Plaintiff’s rights to exclusive use of the trademark, enhancing their ability to enforce these rights against unauthorized use that threaten to mislead consumers and dilute the brand’s established reputation.

2.4. Plaintiff has maintained a significant online presence with its website, “[www.infosys.com](http://www.infosys.com)” operational since 1992. This platform prominently features the Plaintiff’s registered trademarks and serves as a crucial point of interaction for clients and the public, offering comprehensive information about its services and innovations. The visibility of the ‘INFOSYS’

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<sup>3</sup> Collectively referred to as “Plaintiff’s trademarks”



trademark on this website has further reinforced its recognition and association with the Plaintiff, cementing its status as Plaintiff's digital identity.

2.5. This Court has recognized and declared 'INFOSYS' as a 'well-known' mark as a testament to the trademark's extensive recognition, distinctiveness, and the substantial reputation it holds across various sectors. Besides, the trademark registry has also declared 'INFOSYS' as a well-known trademark. This status not only enhances the protection afforded to 'INFOSYS,' but also emphasizes its significant impact and established presence in the marketplace.

2.6. The Plaintiff is aggrieved by the Defendant's adoption of the mark 'INFOSYS' as part of its corporate name – 'Southern Infosys Limited'. This use of the Plaintiff's registered and well-known trademark 'INFOSYS', constitutes infringement under Section 29(5) of the Act. This section explicitly prohibits the use of a registered trademark as part of a corporate name, in a manner that could imply a business connection or endorsement by the trademark owner, thus, leading to potential confusion among the public.

2.7. Although the Plaintiff has not yet identified any specific services being rendered under the tradename 'Southern Infosys Limited,'<sup>4</sup> and the Defendant has not provided documentation to demonstrate such use, the inclusion of 'INFOSYS' within the corporate name is, in itself, a clear infringement. This usage must be enjoined to prevent further damage. The Defendant's adoption of the Impugned tradename is a deliberate attempt to

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<sup>4</sup> "Impugned tradename"



capitalize on the goodwill and reputation of the Plaintiff's trademark 'INFOSYS'. Furthermore, the Defendant's argument citing delay by the Plaintiff in initiating action does not diminish the Plaintiff's rights. The Plaintiff, upon discovering the unauthorized use of their trademark, promptly issued a cease-and-desist notice dated 18<sup>th</sup> August, 2023, which wasn't responded to by the Defendant. Nonetheless, delay is irrelevant given the inherently dishonest nature of the Defendant's adoption. No amount of time elapsed can legitimize the Defendant's use of the infringing mark, as its initial adoption was dishonest and in bad faith. This principle is supported by the case of *Daimler Benz Aktiegessellschaft v. Hydo Hindustan*<sup>5</sup> where it was held that dishonest adoption of a mark does not gain legitimacy through prolonged use.

2.8. The Defendant, in their reply dated 3<sup>rd</sup> May, 2024, has alleged that the Plaintiff is guilty of concealment of material facts from this Court. They have alleged that the Plaintiff deliberately concealed earlier notices issued in the year 2001 as well as notice dated 27<sup>th</sup> April, 2020. As regards the alleged notice issued in 2001, the Defendant has failed to substantiate their allegation and have not produced any copy of the alleged notice or any other proof. Regarding the cease and desist notice issued on 27<sup>th</sup> April, 2020,<sup>6</sup> a comprehensive explanation has been provided through an affidavit dated 21<sup>st</sup> May, 2024, detailing the circumstances under which the notice was issued. During April 2020, the COVID-19 pandemic was at its peak, leading to a nationwide lockdown in India. In compliance with government guidelines,

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<sup>5</sup> 1993 SCC Online Del 605

<sup>6</sup> Interchangeably referred to as the "2020 notice"



the Plaintiff had adopted a ‘work from home’ policy. It was under these exceptional circumstances that Ms. Niharika Swaroop, then serving as legal counsel for the Plaintiff, issued the cease and desist notice dated 27<sup>th</sup> April, 2020. Ms. Swaroop was reporting to Ms. Anjali Balagopal, the then Assistant General Counsel and IP Head at the Plaintiff company. It is pertinent to note that both Ms. Swaroop and Ms. Balagopal have since ceased their employment with the Plaintiff, contributing to the oversight in mentioning this fact in subsequent internal communications and filings. In such circumstances, the subsequent notice dated 18<sup>th</sup> August, 2023, was issued without knowledge of the earlier notice. Nonetheless, the said notice and also the subsequent notice dated 21<sup>st</sup> December, 2023, went unanswered by the Defendant, indicating that they had no material impact on the Defendant’s ability to defend themselves in the ongoing litigation.

