

**IN THE COURT OF THE PRINCIPAL DISTRICT JUDGE  
ERODE**

Present: **Tmt.S. SAMEENA, B.A., L.L.B.**,  
Principal District Judge, Erode

Tamil Visuvaavasu Varudam, Iyppasi Month, 13<sup>th</sup> day  
Thursday, the 30<sup>th</sup> day of October, 2025

**IA No.05/2020**  
**in**  
**OS No.112/2019**

Amazon Seller Services P. Ltd.,  
Through its authorised signatory  
Sri Rahul Sundaram

... Petitioner/6<sup>th</sup> Defendant

Vs

1. SWOT Associates  
a firm represented by its partner K.Murugan  
2. K.Murugan  
3. N.Nathiya

... Respondents/Plaintiffs

This interlocutory application coming today for final hearing before me in the presence of Thiru.Anirudh R.Garga, B.A.L., L.L.B, Advocate for the Petitioner/6<sup>th</sup> Defendant, and of Thiru.T.Senthil Kumar, B.Sc., B.L., Advocate for the Respondents/Plaintiffs and upon considering all material records in this interlocutory application and hearing the submissions on both sides, and having stood over till this day for consideration, and this court doth deliver the following

**ORDER**

Suit against infringement of Trademark filed against the defendants 1 to 5.

02. This petition is filed by the petitioner seeking an order to strike off the name of the petitioner/6<sup>th</sup> defendant from the party array of defendants and also sought for dismissal of the suit against the petitioner/6<sup>th</sup> defendant.

03. The petitioner/6<sup>th</sup> defendant's case is that, the 6<sup>th</sup> defendant is a company incorporated in the year 2010 under the Companies Act, 1956 and is referred to as Amazon website, which is one of the largest online market places in India and thousands of sellers and prospective buyers visit and transact on their Amazon Website on a daily basis and the Amazon Website offers a wide range of products provided by thousands of independent 3<sup>rd</sup> party sellers and the 6<sup>th</sup> defendant being an intermediary, is entitled to get exemption as provided in S.79 of Information Technology Act.

04. It is also contended by the 6<sup>th</sup> defendant that an automated grievance redressal mechanism is provided on the Amazon Website by which any 3<sup>rd</sup> party can submit their infringement related grievance pertaining to products available on the Amazon Website and any third party can contact the Amazon Website for airing their grievance relating to the content posted on the Amazon Website and prayed to strike off the 6<sup>th</sup> defendant from the suit from the array of defendants and to dismiss the suit against 6<sup>th</sup> defendant.

05. The 2<sup>nd</sup> respondent filed counter which was adopted by the respondents 1 and 3. The respondents 1 to 3 contended that the petitioner is well aware of the factum that the defendants 1 to 5 are infringing the registered trademark of the respondents and are selling the infringing products using the website of the petitioner. The respondents before the filing the suit, have sent a legal notice dated 09.01.2019 to all the defendants specifically calling upon to remove all infringing products of electric geysers with the registered trademark SUN. However, even after receipt of the above legal notice, the petitioner/6<sup>th</sup> defendant neither sent any reply nor took any action to remove the infringing products from its website. The above attitude of the petitioner in deliberately failing to remove the infringing products despite having notice, leads to the inference that the petitioner is having

hand in glove with the defendants 1 to 5 and the petitioner has actual knowledge of the fact that the products of the defendants 1 to 5 listed in its websites are infringing the trademark of the respondents and therefore, the inaction of the petitioner in removing the products that are infringing in nature clearly amounts to violation of the provisions of the IT Act and prayed to dismiss the petition with cost.

06. Heard Both Sides.

07. **POINT FOR DETERMINATION:**

Whether this petition can be allowed ?

**POINT:**

08. The petitioner is the 6<sup>th</sup> defendant in the suit.

09. For the sake of convenience the parties are referred to as per their litigative status in the suit.

10. The petitioner who has been arrayed as 6<sup>th</sup> defendant in the suit has filed this petition seeking to strike off the name of the 6<sup>th</sup> defendant from the array of defendants and also sought for dismissal of the suit against the 6<sup>th</sup> defendant.

11. Plaintiff perused. The 1<sup>st</sup> plaintiff is a partnership firm comprising 2<sup>nd</sup> plaintiff and 3<sup>rd</sup> plaintiff. The 1<sup>st</sup> plaintiff partnership firm is engaged in the business of manufacturing, selling and distributing electric geysers with distinct trade mark name of 'SUN' for more than 15 years and had obtained registration of its trade mark 'SUN' under the Trademarks Act for geysers. 1<sup>st</sup> defendant who has retired from the firm with effect from 31.12.2016 by joining hands with defendants 2 to 5 have been indulging in unfair trade practice of marketing electric

geysers under the trade mark 'SUN' and is selling electric geysers in the name of 'SUN' which are being mistook by the consumers, as if, they are the product of the plaintiffs. The prayer column 'C' reads as follows:

“Granting a permanent injunction restraining the defendants 6 to 8 their men, etc., from using their online sale platforms to sell advertise, publish, etc., all products of electric geysers with the name similar or deceptively similar to the registered trademark/name 'SUN' of the plaintiffs”.

12. Under relief (b), the plaintiffs have sought for permanent injunction against the defendants 1 to 5. Prayer (a) is for declaration that the trade mark 'SUN' exclusively belonged to the plaintiff.

