



WEB COPY



O.A.No.1050 of 2023
in C.S.(Comm.Div.) No.305 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 23.02.2024

Pronounced on : 15.03.2024

CORAM : JUSTICE N.SESHASAYEE

O.A.No.1050 of 2023
in C.S.(Comm.Div.) No.305 of 2023

TTK Prestige Limited
First Floor, 91, Santhome High Road
Santhome, Chennai - 600 028.
Represented by its Constituted Attorney
Mr.G.Ramesh Babu

Having Corporate Office at No.1/1 and 1/2
Nagarjuna Castle, Wood Street, Ashok Nagar
Richmond Town, Bengaluru - 560 025.

... Plaintiff

Vs

Versuni India Home Solutions Limited
(Formerly known as Philips Domestic Appliances)
III Floor, Tower A, DLF IT Park
Bloc AF Major Arterial Road
New Town (Rajarhat)
Kolkatta, West Bengal - 700 156.

... Respondent

PRAYER : Complaint filed under Order IV Rule 1 of O.S. Rules and Order VII Rule 1 of CPC read with Section 7 of the Commercial Courts Act, 2015, praying to grant a judgement and decree on the following terms :

(a) permanent injunction restraining the defendant, their management,



WEB COPY



O.A.No.1050 of 2023
in C.S.(Comm.Div.) No.305 of 2023

- members, affiliates, directors, servants, officers, employees, representatives, agent and all other persons claiming under them or acting in concert with them or on their behalf or acting on their instructions from telecasting, broadcasting, publishing, disseminating or otherwise communicating to the public in any manner, any advertisement or any part thereof in any language or any other representation or in any other manner or part thereof in any language to be telecast or broadcast or communicated to the public or published in any manner which directly or indirectly or in any manner, disparages and/or denigrates the plaintiff's Svachh Pressure Cooker and/or the category of goods to which it belongs;
- (b) the defendant be ordered to pay a sum of Rs.10,00,000/- or such other sum as this Court may deem fit and proper as damages for committing acts of disparagement and denigrating the plaintiff's goods;
- (c) an order directing the defendant to delivery up to the plaintiff for destruction, all master tapes, CDs, DVDs or nay other copies/material containing the disparaging advertisements;
- (d) for entire costs of the suit; and

For Plaintiff : Mr.P.S.Raman, Senior Counsel
Assisted by Mr.Arun C.Mohan

For Defendant : Mr.Satish Parasaran, Senior Counsel
Assisted by Mr.K.Premchandrar
Ms.Chitra Subbiah, Ms.Shree Vengat
of M/s.Anand and Anand

JUDGMENT



O.A.No.1050 of 2023
in C.S.(Comm.Div.) No.305 of 2023

The present suit is laid for permanent injunction seeking to restrain the defendant from telecasting, broadcasting, publishing, disseminating or otherwise communicating to the public in any manner, any advertisement or any part thereof in any language or any other representation or in any other manner or part thereof in any language to be telecasted or broadcasted or communicated to the public or published in any manner which directly or indirectly or in any manner, disparages and/or denigrates the plaintiff's 'Svachh Pressure Cooker' and or the category of goods to which it belonged.

2.1 The defendant is a plaintiff's competitor which trades in the same class of goods as the plaintiff. This litigious battle is an off shoot of what the plaintiff claims as an unprovoked advertisement-assault on its product by the defendant. For appreciating the cause of action for the suit and for the present application, it is necessary to state the following facts:

- a) The plaintiff is a manufacturer *inter alia* of pressure cookers. It is a pioneer in the field with considerable market presence for its goods. While so, it came out with a new model pressure cooker with a newly designed lid and its features is explained below:
 - The design of almost every pressure cooker of every manufacturer will have at least two common features in its lid. It will have a



WEB COPY



O.A.No.1050 of 2023
in C.S.(Comm.Div.) No.305 of 2023

safety valve, and a pressure vent. The pressure vent is managed with the help of a weight. It is placed to increase the internal pressure inside the container of the cooker by locking the steam generated within it. This in turn will reduce the boiling point of the water inside the cooker and helps it to reach its saturation temperature faster.