2.9. Furthermore, for the purposes of argument and without conceding to its relevance, even if it is assumed that the notice was indeed concealed, the alleged non-disclosure has not conferred any undue advantage to the Plaintiff. The Defendant has been given a full opportunity to contest the case. Importantly, this Court has not issued any *ex-parte ad-interim* injunction, which further negates any claim of undue prejudice. Defendant’s argument, if accepted, would amount to allowing procedural technicalities to overshadow substantive trademark infringement.

2.10. The legal principle that an injunction must ordinarily follow in cases of established trademark infringement is well recognized.<sup>7</sup>

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<sup>7</sup> *Midas Hygiene Industries (P) Ltd. v. Sudhir Bhatia* (2004) 3 SCC 90



**DEFENDANT'S CASE:**

3. Mr. Piyush Kaushik, counsel for Defendant, strongly opposes the grant of an injunction on the following grounds:

3.1. The plaint is liable to be rejected and particularly no interim injunction should be granted to Plaintiff on account of deliberate, wilful and evident concealment of facts from this Court. Prior to the filing of the suit, the Plaintiff had earlier issued a cease and desist notice dated 27<sup>th</sup> April, 2020. The plaint makes no mention of such a notice and when the Plaintiff has been confronted with the same, no plausible justification or explanation for concealing this fact is forthcoming. On the contrary, the Plaintiff admits in their affidavit dated 21<sup>st</sup> May, 2024, that Ms. Niharika Swaroop was an employee of the Plaintiff. The notice was dispatched through the email ID Niharika.swaroop@infosys.com. A copy of the said notice was cc'd to email address: trademark@infosys.com. This implies that email communication has been sent from the email ID associated with the Plaintiff's website and has been internally routed. Therefore, there cannot be any plausible reason for the Plaintiff not to trace the said communication in their record. This omission is plainly a tactic adopted by the Plaintiff to strengthen their position unjustly, by attempting to secure an *ad-interim* injunction, based on incomplete disclosures to the Court.

3.2. The afore-noted notice was in fact responded to by the Defendant on 28<sup>th</sup> May, 2020, wherein the Defendant categorically denied all the allegations of infringement and passing off. This fact is evidenced from the copy of the email communication presented to the Court. The Plaintiff also has failed to disclose this crucial fact in their pleadings and negates their



stance of feigned ignorance.

3.3. The sole purpose for concealing such vital information from the Court was to secure an *ad-interim* injunction. Had the Plaintiff disclosed earlier communications exchanged between the parties four years ago, they would have faced significant hurdles to overcome the objection of delay and acquiescence—issues that the Court specifically recognizes as valid grounds to deny an injunction. Therefore, the Plaintiff’s claim, as argued by Mr. Kalra, that no advantage has been secured through this non-disclosure, is incorrect. The Plaintiff’s omission of these earlier exchanges was a strategic move to sidestep potential objections that could jeopardize their request for immediate judicial relief.

