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Analysing developments impacting business

ADVERTISEMENT IN ELECTRONIC MEDIA HAS AN INDELIBLE IMPRESSION IN THE MINDS OF VIEWERS

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On 14 May 2020, the Learned Single Judge of the Hon'ble High Court of Delhi delivered a landmark judgment in the case of *Horlicks Limited & Anr. v Zydus Wellness Products Limited* (CS(COMM) 464 of 2019). The Learned Single Judge, after a thorough examination of precedents relating to trade mark disparagement, restrained Zydus Wellness Products Limited (Zydus) from telecasting a television commercial (TVC) for its product COMPLAN which was disparaging Horlicks.

BACKGROUND

In around July 2019, Zydus had launched a TVC wherein it had compared 1 cup of Complan with 2 cups of Horlicks, leading to disparagement of Horlicks. The said TVC was telecast on various television channels in various languages including English, Bengali and Tamil. A screenshot of the impugned TVC is as follows:



Aggrieved by the same, Horlicks filed a suit against Zydus seeking to restrain the telecast of the impugned TVC. Horlicks submitted that the first impression that the impugned TVC gave was that 1 cup of Complan was overall as good as 2 cups of Horlicks, which was completely misleading due to the different nutrient composition and the serving sizes of the products. It was further submitted that even though there was a disclaimer in the impugned TVC clarifying

the same, the impugned TVC was merely 6 seconds long and the disclaimer did not form a part of the voice over in the TVC, which added to the misleading nature of the TVC.

Zydus, on the other hand, submitted that the information given in the impugned TVC was factually correct and it was perfectly within its rights to compare the products on the basis of serving size, which was a relevant factor of comparison. Hence, Zydus submitted that the impugned TVC was neither misleading nor disparaging.

JUDGMENT

The Hon'ble Court, after taking into consideration the law regarding comparative advertising restrained Zydus from telecasting the impugned TVC and held that the electronic medium was a very powerful medium of communication and left an indelible mark on the mind of the viewer. In view of the same, as the impugned TVC was only 6 seconds long and had no voiceover with regard to the disclaimer in reference to the serving size, the impugned TVC was clearly misleading and disparaging. The impugned TVC would only show a comparison between 1 cup of Complian with 2 cups of Horlicks, without any reference to serve size. The Hon'ble Court further held that the balance of convenience was in favour of restraining the impugned TVC as television viewership is continuous and on daily basis and hence every new person who views the impugned TVC would be misled.

COMMENT

The law relating to comparative advertising has established that advertisements can no longer be false, misleading, unfair and deceptive. The yardstick to be applied to television advertisements is also stricter, as electronic media has a far greater impact on the public as in the minds of the viewer as compared to print media. The Hon'ble Court, in the present judgement has reaffirmed the said legal propositions, leading to further clarity in the law.

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