Major Turning Point in the "Turning point" case

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Anand and Anand on behalf of 'Turning point" challenged the interim order passed by the single judge of DHC in August 2015, reviving its right to use the trademark "TP Turning Point". **What's the matter?**

- Two entities (Turning point and Turning Point Pvt Ltd) with similar nature of business were using the identical trademark "TP Turning Point".
- In 2015, Turning point was restrained from using the said trademark, followed by a suit filed by Turning Point Pvt Ltd in Delhi High Court.
- In 2017, Turning point challenged the interim injunction order passed in 2015, establishing themselves as the prior users of the trademark.

Timeline: What happened in 2015?

- In the year 2015, the Respondent Turning Point Institute Pvt. Ltd, engaged in providing educational and training services, by way of preparatory classes for competitive examinations such as the IIT-JEE, PMT, and others, and was operating under the trademark "TP TURNING POINT approached the Delhi High Court and filed a suit against our client Turning Point for passing off the trademark "TP TURNING POINT".

The trademark "TP Turning Point", of the respondent, was represented, alternatively, in either of the two following modes.

- In August 2015, The Delhi High Court comprising of a single judge after considering three documents passed an interim injunction vide order dated 11/08/2015, restraining/injuncting our client from using the trademark and established that the respondent had the sole and exclusive right to use the said trademark.
- It was also alleged, that our client was seeking to wrongfully encash on the goodwill of the respondent, resulting in irreparable loss and damage to the respondent's reputation, apart from the monetary loss that the respondent suffered as a consequence.

- The single Judge relied on documents provided as a proof of prior use of the trademark since 1994 by the educational institute "Turning Point Institute Pvt. Ltd". A prima facie case was registered to the fact that passing off actions were concerned more with unfair competition.

The Respondent also sought to contend that the appellant had not produced cogent evidence to substantiate its claim of use. **What happened in 2017?** In a major turnaround, Turning Point filed an appeal to the Division Bench of Delhi High Court in 2017 through Anand and Anand, disputing the contentions of the respondent (Turning Point Institute Pvt. Ltd), asserting that it was the first to coin the mark "Turning Point", and was a prior user thereof and it was the Respondent who subsequently copied the appellant's mark, in 2001. The Appellant asserted that there was no cogent documentary or other evidence to support the claim, of the Respondent, of having been in existence since 1994, and contended that this claim had been raised only so as to defeat the appellant's claim to prior adoption and use of the "Turning Point" mark since 1998. The matter was presented before the Division bench comprising of Chief Justice of Delhi High court and Justice C. Hari Shanker, who came down heavily upon the interim order passed by the Delhi High Court in August 2015 and held that the evidence adduced by the Respondent, in its support, was insufficient to make out a prima facie case of prior use. The Hon'ble Division Bench of Delhi High Court was pleased to allow our appeal in the matter of Turning Point v. Turning Point Institute Pvt. Ltd and set aside the interlocutory order of the Ld. Single Judge dated 11.08.2017. **The followings are the pointers from the order of the Hon'ble Division Bench:-**

1. While deciding prayers for an interlocutory injunction, the court is required to not only bear in mind the settled principles of existence of the prima facie case, but also whether the party against whom the injunction is sought, has yet to commence business or whether he already been doing so.

2. Goodwill has to be established by proving that the public associates the name, or mark with the goods or services provided by the person, bringing the passing off action and 'Reputation' is distinct and different from 'Goodwill'.

3. The length of the user is not strictly relevant, where the question of goodwill is involved.

4. Identically worded affidavits cannot be relied upon in absence of corroborative evidence. The court relied upon a foreign judgment and emphasized that **identically worded affidavits can be said to be prepared by a person who was concerned in the preparation of the case.**

5. Discrediting the rent receipts of the Respondent of record the Hon'ble Court held that, documents which are **part of homogenous whole, cannot be friend in isolation.**

6. The court further held that **a litigant who produces discrepant evidence, which on the face of it appears to lack credibility would *ipso facto*, stand disentitled to grant of any interlocutory injunction in its favor.**

7. Prior user and goodwill are two of the indispensable ingredients, requiring to be positively established by the party seeking injunction, in a passing off case.

8. The court should keep in mind the deleterious consequence to the business activities of the person against whom the injunction is sought.

9. Following points do indicate prima facie considerable reputation and goodwill:-
   - opposition filed against the use of identical trademarks.
   - domain name registration.
   - previous orders/ judgments and its publicity.
   - newspaper reporting and advertisements

While the proceedings still go on, the division bench observed that the evidence relied upon by the respondent is insufficient for the issuance of an interlocutory injunction against the appellant.

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