

\$~16

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 10th October, 2018

+

CS (OS) 297/2018

AMWAY INDIA ENTERPRISES PVT. LTD.

..... Plaintiff

Through: Mr. Sudhir Chandra, Senior Advocate, Mr. Sohan Singh Rana, Ms. Priya Adlakha, Ms. Tulip De & Ms. Ruhee Passi, Advocates (M-9818202368).

versus

RAJENDRA MEDICOS & ORS.

..... Defendants

Through: Mr. Siddharth Batra, Mr. Ravinder Kumar, Ms. Garima Sehgal & Mr. Vishwajeet Arora, Advocates for D-1&2 (M-9953201386).
Mr. Sanjeev Chopra, Advocate.
Mr. B.P. Shukla & Ms. Neeru, Advs for D-4 with D-4 present in person.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. The Plaintiff is the wholly owned subsidiary of Amway Corporation, Michigan, USA. The Plaintiff's principal company had sought approval from the Government of India to establish and develop a direct selling business of products which were to be sourced from Indian manufacturers, especially small-scale units. Pursuant to the said proposal given to the Government of India, the setting up of the Plaintiff company was approved on 26th August, 1994. It is the case of the Plaintiff that it carries on manufacture and sale of various personal care and cosmetic products as also home care products, nutrition and supplements under the mark AMWAY.
2. The Plaintiff engages various direct contract sellers who conduct

direct selling business through a network. According to the Plaintiff, the direct sellers are bound by the '*Code of Ethics*' which is duly uploaded on the website of Amway i.e. www.amway.in. The salient features of the said Code are as under:

- Amway does not permit Direct Sellers to display/sell its products/literature through retail stores and e-commerce websites. (Section 4.3)
- The Direct seller shall deliver to the customer at the time of sale a written and dated order or receipt which shall:
 - a. Describe the product sold,
 - b. State the price charged,
 - c. Give the name, ADA number, address and telephone number of the selling Direct Seller,
 - d. Include Amway's customer Product Refund Policy, and
 - e. Include Amway's Complaint Redressal mechanism (Section 4.6)

3. The case of the Plaintiff is that the products sold by it in India are not for sale except through the direct selling mechanism wherein the contracted direct sellers visit the customers directly and sell the products. Its products cannot be sold from brick and mortar stores, outlets etc., In order to regulate the sale of its products, its direct sellers are given products which bear a unique code imprinted on the lid as also inside the silver foil packaging of the 'AMWAY' products. This ensures that if a product is found outside the permissible distribution channel, it can be traced back to the specific direct seller and appropriate action is taken, as per the contractual terms.

4. The Plaintiff states that its direct sellers are bound by the Model

Framework for Guidelines of Direct Selling, 2016 issued by the Government of India under the Consumer Protection Act, 1986, which regulates the sale of AMWAY products.

5. A perusal of the Direct Selling Guidelines, which have been placed on record, shows that as per the said guidelines, clause 7 requires that all sales must have the prior written consent by the direct selling entity which in this case is the Plaintiff. Clause 7 of the said guidelines is extracted herein below: -

“Clause 7: Conduct for the Protection of Consumer

- 1. Direct Sellers and Direct Selling Entity shall take appropriate steps to ensure the protection of all private information provided by a consumer;*
- 2. Direct Sellers and Direct Selling Entity shall be guided by the provision of the Consumer Protection Act 1986;*
- 3. All complaints received over phone, email, website, post and walk-in should have a complaint number for tracing and tracking the complaint and record time taken for redressal;*
- 4. Every Direct Selling company shall constitute a Grievance Redressal Committee whose composition, nature of responsibilities shall include but not limited to:*
 - a) The Grievance Redressal Committee shall consist of at least three officers of the Direct Selling entity;*
 - b) The Grievance Redressal Committee shall address complaints and inform complainants of any action taken;*
 - c) Complaints may be made by any member of the general public against a Direct Seller of the company, an employee or any other officer of the entity;*
 - d) All such grievances will be resolved directly by the Direct Selling Entity;*
- 5. The direct selling entity shall provide information to the*

consumer upon purchase which shall contain:

(a) the name of the purchaser and seller;

(b) the delivery date of goods or services;

(c) procedures for returning the goods; and

(d) warranty of the goods and exchange / replacement of goods in case of defect.

Provided that no Direct Seller shall, in pursuance of a sale, make any claim that is not consistent with claims authorized by the Direct Selling Entity.