- Ordinarily, when the pressure inside the cooker increases beyond a certain level, it escapes or tries to escape through the safety valve or through the pressure vent (where weight is placed). And, at times it escapes with some steam and forms forth like spillage around the pressure vent. In case the escaping steam is excessive, it may spread all around the lid and even spill on the stove.
- To negotiate it, the plaintiff has found a chef-friendly solution to have designed a chef-friendly lids for its pressure cookers. It has now created a circular ridge along the periphery of the lid of the cooker by creating a depression around the pressure vent and up to the edge of the lid. Now the top of the lid will look like a small plate fused to the lid. It is intended to ensure that the spillage escaping through the pressure vent or the safety valve does not spill over and run along the sides of the container of the cooker



O.A.No.1050 of 2023
in C.S.(Comm.Div.) No.305 of 2023

and/or on to the stove. In other words, the spillage that escape through the pressure vent or the safety valve will stay on the top of the lid and the design of the lid will hold the spillage as if it is a circular plate with a ridge around its periphery. The plaintiff calls its pressure cooker as '*Svachh Pressure Cooker*'

- b) The defendant is a competitor to plaintiff's product. To address the same issue of spillage escaping through the safety valve and the pressure vent, the defendant has developed its own design by which it created a dismantlable dome-like thing, which when fitted to the top of the lid of its cooker, will ensure that the spillage through the pressure vent and the safety valve of the lid of the cooker stays there.
- c) The significance of the solution which both the parties have found thus addresses a single issue of pressure-vent-spillage of a pressure cooker spoiling cooker or the stove.

2.2 The plaintiff is stated to have applied for patenting what it believes as an invention, and it is being opposed by the defendant herein, which however is not this court's concern now. The issue here relates not to the design of the petitioner's pressure cooker's lid or any invention as the plaintiff claims, but is about how the defendant tried to advertise its product. The defendant has



O.A.No.1050 of 2023
in C.S.(Comm.Div.) No.305 of 2023

WEB COPY

come out with a promotional video for advertising its product wherein it claims that its product (the cooker-lid with the dome like accessory) is the only spillage-free cooker. And, to establish its relative advantage over other pressure cookers and to demonstrate the superiority of its own product, the defendant chose to compare it with the plaintiff's pressure cooker, its pride - the *Svachh Pressure Cooker*. The portion of the video clipping to which the plaintiff takes objection runs barely for few seconds, and it shows excessive forth like spillage around the pressure vent of the plaintiff's *Svachh Pressure cooker*, which appears to make the cooker lid messy, and it proceeds to show how the plaintiff's pressure cooker looks neat. The particular objectionable video shot is still-pictured below:



2.3 Except this one shot where the defendant compares its cooker with that of the plaintiff's, the plaintiff takes no objection to the defendant's advertisement video. The plaintiff therefore has moved this court with the



O.A.No.1050 of 2023
in C.S.(Comm.Div.) No.305 of 2023

WEB COPY

present suit for a prohibitory injunction that the defendant be restrained from advertising in any manner whatsoever which disparages and denigrates the plaintiff's *Svachh Pressure cooker* good and for damages. Along with the suit, the plaintiff had filed the present application seeking an interim injunction along the lines it had prayed for in the suit. Earlier, when the suit was moved, this court, vide its order dated 13.12.2023, has passed an exparte order of interim injunction directing the defendant not to display the shot explained above.

