

IN THE COURT OF MAHAVIR SINGH, ADDITIONAL
DISTRICT JUDGE-CUM-PRESIDING JUDGE, EXCLUSIVE
COMMERCIAL COURT AT GURUGRAM EXERCISING
JURISDICTION UNDER THE COMMERCIAL COURTS ACT,
2015 (UID No.HR-0141)

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CNR No. HRGR01-000081-2022
CIS No. CS-01-2022

Civil Suit no. 1
Date of Institution: 03.01.2022
Date of decision:07.01.2025

1. Microsoft Corporation
One Microsoft Way, Redmond Washington 98052-6399
United States of America
2. Microsoft Corporation India Private Limited
807, New Delhi House Barakhamba Road New Delhi, India-
110001

.... Plaintiffs

Versus

1. Retnec Solutions Private Limited
GP-43, Sector-18, Udyog Vihar, Gurugram-122021,
Haryana, India
2. Zayed Sahaye
Director of defendant no.1
Present Address:
House no.987, Sushant Lok A Block,
Galleria Market, Gurugram – 122009,
Haryana, India

Permanent Address:
6/15, Rajouri Garden,
New Delhi-110027, India
3. Akshay Anand
Director of defendant no.1
House No. 31, Pooja Colony,
Sri Ganganagar-335001,
Rajasthan, India

4. Platform Solutions Management LLC
Address: 6606 Blue Hollow Lane
Dickinson, Texas 77539-4583
United States of America
5. Apploft LLC
Address: 109 Bay Tree Court, Inman,
South Carolina 29349-5923
United States of America
6. Ultra Tech Support
USTechSupport/RealDefense LLC
Address: 1541 Ocean Avenue Suite 200
Santa Monica, California 90401
United States of America.
7. Skyfill Business Solutions LLC
Address: 557 New Park Avenue,
West Hartford, Connecticut 06110
United States of America
8. Apzee Technologies LLC
Address: 557 New Park Avenue,
West Hartford, Connecticut 06110
United States of America
9. Supportbuds
Address: 9245 Laguna Springs Drive
Suite 200, Elk Grove,
California 95758-7991,
United States of America
10. JC IT Services International INC
Address: 9004 16 1st Street Suite 801
Jamaica, New York 11432-6101
United States of America
11. Appweb INC
Address 1: 23832 Rockfield Boulevard #170
Lake Forest, California 92630
United States of America

Address 2: 2172 Gulf Gate Drive Suite 276
Sarasota, Florida 34231-4813
United States of America
12. Geek Dial LLC

Microsoft Corporation & Anr. Versus Retnec Solutions Private Limited & Ors.
-:3:-

Address: 1350 East Flamingo Road #383
Las Vegas, Nevada 89119-5263
United States of America

.... Defendants

Suit for restraining infringement of Trademark, Passing Off, Unfair Trade Practices, Dilution and for seeking damages under sections 27, 29, 135 of The Trade Marks Act, 1999

Argued by : S/Shri Prashant Gupta, Karan Singh and Alok Ahlawat,
Advocates for plaintiffs.
Defendant no.1 already ex-parte.
Defendants no.2 & 3 ex-parte vide order dated 05.12.2023
Shri Nannu Ram, Advocate for defendants no.7 & 8.
(Defence of defendant no.7 struck off vide order dated
17.01.2023)
Claim against defendants no.4 to 6 and 9 to 12 already
abandoned and the defendants were given up on 14.11.2022.

Judgment:

The plaintiffs have filed the present suit for restraining infringement of trademark, passing off, unfair trade practices, dilution and for seeking damages under sections 27, 29 and 135 of the Trade Marks Act, 1999.

2. Case of the plaintiffs as made out from the plaint is that they are providers of the Windows operating system, Hotmail, Outlook, MSN email and messaging services and Office 365 and Azure cloud-based business and productivity suite of services, as well as a variety of other hardware products, software, and services, including Surface, Xbox, HoloLens and other brands and trademarks. Plaintiffs additionally offer computer consulting, technical support and solutions including antivirus software, a malware removal tool, computer security solutions etc.

Mahavir Singh
ADJ-cum-Presiding Judge, Exclusive Commercial Court,
at Gurugram Exercising Jurisdiction under the Commercial Courts Act, 2015
(UID No.HR-0141)07.01.2025

Plaintiffs have invested substantial resources in developing high-quality products and services. Due to the high quality and effectiveness of plaintiffs' products and services and the expenditure of significant resources by plaintiffs to market these products and services, plaintiffs have generated substantial goodwill with their customers, have established a strong brand and have developed the Microsoft name and the names of their products and services into strong and famous world-wide symbols that are well-recognized within their channels of trade. Plaintiffs have registered trademarks representing the quality of their products and services and their brand, including the Microsoft, Windows, Hotmail, Outlook, MSN, Office 365, Azure, Surface, Xbox and HoloLens marks. Plaintiffs are lawful proprietor of MICROSOFT marks for number of products, services and businesses including computer software, consumer electronics, personal computers, and related services. Plaintiffs, either directly or through their subsidiaries and affiliates, have been continuously and extensively using the well-known MICROSOFT marks for the past several decades and have built the MICROSOFT marks into one of the most recognizable brands in the world. In India, the mark MICROSOFT was first used in 1990, when plaintiff no.1 set up its Indian operations through plaintiff no.2. The first international trademark registration for the mark MICROSOFT dates back to year 1979. In India, the first registration of the mark MICROSOFT dates back to year 1984. Defendants are infringing plaintiffs' MICROSOFT marks by providing illegal technical support services to people at large by using plaintiffs

registered trademarks in a wholly unauthorized manner. Defendants are also impersonating as plaintiffs' personnel/employees or 'Microsoft Certified Technicians', by misrepresenting their affiliation with Microsoft to the innocent customers of plaintiffs. Plaintiff no.1, Microsoft Corporation is a corporation organized and existing under the laws of the State of Washington, U.S.A, having its principal office at One Microsoft Way, Redmond, Washington 98052-6399, United States of America. Plaintiff no.1 engages in the development, manufacture, licensing and support of a range of software programs and services for various computing devices *inter alia* under the MICROSOFT marks. Plaintiff no.2 Microsoft Corporation India Private Limited, a company incorporated under the Companies Act, 1956, having its registered office at New Delhi is a wholly owned subsidiary of plaintiff no. 1. Mr. Jaideep Singh Kochar is duly authorized signatory of plaintiff nos. 1 and 2 and is competent to sign and verify the plaint and to institute the suit on behalf of both plaintiffs vide Powers of Attorney and Board Resolutions. Plaintiffs have used MICROSOFT marks in India for the past several years for a wide range of products including developing computing devices, cloud systems and services and software. Plaintiffs have secured trademarks registrations regarding goods and services in classes 9, 12, 16, 21, 25, 28, 35, 36, 37, 38, 39, 41, 42, 43 and 45. Details of registration of some of the registered MICROSOFT marks are mentioned in para 12 of the plaint. Plaintiffs own several domain name registrations including <microsoft.com>. <office.com>, <linkedin.com>. <outlook.live.com>,

etc. Plaintiffs host interactive websites corresponding to these domain names. Besides, information pertaining to plaintiffs goods and services under the MICROSOFT marks is available and displayed on a number of websites including those owned and/or operated by plaintiffs. Plaintiffs trademark "MICROSOFT" has been recognized as "well known" in a decision dated 03.02.2014 passed by Hon'ble Delhi High Court in **Microsoft Corporation & Anr Versus Kurapati Venkata Jagdeesh Babu & Anr. 2014 (57) PTC 601 Delhi**. Pursuant thereto, the Indian Trademark Registry has also notified plaintiffs' mark MICROSOFT as 'well known'. By virtue of extensive use, widespread publicity and superior quality of goods and services under the MICROSOFT marks, plaintiffs' MICROSOFT marks have acquired substantial goodwill and reputation and come to be exclusively associated by the members of the trade and public worldwide including India with plaintiffs and no one else. Hence, plaintiffs' MICROSOFT marks have acquired the status of 'well-known' mark within the meaning of Sections 2(1)(zg) and 11(6) of the Trademark Act, 1999 (hereinafter to be referred as the "Act") and are entitled to be protected as such. Plaintiffs offer technical assistance to their customers through call centers located all over the world. These technical support call centers employ over 10,000 support engineers and technicians. Two of these call centers are located in India, i.e. at Bengaluru and Hyderabad. These authorized Microsoft call centers offer support to consumers in various markets around the world. Plaintiffs taking their commitment seriously to protect and maintain the privacy of their

