

## A Soapy Conflict

The COVID-19 lockdown in almost every country keeping people in confinement did not deter two leading FMCG contenders approach the Bombay High court.

In the last week of March 2020, the Bombay High Court saw its first COVID-19 related misleading advertisement dispute as the court heard a suit filed by Hindustan Unilever Limited (“Plaintiff”) for disparagement and infringement of trademark/copyright against Reckitt Benckiser (India) Private Limited (“Defendant”) alleging that the Defendant displayed an advertisement of their product “Dettol” conveying that the Plaintiff’s product “Lifebuoy” is ineffective for Covid-19.

### Brief Facts of the case:

The advertisement clearly stated that the Defendant’s “Dettol Hand Wash” is better as compared to other soap bars when used for washing hands, which is a necessary precaution for tackling COVID-19. First, the Plaintiff claimed that the Defendant’s “Dettol Hand Wash” advertisement disparaged and blurred the image of the Plaintiff’s “Lifebuoy Soaps Bars” by presenting a soap with the same shape, configuration and red colour, in the advertisement, as that of the Plaintiff “Lifebuoy Soaps Bars” for which the Plaintiff has a registration. The Plaintiff also claimed that the Defendant copied the Plaintiff’s advertisement which was put out earlier. The Plaintiff stated that while their initiative to promote the awareness of COVID – 19/Novel Coronavirus, the Plaintiff published an advertisement wherein it tried to encourage the general public to wash hands on a regular basis by using their product “Lifebuoy Soaps Bars” and also other soaps. The Plaintiff clearly, in the interest of the public, indicated in their advertisement, published in January 2020, that any soap can be used for cleaning purposes and not just their product “Lifebuoy Soaps Bars”. The Plaintiff came out on the platform to unite and strengthen all soap brands together, when the world is struggling to control Coronavirus outbreak. Moreover, the advertisement by the Plaintiff was not just to vocalise and endorse its own product, it was more of a social directive to the society that washing hands with soap and water is one of the essential and most effective ways to protect oneself from the novel virus.



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The Plaintiff claimed that on March 12, 2020, the Plaintiff saw Defendant's "Dettol Hand Wash" advertisement through which the Defendant disparaged and blurred the image associated with the Plaintiff's "Lifebuoy Soap Bars".

The Plaintiff claims that red colour soaps shown in the Defendant's "Dettol Hand Wash" advertisement, which have a similar configuration and shape to that of the Plaintiff's "Lifebuoy Soap Bars", were shown to be ordinary in nature and completely ineffective/useless for tackling COVID-19.

Furthermore, Defendant's "Dettol Hand Wash" advertisement mentioned that the said product gives "10x better protection" than the red colour soaps shown in the said advertisement, which have a similar configuration and shape to that of the Plaintiff's "Lifebuoy Soap Bars".

The Plaintiff further claimed that in lieu of the WHO's guidelines the use of soap and water for regular handwashing is sufficient and the Defendant's "Dettol Hand Wash" advertisement allegedly creates a scare amongst the general public by falsely propagating that other soap bars are ineffective.

The need of the hour is to band together and join forces to fight the pandemic disease and not to paralyze the public by false propagating that only certain brand soaps are effective and others aren't.

The Defendant temporarily agreed to take down the "Dettol Hand Wash" advertisement till the next date of hearing.

## **Advertisement guidelines as per the Maharashtra COVID-19 Regulations, 2020**

Also in the present scenario the any advertisements shown during the present times require prior clearance.

The Maharashtra COVID-19 Regulations, 2020 requires every person/ Institution/ organization using print or electronic or social media for dissemination of any information regarding COVID-19 to ascertain the facts and obtain prior clearance of the Commissioner, Health Services, Director of Health Services (DHS-I & II), Director, Medical Education & Research (DMER), or Collector as the case may be. This has been issued since it is considered to be necessary to avoid spread of any unauthenticated information and/or rumours regarding COVID-19/Novel Coronavirus. If any person/ Institution/organization is found indulging in such activity, it would be treated as a punishable offence under these Regulations.

The Maharashtra COVID-19 Regulations, 2020 further state that any person/Institution/organization found violating any provision of these Regulations would be deemed to have committed an offence punishable under Section 188 of Indian Penal Code, 1860. Section 188 of the Indian Penal Code prescribes punishment for disobeying any order duly promulgated by a public servant.

The Empowered Officers defined under the Maharashtra COVID-19 Regulations, 2020, may penalize any person/ institution/organization found violating provisions of these Regulations or any further orders issued by Government under these Regulations.

Another law in force at the moment is the Disaster Management Act, 2005. The COVID – 29 outbreak comes under the ambit of a Disaster as per the definition given under the said Act, 2005. The term Disaster means any catastrophe, mishap, calamity or grave occurrence in any area, arising from natural or man-made causes, or by accident or negligence which results in substantial loss of life or human suffering or damage to, and destruction of, property, or damage to, or degradation of, environment, and is of such a nature or magnitude as to be beyond the coping capacity of the community of the affected area. The aforesaid act clearly deals with the offences and penalties, which includes that any false warning or alarm as to disaster or its severity or magnitude, leading to panic, shall on conviction, be punishable.

Here, the “Dettol Hand Wash” advertisement allegedly created a scare amongst the general public by falsely propagating that other soap bars are ineffective during the ongoing outbreak of COVID – 19. The Defendant has done well in removing the advertisement as continuing the same would have given the authorities under the aforesaid legislation to take appropriate penal action. Nevertheless, it remains to be seen what relief the court grants to the Plaintiff in terms of damages claimed by it.

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