3.The defendant had entered appearance and had filed its counter. Its core grounds of defense are:

- (a) that the defendant has a right to make a comparative advertisement, and the same is protected under Article 19(1)(a) of the Constitution of India.
- (b) that the impugned advertisement complies with Regulation 1 of the Advertising Standards Council of India Regulations (ASCI Code).
- (c) that nowhere the defendant has named plaintiff's product for its comparative assessment.
- (d) that the advertisement is intended to educate the consumers.
- (e) when the plaintiff came out with its '*Svachh Pressure Cooker*', it



WEB COPY



O.A.No.1050 of 2023
in C.S.(Comm.Div.) No.305 of 2023

came out with a similar advertisement for promoting its product wherein it had used the pressure cooker of another competitor and hence, the plaintiff is estopped from showing an accusing finger on the defendant.

(f) that the cooker in comparison is not subject to any design registration.

4. Mr.P.S.Raman, the learned senior counsel argued that one's right to advertise one's product cannot involve denigration of another. In other words, promotion of one's goods must be on its own inherent strength and it can never be attempted to be achieved by showing another's product in poor light. So far as the present case is concerned, even though the defendant has not referred to the plaintiff's cooker by name for the purpose of comparison to project the advantages of its own product, yet the design of the cooker which it has put up for comparison is far too evident as it fits exactly with the design of applicant's '*Svachh Pressure Cooker*'. Arguing further, the learned counsel submitted that while the defendant has its fundamental right to expression and also right to advertise, it shall be confined to projecting the positives of its own product, even if it includes a bit of puffing, but shall



O.A.No.1050 of 2023
in C.S.(Comm.Div.) No.305 of 2023

WEB COPY

not show the product of a competitor in poor light. Let the defendant scale up its sales through its strength but not by denigrating the plaintiff's product.

And, there the law draws the line. Reliance was placed on the ratio in *Timothy White Vs Gustav Mellin* [1895] AC 154 HL; *Knupffer Vs London Express Newspapers Ltd.* [1944] A.C. 116; *De Beers Abrasive Products Ltd. and Ors. Vs International General Electric Co. of New York Ltd.* [1975] 1 W.L.R. 972; *Hindustan Unilever Ltd., Vs Reckitt Benckiser (India) Ltd.* [2014(2) CHN(CAL) 1]; *Reckitt & Colman of India Ltd Vs M.P. Ramachandran and Ors.* [1999 PTC(19) 741]; *Dabur India Ltd. Vs Colortek Meghalaya Pvt. Ltd. and Ors.* [167 (2010) DLT 278(DB)]; *Reckitt Benckiser Health Care (India) Pvt. Vs Emami Ltd. and Ors.* [2015(4) CHN (CAL) 19]; *Annamalayar Agencies Vs VVS & Sons Pvt Ltd & Ors.* [2008 (38) PTC 37]; *Reckitt Benckiser (India) Pvt Ltd Vs ITC Limited* [2022 (3) CTC 601; and *Gillette India Limited Vs Reckitt Beckiser (India) Private Limited* [2018 SCC Online Mad 1126].

5. Arguing for the defendant/respondent, Mr.Satish Parasaran, the learned senior counsel, argued that it is permissible in law not only to make a comparison between one's product with a similar product of another for trade promotion, but it is also permissible in law to name the very product



O.A.No.1050 of 2023
in C.S.(Comm.Div.) No.305 of 2023

WEB COPY

which is compared. Even the plaintiff has fairly conceded this proposition in its rejoinder, still it continues to harp on its initial allegation that the advertisement of the defendant/respondent is disparaging. Terming the plaintiff to be hypersensitive, the learned counsel submitted that unless the defendant's advertisement depicts any false or inaccurate visuals or statements vis-a-vis the functionality of the plaintiff's product, the latter cannot take any exception to the same. So far as the present case is concerned, it is true the plaintiff has developed a pressure cooker with a mild depression on its lid. *Stricto sensu*, this cannot be claimed to be a design for it to be registered under the Design Act, since it merely intends to serve a function. Indeed, even the plaintiff projects what it claims to be its design is intended to serve a certain function. So far as the alleged disparaging advertisement is concerned, the defendant has not named the plaintiff, and de hors it, the shot where the comparison is made involves only shows the relative functional superiority of the defendant's solution to the pressure-vent-spillage issue over other cookers in the market, which necessarily includes the plaintiff's pressure cooker and nothing more. In other words, no words are spoken, and no visuals are shown to deliberately project or promote denigration of plaintiff's product. Reliance was placed on the



