

**IN THE HIGH COURT OF DELHI AT NEW DELHI**

**SUBJECT : SUIT FOR PERMANENT INJUNCTION**

**CS(OS) 1845/2008**

**DATE OF DECISION : DECEMBER 02, 2008**

**ORRIS INFRASTRUCTURE PRIVATE LTD .... Plaintiff**  
**Through Mr. Sachin Gupta, Adv.**

**versus**

**BE INFRATECK and ANR ..... Defendants**  
**Through**

1. The matter is coming up for ex-parte judgment.
2. The plaintiff Orris Infrastructure Private Limited has filed the present suit for permanent injunction, damages and rendition of accounts and delivery up against the defendants M/s. BE Infratek and BE Software Solutions.
3. The plaintiff company is stated to be engaged in development of township at Gurgaon and has started a residential housing project with the name of CARNATION RESIDENCY consisting of apartment etc. It is stated that the that the cost of the entire project is about Rupees 500 crores, out of which Rupees 200 crores have already been spent.
4. The plaintiff has stated that it had engaged services of M/s Pinga Solutions (P) Ltd and prepared a catalogue of ORRIS CARNATION RESIDENCY and the same has been uploaded on the server of the plaintiff and is accessible from their web site with the domain name www.orris.in. It is claimed that the catalogue uploaded on the server constitutes original artistic and literary work within the Section 2(c) and (o) of the Copyright Act, 1957 and the plaintiff is entitled to protection from infringement and passing of.
5. It is alleged in the plaint that the defendants have procured domain name and set up a website www.carnationresidency.com on which they have uploaded and copied the plaintiffs catalogue Orris Carnation Residency. The website includes photographs of the plaintiffs project. The defendants have been advertising the plaintiffs project on the said website and passing of the plaintiffs project as their. It is also stated that the defendants are also using the mark Orris, which belongs to the plaintiff without authorization.
6. The plaintiffs have filed the affidavit of Mr. Vineet Maheshwari, PW- 1, who has also signed and verified the plaint on behalf of the plaintiff. He has proved on record

certified minutes of Board Resolution dated 30.08.08, Exhibit PW/1, by which he was authorized and instructed to file the present suit.

7. Mr. Vineet Maheshwari has reiterated the averments made in the plaint in respect of the mark Orris and the developmental activities undertaken by the plaintiff for the housing project Carnation Residency. Copy of the plaintiffs Brochure giving details of the said project has been marked as Exhibit PW1/2. The plaintiff has also brought on record license issued to the plaintiff for development of housing project, Exhibit PW1/3.

8. Mr. Vineet Maheshwari has proved on record various agreements entered into with defendant No.3 as well as with other parties. Copy of the said agreements have been collectively marked as Exhibit PW1/4. It is stated by Mr. Vineet Maheshwari that as per the agreements the plaintiff has exclusive right to develop, promote and advertise the projects on the website maintained by the plaintiff and defendants including defendant No.3 does not have any right to advertise and have a similar domain name or claim that the project belongs to defendant No.3. ECHO is on.

9. Mr. Vineet Maheshwari has placed on record photographs of hoardings and other publicity material published by the plaintiff to advertise and make the work/name Carnation Residency popular. The advertisement/publicity material has been enclosed as Exhibit PW1/5. The invoices of the outdoor advertisements have been marked as Exhibit PW1/6 and newspaper advertisements have been collectively marked as Exhibit PW1/7. Mr. Vineet Maheshwari has also placed on record the office order for development of the website under the dome name [www.orris.in](http://www.orris.in), the same has been marked as Exhibit PW1/8. The purchase order dated 17.6.2008 given to M/s Pinga Solutions(P) Limited for preparation of the catalogue for the project Orris Carnation Residency has been filed and proved as Exhibit PW1/9. Mr. Vineet Maheshwari has filed photographs downloaded from the website [www.orris.in](http://www.orris.in) to prove that catalogue Orris Carnation Residency has been uploaded on the said website. The same is marked as Exhibit PW1/10. M/s. Pinga Solutions (P) Limited and the Triverse Advertising Private Limited had transferred and assigned copyright in respect of the catalogue in favour of the plaintiff. Copy of the said documents have been marked Exhibit PW1/11 and 12. Mr. Vineet Maheshwari has stated that marks Carnation Residency and Orris have acquired substantial goodwill and reputation in the trade and amongst the public at large and no one except the plaintiff has right to use the said marks. The plaintiff has valuable intellectual property rights in the said marks which ought to be protected and safeguarded against dilution, misuse and misappropriation. 10. Mr.Vineet Maheshwari has placed on record print outs of files/documents downloaded from the website [www.carnationresidency.com](http://www.carnationresidency.com) to show that the plaintiff catalogue Carnation Residency and photographs therein have been uploaded and copied on the said website. It is stated that defendant No.2 is the registerant of the impugned website and the documents have been downloaded and printouts taken from [www.whois.com](http://www.whois.com), have been marked as Exhibit PW1/13. It is also stated by Mr. Vineet Maheshwari that defendants are also using the plaintiffs trade name and mark Orris without authorization and are wrongly claiming that the said website has been developed by BE Softwares Solutions, who has copyright on the same. Mr. Vineet Maheshwari has highlighted that the data and contents available on the defendants website are identical to

the plaintiffs website and use of the trademark and the website by the defendants is likely to create deception and confusion in the minds of the consumers/Public on account of similarity.

11. The affidavit filed by Mr.Vineet Maheshwari goes unchallenged and uncontroverted.

12. In view of the facts stated above it is established from the affidavit of Mr. Vineet Maheshwari that the plaintiff has been able to prove their right, interest and goodwill in the mark Carnation Residency and in the catalogue prepared and their right to protect the copyright in the said catalogue. The plaintiff has been able to establish their right in the mark Orris. It is also been established that the defendants have copied the catalogue on their website [www.carnationresidency.com](http://www.carnationresidency.com) including the photographs of the said project.

13. In these circumstances, I feel that the plaintiff has been able to make out a case of infringement and passing of in respect of the marks Orris and Carnation Residency as well as copy right in artistic and literary work in the form of the catalogue Carnation Residency. Accordingly, a decree of permanent injunction in terms of prayer clause 23(i) and (ii) is passed in favour of the plaintiff and against defendant Nos. 1, 2 and 3. The plaintiff will be at liberty to approach WIPO or the registering authority for implementation of the injunction order.

14. At this stage, counsel for the plaintiff states that they are giving up prayers for delivery up and rendition of accounts/damages. ECHO is on. The plaintiff will also be entitled to costs. Decree will be drawn accordingly.

Sd./-  
SANJIV KHANNA, J.

DECEMBER 02, 2008