customers, provide their customers with the option of sharing their grievances by submitting reports of scams conducted by fraudsters, on plaintiffs online portal available at <<https://www.microsoft.com/en-us/concern/scam>> (hereinafter referred to as the "Complaint Portal"). This online Complaint Portal has options of providing details of the incidents, which include providing the name of offending company, the point of contact for the victims, the contact number the scammers used to communicate with the victims, the option of confirming if callers referred themselves as being related to or claiming to be a partner of plaintiffs, the amount of money asked by the fraudster, and the type of currency etc. The Complaint Portal also provides the victims with an option to provide their detail after clicking on the "YES" box in the 'Customer Information' tab. Such information then automatically populates itself in Microsoft Excel Sheet. Screenshot of the online Complaint Portal are mentioned in para 19 of the plaint. Traditionally, the entities engaged in technical support frauds use methods like "pop-up" messages on the consumers' screens with a number to call, cold calls impersonating tech companies or "search engine optimization" techniques for presenting themselves as official support of technology companies. The modus operandi and the extent of such surreptitious operations of defendants came to light only when plaintiffs started receiving multiple reports from aggrieved victims. As per the reports, defendants used multiple means to contact the victims like "pop-up" messages and cold calls. The reports contained multiple indicators which pointed towards fraudulent operations conducted by

defendants. The attributes mentioned by the victims in reports like company name, URL, merchant account name and phone number matched the data found during searches of defendant no.1's premises and digital data by the Haryana Police. As of date Microsoft has received over 707,421 complaints from victims across the globe through their Complaint Portal. Amongst these complaints, there was a complaint about defendant no. 1. As per the records of the Registrar of Companies (ROC), defendant no.2 Mr. Zayed Sahaye and defendant no.3. Mr. Akshay Anand, are the Directors of defendant no.1 and responsible for day-to-day business of defendant no.1. Even after criminal actions initiated against defendants no.1 to 3 in November 2018, the infringing and illegal activities of defendant no.1 continued. Defendants no.2 and 3 being the Directors of defendant no. 1, they are key personnel and have active involvement in the decision making of defendant no.1's illegal activities. Defendants no.4 to 12 are entities which are incorporated under the laws of United States of America (USA). These defendants are working in connivance with and are furthering the illegal pursuits of defendants no.1 to 3. Defendants have been joined in this action for certain reasons i.e. defendants no.1 to 3 provide illegal technical support services to people by using plaintiffs' registered trademarks and impersonating as plaintiffs personnel/employees or "Microsoft Certified Technicians"; defendants no.4 to 12 receive payments from people so deceived by defendants no.1 to 3 and thus all defendants are working in connivance with each other; defendants are necessary and proper party

for the proper adjudication of present suit; the right to relief arises out of same acts or transactions of defendants; the cause of action is common; common questions of law and facts arise and separate suits would lead to multiplicity of proceedings. In 2016, plaintiffs came across defendants' infringing activities. Within a span of a few months thereafter, plaintiffs received plethora of complaints against defendants no.4 to 12 on their Complaint Portal. Plaintiffs on the basis of such victim complaints, initiated investigations to gather further information. Considering that defendants conduct their activities clandestinely, the investigations took substantial time. Eventually, in mid-2018, plaintiffs came to a preliminary view that defendant no.1 is likely pursuing its illegal activities through its call center located in India. The preliminary enquiries also indicated that defendants no.1 to 3 were likely working in connivance with defendants no.4 to 12. Plaintiffs then got an investigation conducted relating to activities of defendant no.1 and its associated companies. Meanwhile in October 2018, plaintiffs also received a victim complaint against defendant no.1 on their Complaint Portal. Thereafter, the investigation, which got concluded in October 2018, confirmed that defendant no.1 was indeed operating a call center from Gurugram, India. It was further revealed that defendant no.1 was making unsolicited calls to innocent customers/victims using "pop-up" messages. It contacted potential victims and claimed to have knowledge about victims computers and informed such victims that they needed immediate technical and security support services. The inquiries revealed that defendant no.1 was in the

business of making wrongful monetary gains by impersonating itself as plaintiffs' authorized Technical Support Team executives. The volume of victims reports that plaintiffs received on their Complaint Portal indicated a large-scale technical support fraud was being perpetrated from various call centers in Gurugram. Such fraud included impersonation, cheating, and creating false and fabricated documents using computer resources, causing wrongful losses to plaintiffs and the scam victims and wrongful gains by the perpetrators. Based on their internal investigations and inquiries, the authorized representative of plaintiff no.2 filed a criminal complaint, which was registered as FIR no.0516 of 2018 dated November 28, 2018 at Police Station Sector 17/18, Gurugram. Pursuant to registration of the aforesaid FIR, the officials from Gurugram Police conducted searches at eight (8) different call centers including premises of defendant no.1 at GP-43, Sector-18, Udyog Vihar, Gurugram, Haryana, India on November 28th of 2018. On the day of search and seizure, Mr. Zayed Sahaye and Mr. Akshay Anand, defendants no.2 and 3 who are Directors of defendant no.1 were arrested by the Gurugram Police from premises of defendant no.1. During the search, 18 CPUs, 17 Hard Drives, 1 Server and several other types of incriminating digital evidence and documents were seized from the premises of defendant no.1. On the basis of evidence collected from premises of defendant no.1, pre and post search investigations, preliminary chargesheet and complaints received on the Complaint Portal, it is apparent that defendants no.1 to 3 entered into criminal conspiracy with defendants no.4 to 12, and in pursuance of

such conspiracy, deceived victims based in several countries including USA and Canada by insinuating or impersonating themselves as being a technical support team of plaintiffs. The police investigation revealed that in the process, defendants no.1 to 3 induced such victims into parting with their hard-earned money by using and/or employing false pretenses that the victims' computers had been infected by virus/malware/hackers and therefore required support to clean and run computers. These defendants claimed to be able to assist the victims on behalf of, or rather in the guise of plaintiffs. These searches made by the Gurugram Police were covered in national newspapers in India. On February 15, 2019, a preliminary chargesheet was filed in aforesaid FIR case under sections 43, 66D & 75 of Information Technology Act, 2000 and Sections 415, 416 & 420 of Indian Penal Code, 1860 before learned Judicial Magistrate First Class, Gurugram District Court. Learned Magistrate has taken the cognizance of offences in matter and case no. CHI 366 of 2019 is now pending before the said court. A supplementary chargesheet in the said case is yet to be filed. The preliminary chargesheet reveals that amongst others, the incriminating evidence was found in the computers at defendant no.1's premises, namely, a Notepad document on the computer of an employee of defendant no.1, which appeared to be a script purportedly on behalf of a "Microsoft Certified Technician". The Notepad document also mentioned a telephone number (1-855-979-6498). This number was reported by victims on the Complaint Portal. As per victims' complaints, the person calling from this number pretended that he was a