3.4. The deliberate suppression of facts, and the blatant false assertions, do not justify the grant of injunction. Denying the discretionary and equitable relief of an injunction, due to deliberate concealment of facts, is a legal principle firmly upheld and applied by this Court in numerous cases. The Plaintiff’s characterization of this omission as a mere oversight is insufficient to mitigate the gravity of their non-disclosure, especially when considering the fundamental legal maxim that those seeking equity must do so with clean hands. This Court has consistently underscored the importance of transparency and honesty in proceedings involving equitable remedies. By failing to present all relevant facts upfront, particularly in a case involving potential infringement of intellectual property, the Plaintiff has failed to adhere to the standards of conduct expected in such matters. They have falsified the ‘Statement of truth’ which accompanies the plaints in a commercial suit. This breach not only questions the Plaintiff’s credibility but





also undermines their claim for injunctive relief. Therefore, accepting the Plaintiff's explanation of unintentional oversight would set a wrong precedent, which would encourage lax attitude toward the requisite honesty required in judicial proceedings. Reliance is placed upon the judgments in *Warner Bros. Entertainment Inc. and Ors. v. Harinder Kohli and Ors.*<sup>8</sup> and *Seemax Construction (P) Ltd. v. State Bank of India and Ors.*<sup>9</sup> and *Columbia Sportswear Company v. Harish Footwear and Ors.*<sup>10</sup>

3.5. The Plaintiff is also not entitled to the discretionary relief on the grounds of delay, laches and acquiescence. In January-February, 1997, the Defendant company was listed in the stock exchanges at Delhi, Ahmedabad and Calcutta under the name Disha Financial Services Ltd. Subsequently, the name of the company was changed to Southern Infosys Limited in 1998 without any objection from anyone. The company was then listed with Bombay Stock Exchange,<sup>11</sup> in the year 2016 and since then their shares have been traded on the BSE. As the shares of both the Plaintiff and the Defendant have been traded daily on the BSE, it is undeniable that the Plaintiff must have been aware of the Defendant's presence. Plaintiff has made a false statement on oath that it has come to know about Defendant's business in August, 2023. The Defendant has used their corporate name for more than two and half decades, and it is only after a span of 22 years that the Plaintiff, for the first time, issued the legal notice dated 27<sup>th</sup> April, 2020. Then again, no action was initiated for the next four years. This inordinate

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<sup>8</sup> MANU/DE/1333/2008

<sup>9</sup> MANU/DE/0031/1992

<sup>10</sup> MANU/DE/1197/2017

<sup>11</sup> "BSE"



delay of more than 20 years in filing the present suit, renders the suit non-maintainable and there can be no question of grant of interim injunction. There are communications exchanged between the parties in 2001, demonstrating Plaintiff's knowledge of the Defendant's use of the impugned tradename. Unfortunately, the Defendant does not have copies of such communications readily available. Nevertheless, considering all the facts, it indicates acquiescence on the Plaintiff's part regarding the Defendant's use of the Impugned tradename. The Supreme Court in *Khoday Distilleries Limited v. The Scotch Whisky Association and Ors.*<sup>12</sup> as well as in *Toyota Jidosha Kabushiki Kaisha v. M/s Prius Auto Industries Limited*,<sup>13</sup> has elucidated on the issue of delay and acquiescence holding that any party guilty of delay and laches, cannot be entitled to a relief of injunction.

3.6. The term 'INFOSYS', is merely an abbreviation of the words 'information' and 'systems,' suggesting that its usage is generic and merely descriptive of the services provided. The descriptive nature of the mark of the term 'INFOSYS', is also recognized by the Central Government as is evident from a circular dated 13<sup>th</sup> May, 1999 issued by Department of Company Affairs, Central Government, wherein they had advised all the Registrars of the Companies only to allow inclusion of the term/ word "Infosys", "Software", "System", "Infosystem" etc. subject to their substantial portion of income being from the aforementioned activities. Thus, the use of the term 'INFOSYS' as part of the corporate name is entirely descriptive of the business activities of the Defendant company, adopted in

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<sup>12</sup> (2008) 10 SCC 723

<sup>13</sup> (2018)2 SCC 1



compliance with legal requirements.

3.7. The comparison of the two trademarks, does not reveal any deceptive similarity between the two. The marks are dissimilar in their appearance and thus the likelihood of confusion in the minds of the relevant consumer section, thereby constituting trademark infringement, is ruled out.

3.8. There is also substantial difference in the nature of the business of the Plaintiff and the Defendant and thus there exists no likelihood of confusion.