O.A.No.1050 of 2023
in C.S.(Comm.Div.) No.305 of 2023

authorities in ***Tata Press Ltd. Vs Mahanagar Telephone Nigam Limited & Others*** [(1995) 5 SCC 139]; ***Pepsi Co., Inc. and Ors. Vs Hindustan Coca Cola Ltd. and another*** [(2003) 27 PTC 305]; ***Colgate-Palmolive (India) Ltd., Vs Anchor Health & Beauty Care Private Ltd.,*** [2008-4-L.W.628]; ***Dabur India Ltd., Vs Colortek Meghalaya Pvt. Ltd.,*** [(2010) 42 PTC 88]; ***Reckitt Benckiser Healthcare India Private Limited Vs Cipla Limited*** [(2020) 5 LW 881]; ***Reckitt Benckiser (India) Private Limited Vs The Advertising Standards Council of India and another*** [Order in O.A.Nos.563 & 564 of 2023 in C.S.No.110 of 2023 dated 16.11.2023]; ***MS Kent RO Systems Ltd Vs The Advertising Standards Council of India, through its General Secretary & Others*** [Order in CS(OS) No.44/2024 dated 18.01.2024]; ***Reckitt Benckiser (India) Pvt. Limited and another Vs Wipro Enterprises (P) Limited*** [2023 SCC OnLine Del 2958] and ***Tata Sons Private Limited and another Vs Puro Wellness Private Limited and another*** [2023 SCC OnLine Del 6338].

6. The point in legalese terms is whether the particular shot in defendant's advertisement video vis-a-vis comparing its product with the plaintiff's product *prima facie* constitutes injurious falsehood as to warrant an order of



O.A.No.1050 of 2023
in C.S.(Comm.Div.) No.305 of 2023

WEB COPY

interim injunction against the defendant from displaying the said shot in its promotional video of its pressure cooker? To state it differently whether the advertisement which according to the plaintiff is disparaging to its good constitutes slander of plaintiff's good as to constitute the triple criteria necessary for grant of interim injunction?

7. To answer and decide the said question, this Court deems it appropriate to extract the relevant paragraphs of the ratio laid down in the case of ***Colgate-Palmolive (India) Ltd., Vs Anchor Health & Beauty Care Private Ltd.***, [(2008) 4 LW 628]. In the said case, this Court, after comprehensively considering the legal position of disparaging advertisements within and outside India, came to the conclusion that:

“67(2). To permit 2 rival traders to indulge in puffery, without denigrating each other's product, would benefit both of them, but would leave the consumer helpless. If on the other hand, the falsity of the claim of a trader about the quality and utility value of his product, is exposed by his rival, the consumer stands to benefit, by the knowledge derived out of such exposure. After all, in a free market economy, the products will find their place, as water would finds its level, provided the consumers are well informed. Consumer education, in a country with limited resources and a low literacy level, is possible only by allowing a free play for the trade rivals in the advertising arena, so that each exposes the



O.A.No.1050 of 2023
in C.S.(Comm.Div.) No.305 of 2023

WEB COPY

other and the consumer thereby derives a fringe benefit.

Therefore, it is only on the touchstone of public interest that such advertisements are to be tested. This is why the Supreme court held in Tata Press case that “Public at large is benefited by the information made available through the advertisement.” As a matter of fact the very basis of the law relating to Trade Marks is also the protection of public interest only, since the courts think of an unwary purchaser, who may buy a spurious product on the mistaken impression that it was brand ‘x’. The same logic should form the basis for an action in respect of disparaging advertisements also...

