

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

% Order delivered on: 16th December, 2014

+ **CS(OS) 3761/2014**

MICROMAX INFORMATICS LTD Plaintiff
Through Mr.Rajiv Nayar, Sr.Adv. with
Mr.Kirat Singh Nagra & Mr.Kartik
Yadav, Advs.

versus

SHENZHEN ONEPLUS TECHNOLOGY CO LTD & ORS Defendants
Through Mr.Sudhir Chandra, Sr. Adv. with
Mr.Nishchal Anand and Mr.Aman
Taneja, Advs. for D-1.
Mr.Jayant Bhushan, Sr.Adv. with
Mr.M.S.Ananth, Adv. for D-2 & 3.

CORAM:
HON'BLE MR.JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J. (ORAL)

I.A. No.24487/2014 (U/s 149 CPC)

Court fee has been deposited.

The application is disposed of.

I.A. No.24485/2014 (u/o XXXIX R.1 & 2 CPC)

1. The plaintiff Micromax Informatics Ltd., (hereinafter referred to as "Micromax") has filed this suit for permanent injunction for restraining infringement of the Ambient Services And Application Distributions Agreement (entered into by Micromax and defendants

No. 2 and 3 herein); damages, rendition of accounts, delivery up etc. against the defendants.

2. Mr.Rajiv Nayar, learned Senior counsel appearing on behalf of plaintiff submitted that the plaintiff intends to launch its smartphones on 20th December, 2014. Thus, the plaintiff is pressing for hearing of the interim application. He submits that his prayer for interim injunction be considered on urgent basis. Both parties have made their submissions in the interim application. Defendant No.1 made his submissions without reply who has mainly relied upon the pleadings of its suit and documents filed in CS(OS) No.3688/2014.

3. The case of the plaintiff i.e. “Micromax”, as per the plaint is that Micromax, is engaged in the business of manufacture, sale and marketing of consumer electronics, including smartphones. Micromax started its business operations in the year 2008 and it is averred that within 4 years of business, Micromax has succeeded in putting India on the international map through its constant innovations and keeping the consumer connect alive through its products.

4. Defendant No.1, Shenzhen OnePlus Technology Co. Ltd. (hereinafter referred to as “OnePlus”), is a company formed under the laws of China, defendants No. 2 and 3 are companies incorporated under the laws of State of Delaware, USA, who are engaged in the business of developing software for mobile devices and specialize in the modification of the Android operating system.

Defendants No. 2 and 3 together are hereinafter referred to as "Cyanogen".

5. It has been stated that Micromax and Cyanogen entered into an agreement termed as Ambient Services And Application Distributions Agreement (hereinafter referred to as "the Agreement") whereby Micromax was afforded a license for the purpose of integrating and distributing Core OS, Ambient Services and Applications as a critical part of the devices in India. The Agreement was to be effective from 26th September, 2014. It is averred that the Agreement is of immense commercial importance and the same has been widely reported in various news articles.

6. It is averred in the plaint that the Agreement provided Micromax with an exclusive license inter-alia for India for Ambient Services and Cyanogen undertook not to collaborate directly with another OEM for the purpose of integrating Core OS with devices distributed by such OEM in India.

7. Micromax further submits that in or about August, 2014, it came to know that defendant No.1, OnePlus, was intending to enter the Indian market using Cyanogen's operating system software for which Micromax had exclusive rights. Micromax vide email dated 20th August, 2014 to Cyanogen requested Cyanogen to take preventive measures. Cyanogen in response confirmed that the exclusive rights would devolve upon Micromax post the effective date of the Agreement and OnePlus's agreement with Cyanogen was subject to rights created by Cyanogen qua a third party.

8. It is stated by Micromax that OnePlus has all along been aware about the exclusive agreement and arrangement inter se Micromax and Cyanogen in respect of all the licenses granted by Cyanogen to Micromax. Despite such knowledge, OnePlus sought to infringe upon such exclusive rights by launching its new brand of handsets, namely, OnePlus One in India on 2nd December, 2014 loaded with Cyanogen's Operating System, namely, CM 11S and trademark CyanogenMod for which Micromax had exclusive rights to the exclusion of all other OEMs within India.

9. On 26th November, 2014, Micromax received an email from OnePlus wherein it was stated that OnePlus was aware of the Agreement between Micromax and Cyanogen and OnePlus wanted to discuss some arrangement for the purposes of OnePlus being able to use Cyanogen's products in the Indian market.

Micromax sent a legal notice dated 26th November, 2014 to Cyanogen to cease and desist from taking any steps to infringe or permit any third party to infringe upon the exclusive rights granted to Micromax under the Agreement. It was also stated therein that Cyanogen should take necessary steps to prevent the breach of the terms and conditions of the Agreement. Cyanogen immediately issued a press release subsequently stating that it has exclusive partnership in India with Micromax.