**ANALYSIS AND FINDINGS:**

**Scope of infringement under Section 29(5) of the Act:**

4. The Plaintiff's claim for an injunction is grounded in Section 29(5) of the Act. This section specifically addresses the use of a registered trademark as a part of the corporate name or trade name, dealing in goods or services in respect of which the trademark is registered.

5. An analysis of Section 29 of the Act, particularly sub-sections (1), (2), and (4), indicates that these clauses deal with instances where the Defendant uses a trademark that is either identical or similar to the trademark registered by the Plaintiff. The application of these sub-sections is specifically related to the goods or services that are the same as, similar to, or different from those offered by the Plaintiff. Contrastingly, sub-section 5 of Section 29 of the Act addresses a separate issue. It would be attracted if the Plaintiff's registered trademark is used by the Defendant as tradename or part of their tradename, or name of their business concern. Further, for such usage to constitute infringement, the Plaintiff must also show that the Defendant using such trademark deals in goods or services in respect of which the



trademark is registered. If these two conditions are satisfied, it is not necessary for the Plaintiff to prove that the trademark use as part of the tradename leads to public deception or dilutes the Plaintiff's trademark.<sup>14</sup> Therefore, by implication, Section 29(5) stipulates that trademark infringement occurs only when the registered trademark is used by the Defendant as part of their trade name and the Defendant engages in commerce concerning the goods or services for which the trademark is registered.

**Defendant's Adoption:**

6. The Plaintiff, is the registered proprietor of the trademark 'INFOSYS' and has substantiated their ownership by placing on record trademark registration certificates. Incorporated on 2<sup>nd</sup> July, 1981, they secured the registration of 'INFOSYS' as a wordmark in Class 9 on 15<sup>th</sup> July, 1987 bearing registration no. 475267, with claimed use dating back to 1<sup>st</sup> March, 1981. This trademark registration encompasses a diverse array of products, including "computer hardwares, computer interface computer peripherals, electronic telex interface, and all goods covered in class 9". In addition to this, the Plaintiff has also obtained several other registrations for the mark 'INFOSYS' across different classes. The details of these registrations, all of which predate the Defendant's adoption of the mark, are outlined as follows:

<i>"Trade Mark</i>	<i>Registration No. and Date of Application</i>	<i>Goods and service Details</i>
<i>INFOSYS</i>	<i>475267: 15<sup>th</sup> July, 1987</i>	<i>Class 9 Computer Hardwares,</i>

<sup>14</sup> *Cipla Ltd V Cipla Industries Pvt, Ltd* 2017 SCC OnLine Bom 6791



		<i>Computer Interface Computer Peripherals, Electronic Telex Interface, and all goods covered in class 9</i>
<i>INFOSYS</i>	<i>475269: 15<sup>th</sup> July, 1987</i>	<i><u>Class 16</u> Computer stationery, Computer manuals, Printed matters for computer, Instructional and teaching materials etc.</i>
<i>INFOSYS</i>	<i>484837: 27<sup>th</sup> January, 1988</i>	<i><u>Class 7</u> Machines and machine tools and motors (not for land vehicles) included in class 7.</i>
<i>Infosys</i>	<i>637315: 18<sup>th</sup> August, 1994</i>	<i><u>Class 9</u> computer hardware, data modules, motion control devices, ware house management system, customer service management systems as used in banks, automatic teller machines, computerised interactive machines all being goods included in class 9.”</i>

In contrast, the Defendant began using ‘INFOSYS’ as part of their corporate name ‘Southern Infosys Limited’ on 30<sup>th</sup> September, 1998. This was



officially sanctioned by the Registrar of Companies, N.C.T. of Delhi and Haryana, which permitted the Defendant to change its corporate name from ‘Disha Financial Services Limited’ to ‘Southern Infosys Limited’. This transition highlights a significant point of contention given the Plaintiff’s earlier established rights in the ‘INFOSYS’ trademarks.