Windows User Support Technician, and that the victims' computer had a problem which could be fixed by procuring a few products from him. Thus, this employee sought and extorted money from unsuspecting customers for rendering technical services purportedly on behalf of plaintiffs. A photograph of the above mentioned Notepad document is mentioned in para 33 of the plaint and also an invoice bearing plaintiffs' logo and purported to be an invoice raised by plaintiffs. This invoice also had the name of defendant no.4 apparently to indicate that the cheque was to be issued in the name of defendant no.4; record of payments made to entities such as Apploft LLC, i.e. defendant no.5 against whom victims had made complaints on the Complaint Portal; A scanned copy of a cheque issued in the name of defendant no.5; A Notepad document containing product ID/key of plaintiffs products. As per the evidence collated during the police investigation and the documents supporting the preliminary chargesheet clearly suggest that defendant no.1 was working in connivance with other companies such as "Platform Solutions Management LLC (defendant no.4)", Apploft LLC (defendant no.5), Ultra Tech Support (defendant no. 6). "Skyfill Business Solutions LLC" (defendant no.7), "Apzee Technologies LLC" (defendant no.8), "Supportbuds" (defendant no.9), "JC It Services International Inc" (defendant no.10), "Appweb Inc" (defendant no.11), "Geek Dial LLC" (defendant no.12). As per the preliminary chargesheet, a "Sticky-Note" document was found on one of the computers of an employee of defendant no.1 which appeared to be a script. The said "Sticky-Note"

document mentioned *inter alia* the name of defendant no.4, the fact that the alleged technician and the victim were connected to Microsoft Secure Server, and a telephone number (1-647-957-1065). This number was also reported by the victims on the Complaint Portal. As per victims complaints, the person calling from this number informed them that he has diagnosed the issue with the computers of the victims and that he could fix the issue by (a) connecting to defendant no.4 and (b) taking remote access of their computers. The victims in turn had to shell out money to get these fictitious issues fixed. Hence, defendant no.1 through its call center services, was working in connivance with defendant no.4 to extract money from victims by providing fake technical support services to the victims by misusing name of plaintiffs. Even after Gurugram Police conducted search at the premises of defendant no.1 on November 28, 2018, complaints against defendant no.4 were lodged on the Complaint Portal at-least till November 2020. A photograph of the document available on one of the computers present at the premises of defendant no.1 showed how defendant no.1 was deceiving the victims as mentioned in para 35 of the plaint. An invoice was found at the premises of defendant no.1 bearing plaintiffs' logo and falsely purported to be an invoice raised by plaintiffs. This invoice also had the name of defendant no.4 apparently to indicate that the cheque was to be issued in the name of defendant no.4. Photograph of the invoice available on a computer at the premises of defendant no.1 is mentioned in para 36 of the plaint. As per the preliminary chargesheet, an Excel sheet containing records of a

number of payments that were purportedly received by defendant no. 5, i.e. Apploft LLC, were found on one of the computers at the premises of defendant no.1. Further, plaintiffs received several complaints from victims against defendant no.5 on the Complaint Portal. As per the victims' complaints, the victims received either phone calls or "pop-ups" on their computer screens to call *inter alia* phone numbers such as 1-855-979-6498, 1-810-620-0514, 1-855-979-6452, 1-855-979-6524 and 1-844-287-5006 (which were also used to contact victims by defendant nos.1, 6, 9, 10, 11 and 12) purportedly to fix issues on the computers of the victims. The victims were misinformed that they were interacting with plaintiffs representative and that their computers were hacked or attacked by viruses. The victims were then duped into paying for fake clean-up of their computers and/or security software. In this manner defendant no.1 through its call center services, was working in connivance with defendant nos.5, 6, 9, 10, 11 and 12. Even after the Gurugram police conducted search at the premises of defendant no.1 on November 28, 2018, complaint against defendant no.5 was lodged on the Complaint Portal at-least till October 2019. Photograph of the records of payment received by defendant no. 5 (as found on one of the computers at the premises of defendant no.1) is mentioned in para 37 of the plaint. A scanned copy of a cheque in the name of defendant no.5 was found on a computer at the premises of defendant no.1. The availability of this cheque on the computer of defendant no.1 establishes a link between defendant no.1 and defendant no.5. A photograph of a computer at the

premises of defendant no.1 with scanned copy of the above mentioned cheque is mentioned in para 38 of the plaint. As per preliminary chargesheet, the webpage of defendant no.6 was found open on one of the computers at the premises of defendant no.1. The contact number mentioned on the webpage of defendant no.6, (i.e. 1-810-620-0514) was identical to one of numbers mentioned by victims on the Complaint Portal. As per the victims' complaints, the victims received a "pop-up" message on their computers stating that Microsoft has blocked their computers. The "pop-up" message stated that the victims should contact a phone number (also referred on defendant no. 6's webpage) to resolve the issues. The person then taking call represented himself to be a technician of defendant no.6 and falsely purported to be affiliated with plaintiffs. Thereafter, technician took remote access of the victims' computers to address these fictitious issues, including scare of malware infection, and sold victims what was purported to be anti-virus software. Further, it was noticed that apart from defendant no.6, this contact number was also used by defendant no.5 and defendant no.11 to misrepresent the victims that this phone number belongs to plaintiffs or their affiliates. Based on such misrepresentation, a victim who spoke with a representative of defendant no.6 (falsely believing such person to be representative of plaintiffs) made payment to defendant no.5. It established that defendant no.1 through its call center services, was working in connivance with defendant nos.5 and 6. Even after Gurugram police conducted a search at the premises of defendant no.1 on November 28, 2018, complaints

against defendant no.6 were lodged on the Complaint Portal at-least till January 2019. Photographs of the webpage of defendant no.6 (open on one of computers at the premises of defendant no.1) and a screenshot of complaints received against defendant no.6 and complaints showing payments made to defendant no. 5 on the Complaint Portal (with the same contact number as one provided on defendant no. 6's webpage) are mentioned in para 39 of the plaint. As per preliminary chargesheet, it was further revealed that the contact number 1-844-305-0528 which was mentioned by the victims on the Complaint Portal against defendant no.7 was also referred to in a Notepad document which appeared to be a script available on one of computers found at premises of defendant no.1. As per the victims' complaints, they encountered a "pop-up" on their computer screens stating that Windows was blocked and that they should contact Microsoft at the aforementioned number. The person answering the call represented himself to be a technician of defendant no.7 and falsely purported to be affiliated with plaintiffs. This person then took remote access of victims' computers to fix these fabricated and non-existent issues for a price and sold the victims other purported software security products. In this manner defendant no.1 through its call center services, was working hand-in-glove with defendant no.7 to dupe unsuspecting victims. Photograph of the Notepad document available on defendant no.1's computer and a screenshot of the complaints received against defendant no.7 on the Complaint Portal are mentioned in para 40 of the plaint. As per online records of official website of the State of

Connecticut in the USA (<service.ct.gov>), the registered addresses and support numbers of defendant no.7 and defendant no. 8 are the same. Relevant excerpts from the Connecticut's official State website are mentioned in para 41 of the plaint. The contact details of defendant no.7 and defendant no.8 as provided by the victims on the Complaint Portal are the same as the ones listed on the Connecticut's official State website (i.e.1-844-305-0528). As per the victims' complaints, the victims received a "pop-up" message on their computers stating that Microsoft has blocked their computers. The "pop-up" message stated that victims should reach out to aforementioned phone number to resolve issues. The person answering victims' call represented himself to be a technician of defendant no.8 and falsely purported to be affiliated with plaintiffs. Thereafter, the technician took remote access of the victims' computers to solve these fictitious issues including the issue of viruses. Said person also sold victims alleged firewall software which was purported to be recommended by plaintiffs. The person also deceived the victims for paying substantial amount of money for providing and purported firewall software. In this manner defendant no.1 through its call center services was working in connivance with defendant nos.7 and 8 also. Even after the Gurugram police conducted search at the premises of defendant no.1 on November 28, 2018, complaint against defendant no.8 was lodged on Complaint Portal at-least till May 2020. Relevant excerpt from the Complaint Portal is mentioned in para 41 of the plaint. All these entities appear to be alter-egos of each other and show that these two companies

are associated and carry on their illegal activities in connivance with each other. As per the complaints received on the Complaint Portal, it was revealed that defendant no.5 received payments on behalf of defendant no. 9. Further, as per the preliminary chargesheet, a Notepad document which appeared to be a script was found on one of the computers at the premises of defendant no.1. This Notepad document referred to defendant no.9 and mentioned a phone number (1-855-986-6452). As per the victims' complaints, the victims received a "pop-up" message on their computers stating that Microsoft has blocked their computers. The "pop-up" message stated that victims should reach out to the phone number to resolve the issue(s). The person answering the call represented himself to be a technician of defendant no.9 and falsely purported to be affiliated with plaintiffs. Thereafter, technician took remote access of victims' computers to solve these fictitious issues including the issue of malware and also sold the victims purported anti-virus software. As per complaints received on the Complaint Portal, it was revealed that defendant no.9 had received payments from these victims. In addition, it was revealed in the complaints that at least one payment was made to defendant no.5 on behalf of defendant no. 9. This clearly evidences that defendant no.1 through its call center services, was working in connivance with defendants no.5 and 9. Photograph of the Notepad document (available on the computer of defendant no. 1) and screenshot of the complaints received on the Complaint Portal against defendant no. 9 are mentioned in para 42 of the plaint. As per the preliminary