10. It is submitted by Micromax that OnePlus filed the suit being CS(OS) No. 3688 of 2014 against Micromax with a view to sabotage the launch of Micromax's mobile in India on 20th December, 2014 of which launch OnePlus had full knowledge.

OnePlus in the said suit has not prayed for specific performance of the purported agreement between OnePlus and Cyanogen, knowing that it does not have any legal right in the subject matter for India.

11. It is further alleged by the plaintiff that Clause 6(a) of the purported Trademark License Agreement conferred upon OnePlus license of limited nature subject to third party rights. It could not in any manner infringe or obstruct the performance of the Agreement between Micromax and Cyanogen which gave exclusivity to Micromax for India. The said Agreement in Clause 10 states that the said Agreement supersedes any prior or contemporaneous agreement on that subject. In view thereof the defendants are infringing the rights of Micromax under the said Agreement.

12. Micromax is stated to have incurred major expenses for creation of a brand exclusivity for providing to Indian customers mobile phones with Cyanogen operating systems and Micromax would suffer irreparable harm and loss if the defendants are permitted to continue with their illegal acts in violation of the Agreement between Micromax and Cyanogen.

13. As stated earlier, defendant No.1, OnePlus, prior to the present suit filed a suit for injunction before this Court being CS(OS) No. 3688 of 2014 against Micromax and Cyanogen on the basis of a purported Trademark License Agreement for which injunction restraining the defendants from instituting proceedings against OnePlus in India is sought. This suit is also listed before Court.

14. The case of OnePlus in its suit as per the plaint therein is that OnePlus entered into a Collaboration Agreement dated 28th February, 2014 and Trademark License Agreement dated 1st February, 2014 with Cyanogen, valid till 31st January, 2016.

15. It is averred that OnePlus was granted a non-exclusive license to use Cyanogen's trademarks and software (OS labelled CM 11S) in the entire world except for Mainland China. As per the said Agreements, Cyanogen developed the OS and was to further provide consumer support for duration of the Agreements.

Pursuant thereto, OnePlus launched the product OnePlus One phone alongwith CM 11S in 16 countries. At the time of filing the suit, the same was due to be launched in India on 2nd December, 2014 through online marketplace www.amazon.in.

16. It is the case of OnePlus that a fortnight prior to the said launch, Cyanogen informed OnePlus about terminating the relationship and requested OnePlus to stop using brand name for marketing in India. It was informed to OnePlus vide a press release that Cyanogen had entered into an exclusive agreement with Micromax in India and would not provide support to the OnePlus.

After many requests, Cyanogen agreed to provide OTA support to users of OnePlus in India only for the month of December, 2014. However, on the same day i.e. 27th November, 2014, Cyanogen issued a press release stating that their operating system will exclusively support Micromax's mobile devices in India and will not support any other devices shipped in India with future updates.

17. As OnePlus was anticipating that Micromax or Cyanogen might file a suit against OnePlus restraining it from infringing the copyright in their software or trademark in the brand name, which would disrupt the launch of the OnePlus's product on 2nd December, 2014, OnePlus filed this suit against Micromax and Cyanogen. It is also averred that OnePlus has expended tremendous amount of resources in lieu of its launch and would suffer hardship if defendants are not restrained as prayed. Since there is a valid and subsisting license granted by Cyanogen in favour of OnePlus for the use of OS CM 11S and the trademark CyanogenMod, any attempt to terminate the said Agreements without any cause, reason and justification would be illegal and would subject OnePlus to great hardship incapable of being compensated in monetary terms.

18. In the present case filed by Micromax, Micromax has filed the following documents alongwith the plaint :

- a. Copy of Ambient Services and Applications Distribution Agreement between Cyanogen and Micromax effective from 26th September, 2014.
- b. Copy of Email dated 26th November, 2014 from Cyanogen to Micromax and others.
- c. Copy of Email dated 20th August, 2014 from Micromax to Cyanogen.
- d. Copy of News article dated 31st July, 28th October, 17th November, and 2nd December, 2014 relating to launch of OnePlus's handset in India.

- e. Copy of Press reviews of OnePlus's handset each dated 2nd December, 2014.
 - f. Copy of News article dated 28th November, 2014 relating to public announcement by Cyanogen of its exclusive relationship with Micromax.
 - g. Copy of Agreement dated 1st February, 2014 stated to have been entered into by OnePlus and Cyanogen as filed in CS(OS) No.3688/2014.
 - h. Copy of Agreement dated 28th February, 2014 entered into by OnePlus and Cyanogen as filed in Suit No.3688/2014.
 - i. Copies of printouts of the announcement of the launch of the OnePlus's handset in India.
 - j. Copies of email correspondence between Micromax and the OnePlus and Cyanogen from 18th November, 2014 to 26th November, 2014.
 - k. Copies of News articles, write-ups etc. concerning exclusive tie-up between OnePlus with Micromax as filed in CS(OS) No.3688/2014.
 - l. Copy of the plaint in CS(OS) No.3688/2014 filed by OnePlus.
 - m. Copy of OnePlus's blog as available on www.oneplus.net/blog.
19. Relevant extract from the copy of Ambient Services and Applications Distribution Agreement between Cyanogen and Micromax effective from 26th September, 2014 is as under :

“This Ambient Services and Applications Distribution Agreement (the “Agreement”), effective as of the date indicated below “Effective Date”), is made by and between Cyanogen Inc., a Delaware corporation (“Cyanogen”), with a principal address and contact information set forth below, and Micromax Informatics Ltd. a company incorporated in India under the Indian Companies Act, 1956 and with offices and contact information set forth below (“Company”).

