



India: Delhi High Court grants injunction to Gillette India Ltd. against Reckitt Benckiser in a suit for Disparagement

In a recent case of *Gillette India Limited Vs. Reckitt Benckiser (India) Pvt. Ltd.* **CS(OS) 251/2016**, the Delhi High Court, vide its order dated June 1, 2016, granted an interim injunction to Gillette India Ltd. restraining Reckitt Benckiser (India) Pvt. Ltd. from publishing disparaging advertisements against its VENUS razors.

BRIEF FACTS

- The Plaintiff is Gillette India Ltd. which manufactures razors for hair removal and sells these razors under the trademark “VENUS” and “SIMPLY VENUS”. Plaintiff’s razors have a typical light blue colour.
- The Defendant, Reckitt Benckiser (India) Pvt. Ltd, manufactures and sells hair removal creams under the trademark “VEET”.
- In the impugned video advertisement, the Defendant’s product “Veet” hair removal cream is stated to cause smoothening of skin upto twice as long as shaving, while showing a blue razor in the background in a comparing manner.
- The Plaintiff brought a suit for injunction and damages against an allegedly disparaging video advertisement issued by the Defendant. The Plaintiff also filed an application for grant of ad interim injunction against the defendant to prevent it from issuing, broadcasting, printing or publishing the impugned advertisement, or in any way disparaging the goodwill and reputation of the Plaintiff’s products.

CONTENTIONS OF THE PLAINTIFF

- That the razor shown in the impugned advertisement issued by the defendant is blue in colour and hence it necessarily has a co-relation only to the plaintiff’s razor, as no other company sells blue razors.



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- The defendant, while showing a razor for hair removal in the impugned advertisement does not show the razor with use of foam. Such use of foam is a necessary pre-condition before use of the razor of the plaintiff, this has been provided in the printed instructions on the product of the plaintiff.
- That the disclaimer of ordinary razors is shown in extremely fine print in the impugned advertisements, whereas it should be bolder as to be seen in normal way by the ordinary customer.
- That the claims of the defendant that their hair removal cream is twice as good as a razor do not merely amount to puffery, they are malicious in nature because they are not supported by any evidence of an independent/ neutral body.
- That in the impugned advertisement, the use of razors is shown to leave a stubble. Since this fact is false, the defendant should also be restrained from airing the advertisement containing that portion which shows that use of the razors including that of the plaintiff leaves a stubble.
- Further, in the advertisement, while comparing the cream of the defendant with the razor, use of the cream is shown on a fairer skin while the use of a razor is on dark skin. This contains an undertone that use of the razor leads to skin-darkening, which is also false.

CONTENTIONS OF THE DEFENDANT:

- That the shape of the razors manufactured and sold by the plaintiff are totally different to the razors shown in the advertisement and hence there is no disparagement of the goods of the plaintiff in the impugned advertisement.
- That in another advertisement issued by the plaintiff itself, the plaintiff's razor has been used without foam. Therefore, the plaintiff cannot contend that the defendant must show the use of the razor in the impugned advertisement along with the application of foam or lather.
- That reliance is to be placed on the report of Global Depilatories R&D Laboratory, Hull, UK, which gives a conclusion that "Veet" hair removal cream causes smoothening of skin upto twice as long as shaving. The claims in the impugned advertisement are thus, true.

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Plaintiff's Product



Defendant's Advertisement



HELD:

- The Court perused the judgment of the division bench of the Delhi High Court in **Dabur India Ltd. Vs. Colortek Meghalaya Pvt. Ltd. & Anr., 167 (2010) DLT 278 (DB)**, which had taken into consideration the Supreme Court decisions in **Tata Press Ltd. v. MTNL & Ors., (1995) 5 SCC 139**, and **Colgate Palmolive (India) Ltd. v. Hindustan Unilever Ltd., (1999) 7 SCC 1**. After such perusal, the Court opined that in *Dabur India*, it was held that if an advertisement extends beyond the grey areas and becomes a false, misleading, unfair or deceptive advertisement, such an advertisement would not have the benefit of protection of law.
- The Court held that the use of blue colour by the defendant is not justifiable. According to the Court, the defendant's argument that the shape of the razor was different could not be supported, because the defendant could have used any other colour, and the use of blue colour means that a viewer would necessarily co-relate the razors in the advertisement with the razors of the plaintiff. Grave and irreparable harm was therefore being caused to the plaintiff's reputation and goodwill by the impugned advertisement.
- With regard to the question of showing use of the razor without foam or lather, the Court held that the plaintiff cannot contend that injunction should be granted on this aspect, as the plaintiff has conceded that in its instructions given in the cover of the razor, use of the foam is only said to be a

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better alternative while using the razor and it is not that the use of the foam is said to be mandatory.

- It was held by the Court that the report of Global Depilatories R&D Laboratory, Hull, UK, cannot be accepted by the Court as the report was commissioned at the instance of the defendant and was not the report of a neutral third party. Therefore, the defendant cannot claim on the basis of this report that its cream is twice as good as the razor.
- The submission of the plaintiff that the advertisement creates an impression in the mind of a viewer that use of the razor causes darkening of skin was rejected, it was held that no such conclusion can be reached.
- It was held that the plaintiff cannot obtain an ad interim injunction in its favour on the argument that the advertisement shows the use of a razor leaving a stubble, as it relied on a report that was self-commissioned and was not the report of a neutral third party.
- It was held that the exact conditions to be laid down for airing or non-airing of the impugned advertisement shall be determined at the stage of final adjudication in the injunction application.
Ad interim injunction was held to be sufficient to protect the rights of the parties to the suit, since there could not be a perfect solution to the problem until the parties complete their pleadings.
- The defendant was directed to file its written statement within four weeks, and the plaintiff to file its replication within four weeks thereafter. Parties were directed to file the documents in their power and possession within six weeks for admission/denial. Listed before the Joint Registrar for marking of exhibits to the documents on August 30, 2016.

The matter is fixed in the Court for framing of issues and disposal of pending applications on September 26, 2016.

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