7. The Defendant’s adoption of the mark ‘INFOSYS’ clearly postdates the Plaintiff’s use and registration of their trademarks, making the inclusion of ‘INFOSYS’ in the Defendant’s tradename as subsequent use, a matter of established fact. However, it remains critical to examine the commonality between the goods and services offered by both parties. The Plaintiff’s trademark ‘INFOSYS’ is registered across multiple classes, including Class 9, which covers a broad spectrum of technology-related products such as computer hardware, computer interfaces, computer peripherals, and electronic telex interfaces. Originally incorporated as Disha Financial Services Limited, the Defendant later shifted its business focus towards the technology sector after incorporating the term ‘INFOSYS’ within their new corporate name. This strategic redirection is evident from the objects defined in their Memorandum of Association which includes engagement in the business of computers and related services. This shift underscores the overlap in the business activities of both parties, thereby raising concerns about trademark infringement. The objectives to be pursued by the company as noted in the Memorandum of Association are as follows:

“5. *To carry on business as manufacturers, buyers, sellers, indenters, hirers, importers, exporters, agents, dealers of all level languages and all other aspects of system software including system consultancy and to develop implement applications & software*



*packages.*

6. *To manufacture, import, export, assemble, buy, sell, indent, hire, repair act as representatives, designers, system engineers, system analysts and consultants of all types of computers, main frame system, work processor computerized automation system, peripherals systems and to rent out computer time and to provide computer services computer training, conduct classes for educational program and to arrange for seminars, symposiums and debates.*”

8. The Defendant’s business operations, as outlined in their Memorandum of Association, encompass a wide range of technology-related goods and services. These include the manufacturing and trading—both buying and selling, including importing and exporting—of various types of computers, mainframe systems, software processors, computerized automation systems, and peripheral systems. Additionally, the Defendant is involved in providing comprehensive computer solutions, encompassing system engineering, analysis, and consultancy services for a variety of computers and peripheral systems. When compared with the goods for which the Plaintiff’s ‘INFOSYS’ marks are registered as specified in paragraph no. 6 of this order, the overlap is not only glaring but also incontrovertibly evident. The breadth of the Defendant’s business activities significantly intersects with the technological areas protected under the ‘INFOSYS’ trademark, presenting a clear case of trademark infringement.

9. The Defendant, in their reply, contend that there is a distinct separation in their operations compared to the Plaintiff’s, arguing that while the Plaintiff is engaged in manufacturing, selling, and trading of goods under Class 9, the Defendant exclusively provides services classified under Class 45 (perhaps mistakenly identified by the Defendant as class 45 instead of



class 42). They maintain that they neither manufacture nor sell any tangible goods or software, suggesting that their activities do not overlap with the Plaintiff's goods-related trademark rights. This distinction is highlighted to argue against consumer confusion and deception, which the Court views as irrelevant under the framework of Section 29(5) of the Trademarks Act. However, this argument overlooks critical details. Despite the Defendant's claim of service-only operations, the objectives specified in their Memorandum of Association clearly indicate involvement in activities that overlap with the goods and services for which the Plaintiff's 'INFOSYS' trademarks are registered. This includes engagement in areas directly related to computer systems and software, which are integral to the Plaintiff's business under Class 9. Thus, the Defendant's use of 'INFOSYS' within their corporate name, amidst these overlapping areas of operation, necessitates the consideration of an injunction. Such legal action is imperative to safeguard the Plaintiff's established trademark rights against potential infringement and consumer confusion, as stipulated under Section 29(5) of the Act. While the objects clause in a Memorandum of Association is only indicative of the business activities the company intends to undertake, the Defendant has not sufficiently shown that their goods and services are dissimilar to that of the Plaintiff's. Thus, at this *prima facie* stage, this Court finds that the Defendant's activities fall squarely within the goods and services with respect to which the Plaintiff's trademarks are registered.