Principal Terms

1. Attachments. This Agreement includes and incorporates by reference the Special Terms attached hereto as Schedule A (“Special Terms”), Schedule of Definitions and Interpretation attached hereto as Schedule B (“Definitions Schedule”), the Standard Terms and Conditions attached hereto as Schedule C (“Standard Terms”) the Device Launch Addendum attached hereto as Schedule D (“Launch Addendum”), list of Cyanogen Applications attached hereto as Schedule E-1 (“Cyanogen Apps List”) and the list of Third Party Applications attached hereto as Schedule E-2 (“Third Party Apps List”). In the event of conflict between the Principal Terms, on the one hand, and on the other hand, the schedules attached hereto, the following will be the order of priority : Special Terms, Cyanogen Apps List, Third Party Apps List, Principal Terms, Definitions Schedule and Standard Terms. This agreement also incorporates by reference the Branding Guidelines at www.cygn.com/marketing/guidelines, which may be updated from time to time by Cyanogen. It is clarified that the Launch Addendum, Cyanogen Apps List and Third Party Apps List are illustrative in nature and will be completed for each Launch of a Device and any subsequent launch (as defined in Section 3.5(b) of the Principal Terms) thereof; provided, however, with respect to the Cyanogen Apps List and Third Party Apps list, once an initial version of such schedules are completed with

respect to a Launch for the first Device, then with respect to any other Device (Whether an initial Launch or subsequent Launch) such schedules will at minimum contain the Cyanogen Application or Cyanogen 3PA previously agreed, unless the removal of any such application is consented to by Cyanogen.

2. Term. The term of this Agreement shall begin on the Effective Date and continue for a period of three (3) years from the Effective Date, unless earlier terminated as provided in this Agreement. This Agreement shall not renew unless specifically agreed by the Parties in writing.

3.2 License Grant. Subject to the terms and conditions of this Agreement, Cyanogen (and its wholly-owned Affiliate, CyanogenMod LLC) hereby grants to Company a non-exclusive, nontransferable, non-sublicensable (except Company may sublicense to Telecom Operators with whom Company has a written agreement), right and license during the Term to (a) distribute Ambient Services with Core OS as part of the Devices, (b) reproduce and distribute the Applications to the extent necessary to exercise the rights granted herein; and (c) except as set forth in Section 7, distribute Core OS, Ambient Services and the Applications integrated foregoing, Cyanogen acknowledges and agrees that Company is permitted to sublicense Core OS, Ambient Services and Applications to Affiliates, resellers, distributors or other third parties for distribution or manufacturing (including original device manufactures (ODMs)) purposes provided Core OS, Ambient Services and Applications are pre-loaded in their entirety on the Devices. Devices may only be distributed if Core OS, Ambient Services and all Applications authorized for distribution in the applicable Territory are pre-installed in their entirety on the Device (that is, Company is not permitted to remove Ambient Services or to exclude one or more Applications), unless otherwise approved by Cyanogen in writing in advance. Initial launch of a Device

in each country comprising the Territory, and the appearance and implementation of Core OS, Ambient Services and the Applications, will be subject to Cyanogen's prior written approval (such approval not to be unreasonably withheld), and will adhere to the terms and conditions of this Agreement, including but not limited to the Branding Guidelines. If Cyanogen specifies a specific version of Core OS, Ambient Services or an Application to be distributed in a certain Territory, Company will distribute only such version within such Territory. Company may also sublicense the Applications to its contractors for testing, evaluation and development purposes only (not distribution) and only with contractors with which Company has a written agreement that is no less protective of the Applications as set forth in this Agreement.

Schedule A

Special Terms

4. Exclusive Territory. Notwithstanding the non-exclusive license granted by Cyanogen to Company in Section 3.2 of the Principal Terms, the Parties agree that for the following countries in the Territory : India, Bangladesh, Sri Lanka, Nepal, Pakistan and Myanmar, such countries shall (a) be exclusive to Company for Ambient Services and (b) have limited exclusivity to Company for Core OS such that Cyanogen will not collaborate directly with another OEM (or agent acting on behalf of such OEM) for the purpose of integrating Core OS with devices distributed by such OEM (or agent of such OEM) in the aforementioned countries."