6. Any person who sells or offers for sale, including on an e-commerce platform / marketplace, any product or service of a Direct Selling Entity must have prior written consent from the respective Direct Selling Entity in order to undertake or solicit such sale or offer”

6. The allegation of the Plaintiff in the present suit is that the Defendants are chemists who are selling ‘AMWAY’ products from their outlets/shops without the permission and consent of the Plaintiff. Further, the products are also tampered with, inasmuch as the unique selling code does not appear on some of the products being sold. When the Plaintiff became aware of these products being sold from various chemists’ shops located in Bhagirath Palace and Chandni Chowk in Delhi, the Plaintiff got an investigation conducted. The investigation revealed that the unique codes were not appearing on the products and the Defendants were not even honouring the 30 days return and refund policy, which is given to all ‘AMWAY’ customers. This, according to the Plaintiff, is not just violative of the Plaintiff’s rights in mark ‘AMWAY’ but it would also be violative of guidelines of the Government of India. Since the Plaintiff has assured the Government that it would be in full compliance of the direct selling guidelines of 2016, sale of these products from such stores would be exposing the Plaintiff to various regulatory issues. Moreover, the Plaintiff also apprehends a serious erosion

of its business and goodwill through such sales. Under such circumstances, the Plaintiff has filed the present suit.

7. On 1st June, 2018, this Court had granted an interim order in the following terms.

“In the circumstances, summons of the suit and notice of the injunction application is issued to the defendants through all modes returnable before the learned Joint Registrar on 05.09.2018 and in the meanwhile, the defendants as well as unidentified persons are restrained at Bhagirath Palace, Chandni Chowk, Delhi under John Doe order and their vendors, sellers, agents, servants, representatives and employees or any one claiming under them, directly or indirectly, from in any manner selling/purchasing/distributing the Plaintiffs 'Amway products' unauthorizedly and illegally through any wholesale/retail shops till the next date of hearing.”

8. The Defendants had, thereafter, entered appearance. Two further Defendants were impleaded owing to the reports of the Local Commissioner. The Defendants were directed to be present today.

9. The Defendants have brought all the seized products and the same have been seen by the Court. It is seen that while several products do bear the unique code on the top of the lid, there are a number of products which do not bear the unique code. The statements of the Defendants have been recorded. The Defendant's statements reveal that the entire purchase made by them is clandestine in nature. The Defendants are unable to produce any invoices showing the purchase of these products nor are they able to clearly disclose as to how these products are passing through the various distribution channels and reaching them. The Defendants, in their statements, have disclosed the names of some of the sellers from whom the products have been sourced. The same have been duly recorded. All the

Defendants have agreed not to sell 'AMWAY' products from their shops and have also agreed to suffer a permanent injunction. The Defendants have, further, surrendered the seized products to the Plaintiff's representative.

10. While it is the oral submission of learned counsel for the Defendants that the Plaintiff is well aware of the loopholes in its distribution network and is turning a blind eye to it, there is no evidence to support this submission. Direct sellers of AMWAY are bound by their '*Code of Ethics*' and various guidelines which are applicable to them. Selling of AMWAY products outside the Direct Selling Network would not just be contrary to the Code of Ethics for Direct Sellers, but also could be argued as being violative of the Direct Selling Guidelines. The effect of the said Code and Guidelines would be considered in an appropriate case.

11. Since several of the products do not bear the unique code, the same constitutes impairment/tampering as well. The question of exhaustion of trade mark rights in the context of Direct Selling Guidelines and the Code of Ethics is not being gone into in the present case, in view of the stand of the Defendants. In the present case, the principle of exhaustion would also not be applicable, inasmuch as, the Defendants have not been able to establish that the products, which were seized, are in fact genuine. They are also unable to show the proof of purchases of these products.

12. The statements of the parties - Mr. Nawal Kwatra, Mr. Madan Lal Khurana, Mr. G.S. Sabharwal and Mr Mukesh Batheja have been recorded today. Mr. Rajendra Shanker Pandey, Legal Manager, Amway India is also present in Court and his statement has also been recorded. Mr. Pandey submits that he is duly authorised by a Power of Attorney to make a

statement on behalf of the company. Let a copy of the said Power of Attorney be filed within ten days from today.

13. The Defendants have stated that they had purchased the products seized in their premises from various sellers who portrayed themselves as Direct Sellers of Amway. Further they have agreed not to sell Amway products in future and have also agreed to surrender all the seized products to Amway. None of the Defendants had any proof of purchase, proof of payment or even an invoice to establish the said purchases made by them. As per the Code of Ethics sales require all the details to be mentioned including the kind of product sold, price charged, name and other contact details of the direct seller, warranty in terms of the refund policy of Amway. In the absence of the same, source of the products are completely suspect.

14. In view of the statements of the Defendants, the Plaintiff is willing to forego the relief of damages/rendition of accounts as also costs. Under these circumstances and owing to the statements recorded today, the suit is liable to be decreed.

15. In the facts and circumstances of the present case, the suit is decreed in terms of paras (a) and (b) of the prayer. The Defendants have already disclosed the names of the direct sellers who had supplied the goods to them, with their mobile numbers. Prayer (c) also stands satisfied. Reliefs of damages and costs etc. are given up by the Plaintiff. Decree sheet be drawn.

16. Suit is disposed of. All pending IAs are also disposed of.

PRATHIBA M. SINGH
JUDGE

OCTOBER 10, 2018

Rahul/Dk