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THE CASE OF HAMDARD NATIONAL FOUNDATION V. HUSSAIN DALAL, 202 (2013) DLT 291 IS BEING REFERRED TO

~ *Mahima Gautam*

INTRODUCTION

Humdard National Foundation, the plaintiff, operates a highly renowned laboratory that specialises in the production of ayurvedic remedies. The foundation has been engaged in the business of ayurvedic preparations for over a century. The plaintiffs are said to have made significant contributions to society, which are well recognised both in India and globally. The cinematograph picture "YEH JAWANI HAI DEEWANI" has a conversation that is offensive and damages the reputation of the product "ROOH AFZA" belonging to the plaintiff. The plaintiff is the Hamdard National Foundation. The individual being accused is Hussain Dalal, who is the defendant in this case. The bench is presided over by the Honourable Mr. Justice Manmohan Singh, who is often referred to as Manmohan Singh or J. (Verbal)

CASE DETAILS

The plaintiff, Humdard National Foundation, operates a highly renowned laboratory specialising in the production of ayurveda remedies. They have been engaged in the ayurveda preparations industry for over a century. The plaintiffs are said to have made significant contributions to society, which are well recognised both in India and globally. Included in the list of goods listed are popular brands such as ROOH AFZA and Rogan Badaam Shrin.

- The plaintiffs argue that ROOHAFZA is one of the most renowned trademarks for sharbats. The trademark described above has been extensively used since 1907, and the trade mark

ROOHAFZA has been officially registered since 1945—before this country gained independence.

- The plaintiffs argue that ROOHAFZA is widely recognised and used in households in India and elsewhere, making it a well-known brand. ROOHAFZA, a popular sharbat in India and its neighbouring countries, is well recognised and considered an essential part of growing up in these regions.

Based on this information, the plaintiffs claim that the defendants have recently released the film YEH JAWAANI HAIN DEEWANI, which is now being shown in cinemas. The plaintiffs allege that this movie includes speech that unintentionally portrays the well recognised product ROOHAFZA in a manner that is detrimental to their interests as the proprietors. The plaintiffs have replicated the obscene lines from the movie to bolster their argument. The reproduction of these items is as follows: The son expressed his dissatisfaction by stating, "This Roohafza is highly unsatisfactory!" Mom reassured, "Everything will be fine!" Son: "This Roohafza is very bad." The plaintiffs contend that the mentioned dialogue between the mother and son in the film depicts a specific kind of household, wherein the mother endeavours to reassure her son that despite the difficulties he encounters, everything will turn out fine. In response, the son asserts that although circumstances may alter, ROOHAFZA will perpetually remain unfavourable. The plaintiffs contend that the verifiable reality of the product's popularity diverges significantly, since it has achieved widespread recognition and is highly regarded by a diverse array of users, spanning from affluent urban dwellers to rural residents. Therefore, the plaintiffs contend that the owner's stake would be negatively affected and that the plaintiffs' positive reputation and standing would unquestionably be injured by making a statement regarding the widely recognised product that has achieved such a strong reputation in the Hindi film industry that almost all Indian viewers would see.¹

PROBLEMS IN THE CASE

1. Has the reputation of the ayurvedic medicine Rooh-Afza been negatively affected by the film Yeh Jawani Hai Deewani?

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<https://lawsuitcasefinder.com/casedetail?id=U2FsdGVkX19XC1xqplo2u4jm0JKKeR0InuJxplo2vOXRNyDeUMGs5>

2.Does the film come within the scope of Section 29(9) of the Trademark Act1999?

PLAINTIFF'S ASSERTIONS

Mr. N.K Anand and Mr. Pravin Anand represented the plaintiffs and presented arguments. Mr. Anand argued that the movie's discussions may be legally pursued under both common law and laws, and their inclusion would unquestionably damage the plaintiffs' reputation and positive public perception. Mr. Anand has relied on the standards of commercial disparagement, which are widely accepted in the realms of commercial speech and advertising. These criteria establish that no trader or merchant has the right to assert that a competitor's products are inferior or of poor quality. Mr. Anand said that since the movie is a commercial venture and attracts a large audience, there is no justification for not applying the aforementioned principles to the discourse. Mr. Anand further said that the actor in the film, who is also marketing the PEPSI drink, is contradicting himself by delivering words in the movie that are harmful to the product. ROOHAFZA drink is detrimental to the client's best interests.

DEFENDANT'S ARGUMENTS

The defendants contended that Article 19 (1) guarantees freedom of speech and expression, asserting that every person have the right to express themselves. The presence of a purpose to mislead is not a necessary element of a passing off action, as has been established. Therefore, it is irrelevant whether a passing off is done with fraudulent intent or without intent, as long as it meets the legal and factual criteria for infringement. The state has the authority to pass laws that fairly limit the exercise of the rights provided by the subclause indicated above, particularly in relation to defamation and other related issues, as specified in Article 19 (1)(a) and Article 19 (2) of the Act. The legislation that bans verbal trademark infringement is a business law that prohibits unfair or deceptive commercial communication that might hurt the owner. It comes within the ambit of infringement and aims to prevent derogatory statements. The Supreme Court, under the authority of Honourable The presiding judge is Kuldeep Singh. In the case of Tata Press Ltd. v. Mahanagar Telephone Nigam Ltd. & Ors., it was determined that commercial speech that is unfair, untruthful, and deceitful may be restricted under Article 19(2) and is not protected by Article 19(1). This decision was confirmed by his Lordship at that time. The year

1995. Subsequently, the Court proceeded to assess the allowable scope of commercial speech in the latter portion of the ruling.