20. It is clear from the collective reading of Clause 3.2 and special term Clause 4 of the Agreement that though the grant of the licence was non exclusive to Micromax but the exclusivity was maintained for Core OS in India, Bangladesh, Sri Lanka, Nepal,

Pakistan and Myanmar and Cyanogen will not collaborate directly with another OEM. On the otherhand OnePlus was granted non-exclusive rights for distribution, sale and marketing to end users in the permitted countries without any exception. It is also clear that the Agreement between Micromax and Cyanogen records that this Agreement is the parties entire agreement relating to its subject and supersedes any prior or contemporaneous agreements on that subject. This is also an indicator that the intention of the parties was to create the relationship of the grant as mentioned in the Agreement dated 26th September, 2014.

21. The defendant No.1 OnePlus has filed a copy of Agreement dated 28th February, 2014 entered into by the OnePlus and Cyanogen in Suit No.3688/2014. The relevant clauses 2.4, 2.5, 3.1, 3.2, 3.3, 3.4, 8.1, 8.2 and 8.12 are reproduced hereunder :

“2.4 Distribution and Sales. The distribution, sale and marketing of the OnePlus Phone shall be limited to the Permitted Territory and the Parties further agree as follows ;

(a) OnePlus shall only distribute, sell and market the OnePlus Phone using online stores (or applications) and no distribution or sale shall occur in or through physical storefronts, kiosks or other permanent or temporary physical locations in the Permitted Territory. OnePlus will not and will cause any third party engaged by OnePlus for the distribution and sale of the OnePlus Phone not to sell and/or ship any OnePlus Phone to any Person outside of the Permitted Territory;

(b) OnePlus and Cyanogen will discuss and mutually agree on the appropriate level of distribution for the

OnePlus Phone using channel sales agreements with online stores (or applications);

(c) Cyanogen will support the marketing and promotion of the OnePlus Phone in the Permitted Territory using online properties owned and/or controlled by Cyanogen;

(d) Any and all promotion and marketing for the OnePlus Phone shall be directed to and intended for End Users in the Permitted Territory only;

(e) After the Launch Date and throughout the License Period, OnePlus will provide Cyanogen with monthly sales reports that include the following information : number of mobile devices sold, number of returns, retail sales price and mobile carrier on a country-by-country basis for the Permitted Territory. Such reports will also include any other information reasonably requested by Cyanogen and any and all information contained in such reports will be deemed Confidential Information of OnePlus; and

(f) After the Launch Date and throughout the License Period, Cyanogen will provide OnePlus with monthly reports regarding changes to the OnePlus Phone operating system firmware and the rate of upgrade adoption . Such reports will be deemed Confidential Information of Cyanogen.

2.5 Limited Exclusivity.

(a) Provided OnePlus is not in breach of this Agreement, for a period of thirty (30) days after the Launch Date, Cyanogen shall not engage in the integration of CyanogenMod with any other mobile device manufacturer for the purpose of distributing such device in the Permitted Territory or develop or integrate features and services similar to the CMOD Enhancements for any other mobile device manufacturer for purposes of distributing such

device in the Permitted Territory; provided, however, nothing in the foregoing shall limit or prohibit Cyanogen, on and after the Launch Date from releasing source code related to CMOD Enhancements into the developer community for purposes of development and continuous innovation.

(b) Provided Cyanogen is not in breach of this Agreement, for a period of thirty (30) days after the Launch Date, OnePlus will not offer or otherwise distribute the OnePlus Phone with operating system firmware other than CyanogenMod in the Permitted Territory.

Article III

Licenses and Ownership

3.1 Ownership. Except as expressly set forth in this Article III, each Party shall retain ownership of all right, title and interest in and to its Intellectual Property Rights, including any Intellectual Property developed solely by such Party in connection with the Collaboration. In the event that the Parties jointly develop any Intellectual Property Rights and unless otherwise agreed to by the Parties in writing, Cyanogen shall own all right, title and interest in and to such developed rights, which Cyanogen may exploit without accounting to the other. For the avoidance of doubt, the provision of comments, feedback or suggestions by one Party to the other regarding any of such other Party's products or services shall not constitute the development of the subject matter thereof, and such other Party shall not be restricted from using any such comments, feedback and suggestions in any manner, including by developing and incorporating the subject matter thereof into its products and/or services.

3.2 OnePlus License to Cyanogen.

(a) Grant. Subject to the terms and conditions of this Agreement, OnePlus hereby grants to Cyanogen a limited, non-exclusive, non-transferable, worldwide, fully paid-up, royalty free license, without the right to sublicense (except as set forth in Section 3.2(b) below) to the OnePlus Deliverables for the sole purpose of integrating CyanogenMod into the OnePlus Phone and developing and integrating CMOD Enhancements for and into the OnePlus Phone for distribution, sale and marketing to End Users in the Permitted Territory.