10. As previously noted, Section 29(5) of the Act does not require the Plaintiff to demonstrate that the use of their trademark results in public





deception or dilution of the mark. However, given the Defendant's emphasis on the issue of trademark similarity, a brief examination of whether the marks 'INFOSYS' and 'Southern Infosys Limited' could confuse consumers is warranted. This assessment considers the visual, phonetic, and conceptual similarities between the Plaintiff's trademark and Impugned tradename. Visually the Defendant's tradename integrates the term 'INFOSYS.' Although the prefix 'Southern' might suggest some differentiation, 'INFOSYS' remains the dominant element of the name, closely mirroring the Plaintiff's standalone trademark. On a *prima facie* assessment, this visual similarity could lead consumers to perceive a connection between the two entities. On a *prima facie* view phonetically, the marks are nearly identical, as the pronunciation of 'INFOSYS' remains unchanged. The addition of 'Southern' does little to mitigate the strong phonetic impact of the shared term, potentially leading consumers to believe that 'Southern Infosys Limited' is a regional branch or an associated entity of the Plaintiff. On a *prima facie* view conceptually, both marks suggest an affiliation with information systems or technology-related services. While 'Southern' may imply a geographical distinction, it does not alter the primary technological connotation of the term 'INFOSYS.' This shared conceptual message reinforces the perception that the goods and services offered under 'Southern Infosys Limited' could be endorsed by or affiliated with the Plaintiff. In conclusion, on a *prima facie* assessment the combination of visual, phonetic, and conceptual similarities between the marks, on a *prima facie* assessment significantly raises the likelihood of consumer confusion, suggesting that 'Southern Infosys Limited' might be mistakenly associated



with the Plaintiff.

**Consideration of Defendant's Objections to Injunctive Relief:**

11. Having established a clear case of infringement, the Court must now address the other objections raised by the Defendant against the grant of an interim injunction. These objections include allegations of concealment, delay, laches, acquiescence, and claims of the trademark being generic or descriptive. Each of these objections requires careful consideration to ensure that the relief granted is just and equitable. The following sections will address and deliberate on these objections to determine their validity and impact on the relief sought by the Plaintiff.

**Concealment on part of the Plaintiff:**

12. The Plaintiff acknowledges that the cease and desist notice dated 27<sup>th</sup> April, 2020, was not disclosed in the plaint. This oversight, they urge, was not an attempt to mislead the Court but rather an accidental omission. The justification given is plausible. The onset of the COVID-19 pandemic brought about unprecedented global disruptions, including the sudden shift to remote work arrangements that affected countless organizations worldwide. It is likely that during this chaotic period, the Plaintiff's routine operations and document management practices were significantly challenged. This difficulty was compounded by the transition to a remote work environment and the departure of key personnel responsible for managing these documents. Thus, this omission could have occurred due to lack of proper records and was not intentional.

13. The Court has observed that, throughout the proceedings, the



Defendant has not identified any legal or factual deficiencies in the alleged concealed notice that would materially influence the outcome of the case. Thus, their prayer to dismiss the plaint based on the alleged concealment of the 2020 notice is without merit. The primary concern before the Court remains the alleged infringement by the Defendant, which continues to threaten the Plaintiff's trademark rights and market reputation. In adjudicating cases for substantive justice, particularly where clear evidence of trademark infringement exists, minor procedural missteps that are adequately explained should not overshadow the merits of the case. The Plaintiff's explanation for the oversight, which cites the operational disruptions caused by the pandemic, *prima facie* appears credible and does not imply intentional concealment.

14. Furthermore, the Court must also consider the broader timeline and the implications of procedural delays. Despite the Defendant's use of the Impugned tradename since 1998, the Plaintiff has delayed filing the suit until 2024. Consequently, the disclosure of the 2020 notice would have only necessitated an explanation for a four-year delay in initiating the present lawsuit. Hence, the Defendant's argument regarding the delay would hold relevance regardless of the non-disclosure of the 2020 notice, given that there has been a longer and more substantial delay of more than 20 years in filing the present suit. Thus, the procedural lapse of non-disclosure of 2020 notice does not significantly impact the validity of the Defendant's objections or diminish the Plaintiff's substantial claims of infringement.

15. The Court concludes that although the Plaintiff could have exhibited greater diligence, there is no substantial evidence to indicate that the



omission of the 2020 notice was a deliberate attempt to mislead the Court or secure an unfair advantage. The cases cited by the Defendant are not directly applicable to the current situation, as there was no active concealment of material facts by the Plaintiff here. Thus, the lapse, although regrettable, does not fundamentally alter the nature of the case or the Plaintiff's position.

