

## IP Hotline

September 09, 2009

### INFRINGERS FACE THE "MUSIC"- T-SERIES SINGS ITS WAY TO VICTORY!

The question whether the pendency of an application before the Copyright Board for grant of compulsory license deprives the civil courts of their power to grant an injunction was scrutinized by the Hon'ble Delhi High Court ("Court") recently in a case<sup>1</sup> filed by **Super Cassettes Industries Ltd ("Plaintiff")**, a renowned Indian music company, popularly known as "T-Series" against Zee Networks ("**Defendants**") which operates a variety of popular Hindi entertainment channels in India. The Court resolving the issue held that the jurisdiction of the court to grant an injunction is not ousted when a case for infringement is established.

#### BACKGROUND:

The Plaintiff had licensed their repertoire to the Defendants under licensing agreements for use of their copyrighted material in various reality shows like Sa Re Ga Ma Pa and a variety of teleserials aired by the Defendant's television network. The second licensing agreement ("**Licensing Agreement**") for which the Defendants had agreed to pay a royalty of Rs. 4, 00, 00,000/- (Rupees Forty Million) in advance, in equal monthly installments to the Plaintiff was to expire on March 31, 2009.

The grievances of the Plaintiff began with the Defendants' non-payment of monthly installments of Rs.69, 33,336/- (Rupees 6.94 Million approx.) for the month of February, 2009. Further, the Defendants continued to illegally use the Plaintiff's repertoire even after the expiry of the term of the Licensing Agreement i.e. post March 31, 2009. In spite of repeated insistence by the Plaintiff, a fresh licensing agreement could not be concluded between the parties, as the Defendants proposed an amount of Rs. 60,00,000/- (Rupees Six Million) as against the royalty rates proposed by the Plaintiff, which was more than three times the rate royalty rate specified in the Licensing Agreement.

Aggrieved, the Plaintiff filed the present suit for permanent injunction for restraining the infringement of copyrights in the sound recordings (audio or visual), musical works and cinematograph works (which also include visual songs or sound recordings) owned by the Plaintiff. On May 15, 2009, during the pendency of the suit, the Defendants made an application to the Copyright Board for the determination of the royalty to be paid by the Defendants to the Plaintiff.

#### LEGAL TUSSLE:

The Defendants contested the claims of the Plaintiff and relied heavily on the judgement given in the case of **Entertainment Network v. Super Cassettes Industries**<sup>2</sup> in their submissions. While refuting the allegations of infringement, the Defendants resisted the suit, *inter alia*, on the grounds that the present case is governed by the dicta of the **Entertainment Network's** case and thus the Court's jurisdiction is ousted as the '*fixation of royalty*' is the exclusive domain of the Copyright Board. Relying on the case of **Phonographic Performance Limited v. Retail Broadcast Services Limited**<sup>3</sup>, the Defendants further maintained the stand that since an application is pending before the Copyright Board under Section 31<sup>4</sup>, it will be appropriate for the Court to leave the question of royalty open and the Court must also consider the same as a circumstance for non grant of injunction.

It was the submission of the Plaintiff that once a case of infringement is established, the mere pendency of application under Section 31 of the Copyright Act does not deprive the courts of their jurisdiction to grant an injunction and the refusal to grant the same on this premise would amount to prejudging the factum that the Board is likely to decide in favour of the Defendants.

#### JUDGMENT:

The Court concurred with the submissions of the Plaintiff and held that the acts of the Defendants are prima facie infringing acts within the meaning of the Copyright Act, 1957.

Dealing with the jurisdiction issues, while the Court appreciated the fact that the case of **Phonographic Performance Limited v. Maitra & Others**<sup>5</sup> defines the correct position of the law on the subject of compulsory licensing and the **Entertainment Network's** case is an umbrella judgment on the subject<sup>6</sup>, it rejected the Defendants' interpretations of the **Entertainment Network's** case that since the Copyright Board is the competent body to determine the extent of royalty payable by the Defendants, this Court should await the outcome of the decision of the Copyright Board. The Court in the instant case clarified that the judgment does not state that the powers of the civil court to grant relief against the infringement of the copyrighted works is curtailed, even in circumstances where an application before the Copyright Board is pending.

Thus, while it is true that there is no *res integra* to the proposition that the grant of compulsory licensing is equivalent to the non grant of injunction, the Court held that the mere factum of filing of application cannot be equated with the grant of compulsory license and the jurisdiction of the Court to grant an injunction is thus not ousted.

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However, in view of the mitigating factors like the consequent effect on the defendants channel's popular programme 'SA RE GA MA PA', and the pending decision of the Copyright Board, the Court, in the interest of justice, did not grant an injunction in the instant case. Instead, it inter alia directed the Defendants to pay royalty for the period extending to March 2010, on the expiry of which the Plaintiff will be at a liberty to file a fresh application of injunction and the Defendants' will be entitled to make an application for modification of orders. The Court also directed the Defendants to furnish accounts from 1st April, 2009 till 1st August, 2009 and to continue to file the same on a monthly basis with the Court.

CONCLUSION:

A lucid distinction was drawn by the Court between the jurisdictions and the scope of powers of the courts and the copyright board in the instant case. This judgment marks an important step in defining the scope of jurisdiction of the civil courts and clarifies that the mere filing of an application for compulsory licensing before the Copyright Tribunal does not bar the civil court's jurisdiction to deal with and grant injunction in appropriate cases.

- Aarushi Jain & Gowree Gokhale

<sup>1</sup>Super Cassettes Industries Ltd v. Mr. Punit Goenka & Anr, Civil Suit. No.769 of 2009 decided on August 13, 2009.

<sup>2</sup>2008 (37) PTC 353.

3 (1995) F.S.R. 813.

4 Copyright Act, 1957.

<sup>5</sup>(1998) 2 All ER 638.

<sup>6</sup> The Apex court held that the Copyright Board can fix the compulsory license as an authority and can also determine reasonable royalty.

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