(b) Limitations. The OnePlus Deliverables are licensed not Sold. Cyanogen is not entitled to use or exploit the OnePlus Deliverables other than as expressly licensed pursuant to this Section 3.2 or to modify, adapt, translate, sell, rent, lease, or create derivative works based upon any of the OnePlus Deliverables, or any part thereof (and the parties agree that the CMOD Enhancements are not and shall not be deemed modifications, adaptations or derivative works of the OnePlus Phone device software or firmware): For the avoidance of doubt, Cyanogen shall have no right to use or otherwise exploit, in any manner, any One Plus Deliverables on a stand-alone basis.

3.3 Cyanogen License to OnePlus.

(a) Grant. Subject to the terms and conditions of this Agreement, Cyanogen hereby grants to OnePlus a limited, non-exclusive, non-transferable, worldwide, fully paid-up, royalty free license, without the right to sublicense to the Cyanogen Materials for the sole purpose of integrating the CMOD Enhancements into the OnePlus Phone for distribution and sale to End Users in the Permitted Territory.

(b) Limitations. The Cyanogen Materials are licensed not sold. OnePlus is not entitled to use or exploit the Cyanogen Materials other than as expressly licensed

pursuant to this Article 111 or to modify, adapt, translate, sell, rent, lease, or create derivative works based upon any of the Cyanogen Materials, or any part thereof. For the avoidance of doubt, OnePlus shall have no right to use or otherwise exploit, in any manner, any Cyanogen Materials on a stand-alone basis.

3.4 No Other Rights. Except as expressly provided herein, no license or other right is granted, by either Party to the other, by implication, estoppel or otherwise, under any Intellectual Property Rights now or hereafter owned or controlled by such Party. Nothing contained in this Agreement shall be construed as conferring any right to use in advertising, publicity, or otherwise. any Trademark, or any contraction, abbreviation or simulation thereof, of either Party. All other rights to each Party's Intellectual Property are reserved to Such Party. Except for the licenses granted to pursuant to this Article III, as between the Parties, (a) OnePlus shall own all right, title and interest in and to the One Plus Deliverables (except for those items owned and/or controlled by third parties) all improvements, modifications, updates, upgrades, enhancements, derivative works and additions to any of the foregoing, and any and all Intellectual Property Rights embodied in any of the foregoing, and (b) Cyanogen shall solely own all right, title and interest in and to, CyanogenMod, CMOD Enhancements, Cyanogen Deliverables, all improvements, modifications, updates, upgrades, enhancements, derivative works and additions to any of the foregoing, and any and all Intellectual Property Rights embodied in any of the foregoing.

8.1 Dispute Resolution : Except as expressly provided otherwise in this Agreement, in the event that either Party believes that the other Party has breached this Agreement or if any dispute between the Parties arises hereunder, such Party shall provide the other Party with written notice of such breach, describing the alleged breach in

reasonable detail. The matter shall be referred to the respective CEOs of OnePlus and Cyanogen, or their respective designees, which individuals shall negotiate in good faith to resolve such matter in a mutually satisfactory manner for ten (10) days, or such longer period of time to which these individuals may agree. If such efforts do not result in a mutually satisfactory resolution, either Party may take any actions it deems necessary or appropriate to enforce its rights under this Agreement. For the avoidance of confusion, nothing in this Section 8.1 shall be construed so as to in any way limit a Party's right to terminate this Agreement pursuant to Section 7.2.

8.2 Enforcement. The Parties agree that irreparable damage would occur if any of the provisions of this Agreement were not performed in accordance with their specific terms. Therefore, the Parties shall be entitled to specific performance of the terms hereof, this being in addition to any other remedy to which they are entitled under this Agreement, at law or in equity.

8.12 Governing Law; Venue. This Agreement will be governed by and construed in accordance with the laws of the State of California without regard to principles of conflicts of law, to the extent they would result in application of the laws of any other jurisdiction. The Parties agree that the exclusive venue for any controversy or claim arising out of or related to this Agreement or any breach of this Agreement will be in any state or federal court of competent jurisdiction located in the Northern District of California. Each Party agrees not to commence any action, suit or proceeding relating to this Agreement except in such courts, and each Party further agrees that service of any process, summons, notice or document by U.S. registered mail to its respective address set forth in Section 8.6 shall be effective service of process for any action, suit or proceeding brought against it in any such court."

22. It is clear from the said clauses that OnePlus by virtue of collaboration and license agreement was granted limited non exclusive rights. It is specifically stipulated in Clause 8.1 that in the event that either party believes that other party has breached this agreement or if dispute between the parties arises and mutually satisfactory resolution as contemplated in the said Clause is not arrived at, such party may take any action it deems necessary or appropriate to enforce its rights under the Agreement. The Governing Laws of State of California would be applicable and incase of breach, courts of Northern District of California would decide such controversy or claim arising out of the said Agreement. Each party under the Agreement was bound not to commence any action, suit or proceedings relating to agreement except in such courts.