**The delay, laches and acquiescence:**

16. The Plaintiff adopted the trademark 'INFOSYS' in 1981 and the first registration of the mark 'INFOSYS' was granted in their favour in 1987. Given the Plaintiff's long and continuous use, it has been declared a 'well-known' trademark. However, for addressing the issue of infringement, Defendant's date of adoption and Plaintiff's status, as on the said date, will be the sole criteria for the Court to rule on the instant application. The Defendant concededly adopted the term 'Southern Infosys Limited' in 1998, after more than 17 years of the Plaintiff's use and subsequent registration of the mark 'INFOSYS.' Even though the Plaintiff's trademark may not have acquired the status of 'well-known' trademark at that point of time, but Defendant's adoption raises significant concerns, particularly in the context of trademark rights awareness. The Defendant, by virtue of operating in the same industry and the public listing of the company, had constructive notice of the Plaintiff's registered and well-known trademark. It is a fundamental expectation that entities undertake thorough due diligence before adopting a corporate or trade name, especially when entering fields populated by established trademarks.

17. The Defendant's failure to perform such due diligence suggests a lack of good faith. The adoption of a name so closely resembling 'INFOSYS'—a



term which was established and recognized within the industry for 17 years prior to Defendant’s adoption—appears to be a deliberate attempt to capitalize on the goodwill and reputation that the Plaintiff has developed over 17 years of continuous use. Such actions are indicative of bad faith and a clear intention to benefit from the established market presence and consumer recognition of the Plaintiff’s trademark. It must be noted that the Defendant company is publicly listed which implies a higher degree of scrutiny and adherence to corporate governance standards, including comprehensive checks against infringing on existing intellectual property rights. Therefore, the Defendant’s oversight or neglect in this regard does not excuse the infringement.

18. While the Plaintiff has indeed taken a considerable amount of time to initiate the present lawsuit, this delay does not extinguish the Plaintiff’s rights under trademark law, particularly given the continuous use of their trademark. In trademark jurisprudence, delay or laches can mitigate the remedies available to a trademark owner but does not necessarily negate the right to object to and seek protection against infringement, especially when such infringement poses a continued threat to the brand’s identity and market position.

19. The Court must also consider the Defendant’s argument of acquiescence, which posits that the Plaintiff, by remaining inactive for an extended period, has tacitly consented to the Defendant’s use of the ‘INFOSYS’ mark within its tradename. To establish acquiescence as a valid defence, it must be demonstrated that the Plaintiff was aware of the Defendant’s use and, through inaction, led the Defendant to reasonably



believe that their use was permissible. However, the evidence does not conclusively show that the Plaintiff actively or explicitly approved the Defendant's use of the 'INFOSYS' mark. Moreover, the fact that the Plaintiff's trademark was registered before the Defendant adopted the mark underscores that the Plaintiff had established rights that were recognizable and should have been considered by the Defendant.

20. Furthermore, mere delay by the Plaintiff does not automatically amount to acquiescence. Legal precedents clearly stipulate that mere delay does not constitute acquiescence. For acquiescence to be a valid defence, there must be unequivocal evidence that there were positive acts of encouragement from the Plaintiff, and not just mere silence or inaction on their part.<sup>15</sup> Thus, without such positive encouragement or explicit consent from the Plaintiff, the passage of time before initiating legal proceedings does not automatically prevent the Plaintiff from asserting their rights.

21. To conclude, the Court finds that there is insufficient evidence to support Defendant's claim of acquiescence. While the Plaintiff did delay in taking action, there is no clear evidence that this delay amounted to an implicit approval of the Defendant's use of the mark. While the Defendant does allege that a cease-and-desist notice was sent in 2001 by the Plaintiff, they have failed to present the same before the Court. Plaintiff's assertion of their rights, culminating in this legal action, undermines the notion that they ever intended to permit the Defendant's use of the 'INFOSYS' mark. Considering the entirety of the circumstances, the Defendant's defence, based on acquiescence, does not hold sufficient ground to deny the relief

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<sup>15</sup> *M/s Power Control Appliances & Ors v. Sumeet Machines Pvt Ltd*, 1994 (2) SCC 448



sought by the Plaintiff. The ongoing infringement which started without proper verification of trademark rights, as well as the lack of a convincing explanation for adoption of the Impugned tradename, calls for intervention to protect the integrity of the Plaintiff's trademark rights.

