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HIGH COURT OF DELHI LAYS DOWN PRINCIPLES RELATING TO AWARD OF DAMAGES

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On 22 April 2019, the Hon'ble High Court of Delhi delivered a landmark judgment in the case of *Koninlijke Philips NV & Anr v Amazestore & Ors*, (CS(COMM) 737/2016) along with another connected matter with regard to infringement of design, infringement of copyright, passing off and unfair competition. The judgment laid down the basic principles to be followed while awarding damages in cases of infringement of intellectual property.

BACKGROUND

Koninlijke Philips NV (Phillips) filed two suits for infringement of registered design, infringement of copyright, passing off and unfair competition against Nova Manufacturing Industries, BESTCO LLC and Omni Exim Private Limited (Defendants) with regard to the registered design, trade dress and product literature of Phillips's beard trimmer.

The Defendants were the manufacturers, importers and distributors of the infringing products i.e. beard trimmers being sold under the trademark NOVA. Phillips claimed that the Defendants' beard trimmers were an imitation of the shape and configuration of Philips' beard trimmers. It further claimed that the Defendants were copying the packaging as well as product literature being sold along with the Phillips' beard trimmer.

As the Defendants had failed to comply with injunction orders passed against them in the past, Phillips submitted that the misconduct of the Defendants in the present suit was manifold and the Defendants had earned massive profits by violating the intellectual property rights of Phillips. Accordingly, Phillips was claiming both actual as well as aggravated damages.

JUDGMENT

The Delhi High Court, after observing that the beard trimmers being sold by the Defendants very closely resembled the beard trimmers being sold by Phillips held that the Defendants were liable for infringement of the registered design of Phillips and also for infringement of copyright, passing off and unfair competition.

The Delhi High Court, with regard to compensatory damages, relied upon the its earlier judgement in *Inter Ikea Systems BV & Anr v Sham Murari & Ors*, (2018 SCC OnLine Del 11221) wherein compensatory damages were awarded considering the judgement in *Hindustan Unilever Limited v. Reckitt Benckiser India Limited* (2014 (57) PTC 495 [Del] [DB]) and agreed that a conservative margin of 20% profit being earned by the

Defendants could be assumed in the present suits. In view of the same, the Delhi High Court awarded compensatory damages of INR 2,15,71,000 to Phillips.

The Delhi High Court, with regard to aggravated damages, relying upon the judgements in *Rookes v Barnard*, [1964] 1 All ER 367 and *Cassell & Co Ltd v Broome* (1972 AC 1027) held that the degree of misconduct by Defendants in a civil suit was determinative of the nature of relief to be granted. Hence, applying the aforesaid principles, it was held that the following rule of thumb should be followed while granting damages in cases of intellectual property infringement: -

	Degree of mala fide Conduct	Proportionate award
➤	First-time innocent infringer	Injunction
➤	First-time knowing infringer	Injunction + Partial Costs
➤	Repeated knowing infringer which causes minor impact to the plaintiff	Injunction + Costs + Partial damages
➤	Repeated knowing infringer which causes major impact to the plaintiff	Injunction + Costs + Compensatory damages
➤	Infringement which was deliberate and calculated (Gangster/scam/mafia) + wilful contempt of court.	Injunction + Costs + Aggravated damages (Compensatory + additional damages)

In light of the aforesaid principle, as the evidence in the present suit clearly showcased high profits enjoyed by the Defendants and a clear mala fide on their part, the Delhi High Court awarded aggravated damages of INR 1 Crore to Phillips.

COMMENT

The Delhi High Court, through this landmark judgment has clarified the law relating to grant of compensatory damages in cases of infringement of intellectual property. The Delhi High Court, by providing a concise and simplified table, has given a roadmap for other courts to grant compensatory damages in cases of clear mala fide and egregious infringement. The aforesaid clarification may lead to damages being granted to plaintiffs in more cases and hence may create a deterrent effect to infringers looking to ride on someone else’s intellectual property. However, it would be advisable to treat the above mentioned chart as only illustrative and the courts must feel free to deviate from the same in case of good reasons (as specified by the Delhi High Court in the present judgement), as each case of grant of damages has to be seen on its own facts.

- Ajay Bhargava (Partner), Ankur Sangal (Principal Associate) and Sucheta Roy (Senior Associate)

For any queries please contact: editors@khaitanco.com

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Mumbai

One Indiabulls Centre, 13th Floor
Tower 1 841, Senapati Bapat Marg
Mumbai 400 013, India

T: +91 22 6636 5000
E: mumbai@khaitanco.com

New Delhi

Ashoka Estate, 12th Floor
24 Barakhamba Road
New Delhi 110 001, India

T: +91 11 4151 5454
E: delhi@khaitanco.com

Bengaluru

Simal, 2nd Floor
7/1, Ulsoor Road
Bengaluru 560 042, India

T: +91 80 4339 7000
E: bengaluru@khaitanco.com

Kolkata

Emerald House
1 B Old Post Office Street
Kolkata 700 001, India

T: +91 33 2248 7000
E: kolkata@khaitanco.com