13. It is the case of the 6<sup>th</sup> defendant that, 6<sup>th</sup> defendant is company incorporated in the year 2010 under the Companies Act, 1956 and is referred to as Amazon website, which is one of the largest online market places in India and thousands of sellers and prospective buyers visit and transact on their, Amazon Website on a daily basis and the Amazon Website offers a wide range of products provided by thousands of independent 3<sup>rd</sup> party sellers.

14. It is the further case of the 6<sup>th</sup> defendant that it is an intermediary as defined under Section 2(1)(w) of the Information Technology Act, 2000 and 6<sup>th</sup> defendant facilitate buying and selling of various products between independent sellers and prospective buyers on the Amazon Website and 6<sup>th</sup> defendant has no role whatsoever in the sale and purchase of goods which take place on the Amazon Website except for providing a digital platform in the form of Amazon Website to the sellers and buyers and the 6<sup>th</sup> defendant being an intermediary, is entitled to get exemption as provided in S.79 of Information Technology Act. It is the further case of the 6<sup>th</sup> defendant that an automated grievance redressal mechanism is

provided on the Amazon Website by which any 3<sup>rd</sup> party can submit their infringement related grievance pertaining to products available on the Amazon Website and any third party can contact the Amazon Website for airing their grievance relating to the content posted on the Amazon Website. According to 6<sup>th</sup> defendant, the 6<sup>th</sup> defendant has been wrongly impleaded and 6<sup>th</sup> defendant is neither a necessary party nor a proper party and hence 6<sup>th</sup> defendant has to be deleted from the array of parties.

15. Placing reliance on the judgment of the **Hon'ble Supreme Court in Shreya Singhal V Union of India** reported in **AIR 2015 Supreme Court 1523**, the learned counsel for the 6<sup>th</sup> defendant would contend that the 6<sup>th</sup> defendant is acting only as an intermediary between the parties and they have no other role, except the status of intermediary and several thousands of people are visiting Amazon Website for selling their products and also prospective buyers are visiting the Website on a daily basis and 6<sup>th</sup> defendant is only facilitating the buying and selling of various products between independent sellers and prospective buyers on the Website. The role of the 6<sup>th</sup> defendant falls under the category 'intermediary' as defined under S.2(1)(w) of Information Technology Act, 2000 and 6<sup>th</sup> defendant is protected from any liability as per S.79 of Information Technology Act, 2000.

16. On the other hand it is submitted by the plaintiff that they issued legal notice dated 09.01.2019, to 6<sup>th</sup> defendant and other websites such as Flipkart and Snapdeal, calling upon them not to facilitate the selling of the deceptively similar products, in their website and inspite of the said legal notice, the 6<sup>th</sup> defendant and other website platforms are permitting defendants 1 to 5 to use their online platforms for selling their dubious products in the name of 'SUN' which was the registered trademark belonged to the plaintiff firm.

17. There is a rider in S.79 of Information Technology Act and S.79 sClause 3 reads as follows:

(3) The provisions of sub-section (1) shall not apply if –

- (a) the intermediary has conspired or abetted or aided or induced, whether by threats or promise or otherwise in the commission of the unlawful act;
- (b) upon receiving actual knowledge, or on being notified by the appropriate Government or its agency that any information, data or communication link residing in or connected to a computer resource controlled by the intermediary is being used to commit the unlawful act, the intermediary fails to expeditiously remove or disable access to that material on that resource without vitiating the evidence in any manner.

Explanation – For the purposes of this section, the expression 'third party information' means any information dealt with by an intermediary in his capacity as an intermediary.]'

Further Rule 3(2)(d) of Information Technology (Intermediary Guidelines) Rules, 2011 reads as follows:

'3. Due diligence to be observed by intermediary.--The intermediary shall observe following due diligence while discharging his duties, namely;-

- (2) Such rules and regulations, terms and conditions or user agreement shall inform the users of computer resource not to host, display, upload, modify, publish, transmit, update or share any information that---
- (d) infringes any patent, trademark, copyright or other proprietary rights;

18. Therefore, from the above it is clear that the intermediary was not given total exemption under S.79 of Information Technology Act, 2000. Whether the 6<sup>th</sup> defendant aided defendants 1 to 5, for selling that dubious product of geysers under the name SUN, can be decided only at the time of trial. If the Court finds

that the suit has been filed against 6<sup>th</sup> defendant vexatiously, there is option for 6<sup>th</sup> defendant to claim compensatory cost under S.35(A) of Civil Procedure Code. Further whether the service rendered by the 6<sup>th</sup> defendant falls under the definition intermediary and is entitled for exemption under S.79 of the Information Technology Act can also be decided only at the time of trial. This court does not find any reason, to delete or remove the name of 6<sup>th</sup> defendant from the party array in the suit. Hence, the petition is liable to be dismissed.

19. **In the result**, the petition in IA No.05/2020 in OS No.112/2019 is dismissed. No Cost.

Dictated to the Steno-typist, typed by him directly, and then corrected and pronounced by me in the open court, this 30<sup>th</sup> day of October, 2025.

Principal District Judge  
Principal District Court  
Erode

Petitioner/6<sup>th</sup> Defendant Side Witness and Exhibits: Nil

Respondents/Plaintiffs Side Witnesses and Exhibits: Nil

Principal District Judge  
Principal District Court  
Erode

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Principal District Court, Erode,  
Draft/Fair Order  
IA No.05/2020 in  
OS No.112/2019  
Dated: 30.10.2025

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