

Delhi High Court in Dettol vs. Santoor Handwash: Comparative Advertising is Allowed, Disparagement is Prohibited

Judgment Date: 18 May 2023

The Delhi High Court has significantly ruled on the boundaries of comparative advertising, observing that while it is permissible to showcase a competing product, denigrating or disparaging the rival's product is impermissible.

The single judge **Justice C. Hari Shankar** emphasized the importance of maintaining a subtle distinction between highlighting the superiority of one's own goods and claiming the inferiority of the competitor's product.

“While it is permissible for a manufacturer to compare his product with another's, he crosses the permissible line when he denigrates the latter product or claims the latter product not to have a beneficial effect which is possessed by his product, especially where such claim is incorrect on facts,” the judge observed.

The Court made this observation while dismissing a plea filed by the plaintiff- Reckitt Benckiser Private Limited (Dettol) for an ad-interim injunction wherein the company claimed that Wipro Enterprises Private Limited's advertisement for its hand wash Santoor disparaged the former's product Dettol.

Santoor's advertisement showed a young girl wanting to play with her mother. However, her mother was engaged in gardening making her hands are rough and dirty. She washes her hands with Santoor Hand Wash and goes to play with her daughter. The young girl is amazed at the softness of her mother's hands and coaxes her into continuing to play with her.

The mother caresses her daughter's cheeks and afterwards removes from the shelf, a plastic bottle labelled 'ordinary hand wash.'

Dettol accused that the bottle which was being removed in the ad bears the shape of Dettol Hand Wash. Dettol stated the advertisement assumed more significance in wake of the Covid-19 pandemic because of which people have been washing their hands repeatedly. It was argued that the advertisement effectively rubbishes Dettol as lacking moisturising or hand softening properties indicating that it is inferior to Santoor.

Meanwhile, Wipro Enterprises (manufacturer of Santoor) stated that the advertisement does not refer to the properties of Dettol and all that it states is that Santoor contains sandal, which Dettol does not contain and that sandal has skin softening properties.

The defendants- Wipro Enterprises (P) Limited, contended that the Unique Selling Point (USP) of Santoor is that it is made out of natural ingredients, and based on Ayurveda and that advertisement involves an exhortation to a prospective customer to choose the product of Santoor over another. That does not, however, amount to any kind of an indicator that the product of the latter is harmful in any way, it was argued.

The Court after examining the facts and submissions of the case stated that the comparative advertisement short of denigration and disparagement, is permitted in law.

“Every advertisement seeks to promote a particular product over others, as superior. Else, the very raison d’etre (most important reason) of advertising the product is lost. So long as the advertisement does not slight the rival product, no justifiable cause for pique can be said to exist. The impugned advertisement, in my opinion, does not slight either Dettol, or any other hand wash,” the Court held.

Therefore, the Court opined that the primary message that the advertisement seeks to convey was to praise Santoor as superior to other similar products and that it contains sandal, which is known to moisturize the skin. It would be reading too much into the advertisement to extract from it, anything derogatory about Dettol, the judge stressed.

The Court observed that an advertisement cannot be enjoined as disparaging merely on the ground that it was intended to be disparaging if the advertisement, seen as a whole by a reasonable and right-thinking consumer, does not, in fact, convey an impression that disparages the rival product.

The Court lastly laid the following principles after referring to catena of judgments:

1. Where the advertisement does not directly or indirectly refer to the plaintiff’s product, the plaintiff could not claim that its product was being targeted merely because it enjoyed a lion’s share of the market. Targeting of the plaintiff’s product is the sine qua non, whether expressly or by necessary implication. That implication cannot, however, be premised merely on the market share of the plaintiff’s product.

2. At the same time, even if the rival product was not specifically targeted, an indirect representation, which was sufficient to identify the product, was as good as direct targeting
3. Within the limits of permissible assertions, comparative advertising is protected under Article 19(1)(a) as commercial speech. In comparative advertising, a certain amount of disparagement is implicit.
4. An advertisement must not be false, misleading, unfair or deceptive, irrespective of whether it is extolling the advertised product or criticizing its rival.
5. Puffery is the only exception, as puffery, by its very nature, involves exaggeration and embellishment, and an element of untruth is bound to exist in it. Untruth in puffery is permissible only because puffery is inherently not taken seriously by the average consumer.

Applying the aforesaid principles in the present case, the Court observed, “*No prima facie case is, therefore, made out, to injunct the broadcasting or display of the impugned advertisement.*”

Hence, the Court dismissed the application.

Senior Advocate CM Lall along with **Advocates Nancy Roy, Aastha Kakkar, Prashant, Nida Khanam** and **Ananya Chug** appeared for Reckitt Benckiser (Dettol).

Senior Advocate Akhil Sibal along with **Advocates Ankur Sangal, Pragya Mishra, Trisha Nag, Sanya Kumar** and **Asavari Jain** appeared for Wipro Enterprises (Santoor).

REFERENCE- <https://www.livelaw.in/high-court/delhi-high-court/delhi-high-court-comparative-advertising-dettol-santoor-229010?infinitescroll=1>