chargesheet, a Notepad document was found on one of computers at the premises of defendant no.1, wherein defendant nos.5, 10 and 11 were mentioned. In this Notepad document, there were statements from two people, stating that (i) their computer and network problems had been fixed and they agreed to close the case; (ii) they agreed to pay a certain amount of money to Apploft LLC (i.e. defendant no. 5); (iii) they would mail/get a "Money Order" on a certain date and (iv) they would call the toll-free phone number (1-855-979-6524) and provide "Money Order's" number to support team; Below these statements, following was mentioned: "Name on the Money Order: - APPWEB INC" (i.e. defendant no.11) and defendant no.10 was also mentioned at the top of the Notepad document as the "Business Name". A number of complaints were received by plaintiffs against defendant no.10 on the Complaint Portal. As per the victims' complaints, a person representing defendant no.10 called the victims claiming to be a subsidiary of plaintiffs or associated with plaintiffs. This person informed the victims that their computers were hacked and then sold purported firewall protection, receiving a considerable amount of money from the victims. In addition, as per the victims' complaints, on the aforementioned phone number (1-855-979-6524), used to contact victims, was also referred to in a false "pop-up" warning message which was purportedly sent by defendant no.10 to the victims. Thus, it is clear that defendant no.1, through its call center services was working in connivance with defendants no.5, 10 and 11. Even after the Gurugram police conducted search at premises of

defendant no.1 on November 28, 2018, complaint against defendant no.10 was lodged on the Complaint Portal at-least till March 2020. Photograph of the Notepad document available on the computer of defendant no.1 and screenshot of complaints received on the Complaint Portal against defendant no.10 are mentioned in para 44 of the plaint. As mentioned in paragraph 43 above, the Notepad document found on one of the computers at the premises of defendant no.1 mentioned defendant nos. 5, 10 and 11 (Defendant no.11 was listed under "Name on the Money Order"). A number of complaints were also received by plaintiffs against defendant no.11 on Complaint Portal on which technical support number provided by victims was the same as one mentioned in Notepad document. As per these complaints, the victims either received calls from the aforementioned number or "pop-ups" on their computer screens to call aforementioned number. The victims were told that they were interacting with plaintiffs' technician and that their computers were hacked or attacked by trojan viruses. They were then duped into paying for fake clean-up of their computers. Thus, it is clear that defendant no.1 through its call center services, was working in connivance with defendant nos.5, 10 and 11. Even after Gurugram police conducted search at the premises of defendant no.1 on November 28, 2018, complaint against defendant no.11 was lodged on Complaint Portal at-least till March 2019. Screenshot of the report pertaining to complaints received on the Complaint Portal against defendant no.10 is mentioned in para 46 of the plaint. As per the preliminary chargesheet, another

Notepad document was found on one of the computers at premises of defendant no. 1, wherein defendants no.5 and 12 were both mentioned. In this Notepad document, there were statements from two other people, stating that (i) their computer and network problems had been fixed and they agreed to close the case; (ii) they agreed to pay a certain amount of money to Apploft LLC (i.e. defendant no.5) and GEEK Dial LLC (i.e. defendant no.12), respectively; (iii) they would mail a "Cashier's Cheque" on a certain date and (iv) they would call the toll-free phone numbers (1-855-979-6524 and 1-844-287-5006, respectively) and provide the "Cashier's Cheque" number to the support team. A number of complaints were received by plaintiffs against defendant no.12 on Complaint Portal. The victims in their complaints on Complaint Portal stated that their computers froze and that they received a "pop-up" stating that their computers had encountered issues and that they should call the aforementioned phone number (1-844-287-5006, also referred to in the Notepad document). The person who received call falsely claimed to be a Microsoft supervisor. This person then fallaciously stated that the victims' computers were hacked and infected with viruses. The victims were then duped by this person into parting with their money in exchange for fake clean-up services. So defendant no.1, through its call center services, was working in connivance with defendants no.5 and 12. Photograph of the aforementioned Notepad document available on the computer of defendant no.1 and the report pertaining to the complaints received on the Complaint Portal against defendant no.12 are mentioned in para 48 of the

plaint. The victims received either phone calls or "pop-up" messages informing the victims that their computers have issues, and it was suggested to victims to reach out to plaintiffs' technical support team or its affiliates. The fraudulent and infringing acts of defendants continued even after filing of preliminary chargesheet by the Gurugram police against defendants no.1 to 3 in the aforesaid criminal case. Plaintiffs received complaints throughout years 2019 and 2020 against common domain names and phone numbers, or such common details, under names of different companies. Plaintiffs upon analysis found that such complaints narrowed down to the details which correspond to the details of defendants, especially defendant no.1, which is managed by its Directors, defendant nos.2 and 3. A few complaints received on the Complaint Portal with the details that match with the details of defendants are mentioned in para 51 of the plaint. By virtue of long, continuous and extensive use, worldwide registrations, aggressive promotion, unsolicited media attention, the MICROSOFT marks qualify as well-known marks within the meaning of section 2(1) (zg) and section 11(6) of the Trade Marks Act, 1999 and, therefore, deserve to be protected as such. Any reference to the MICROSOFT marks in relation to any goods is bound to be associated with plaintiffs alone. Defendants have not only identically copied the MICROSOFT marks, but have also impersonated themselves as Microsoft Security or "Microsoft Certified Technician" and by misusing the MICROSOFT marks, defendants gave a false impression to the victims that defendants are affiliates or are a

venture of plaintiffs. The use of identical MICROSOFT marks by defendants in relation to above-mentioned goods and services has created a false impression in the minds of the consumers that defendants' services originate from plaintiffs or that defendants are associated with plaintiffs, which is not true. The use of MICROSOFT marks by defendants takes unfair advantage of and is detrimental to and/or dilutive of the distinctive character and repute of plaintiffs MICROSOFT marks. Thus, defendants' use of the same amounts to intentional and willful infringement of the statutory rights of plaintiffs within the meaning of Section 29 of the Act, apart from amounting to offence. The use by defendants of MICROSOFT marks has an inherent misrepresentation to consuming public that defendants' goods/services have an association with or are licensed by plaintiffs, when they are not; and such misrepresentation is not only calculated to give unfair advantage to defendants but is also causing incalculable damage to plaintiffs' exclusive intellectual property rights and enviable goodwill in the MICROSOFT marks in addition to causing substantial monetary loss to plaintiffs.

3. Defendants have continuously and dishonestly used plaintiffs' well-known MICROSOFT marks with a clear intention to induce innocent people to believe that services rendered by defendants originate from plaintiffs and further inducing the victims to part with their money whilst misrepresenting to victims that the money is in payment for fixing their computers. Defendants are causing wrongful gains to themselves and wrongful losses to the public at large, whilst

adversely affecting and causing incalculable harm and injury to plaintiffs in terms of loss of goodwill, reputation associated with MICROSOFT marks apart from monetary losses. Thus, defendants are clearly infringing and passing off their goods/services as that of plaintiffs' goods/services due to which plaintiffs have suffered irreparable harm and injury, leading to damage and dilution to their exclusive proprietary rights and goodwill in the MICROSOFT marks. In these circumstances plaintiffs have been forced to file the present suit praying for the following reliefs.

- (i) A decree of permanent injunction restraining defendants, their presidents, directors, affiliates, members, agents and all other persons acting for, claiming under or through or on their behalf or in concert with them, from using the MICROSOFT marks, Microsoft "HOTMAIL", "OUTLOOK", Outlook, Hotmail "OFFICE 365" or any other mark deceptively or confusingly similar to plaintiffs MICROSOFT marks and from doing any other act so as to infringe plaintiffs' MICROSOFT marks;
- (ii) A decree of permanent injunction restraining defendants, their presidents, directors, affiliates, members, agents and all others acting for, claiming under or through or on their behalf or in concert with them, from using the MICROSOFT marks, Microsoft "HOTMAIL", "OUTLOOK". Outlook Hotmail, "OFFICE 365" or any other mark deceptively or confusingly similar to plaintiffs' MICROSOFT marks and from doing any other act so as to take unfair advantage of and/or cause detriment to the distinctive

character and reputation of plaintiffs' MICROSOFT marks and/or to impersonate plaintiffs in any manner;

- (iii) A decree against defendants directing them to render true and faithful accounts of all enrichment/benefits illegally earned by defendants on account of use of marks identical, deceptively or confusingly similar to or using plaintiffs' MICROSOFT marks, "HOTMAIL", "OUTLOOK", Outlook Hotmail., "OFFICE 365" and to then pay to the plaintiff such amount as may be found due on such accounts being rendered;
- (iv) A decree for damages in favour of plaintiffs and against defendants amounting to ₹2,00,01,000/- only;
- (v) A decree against defendants, their presidents, directors, affiliates, members, agents and all others acting for, claiming under or through or on their behalf or in concert with them, for delivery up for destruction upon oath of all products and materials including sample call scripts, business brochures, promotional material, cheque(s) and any other material(s) incorporating the name of plaintiffs etc. containing plaintiffs' trademarks, and/or any essential features thereof;
- (vi) An order awarding costs of this suit to plaintiffs.