23. In the present case, it is apparent that any right in favour of OnePlus if any flowing from the said Agreement would be governed as per Clause 8.12 dealing with Governing Law; Venue of the Agreement. Thus, it is clear that no action against the Cyanogen in India is maintainable in view of settled law as there exists an agreement containing exclusive jurisdiction clause in relation to the breach of the terms of the Agreement between OnePlus and Cyanogen. The plea of OnePlus which seeks to restrain Micromax to exercise its right as a exclusive licensee is neither available to OnePlus under the Agreement being a limited non-exclusive licensee from Cyanogen nor the same is enforceable in the courts in India. The only complaint of OnePlus could be that Cyanogen

has breached the agreement between OnePlus and Cyanogen by inducting another licensee in India in the form of Micromax. The said breach would be decided in terms of the Agreement which provides the governing law as that of Californian Courts and exclusive jurisdiction to the said courts. It is also the admitted position that there is no privity of contract between Micromax and OnePlus.

24. Mr.Sudhir Chandra, learned Senior counsel appearing on behalf of defendant No.1, OnePlus has relied upon various emails exchanged between OnePlus and Cyanogen including the printouts from Cyanogen's blog available at <https://cyngn.com/blog/2014/12/commitment-to-our-users/> and printout from Times of India website reporting Cyanogen's blogpost available at <http://timesofindia.indiatimes.com/articleshow/45383570.cms> which read as under :

"December 04, 2014

Cyanogen's Commitment to our Users

Over a year and a half ago, we founded Cyanogen Inc. with an unfailing commitment to build a mobile OS by the users, for users. We've come a long way in a short period of time and are continually amazed by the innovation fostered by our engineering and product teams and the exceptional contributions by the CM community. We couldn't have accomplished so much in a short period of time if it were not for the commitment and vision we collectively share to redefine mobile computing. With that said, we wanted to address a couple points of inaccurate

information that have come out over the past week. We had not commented earlier as we believe in treating our partners and users with the utmost respect.

We are proud of the work we did on the OnePlus One. Through our collaboration with OnePlus, we demonstrated the power of strong hardware and software tuned for exceptional performance. To clarify misinformation out there, the OnePlus One will get OTA firmware updates for all global devices, including global devices for our users in India. Rather than have misinformation continue to circulate out there, we felt it important to bring this matter to rest.

As we look to the future, we want to continue to push the envelope and take the Cyanogen OS to new heights. Our strategic partnership with Micromax and the new YU brand of devices will enable us to bring high quality, amazing experiences to our users in India. our commitment is and always remains to be a user-centric company, and we will support our users wherever our OS is distributed.

Times of India :

New Delhi : A week after announcing an exclusive deal with Micromax for powering its new Yu range of smartphones, Cyanogen has informed that it will continue to support its software on the OnePlus One for users in India.

The developer behind the popular, custom aftermarket version of Android, clarified via a blog post that the OnePlus One will get OTA firmware updates for 'all global devices, including global devices for users in India.'

It's worth pointing out that OnePlus executives had mentioned during an event in New Delhi, that the company is shipping the international version of the One to Indian consumers. This clears the state of confusion surrounding

software support for OnePlus One and implies that Indian users of the phone will also receive future software updates released by Cyanogen. The phone runs a custom build of CyanogenMod OS based on Android 4.4 KitKat.

Earlier, OnePlus had announced that it had been developing its own version of Android and a build of the OS based on Lollipop (the latest version of Android), will be released for Indian users, next month. A final build of the OS will be released in February 2015. The OS was originally being developed for OnePlus' future products.

The company had also committed to at least two years of software support for the OnePlus One, starting from the release of its first community build.

Cyanogen says it has come out with a clarification to stop the flow of misinformation following the announcement of its partnership with Micromax. However, it's not clear why it waited a week to offer a response.

Cyanogen's Steve Kondik had also expressed dismay at a OnePlus One forum posting where the latter had said that 'gestures, tap to wake, themes, tweaks' were OnePlus features. The post was later modified.

OnePlus One was launched on December 2 in the Indian market at Rs.21,999. The phone is exclusively available on Amazon.in through an 'invite-only' system."

25. From the emails exchanged between OnePlus and Cyanogen, it is evident that Cyanogen has changed its stand from time to time. It would also show from another blog of Cyanogen which is dated 8th December, 2014 and may be considered as last version emanating from Cyanogen which reads as under :

“OnePlus One Global Device Update
(/blog/2014/12oneplus-one-global-device-update)

Since we clarified our support for OTA firmware updates for OnePlus One global devices, we’ve received a number of inquiries regarding OnePlus One devices sold in India.

As we had pledge to our users, OnePlus One global devices will receive our OTA firmware updates. If a user in India purchased a OnePlus One global device in channels outside of India, they will receive our OTA firmware updates. However, this excludes OnePlus One original devices sold directly in India. We are committed to our exclusive partnership in India with Micromax, which will be launching its first Cyanogen OS device under their new YU brand.”

