

ODC-2

IA NO: GA/1/2023
CS/41/2023
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE
[Commercial Division]

DABUR INDIA LIMITED
VS
DHRUV RATHEE AND ORS.

BEFORE:

The Hon'ble JUSTICE RAVI KRISHAN KAPUR

Date : 15th March, 2023.

Appearance:

Mr. Sudipta Sarkar, Sr. Adv.

Mr. Debnath Ghosh, Adv.

Mr. Sudhakar Prasad, Adv.

Mr. Pradipta Bose, Adv.

Mr. Biswarup Mukherjee, Adv.

...for the petitioner

Mr. Utpal Bose, Sr. Adv.

Mr. Phiroze Edulji, Adv.

... for the respondent nos. 2 and 3

1. This is a suit for protection of the intellectual property rights of the petitioner.
2. The petitioner is a leading manufacturer and distributor of Fast Moving Consumer Goods. The petitioner manufactures and markets products under its house mark Dabur. The petitioner also manufactures and sells fruit juices and ready to serve beverages under the brand name Real. The petitioner has spent huge sums in advertising products sold under the brand name Real and has also earned tremendous goodwill and reputation both in the domestic and the international market. The petitioner is also the registered

proprietor of the trademark 'REAL', 'REAL FRUIT POWER', 'FRUIT POWER', 'REAL ACTIVE' wordmark, logos and labels in class 32 which have continuously and uninterruptedly been used by the petitioner.

3. The respondent no.1 is a social media influencer and claims to be a "YouTube educator" having a YouTube channel by the name of "Dhruv Rathee" at URL:<https://www.youtube.com/@dhruvrathee/featured>. The respondent no.1 also claims to have a number of followers and is also active on Facebook, Twitter, Instagram. The respondent nos. 2 to 4 are social media platforms.
4. On 14 February, 2023 the defendant no.1 had uploaded a video (the impugned video) on its you tube channel at URL: <https://www.youtube.com/watch?v=Y-k2eaDcyqo> which has a duration of 21 minutes and 59 seconds. It is contended that the impugned video is specifically aimed at denigrating and disparaging packaged fruit products. A story board of the entire English transcript of the impugned video is also annexed to the pleadings.
5. The grievance of the petitioner is that the impugned video makes unfair comparisons between carbonated soft drinks and RTS fruit beverages. Moreover, there is an unfair comparison made between the fresh fruit juices and RTS fruits beverages. The overall impact of the impugned video is to generically disparage all packaged drinking fruit juices. It is also contended that consumption of packaged fruit juices leads to type 2 diabetes. The impugned video also conveys to the public that drinking packaged fruit juices leads to hair loss and is harmful if consumed. In short, the impugned video advises consumers

not to consume packaged fruit juices and strongly recommends not to give packaged fruit juices to children.

6. It is also alleged that the impugned video makes a clear, direct and brazen reference to the products sold under the brand name “Real”. The petitioner also alleges that the respondent no.1 has deliberately and mischievously partially blurred the registered mark/logo “Real Fruit Power” and directly targeted the petitioner’s product thereby tarnishing its reputation. The respondent no.1 has also used slides in the impugned video from the petitioner’s promotional advertising videos which are easily relatable by the consumers at large to the product Real.
7. By a letter dated 15 February, 2023 the petitioner had complained to the respondent no.2 with a request to remove the impugned video. By its reply dated 17 February, 2023, the respondent no.2 refused to accede to the request of the petitioner. Subsequently, on 18 February, 2023 the respondent no.1 had also posted the impugned video on his Facebook page.
8. The respondent no. 1 is not represented. The respondent nos.2 and 3 are represented and do not make any submissions insofar as the merits of the impugned video are concerned.
9. Although the right of the petitioner to seek recourse to law cannot be questioned, the interests of the consumer and the public must be safeguarded and respected. Dissemination of information through any medium or platform is a modern day reality. The only caution which a defendant ought to bear in mind is whether the publication falls

within the four corners of law. In such circumstances, what has to be balanced is the right of the consumer to be made aware vis-a-vis the right of any manufacturer not to be ridiculed.

10. Article 19(1) (a) of the Constitution guarantees freedom of speech and expression. The principle of freedom of expression protects both information and ideas. The obstruction to free speech, expression, creativity and imagination is restricted only to the limited extent as enshrined in Article 19(2) of the Constitution.
11. The impugned video shows an earlier advertisement which had been aired by the petitioner in respect of its product Real and also shows the petitioner's product Real in a blurred manner. The product of the petitioner Real has been repeatedly targeted both overtly and covertly in the impugned video. Any consumer would understand that the product shown in the impugned video is that of the petitioner's product Real.
12. The respondent no.1 in publishing and circulating the impugned video has also contravened the provisions of section 29 (9) of the Trade Marks Act, 1999 and the Copyright Act, 1957. The unauthorized use of the packaging, label and logo of the product Real in the impugned video violates the trademark and copyright protection afforded to the petitioner and is impermissible.
13. Prima facie, at the ad interim stage even though the underlying intent of the impugned video may not be objectionable, in making repeated direct and brazen references to the product Real of the petitioner, the Lakshamanrekha or the Rubicon has been crossed. In my view, the

petitioner's product Real has been specifically targeted, denigrated and discredited in the impugned video. Accordingly, the petitioner has been able to make out a strong prima facie case on merits. The balance of convenience and irreparable injury is also in favour of orders being passed.

14. In view of the aforesaid, the respondent no.1 is permitted to air, circulate or upload the impugned video only after removing the offending portions in the impugned video which makes any reference to the petitioner's product Real and also not to make any use of the trademark, copyright content, trade dress, packaging label and logo of the petitioner's Real brand of products.
15. The respondent no.1 is directed to carry out the aforesaid changes within a period of 7 days from the date of communication of this order. In default, appropriate orders would be passed on the defendant nos.2, 3 and 4 to block the impugned video if necessary. Let this matter appear on 22 March, 2023. In the meantime, the petitioner is also directed to effect service afresh on the respondent no.1 and file an Affidavit of Service on the returnable date.

(Ravi Krishan Kapur, J.)