4. Notice of the suit was issued to the defendants. Defendants no.2 and 3 appeared through counsel on 29.3.2022 whereas remaining defendants remained unserved. Defendant no.1 was subsequently proceeded against exparte on 02.07.2022 and suit qua defendants no.4 to

6 and 9 to 12 was abandoned as the plaintiff gave up its claims against them under Order 23 Rule 1 CPC on 14.11.2022. Defendants no.2 and 3 also did not file the written statement within the prescribed time and so their defence was also struck off on 02.07.2022.

5. Defendants no.7 and 8 put appearance through counsel on 02.07.2022 and subsequently filed written statement on 14.11.2022. An application was moved by plaintiff for not reading the written statement filed on behalf of defendants no.7 & 8 and the said application was dismissed as withdrawn qua defendant no.8 on 17.03.2023 whereas defence of defendant no.7 was struck off vide order dated 17.01.2023 for filing written statement after 120 days of service.

6. In the joint written statement filed on behalf of defendants no.7 and 8 and which is to be considered only on behalf of defendant no.8 as defence of defendant no.7 was subsequently struck off, certain preliminary objections have been raised regarding maintainability of the suit; the suit having been filed on false, frivolous and baseless allegations for extracting money from the defendants by misusing the process of law; the answering defendants have no concern with plaintiffs or defendants no.1 to 3 as alleged and they had no role to play in using the Trade Marks of plaintiffs by defendants no.1 to 3 and so plaintiffs have no cause of action against them; this court has no territorial jurisdiction to try and entertain the present suit; the suit has not been properly valued for the purposes of court fees and jurisdiction; etc.

7. On merits, the allegations made by the plaintiffs that

answering defendants used the mark and logo of the plaintiffs in any manner has been denied. The plaintiffs being providers of various operating systems as pleaded in para 2 of the plaint and that they are lawful proprietor of MICROSOFT marks etc. as detailed in para 3 are denied for want of knowledge. It has been denied that answering defendants were infringing plaintiffs' 'MICROSOFT' marks by providing illegal technical support services to people at large by using the plaintiffs Trade Mark in an unauthorized manner or that they were impersonating as plaintiffs' employees or 'Microsoft Certified Technicians' by misrepresenting their affiliation with Microsoft to the innocent customers of plaintiffs as alleged. The answering defendants never used the mark and logo 'MICROSOFT' or 'Microsoft Certified Technicians' of the plaintiffs in any manner. It has also been denied that the plaintiffs have been forced to file the present suit due to malafide and unauthorized use of the marks of plaintiffs by them. The details given by plaintiffs relating to their business and obtaining Trade Marks registrations for their logos and labels in India and abroad as detailed in the plaint have been denied for want of knowledge. The answering defendants have also denied the allegations of committing technical fraud scams by impersonating Tech Companies or 'Search Engine Optimization' techniques of plaintiffs in any manner as alleged. The allegations levelled against remaining defendants have been denied for want of knowledge. Incorporation of answering defendants in America has been admitted being matter of record but all other allegations made against them have been denied. It

has been denied that defendants were working in connivance with the illegal pursuits of defendants no.1 to 3 as alleged. The answering defendants have no concern with defendants no.1 to 3 in any manner nor they were receiving payments from them as alleged. The allegations levelled by the plaintiffs regarding infringing activities and technical support scam against the answering defendants have been denied being wrong and those against other defendants have been denied for want of knowledge. Registration of FIR by the plaintiffs with Police Station Sector-17/18, Gurugram against defendant no.1 has also been denied for want of knowledge. It is denied that defendants no.1 to 3 entered into criminal conspiracy with defendants no.4 to 12 and deceived victims based in several countries including USA, Canada by insinuating or impersonating themselves being technical support team of the plaintiffs as alleged. The answering defendants have no concern with defendants no.1 to 3 in any manner. Proceedings of criminal case as mentioned in the plaint have been denied as they do not relate to answering defendants and allegations levelled against other defendants have also been denied for want of knowledge. The allegations levelled against answering defendants by the plaintiffs in para 14 of the plaint have been denied and it has been denied that contact no. 1-844-305-0528 mentioned by the victim which was found on the Complaint Portal against defendant no.7 and when they encountered a pop up on their computer screens, the person answering the call represented himself to be a technician of defendant no.7 and falsely claimed himself to be affiliated with plaintiffs

and sold to the victims other software security products as alleged. It is also denied that defendant no.1 was working hand in glove with defendant no.7 to dupe unsuspecting victims as alleged. The photographs of Notepad document of defendant no.7, if any, annexed with the plaint are false and fabricated and are not related to defendant no.7. It is admitted that the address of answering defendants are same and they are sister concerns but all other allegations levelled against them have been denied being wrong and incorrect. The answering defendants never used or misused the mark and logo 'MICROSOFT' or 'Microsoft Certified Technicians' of the plaintiffs in any manner till date and they have not infringed any statutory rights of the plaintiffs. All other allegations levelled by plaintiffs against answering defendants have also been denied. It is denied that answering defendants were continuously and dishonestly using plaintiffs' well known MICROSOFT marks with an intention to induce innocent people to believe that services rendered by defendants originated from the plaintiffs or that they induced the victims to part with money by misrepresenting them and thereby causing wrongful gain to themselves and wrongful loss to the public at large while adversely affecting and causing incalculable harm and injury to plaintiffs in terms of loss of goodwill, reputation associated with MICROSOFT marks apart from monetary losses as alleged and so plaintiffs are not entitled to any relief against the answering defendants including damages or losses amounting to ₹2 crores as alleged. Accordingly, it has been prayed that the suit filed by the plaintiffs be

dismissed.

8. Thereafter affidavits of admission and denial of documents relied upon by plaintiffs was filed on behalf of defendant no.8 and after Case Management Hearing, following issues were framed by the court on 14.09.2023.

1. Whether the plaintiffs are the registered proprietors of trademarks and logos as detailed and described in para no.1 of plaint? OPP
2. Whether defendants no.1 to 3, 7 and 8 have infringed the registered trademarks of the plaintiffs and whether they have also passed off their goods and services as and that of the plaintiffs? OPP
3. In case issues no.1 and 2 are decided in favour of the plaintiffs then whether the plaintiffs are also entitled to the relief of injunction as prayed for? OPP
4. Whether the plaintiffs are also entitled to claim damages from the defendants along with costs as prayed for? OPP
5. Whether the plaintiffs are also entitled to claim rendition of accounts from the defendants as prayed for ? OPP
6. Whether the plaintiffs have not approached to the court with clean hands ? OPD
7. Whether the suit filed by the plaintiffs is not maintainable in the present form? OPD
8. Whether this court has no jurisdiction to try and entertain the present suit? OPD
9. Relief.