**Whether the term 'INFOSYS' is generic:**

22. The Defendant asserts that the term 'INFOSYS' is merely an abbreviation of the words 'information' and 'systems,' suggesting that its usage is generic and merely descriptive of the services provided. They further reference a circular dated 13<sup>th</sup> May, 1999, issued by the Department of Company Affairs, Central Government, which advised that terms such as "Infosys", "Software", "System", "Infosystem" etc., should only be included in company names if a substantial portion of the company's income is derived from the related activities. The Court does not find merit in Defendant's plea. The government advisory regulates the use of certain terms in corporate names to ensure they reflect the company's business activities accurately; it does not automatically deprive these terms from acquiring distinctiveness as trademarks. Pertinently, the mark 'INFOSYS' has been extensively used and promoted by the Plaintiff globally since 1981, long before the issuance of the 1999 circular. Thus, there is no basis for the Court to at a *prima facie* stage to hold the term 'INFOSYS' as generic.

23. In addressing the Defendants assertion that the term 'INFOSYS' is merely descriptive, it is also essential to consider the concept of acquired distinctiveness or secondary meaning. The critical test for determining whether a mark is descriptive does not hinge solely on its original, generic



usage but rather on its association in the public mind over time. Acquired distinctiveness occurs when a term, initially considered generic or descriptive, evolves through extensive and sustained commercial use, advertising, and public recognition to signify a specific source rather than just the product or service itself.<sup>16</sup> In this context, ‘INFOSYS’ has transcended its ostensibly descriptive origins to embody a unique identifier of the Plaintiff’s goods and services. Over decades, ‘INFOSYS’ has been consistently used, promoted, and legally protected as a trademark, deeply embedding it in the public consciousness as synonymous, not with a general category of technology services, but specifically with the Plaintiff’s goods and services. The evidence presented of recognition of the term as well-known declaration by the trademarks registry, including the longevity of the mark’s use, supports the conclusion that ‘INFOSYS’ functions as a distinctive mark.

24. To conclude, while ‘INFOSYS’ might have begun as a potentially descriptive term, but it has undoubtedly acquired a secondary meaning that links it indelibly to the Plaintiff. The Defendant’s argument that the term remains merely descriptive is, therefore, not persuasive. On a *prima facie* assessment the Defendant’s use of the mark ‘INFOSYS’ not only infringes upon the Plaintiff’s trademark rights, but also risks causing confusion among consumers and diluting the trademark’s commercial value. Therefore, Defendant’s use of the word ‘INFOSYS,’ can also not be considered to be descriptive of the services they offer.

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<sup>16</sup> *T.V. Venugopal vs. Ushodaya Enterprises Ltd. and Ors.*, (2011) 4 SCC 85. See also: *Registrar Of Trade Marks vs Hamdard National Foundation* AIR1980DELHI180





25. Nevertheless, considering the fact that the Defendant has been using the mark for considerable period of time, in the opinion of the Court, they must be afforded sufficient time to switch over to a non-infringing trade name.

26. In light of the above, the present application is allowed with the following directions:

27. The Defendant is restrained from using the mark 'INFOSYS' as part of their corporate/ trade name 'Southern Infosys Limited' or in any other manner amounting to infringement of the Plaintiff's trademarks.

28. The Defendant is afforded a period of four months from the date of release of this order, to make the transition to a non-infringing tradename. Immediately after the expiry of the four months period, the Defendant shall cease the use of the mark 'INFOSYS,' as part of their trade name/ corporate name or in any other manner amounting to infringement of the Plaintiff's trademarks.

29. With the above directions, the present application is allowed and disposed of.

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30. List before the Joint Registrar for completion of pleadings on 20<sup>th</sup> August, 2024.

**SANJEEV NARULA, J**

**MAY 27, 2024/as**