



**ISSUES RAISED:**

In this case, the plaintiff asked the defendant to restrain from making misleading and disparaging advertisements, where the defendant compared their product i.e, “Eveready LED Bulb” with the product of plaintiff’s “Havells LED Bulb”.

To what extent is comparative advertising acceptable and how to identify if an advertisement is deceptive/misleading or not.

**RULE:**

Any advertising of a registered trademark that (Section 29(8))

- a) takes unfair advantage of and is contrary to honest practises in industrial or commercial issues; or
- b) is damaging to its unique character; or
- c) is against the trade mark's reputation

Section 29 shall not be construed as prohibiting any person from using a registered trade mark for the purpose of identifying goods or services as those of the proprietor if the use is --

- (a) in accordance with honest industrial or commercial practises, and
- (b) does not take unfair advantage of or be detrimental to the trademark's distinctive character or repute.

In India, freedom of the press is implied by Article 19(1)(a) of the Indian Constitution, which guarantees freedom of speech and expression. All people have the right to freedom of speech and expression, according to Article 19(1)(a).

## **PLAINTIFF'S CONTENTIONS**

- The statement "check lumens and price before you buy" invited buyers to compare only two features of a bulb, namely lumens and price, as if they were the only ones that mattered in deciding the value of an LED Bulb.
- This analogy is selective and deceptive.
- All relevant parameters have to be compared by the defendant.
- When it comes to lumens, the advertisement compares Plaintiffs' product to other third-party products, but when it comes to power factor, the Defendants altered the comparison to one between its product (LED Bulb) and CFL Bulb instead of rival LED Bulbs.
- Plaintiffs relied on a number of sources to back up their claims.
  - Tata Press Ltd. v. Mahanagar Telephone Nigam Ltd. and Ors.;(1995) 5 SCC 139
  - Lakhanpal National Ltd. v. MRTP Commission & Anr., (1989) 3 SCC 251
  - Glaxosmithkline Consumer Healthcare Ltd. v. Heinz India (P) Ltd.; MIPR 2010 (3) 314; 2009 (39) PTC 498 (Del)
  - Medicare Ltd. v. Reckitt Benckiser India Limited, 2002 (24) PTC 686 (MRTP)
  - Janssen Pharmaceutica Pty. Ltd. v. Pfizer Pty. Ltd., No. G220 of 1985

## **DEFENDANT'S CONTENTIONS**

- The claims made in the impugned advertisement were accurate and justified.
- The impugned advertisement's comparative representations were taken from the product packaging of all of the companies included in the advertisement.
- The comparison of lumens per watt, lumens, and price with rival products was justified because the packaging of all rival products did not include all of the parameters suggested by the Plaintiffs. The common qualities of all packages had been noted in the advertisement's comparative table.
- A light source's total amount of visible light output is measured in lumens. As a result, defendant No. 2 was perfectly justified in representing brightness in lumens.
- It was permitted to glorify one's own product as long as the competitor's product was not denigrated.
- Plaintiffs relied on a number of sources to back up their claims.
  - Dabur India Ltd. v. Colortek Meghalaya Pvt. Ltd. & Anr.; 2010 (42) PTC 88 (Del)
  - Philips India Pvt. Ltd. v. Shree Sant Kripa Appliances Pvt. Ltd.; CS(OS) No. 1913/2014

## **APPLICATION:**

The plaintiff argued that the advertisement's statement "check lumens and price before you buy" was an invitation to customers to double-check these two factors before purchasing an LED Bulb. This is thought to be a biased and deceptive method of comparing products. This meant that the defendants claimed to be able to offer higher-quality products at lower prices. Even though the defendant's bulb had more "lumens," it had a lower power factor and a shorter

overall life. The price factor was compared in such a way that the plaintiff's product appeared to be inferior. It was argued that when comparing products in advertisements, honest and fair disclosure was essential. He cited clauses 29(8) and 30(1) of the Trademarks Act, 1999, as well as the Advertising Standards Council of India Code. It states that commercial advertising must follow honest industrial methods and not take advantage of or harm the trademark's distinctive character. The defendant's arguments were that the statements in the advertisement were taken from the product packaging. The comparison to the rival product was justified because the competitor products' packaging did not include all of the parameters indicated by the Plaintiff. The brightness is measured solely in lumens. As a result, he is justified in making this representation. It was argued that as long as the relevant factors were disclosed, there would be no grounds for disparagement. It was pointed out that the plaintiff failed to set up any unique damages that were required to maintain order in the case of disparagement. The Delhi High Court defined the term "advertisement." Advertisement is defined as "the making of a representation in any form in connection with a trade, business, craft, or profession in order to promote the supply of goods or services" in Article 2(1) of the EEC Advertising Directive. The court relied on *Marico Ltd v Adani Wilmar Ltd*, where the court held that when determining the meaning of an advertisement, the court must consider the fact that the public expects a certain amount of hyperbole in advertising, and the test to be applied is whether a reasonable person would take the claim being made seriously. The Court concluded with a definition of comparative advertisement by referring to Article 2(2a) of the Advertising Standards Council of India Code. It was decided that comparative advertising is legal and permitted because it promotes competition and enlightens public. It is subject to certain conditions, including that it should be clear as to what part of the advertiser's product is being compared to that of its competitors, that the comparisons are factual, actual, and substantiated, that the advertiser receives no artificial advantage, that there is no risk of consumer being misled, and that the advertisement does not attack competitors' products. The main objective of Trademarks Act sections 29(8) and 30(1) is to permit comparative advertising as long as it is done honestly by the advertiser. The test of honest use is the objective test that determines whether a reasonable audience would consider the use to be honest. The court used the example of second-hand automobile advertisements not being regarded honest if they are used to promote the use of powerful medicines. Honesty must be measured against what the target audience of the advertisement may reasonably expect.

Failure to call out a competitor's advantage is not considered dishonesty. However, extreme caution must be exercised to ensure that the comparison to a competitor's product is neither defamatory nor misleading. There is no rule under Indian law that all of a product's features have to be compared in an advertisement. The court ruled that an advertisement can be considered deceptive if two conditions are met. To begin with, misleading advertising must deceive the individual who sees it. Second, the misleading advertising must be likely to alter the economic behaviour of the public to whom it is directed, or hurt a competitor of the advertiser, due to its deceptive nature.

### **CONCLUSION:**

Comparative advertising is permitted, according to the Court, if the following conditions are met:

- Goods and services that meet same needs or are used for the same purpose.
- At least one relevant piece of information (price can be included).
- The product's applicability is the same

The court held that the statements made when comparing a product to a competitor's product, must not be defamatory, libelous, ambiguous, or misleading. The Court also states that the comparative advertisement does not directly indicate a particular amount of disparagement. In light of the findings, the court held that it is permissible for an adviser to highlight a product's unique characteristic that distinguishes it from its competitors and to make a valid comparison.

The Court further stated that while mere trade puffery is disturbing to the registered proprietor, the advertisement does not constitute trademark infringement.