9. When the case was fixed for evidence of the plaintiff, an application under Order X1 Rule 2(1) and Order X1 Rule 5(1) read with Section 151 CPC seeking interrogatories and discovery of documents was filed on behalf of plaintiffs. Subsequently the said application was

dismissed being not pressed on 09.01.2024 on the statement of learned counsel for the plaintiffs. Another application for filing certain additional documents in evidence under Order X1 Rule 1(4) CPC was filed on 07.02.2024 which was allowed. Thereafter plaintiffs examined one PW Shri Jaideep Singh Kochar as PW1 who tendered his affidavit Ex.PW1/A in his examination-in-chief corroborating the case of the plaintiffs as pleaded in the plaint. He also tendered following documents in evidence of the plaintiffs to prove their case:

Ex. PW1/1	True copy of Power of Attorney dated 22.06.2020
Ex. PW1/2	True copy of Board Resolution dated 11.12.2020
Ex. PW1/3	True copy of Board Resolution dated 29.12.2021
Ex. PW1/4	Certificate under Section 65B of the Indian Evidence Act, 1872 of Shri Jaideep Singh Kochar, authorised signatory of plaintiffs
Ex. PW1/5	Copies of printout of the business information
Ex. PW1/6	Copy of Company Master Data
Ex. PW1/7 to Ex. PW1/10	Legal proceeding certificates in respect of marks under nos. 430449, 2382598, 1280442 and 2414836
Ex. PW1/11 to Ex. PW1/24	Online status as accessed and printed from the online records of the Trade Marks Registry available on its website in respect of registration nos.430449, 1236704, 2382598, 1280442, 2414836, IRDI-3858804, IRDI-4012393, 771973, 1290203, 710813, 1665696, 1665716, 2242387 and 2185195
Ex. PW1/25 & Ex. PW1/26	Copy of order dated 03.02.2014 passed by Hon’ble Delhi High Court in CS (OS) 2163/2020 & I.A. no.14225/2010 in case titled as Microsoft Corporation & Anr. Versus Kurapati Venkata Jagdeesh Babu & Anr. and list of well known trademarks as available on the website of Trade Marks Registry
Ex. PW1/27	Printouts containing details about Microsoft Customer Service and Support
Ex. PW1/28	Printouts of the Complaint Portal of plaintiffs for submitting reports of incidents of scams

Ex. PW1/29	Printouts of the FTC press release dated February 04, 2021
Ex. PW1/30	Printouts of 2021 Microsoft Global Tech Support Scam Research Report
Ex. PW1/31	Printouts containing details of Digital Crime Unit as available on the website of plaintiff no.1
Ex. PW1/32	Screenshot of complaint received against defendant no.1
Ex. PW1/33	Printout of the Master Data containing details of incorporation of defendant no.1
Ex. PW1/34 (colly)	Copy of criminal complaint and FIR no.0517 dated 28.11.2018, Police Station Sector 17/18, Gurugram
Ex. PW1/35 (colly)	Printouts of some of the news publications
Ex. PW1/36	Certified copy of the Preliminary Chargesheet
Ex. PW1/37	Photograph of the Notepad document
Ex. PW1/38	Photograph of the document available on one of the computer present at the premises of defendant no.1 evidencing how defendant no.1 was deceiving victims
Ex. PW1/39	Screenshots of complaints received against erstwhile defendant no.4
Ex. PW1/40	Photograph of the invoice available on a computer at the premises of defendant no.1
Ex. PW1/41	Photographs of the records of payments received by erstwhile defendant no.5
Ex. PW1/42	Screenshots of complaints received against erstwhile defendant no.5
Ex. PW1/43	Photograph of a computer at the premises of defendant no.1 with scanned copy of the cheque
Ex. PW1/44	Photographs of webpage of erstwhile defendant no.6
Ex. PW1/45	Screenshots of complaints received against erstwhile defendant no.6
Ex. PW1/46	Photograph of the Notepad document available on defendant no.1's computer
Ex. PW1/47	Screenshots of the complaints received against defendant no.7 on the Complaint Portal
Ex. PW1/48	Screenshots of the complaints received against defendant no.8 on the Complaint Portal
Ex. PW1/49	Photograph of Notepad document

Ex. PW1/50	Screenshots of the complaints received against defendant no.9 on the Complaint Portal
Ex. PW1/51	Photograph of the Notepad document
Ex. PW1/52	Screenshots of the complaints received against defendant no.10 on the Complaint Portal
Ex. PW1/53	Screenshots of the complaints received against defendant no.11 on the Complaint Portal
Ex. PW1/54	Photograph of the Notepad document available on the computer of defendant no.1
Ex. PW1/55	Screenshots of the complaints received against defendant no.12 on the Complaint Portal

and subsequently evidence on behalf of plaintiffs was closed by learned counsel for the plaintiff vide his statement on 08.05.2024.

10. The case was then adjourned for evidence of defendant no.8 and no witness was examined by learned counsel for defendant no.8 and he close evidence on behalf of defendant no.8 on 26.07.2024.

11. I have heard learned counsel for the parties and have gone through written submissions filed on behalf of plaintiffs. My issewise findings with reasons thereof are as under:

Issue No.1:

12. Onus to prove this issue is on the plaintiffs.

13. Learned counsel for the plaintiffs has argued that from the pleadings of the suit and evidence led by the plaintiffs, it is established that plaintiffs are the registered owners of mark and label MICROSOFT which is proved from the evidence led by the plaintiffs. To prove its case and corroborate the testimony of plaintiffs’ witness plaintiffs have tendered Ex. PW1/5 which is business information printout containing details of incorporation of plaintiff no.1 from the official website of

Secretary of State of the State of Washington, United States of America which is proved by Certificate under Section 65B of the Indian Evidence Act of PW1 as Ex. PW1/4. Similarly, certificate of incorporation of plaintiff no.2 in India is proved vide Ex. PW1/6 and Power of Attorney executed in favour of PW1 Shri Jaideep Singh Kochar authorizing him to institute suit on behalf of plaintiff no.1 as Ex. PW1/1 and Board Resolutions are Ex. PW1/2 & Ex. PW1/3. Plaintiffs have also proved Trade Mark registrations for MICROSOFT marks and its variants in various classes as Ex. PW1/7 to Ex. PW1/24. Beside this, plaintiffs' Trade Mark MICROSOFT has been recognized as "well known" as defined in Section 2(1)(zg) of the Trade Marks Act, 1999 in **Microsoft Corporation and Anr. Versus Kurapati Venkata Jagdeesh Babu and Another 2014(57) PTC 601 (Delhi)** which has also been exhibited as Ex. PW1/25. The same is also mentioned in list of well known Trade Marks as available on the official website of Trade Marks Registry which has been tendered as Ex. PW1/26.

14. Admittedly, defendant no.1 has been proceeded against exparte, whereas defence of defendants no.2,3 and 7 is struck off and the evidence led by plaintiffs on the aforesaid facts has not been controverted by defendant no.8. So plaintiffs have been able to prove that they are registered proprietors of Trade Marks and Logos as detailed and described in para 1 of the plaint. Accordingly, issue no.1 is decided in favour of the plaintiffs and against the defendants.

Issues No.2 & 3:

15. Onus to prove these issues is on the plaintiffs. Learned counsel for the plaintiffs has argued that evidence led by the plaintiffs has gone unrebutted and defendants no.1 to 3 and 7 & 8 did not lead any evidence to rebut the case of the plaintiffs and from the evidence led by plaintiffs which has gone unrebutted, the plaintiffs have been able to prove that the defendants against whom the present suit is being pursued by plaintiffs have infringed the registered Trade Marks of plaintiffs and they have passed off their goods and services as that of plaintiffs and nothing has come out in cross-examination of plaintiffs' witness in cross-examination by learned counsel for defendants no.7 & 8. So he has prayed for deciding these issues in favour of plaintiffs.

16. On the other hand, learned counsel for defendants no.7 & 8 has argued plaintiffs have to stand on their own legs to prove their case and they cannot take any benefit of weakness in the case of defendants. Even if defendants have not led any evidence to prove their defence, initial onus is on the plaintiffs to prove their case and they have failed to discharge their onus as it is not established on file that defendants no.1 to 3, 7 & 8 have infringed the registered Trade Marks of plaintiffs or have passed off their goods and services as that of plaintiffs. So they have prayed for deciding these issues against the plaintiffs.

17. After hearing learned counsel for the parties and after appreciation of record of the case including evidence led by plaintiffs, the court is of the considered view that plaintiffs have been able to prove these allegations against the aforesaid defendants and the arguments

advanced by learned counsel for contesting defendants cannot be accepted for the reasons given below.

