



*Sakshi Singhal
Trainee Associate*

DELHI HIGH COURT ON PASSING OFF UNDER THE DESIGNS ACT, 2000

A. Brief Facts:

RB Health US LLC (“**RB**” *i.e.*, Reckitt Benckiser), the manufacturer of ‘Dettol’ soap, filed a suit in the Delhi High Court against Dabur India Limited (“**Dabur**”) for using its registered design which included the tag line, trade dress, packaging and colour. RB claimed that, Dabur’s soap bar ‘Sanitize’ was a fraudulent imitation of the RB’s soap bar ‘Dettol’ and it constituted an offence of piracy of design under Section 22 of the Designs Act, 2000 (“**Act**”).

B. Delhi High Court Order:

The Delhi Court (“**Court**”)¹ declined temporary injunction against Dabur holding that ‘Sanitize’ soap bar cannot be confused with ‘Dettol.’ However, the Court directed Dabur to maintain a record of the sales of the soap. It clarified that the interim order would not impact the final judgement of the case.

C. Reasoning:

1. HC opined that for an infringement under Section 22 of the Act, the following three conditions need to be satisfied:
 - a. A plaintiff must be able to establish that it has the necessary goodwill and reputation in the goods sold or services offered to the consumers at large which in turn should be interlinked with the get-up in which they are proffered.
 - b. A plaintiff must be able to demonstrate that the defendant’s misrepresentation *qua* the goods or services offered by him have led consumers to believe that they originate from the plaintiff.
 - c. The action of the defendant has resulted in damage or is likely to result in damage due to the misrepresentation with regard to the origin of the goods and services.
2. HC observed that there was enough material to show that there were several soap bars in the market with similar features if not identical in relation to the colour, shape and smell of the soap bar. Neither the taglines nor the indications/signs of RB were a registered trademark. Extract of the submission made by RB comparing the two products is as below:

¹ *RB Health US LLC and Anr. v. Dabur India Limited* Order in I.A. No. 6865/2020 arising out of CS(COMM) 319/2020 = MANU/DE/2146/2020.



3. The Court while applying the test of imperfect memory, opined that there exists stark difference between the two soap bars. A customer purchasing the ‘Sanitize’ soap bar cannot miss the Dabur mark and the buyer would not confuse it with ‘Dettol’ soap bar.

CONCLUSION

This Order by the HC opines on the rules to determine infringement of trademark and how the use of an unregistered trademark does not give reason for a suit for infringement.

This *Counselence Connect* contains information in a nutshell on a recent change in law. This is not legal advice and must not be treated so. For legal advice, please contact us at: info@counselence.com.