26. In order to know about the progress of the transaction after the execution of two licenses issued by the Cyanogen, one in favour of OnePlus i.e. non-exclusive and subsequently in favour of Micromax i.e. exclusive, it is necessary to go through the emails exchanged between the parties from the relevant period i.e. 17th November, 2014 to 26th November, 2014 i.e. after the executions of two agreement. The same are reproduced as under :

“From : Carl Pei <carl@oneplus.net>
Date : Nov 17, 2014 at 8.26 PM
Subject : Re : Cyanogen end.
To : Kirt McMaster <kirt@cyngn.com>

I’m guessing there’s some misunderstanding. Shall we talk about it during your visit in December?

From : Kirt McMaster <kirt@cyngn.com>
Date : Tue, Nov 18, 2014 at 12.08 PM
Subject : Re : Cyanogen end.
To : Carl Pei <carl@oneplus.net>

Carl. We will be terminating our relationship with one plus. I will get back to you with more details shortly.

From : Kirt McMaster <kirt@cyngn.com>
Date : Tue, Nov 18, 2014 at 12.36 PM
Subject : Re : Cyanogen end.
To : Carl Pei <carl@oneplus.net>

No misunderstanding. We have no reason to meet in sz. We are terminating.

From : Kirt McMaster <kirt@cyngn.com>
Date : Wed, Nov 19, 2014 at 2.59 PM
Subject : Cyanogen termination
To : Carl Pei <carl@oneplus.net>
Cc: Vikram Natrajan <vik@cyngn.com>, Frank Montes <fmontes@cyngn.com>

Carl....Any and all communication in regard to oneplus and cyanogen must go through vik and myself.

We will halt support for oneplus devices immediately.....I am also requesting that oneplus stop using the cyanogen brand in any marketing collateral or communication in India.

Frank also cc'd is our general council. If you have any specific questions send them to all of us.

K

Sent from my iPad

From : Kirt McMaster <kirt@cyngn.com>
Date : Sun, Nov 23, 2014 at 1.49 PM
Subject : Re : Let me know when we can have a call
To : Carl Pei <carl@oneplus.net>

Either now... Or tomorrow.

Sent from my iPad

From : Carl Pei <carl@oneplus.net>
Date : Nov 23, 2014 at 9.57 PM
Subject : Re : Let me know when we can have a call
To : Kirt McMaster <kirt@cyngn.com>

Kirt,

Can you do my morning tomorrow (Tuesday), your Monday night?
What would be a good time?

Best regards,
Carl Pei

From : Carl Pei <carl@oneplus.net>
Date : Nov 24, 2014 at 4.54 AM
Subject : Re : Let me know when we can have a call
To : Kirt McMaster <kirt@cyngn.com>

The time sounds good. Skype ?

From : Kirt McMaster <kirt@cyngn.com>
Date : Mon, Nov 24, 2014 at 6.18 PM
Subject : Re : Let me know when we can have a call
To : Carl Pei <carl@oneplus.net>
Sure. 8pm?

I'd like to reach a compromise here. Ship stock android in India. No mention of Cyngn in India and I will keep supporting oneplus for rest of world. And we can continue dialogue for other devices etc.

From : Carl Pei <carl@oneplus.net>
Date : Nov 24, 2014 at 8.26 PM
Subject : Re : Let me know when we can have a call
To : Kirt McMaster <kirt@cyngn.com>

Looks like we didn't catch each other this time. Shall we try same time your Thursday (my Friday)? Alternatively, I'm happy to talk via email.

We have removed mentions of Cyanogen in PR, marketing, and upcoming product pages already.

From : Kirt McMaster <kirt@cyngn.com>
Date : Nov 24, 2014 at 9.07 PM
Subject : Re : Let me know when we can have a call
To : Carl Pei <carl@oneplus.net>

Call at 3107514723

From : Kirt McMaster <kirt@cyngn.com>
Date : Nov 25, 2014 at 10.08 AM
Subject : Re : Let me know when we can have a call
To : Carl Pei <carl@oneplus.net>

Sure. Spheresong. What is your mobile just in case.

From : Carl Pei <carl@oneplus.net>
Date : Nov 25, 2014 at 12.08 PM
Subject : Re : Let me know when we can have a call
To : Kirt McMaster <kirt@cyngn.com>

+86 18566667562

From : Kirt McMaster <kirt@cyngn.com>
Date : Tue, Nov 25, 2014 at 1.21 PM
Subject : Re : Let me know when we can have a call
To : Carl Pei <carl@oneplus.net>

Try me again ! I just missed you.

