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BOMBAY HIGH COURT IN A LANDMARK DECISION RESTRAINS REVIEW VIDEO BY YOUTUBER AND EMPHASIZES ON RESPONSIBLE USE OF THE POWER OF SOCIAL MEDIA

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In *Marico Limited v Abhijeet Bhansali* (Notice of Motion No 1094 of 2019 in COMIP No. 596 of 2019), the Bombay High Court (Court) has passed a landmark order directing removal of a Youtube "review" video titled "Is Parachute Coconut Oil 100% Pure?" by a social media influencer/v-blogger Abhijeet Bhansali (Defendant) under the alias "Bearded Chokra" regarding Marico's Parachute coconut oil.

Background

In February 2019, Marico Limited (Plaintiff) filed a suit along with a motion seeking interim reliefs against the Defendant who had created and posted a video about the Plaintiff's Parachute Coconut Oil on his Youtube Channel on the grounds that the content of the video was disparaging, denigrating and misleading in nature and also made unauthorized use of the Plaintiff's registered trademarks.

The Plaintiff had initially issued a cease and desist notice to the Defendant recording its objections to the content of the video and calling upon him to take down the video. The Defendant offered to delete certain portions of the video, justified some portions and, also made an offer to amend the video subject to certain conditions that were not acceptable to the Plaintiff. Accordingly, the suit was filed on the grounds that the said video was fraught with reckless, false and disparaging statements targeted against the Plaintiff's popular Parachute coconut oil and the grounds that the Defendant had sought to provide incorrect, unsubstantiated and misleading information to the viewers with a view to influence them into believing that the Plaintiff's product was of an inferior quality and/or inferior to other oils. The Plaintiff contended that the video was published by the Defendant in the course of his trade and occupation as a youtuber/blogger, the manner, intent and storyline of the video was meant to disparage the product of the Plaintiff and had caused special damage to the Plaintiff and constituted the tort of slander of goods and disparagement. Furthermore, the Defendant also promoted rival/competitive products in his video. He sought to attract viewers by using the goodwill and reputation of the Plaintiff's product and made monetary gains by diverting his viewer traffic to online retail sites for purchase of various other rival products (which purchases would entitle the Defendant to a commission) as well as by seeking monetary donations/sponsors for his channel.

The Defendant contended that the said video constituted his *bonafide* opinion, inter alia, as a consumer and was protected under the fundamental right to freedom of speech and expression. It was the Defendant's case that he was not a trader or

competitor of the Plaintiff; the video was his attempt at educating the customers regarding the quality of coconut oils and that the consumers were entitled to exercise their judgement. He also sought to argue the Bonnard Principle, that the content in the video was based on research and material and that once he claimed truth/justification as a defense, no injunction ought to be granted without a trial.

Decision

Whilst there have been orders in the past wherein social media influencers have been restrained from publishing certain videos, such matters have not been contested. The decision in this case is a landmark decision and is first of its kind since the matter was contested and a detailed reasoned interim order has been passed by the Court after considering the detailed submissions on various issues from both parties. The Court has held that the Defendant's video was created and published without exercising due diligence or research and his statements in the video were made with recklessness, without caring whether they were true or false. The Court also found the Defendant knowingly made false representations to its viewers and that on counts more than one, it had become evident that the Defendant's video reeked of malice. The said video, the Court observed, caused special damage to the Plaintiff since it appeared to have induced some customers into not purchasing the product of the Plaintiff as was evident from comments posted on the impugned video. The Court held that the Plaintiff had satisfied all the tests to establish a case for slander of goods, malicious falsehood and disparagement, and it did not matter that the Defendant was an individual and not a competitor. The Court further held that the Defendant's video, under the garb of educating members of the public, was essentially targeted at the Plaintiff's product and contained misleading information which disparaged and belittled the said product. The video also made unauthorized use of the Plaintiff's registered trademarks in a manner which was detrimental to its distinctive character or reputation and was not in accordance with honest practices in industrial or commercial matters, held the Court. As regards the argument of freedom of speech, the Court held that the right was not unfettered and could not protect reckless statements. The Court also held that the Bonnard Principle was not applicable to the facts of the case since the Defendant had not been able to prima facie show *bonafide* and the comparison shown in the video was not justified on the material placed before the court. The Court further observed that the principle was applied in cases of defamation (and not in cases of disparagement) and in the context of the erstwhile jury system in the UK, but was no longer applicable even in the UK after the Defamation Act, 2013 came into force and the jury system came to an end for such matters. It held that the principle could also not therefore, be applied in the Indian context to the present case. Before parting with the judgement, the Court also opined that, with the advent of internet and social media platforms; social media influencers powerfully impact the lives of their viewers and people at large and also stressed on the responsibility they have to ensure what they are publishing is not harmful or offensive. The Court accordingly directed the Defendant to take down the video and remove it from Youtube and any other platform in any medium whatsoever. Khaitan & Co represented Marico in the matter.

Comment

Whilst the decision does not bar review videos and video blogs, decision comes as an important breakthrough in this age where internet is commercialized and used as an impactful and powerful mode of communication. Reasonable limitations and responsibility have now been placed on those reaping benefits from internet influencing and social media influencing. Some set of guidelines are thus available to ensure that the internet and social media platforms are not misused by individuals (and not only competitors) to the detriment of others.

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