68 (g) An advertisement which tends to enlighten the consumer either by exposing the falsity or misleading nature of the claim made by the trade rival or by presenting a comparison of the merits (or demerits) of their respective products, is for the public good and hence cannot be taken to be an actionable wrong, unless 2 tests are satisfied namely (i) that it is motivated by malice and (ii) that it is also false. This is on account of the fact that a competitor is more well equipped to make such an exposure than anyone else and hence the benefit that would flow to the society at large on account of such exposure, would always outweigh the loss of business for the person affected. If 2 trade rivals indulge in puffery without hitting each other, the consumer is misled by both, unless there is increased awareness or Governmental intervention. On the other hand, if both are restrained from either making false representations/incorrect representations / misleading representations or issuing unintended warranties (as defined as



O.A.No.1050 of 2023
in C.S.(Comm.Div.) No.305 of 2023

WEB COPY

unfair trade practice under the Consumer Protection Act), then the consumer stands to gain. Similarly, permitting 2 trade rivals to expose each other in a truthful manner, will also result in consumer education.”
(emphasis supplied)

The authorities relied on by the rival parties repeatedly lay stress on the need for simultaneous compliance of three fundamental indicators for establishing injurious falsehood, and they are:

- a) That the statement about plaintiff's good, made in whatever form must be false;
- b) that the statement is disparaging to the plaintiff' good; and
- c) that it caused special damages to the plaintiff.

This implies that all those instances which illustrates the maxim *damnum sine injuria* - damage without a legal wrong, may not merit consideration as constituting a cause for an action. To this may be added the fundamental right to free speech of any trader to promote its product, where truth can be a defence .

8. In the instant case the defendant, while admitting that it had made a video to promote its product has compared it with its rival's product, first claims that it does not name the plaintiff, that even if the defendant's advertisement



O.A.No.1050 of 2023
in C.S.(Comm.Div.) No.305 of 2023

is considered as showing that the performance of plaintiff's product may not match the latter's claim, it is well within its right to show it as long as it is true. The advertisement shows that the forth still escapes from the pressure vent of a certain cooker, which even if it is presumed to be the plaintiff's cooker, it is not something which the plaintiff cannot disown. After all the solution which both the plaintiff and the defendant claim to have developed is only capable of managing the pressure-vent-spillage but not regulating and arresting the spillage. The plaintiff nowhere claims that what is shown in the advertisement as regards the plaintiff's cooker is either false or an impossibility. To state it differently, neither side has developed any mechanism to arrest the pressure-vent-spillage, but only appears to have found a solution to manage it. They do not deal with the theories of physics behind the working of the pressure cooker but has found a cosmetic solution to the common problem one faces while using cooker. Neither the ridge design of the plaintiff's lid, nor the dome design of the defendant's accessory hold the prospect of arresting the spillage. The emission of pressure-vent-spillage and its management by confining it to the top of the lid of the cooker are two independent aspects. While the science controls the former, the solution which the parties have come out with constitutes the later.



O.A.No.1050 of 2023
in C.S.(Comm.Div.) No.305 of 2023

WEB COPY

Therefore, pressure-vent-spillage is a reality in both the cookers, and hence how does a video showing the pressure-vent-spillage on the top of the lid of the plaintiff's pressure cooker may ipso facto amount to a false statement? This court therefore, does not find that the plaintiff has made out a strong *prima facie* case to constitute injurious falsehood. Necessarily this court cannot hold that the other two criteria required for grant of an order of interim injunction have been established by the plaintiff.

9. In conclusion, this court does not find merit in this application, and the same is dismissed.

15.03.2024

ds

N.SESHASAYEE.J.,

ds



WEB COPY



O.A.No.1050 of 2023
in C.S.(Comm.Div.) No.305 of 2023

Pre-delivery Judgment in
O.A.No.1050 of 2023 in
C.S.(Comm.Div.) No.305 of 2023

15.03.2024