Defendant ordered to withdraw TM applications for phonetically similar mark

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Delhi High Court orders defendant using a trade mark visually and phonetically similar to CLOUDTAIL to withdraw its use and desist from similarly infringing domain name. The plaintiff, trading under the brand CLOUDTAIL, is a popular seller on e-retail channels. Its business spans thousands of products from many different industries. Its CLOUDTAIL trade mark is widely recognized by the trade and the public and has come to be associated exclusively with the plaintiff. The defendant apprised the plaintiff of its intention to adopt the CLOUDTEL mark. The plaintiff declined to give a 'No Objection' owing to the proximity of the respective businesses and the close phonetic and visual similarity of the mark. Subsequently, the defendant opposed registration of the plaintiff's CLOUDTAIL mark and filed its own trademark application to register CLOUDTELE. It also created an identical domain name. The court found merit in the plaintiff's contention that the defendant's mark CLOUDTELE was deceptively similar to the CLOUDTAIL mark. The difference in pronunciation between the suffixes TAIL and TELE was very minor and would not sufficiently allay confusion in the mind of consumers. Furthermore, the court noted that the defendant's opposition before the Trademark Registry was mala fide on account of incomplete disclosure of information. The court decreed the suit on the very first day, its order in the terms that the defendant will stop its use of CLOUDTAIL, CLOUDTELE or other deceptively similar marks and withdraw the associated domain name. Significantly, the defendant was also directed to withdraw its applications filed for the registration of the impugned marks and its opposition again the plaintiff's marks. *Cloudtail India Private Limited v Excel Telesonic India Private Limited; before the Delhi High Court; order dated 31.5.2017*

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