From : Vivian Lee<vlee@cyngn.com>
Date : Tue, Nov 25, 2014 at 7.02 PM
Subject : UPDATED Press Release – from Cyanogen
To : Kirt McMaster <kirt@cyngn.com>, Vikram Natarajan <vnatarajan@cyngn.com>

.... Kirt and Vik,

Below is the updated press release. This is from Cyanogen with the goal of issuing via India wires.

Cyanogen Inc. announces exclusive mobile partnership in India with Micromax.

Palo Alto, Calif. – 27th November, 2014 – Cyanogen Inc, a leading mobile OS company, has announced an exclusive partnership in India with Micromax Informatics, the largest mobile brand in India.

The arrangement highlights the significance of the software-hardware partnership and shared vision to deliver a whole new class of user-focused mobile device experiences that will disrupt the market. Cyanogen's exclusive deal means that Cyanogen OS will only support Micromax mobile devices in India, and does not support OnePlus devices in India.

Micromax's new 'YU' mobile brand will be announcing its first device in December and will be the first to launch with Cyanogen's new Themes app, supported by a powerful theming engine that enables deep.

From : Kirt McMaster <kirt@cyngn.com>

Date : Wed, Nov 26, 2014 at 11.07 AM

Subject : Fwd : UPDATED Press Release – from Cyanogen

To : Carl Pei <carl@oneplus.net>

Cc : Vivian Lee <vlee@cyngn.com>

Carl....this is the release that will be going out thurs afternoon or fri morn india time.

Vivian Lee

VP Marketing

Cyanogen Inc.

www.cyngn.com

(M) 415-341-5244"

27. It is evident from the emails exchanged between OnePlus and Cyanogen that Cyanogen in the month of November was determined to terminate the license with OnePlus in India. At the same time, it appears that both parties i.e. OnePlus and Cyanogen have good business relation of similar kind in many other countries

and in fact Cyanogen is supporting the business of OnePlus in many parts of the world and Cyanogen is acknowledging the good quality of services provided by OnePlus. But in India, Cyanogen has changed its mind requesting OnePlus to stop using Cyanogen brand in any marketing collaboration or communication in India.

28. It also appears from reading of the other material available on record that mentally OnePlus at one point of time i.e. on 24th November, 2014 agreed to give up the trade mark in India as OnePlus in one email, has agreed to remove Cyanogen from press-release, marketing its up-coming product. It might be due to the reason of having very cordial business relations between them in other parts of the world. But, at the same, one cannot understand, despite of communication dated 24th November, 2014 by emails, OnePlus was yet to launch its phone in India on 2nd December, 2014. Similarly, Cyanogen on 4th December, 2014 in its blog again took a U-turn. However, later on, Cyanogen has cleared its stand in a subsequent blog.

29. OnePlus has admittedly not taken any action against Cyanogen so far for breach of contract or enforcement of its rights by virtue of the Agreement between them. Even otherwise, said action, if any, would not be maintainable in India in view of Clause 8.12 of the Agreement as the same is subject to Governing law Clause of the Agreement.

30. OnePlus's non-exclusive right, if any, flow only from the Agreement. There is no agreement between the Micromax and OnePlus. Micromax has accrued the exclusive rights in India from

Cyanogen by virtue of a subsequent agreement. The damages, compensation and loss, if any, suffered by OnePlus would be subject matter of litigation between OnePlus and Cyanogen in California (USA). However, at this stage, prima facie from the perusal of the documents, it appears that the right of Micromax to use the trade mark and OS is an exclusive one atleast for India and the said fact is time and again admitted by Cyanogen though sometimes for business reasons, Cyanogen also took contrary stand in favour of OnePlus. The last word emanating from Cyanogen maintains the position that there exists exclusivity of relationship with Micromax, the plaintiff herein. In view of this position, which the defendant No.1, OnePlus is unable to controvert at this stage with any other contra material I am of the view that Micromax has established a case of grant of ad-interim injunction against OnePlus in respect of the exclusive rights granted in its favour. In case, the said interim orders are not passed, the Micromax would suffer irreparable loss and injury. The balance of convenience also lies in favour of the plaintiff and against the defendant No.1.

31. Thus, I.A. No.24485/2014 is disposed of by granting the interim injunction restraining defendant No.1, their directors, affiliates, subsidiaries, franchisees, officers, servants, agents, distributors, stockists, if any, and all acting on for or on their behalf from marketing, selling and shipping its OnePlus mobiles in India, thereby amounting to interference in the plaintiff's business and from interfering and/or infringing the plaintiff's exclusive license

granted in respect of defendant Nos.2 and 3's softwares and operating systems under the Ambient Services and Application Distributions Agreement with an effective date of 26th September, 2014.

32. However, it is made clear that stock of defendant No.1 lying in the market pertaining to the product in question is allowed to be disposed of. The defendant No.1 is restrained from shipping any stock to India bearing the mark Cyanogen from today. Copy of this order be given Dasti to all the parties under the signatures of Court Master.

(MANMOHAN SINGH)
JUDGE

DECEMBER 16, 2014