18. Beside oral testimony of the plaintiffs' witness in which he has corroborated the case of the plaintiffs as pleaded in the plaint, he has also proved various documents relied upon by them in their evidence. From the documents tendered in evidence by the plaintiffs' witness, it is established that defendants no.1 to 3, 7 and 8 have infringed the registered Trade Marks of the plaintiffs and they also passed off their goods or services as that of the plaintiffs. To prove their case, plaintiffs have relied upon their Complaint Portal for submitting reports of incident of scams and printouts of the same containing details which have been tendered as Ex. PW1/27 and Ex. PW1/28 supported by the certificate under Section 65B of the Indian Evidence Act as Ex. PW1/4. This complaint portal is Microsoft Customer Service and Support which is technical support arm of plaintiffs which provide support and technical solutions to customers and partners. Plaintiffs also offer technical assistance to their customers through call centres located all over the world. These technical support call centres employ over 10,000 support engineers and technicians. Two of these call centres are located in India, i.e. at Bengaluru and Hyderabad. These authorized Microsoft call centres offer support to consumers in various markets around the world. Plaintiffs also provide their customers with an option of hearing their grievance by submitting reports of scams conducted by fraudsters, on plaintiffs' online portal available at <<https://www.microsoft.com/en->

us/concern/scam> (hereinafter referred to as the "Complaint Portal"). This portal has options of providing details of incidents including providing the name of offending company, point of contact for victims, contact number the scammers used to communicate with victims, the option of confirming if callers referred themselves as being related to or claiming to be a partner of plaintiffs, the amount of money asked by the fraudster, and the type of currency etc.

19. It is alleged that the modus operandi of the defendants came to the knowledge of the plaintiffs after they started receiving multiple reports from aggrieved victims. As per these reports, defendants used multiple means to contact victims like 'pop up' messages and cold calls. The reports contained multiple indicators which pointed towards fraudulent operations conducted by defendants. One of the complaint was against defendant no.1 and as per records of Registrar of Companies, defendants no.2 and 3 are Directors of defendant no.1 responsible for day to day business of defendant no.1. A criminal complaint was also lodged by the plaintiffs against them. Defendants no.7 and 8 are entities and incorporated under the laws of USA and they were working in connivance with their illegal acts with defendants no.1 to 3. They used to provide illegal technical support services to plaintiffs' customers by unlawfully using the plaintiffs' registered MICROSOFT marks and impersonating themselves as employees or personnel of plaintiffs. Many such entities including defendants no.7 and 8 (also defendants no.4 to 6 and 9 to 12) received money from the victims so deceived by defendants

no.1 to 3 and thus all of them were acting in connivance with each other. Plaintiffs also registered a criminal complaint FIR no.0516 dated 28.11.2018 at Police Station Sector-17/18, Gurugram which is Ex. PW1/34. It is claimed that defendants no.2 and 3 were arrested during investigation of the case and during search various CPUs, hard-drives and one server and other incriminating digital evidence and documents were seized from the premises of defendant no.1 which show that they were duping people by impersonating the plaintiffs and defendant no.1 was running a large scale call centre in connivance with other defendants to scam innocent persons.

20. The plaintiffs have also relied upon documents Ex. PW1/32 printout of Complaint Portal's screenshots setting out the complaint received against defendant no.1, Ex. PW1/33 printout of Master Data containing details of incorporation of defendant no.1, Ex. P1 a printout of business information, Ex. PW1/37 a photograph of Notepad document, Ex. PW1/38 a photograph of the "Sticky-Note", Ex. PW1/39, a printout of the Complaint Portals's screenshot setting out the complaints received against erstwhile defendant no.4, Ex. PW1/40, a photograph of the invoice, Ex. PW1/46 A photograph of the Notepad document, Ex. PW1/47, a print out of the Complaint Portal's screenshot setting out complaints received against defendant no.7, Ex. PW1/48 a printout of the Complaint Portal's screenshot setting out complaints received against defendant no.8, Ex. PW1/49 A photograph of Notepad document available on the computer of defendant no.1, Ex. PW1/51 A photograph

of Notepad document and Ex. PW1/54 a photograph of Notepad document available on the computer of defendant no1. All these documents show involvement of defendants no.1 to 3 in illegal activities by misusing the marks, logos of the plaintiffs and that also by defendant nos.7 and 8. From these, it is established that the victims who had registered on the Complaint Portal of the plaintiffs had either received phone calls or 'Pop up' messages informing them that their computers have issues and so they should reach out to plaintiffs' Technical Support team or its affiliates. The phone numbers indicated on the notepad documents found on the computer at the premises of defendant no.1 which were also mentioned in the victim's complaint on the Complaint Portal matched which are as under:

S. No.	Phone Number	Defendant (s)/erstwhile defendant(s)
1	1-855-979-6498	Defendant no. 1 and erstwhile defendant no. 5
2	1-647-957-1065	Defendant no.1 and erstwhile defendant no. 4
3	1-810-620-0514	Defendant no.1 and erstwhile defendant nos. 5, 6 and 11
4	1-844-305-0528	Defendant nos. 1, 7 and 8
5	1-855-986-6452	Defendant no.1 and erstwhile defendant nos. 5, 9 and 11
6	1-855-979-6524	Defendant no.1 and erstwhile defendant nos. 5, 9, 10 and 11
7	1-844-287-5006	Defendant No.1 and erstwhile defendant nos. 5 and 12

21. Even after registration of FIR against defendants no.1 to 3 and filing of preliminary charge sheet against them by Gurugram police in the criminal case registered against them, plaintiffs continued receiving

complaints in the year 2019 and 2020 also against common domain names and phone numbers under names of different companies which on analysis showed involvement of defendants no.1 to 3. Thus, from the evidence on file, plaintiffs have been able to show that defendants no.1 to 3, 7 and 8 had infringed the registered Trade Marks of the plaintiffs and were also passing off their goods and services as that of the plaintiffs. So they are entitled to relief of injunction as prayed for. Both these issues are accordingly decided in favour of the plaintiffs.

Issues No.4&5:

22. Onus to prove these issues is on the plaintiffs. Learned counsel for the plaintiffs has argued that from the discussion made above on issues no.2 and 3, it is established that defendants no.1 to 3, 7 & 8 were unlawfully using marks and logos of the plaintiffs and were also passing off their goods and services as that of plaintiffs thereby causing financial loss to the plaintiffs as the Complaint Portal of the plaintiffs also have details of the amount paid by the victims/customers allegedly to the plaintiffs which payments were made to the defendants. All these details are also available on the Complaint Portal of the plaintiffs. The plaintiffs have tendered documents Ex. PW1/39, Ex. PW1/41, Ex. PW1/42, Ex. PW1/43, Ex. PW1/45, Ex. PW1/46, Ex. PW1/47 and Ex. PW1/48 to Ex. PW1/55 relating to various defendants. However, since the present suit is only against defendants no.1 to 3, 7 and 8, only those entries relating to these defendants will be considered for granting damages to the plaintiffs. Learned counsel for the plaintiffs has also pointed out various entries

which are after registration of FIR against defendants no.1 to 3 and so the contesting defendants are liable to compensate the plaintiffs for the financial damages caused to the plaintiffs besides loss of reputation and goodwill of the plaintiffs by the alleged wrongful acts of the defendants infringing the intellectual property rights of the plaintiffs. Learned counsel for defendants no.7 and 8 has argued that there is nothing against defendants no.7 and 8 and plaintiffs' witness has admitted the same in his cross-examination. On going through the cross-examination of the witness, he has simply stated that he did not file any complaint against defendants no.7 and 8 or others nor his statement was recorded by the police and the FIR was registered against defendant no.1 only. However, he has stated in his cross-examination that he has placed on file certain documents showing complaint against defendants no.7 and 8 though he never met the victims personally. Learned counsel for the plaintiffs has also argued that the cross-examination of the witness by learned counsel for defendants no.7 and 8 cannot be read in evidence as though written statement has been filed on behalf of defendants no.7 and 8 through an authorised representative but there is no Board Resolution passed by defendants no.7 and 8 in favour of the authorised representative who appeared on their behalf and in the absence of the same, authorisation of learned counsel for defendants no.7 and 8 is not proper and so the cross-examination by learned counsel cannot be read. Admittedly, defendant no.8 did not examine any witness or lead any evidence to prove its case. So there is force in argument advanced by learned counsel for the

plaintiffs.

23. Further as per discussion made above, the plaintiffs have been able to prove that defendants no.1 to 3 alongwith other defendants including defendants no.7 and 8 were acting in connivance with each other which is established from the preliminary charge sheet filed against defendants no.1 to 3 in the criminal case filed against them. A certified copy of same has been tendered in plaintiffs' evidence as Ex. PW1/36. In the various computer systems recovered from the illegal call centre being run by defendants no.1 to 3, notepad documents were found on the computers of employee of defendant no.1 which appeared to be a script purportedly on behalf of 'Microsoft Certified Technicians'. The notepad document also mentioned various telephone numbers which have been mentioned above in a tabulated form in discussion on issues no.2 and 3 which were relating to different defendants and phone number 1-844-305-0528 mentioned at serial no.4 of the aforesaid table was operated by defendants no.7 and 8 and it is so mentioned in preliminary charge-sheet. This contact number was also mentioned by the victims on the Complaint Portal against defendant no.7 and the same was also mentioned in a Notepad document which appeared to be a script available on one of the computers found at the premises of defendant no.1. As per victims' complaints they encountered a 'pop up' on their computer screens stating that Windows was blocked and they should contact Microsoft at the aforementioned number. The person answering the call represented himself to be a technician of defendant no.7 and falsely claimed to be

affiliated with plaintiffs. The said person then took remote access of the victims' computer to fix these fabricated and non existent issues for a price and sold the victims other alleged software security products and in this manner, defendant no.1 through its call centre services was working in connivance with defendant no.7 to dupe victims by impersonating the plaintiffs. It is further argued by learned counsel for the plaintiffs that as per online records of the official website of the State of Connecticut USA, the registered address of defendants no.7 and 8 are same. Contact details of defendants no.7 and 8 as provided by the victims on the Complaint Portal are the same i.e. 1-844-305-0528. So involvement of defendants no.7 and 8 with defendant no.1 in extracting money from innocent victims by claiming themselves to be Certified Technicians of plaintiffs is established and as per investigation in the criminal case and as per plaintiffs' they continued to receive complaints against defendant no.8 on their Complaint Portal in 2019 and 2020. Thus, defendants continued to infringe plaintiffs' 'well known' MICROSOFT mark and committing scams with innocent victims despite police action. The plaintiffs have relied upon documents Ex. PW1/46 to Ex. PW1/48 to prima facie establish involvement of defendants no.7 and 8 in the illegal acts. In such matters, it is difficult to get direct evidence and so arguments advanced by learned counsel for defendants no.7 and 8 that involvement of defendants no.7 and 8 is not proved as no payment to them by any third party is established cannot be accepted. In fact the same is corroborated from documents Ex. PW1/46 to Ex. PW1/48 in

which the number found on the computer screen of computer recovered from the premises of defendant no.1 is mentioned in many of the complaints reported by the victims against defendants no.7 and 8 on the Complaint Portal of plaintiffs and even the mode of payment and amount paid is also mentioned by the different complainants alongwith brief narration of the manner in which fraud was committed with them. Similarly in the other similar printouts tendered in evidence by the plaintiffs, it is established that defendants no.1 to 3 were acting in connivance with all other defendants based in America and operating on their behalf also by running a fake call centre in India and so defendants no.1 to 3 and 7 and 8 are liable to pay damages to the plaintiffs. On going through the amounts mentioned in the exhibited documents tendered by the plaintiffs, a sum of about \$ 5800/- has been allegedly paid to defendants no.7 and 8 by the victim by considering them to be the Microsoft Certified Technician (checked) and the total amount allegedly received by all the defendants in connivance with defendants no. 1 to 3 (including defendants no.4 to 6 and 8 to 12 which were given up by the plaintiffs) is approximately US \$ 83411/-. This damage was actually payable to the plaintiffs owing to the infringement and passing off its well known Microsoft marks.

24. Hon'ble Delhi High Court in **Koninlijke Philips N.V. & Anr. Versus Amazestore & Ors. 2019 (78) PTC 618 (Del)** has laid down the following principles for granting damages.

	Degree of malafide conduct	Proportionate award
(i)	First-time innocent infringer	Injunction
(ii)	First-time knowing infringer	Injunction + Partial Costs
(iii)	Repeated knowing infringer which causes minor impact to the Plaintiff	Injunction + Costs + Partial damages.
(iv)	Repeated knowing infringer which causes major impact to the Plaintiff	Injunction + Costs + Compensatory damages
(v)	Infringement which was deliberate and calculated (Gangster/scam/ mafia) + willful contempt of court.	Injunction + Costs + Aggravated damages (Compensatory + additional damages)

25. Hon’ble Bombay High Court in **Nippon Steel & Sumitomo Metal Corporation Versus Kishor D Jain & Anr. 2019:BHC:OS:8524** has also held that the defendants should be burdened with cost and damages for infringement of Copyright and Trade Mark etc.

26. Considering the facts and circumstances of the case as discussed above and the law as mentioned above, the defendants no.1 to 3 are liable to pay damages amounting to ₹50 lakhs to the plaintiffs including punitive and exemplary damages. Similarly, defendants no.7 and 8 are also liable to pay ₹5 lakhs including punitive and exemplary damages. Beside this plaintiffs are also entitled to legal cost of ₹20,65,926/- as legal cost including cost of litigation as per certificate and affidavit filed by learned counsel for the plaintiffs. However, the plaintiffs are not entitled to any relief of rendition of accounts against the

defendants as prayed for. Accordingly, issue no.4 is decided in favour of the plaintiffs, whereas issues no.5 is decided against the plaintiffs.

Issues no.6 to 8:

27. Onus to prove these issues is on the defendants. However, no evidence has been led by the defendants. Otherwise also, in the light of discussion made above, it cannot be said that the plaintiffs have not approached the court with clean hands, the suit filed by the plaintiffs is not maintainable in the present form or this court has no jurisdiction to try and entertain the present suit. Accordingly, all these issues are decided against the defendants.

Relief:

28. In the light of discussion made above, the suit filed by the plaintiffs succeeds and is partly decreed with costs by granting following reliefs:

- (i) A decree of permanent injunction is passed against defendants no.1 to 3, 7 & 8 restraining them, their presidents, directors, affiliates, members, agents and all other persons acting for, claiming under or through or on their behalf or in concert with them, from using the MICROSOFT marks, Microsoft "HOTMAIL", "OUTLOOK", Outlook, Hotmail "OFFICE 365" or any other mark deceptively or confusingly similar to plaintiffs' MICROSOFT marks and from doing any other act so as to infringe plaintiffs' MICROSOFT marks and also from doing any other act so as to take unfair advantage of and/or cause detriment to the distinctive character and reputation of

plaintiffs' MICROSOFT marks and/or to impersonate plaintiffs in any manner.

- (ii) A decree of injunction is passed against defendants no.1 to 3, 7 & 8 and their presidents, directors, affiliates, members, agents and all others acting for, claiming under or through or on their behalf or in concert with them, for delivery up for destruction upon oath of all products and materials including sample call scripts, business brochures, promotional material, cheque(s) and any other material(s) incorporating the name of plaintiffs etc. containing plaintiffs' trademarks, and/or any essential features thereof.
- iii) A decree for grant of damages alongwith punitive damages is passed against defendants no.1 to 3 directing them to pay an amount of ₹50 lakhs to the plaintiffs and they shall be jointly and severally liable to pay this amount to the plaintiffs.
- iv) A decree for grant of damages alongwith punitive damages is passed against defendants no.7 & 8 directing them to pay an amount of ₹5 lakhs to the plaintiffs and they shall be jointly and severally liable to pay this amount to the plaintiffs.
- v) The plaintiffs are also held entitled to legal cost including cost of litigation as per certificate and affidavit filed by learned counsel for the plaintiffs as permissible under rules from defendants no.1 to 3, 7 and 8.

Decree sheet be prepared accordingly. File be consigned to record room after due compliance.

Date of Order: 07.01.2025
(Mukesh Kumar)

(Mahavir Singh)
Additional District Judge-
cum-Presiding Judge
Exclusive Commercial Court
at Gurugram Exercising
Jurisdiction under the
Commercial Courts Act, 2015
(UID No.HR-0141)

Note: This judgment contains forty eight pages and the same have been duly checked and signed by me.

(Mahavir Singh)
Additional District Judge-
cum-Presiding Judge
Exclusive Commercial Court
at Gurugram Exercising
Jurisdiction under the
Commercial Courts Act, 2015
(UID No.HR-0141)
07.01.2025