Ratio decidendi refers to the legal principle or reasoning that forms the basis for a court's decision in a particular case. The Honourable Bench stated that the Trademark Act of 1999 specifically includes provisions for the violation of a trademark. If said in public, it will be deemed an infraction. The Court cited Article 29 (9) and clarified that if a registered trademark is primarily composed of words, infringement may occur via either spoken use of those words or their visual depiction.

In this particular example, YEH JAWANI HAI DEEWANI is a film that uses cinematography to visually depict moving images accompanied by sound recordings and conversations. These elements are collectively given in the form of audio and video to a wide audience. The film is in violation of Section 29 (9) of the Trade Marks Act 1999 as it infringes upon a registered trademark via the use of spoken words and their visual depiction. The court cited the rulings in the case of Prakash Jha Productions v. Bata India Limited and Another, where the Supreme Court determined that the lyrics in question were derogatory and should have included a disclaimer clarifying that there was no intention to harm the reputation of individuals.

Regarding Tata Press Ltd. V. Mahanagar Telephone Nigam Ltd. is a telecommunications company. Abbreviation for "Ors." The Supreme Court ruled that misleading, unfair, and untruthful commercial communication may be regulated under the limitations outlined in Article 19(2). This is because Article 19(1) guarantees freedom of speech and expression, but this right is not unlimited and is subject to certain constraints. The Supreme Court has clarified that commercial communication that is deceptive, unfair, or misleading may be controlled or forbidden by the State under Article 19(2) of the Constitution. The court concurred that in the current instance, the cinematography film YEH JAWANI HAI DEEWANI contains lines that are offensive and defamatory, as well as visual depictions that are in bad taste. They were unnecessary and had the potential to damage and sully the reputation of the plaintiffs. At first glance, these objectionable talks are violating the rights of the complainant. However, because the picture has already been released in cinemas, the only protection that can be provided to the plaintiffs is to prevent similar acts from occurring in the future. The court ruled that the ruling does not apply to the theatrical distribution of the picture, since it has already been made available to the public. However, the defendants have the choice

to remove the objectionable phrases before releasing the home version or any other cable version of the film.²

ANALYSIS OF THE CASE

In this particular instance, the film YEH JAWANI HAI DEEWANI includes a conversation that harms the reputation of the plaintiff, who operates a well-known laboratory specialising in various ayurvedic remedies. The items are much sought after by Indian households. The film includes a disparaging comment about ROOH AFZA, which undermines the drink's reputation and appeal.

In this case, the court has ordered that it recognises the derogatory nature of the remark and its negative impact on the drink's popularity among the general public. The defendants should have included a disclaimer before making the remark. However, since the theatrical version of the drink has already been released in the country, the only protection that can be provided to the plaintiffs is to ensure that the defendants do not repeat such an act in the future. The defendants were instructed to make the home version or any other television version available by removing the offensive and inappropriate dialogues.

In my opinion, the words in the film that criticised the use of alcoholic beverages were offensive, since films that combine visual and auditory elements have the potential to sway public opinion. Article 19(1) of the Constitution of India guarantees the right to Freedom of Speech and Expression, although this right is not unlimited and is subject to certain limitations. The producers and filmmakers should possess a comprehensive understanding of the limitations imposed on freedom of speech and expression. The Court's conclusion on the current issue was praiseworthy and positive. Given that the plaintiff's laboratory has been in operation for almost a century and its products enjoy widespread popularity and public acclaim. Hence, the comments expressed in the film on ROOH AFZA were damaging the drink's brand. The court used a broad and flexible interpretation to Section 2 (2) and Section 29(9). The court's ruling is commendable and positive.

ANALYSIS OF THE CASE

² <https://www.casemine.com/judgement/in/63725f3f68ae7c3969ff9aa3>

The case of Hamdard National Foundation v. Hussain Dalal, 202 (2013) DLT 291 is being referred to.

Introduction:

The plaintiff, Humdard National Foundation, operates a highly renowned laboratory that specialises in the production of ayurveda remedies. They have been engaged in the business of ayurveda preparations for over a century. The plaintiffs are said to have made significant contributions to society, which are well recognised both in India and beyond. The cinematograph film "YEH JAWANI HAI DEEWANI" has a line that defames the plaintiff product "ROOH AFZA" and damages its reputation.

The plaintiff is the Hamdard National Foundation. The individual being accused is Hussain Dalal, who is the defendant in this case. The bench is presided over by the Honourable Mr. Justice Manmohan Singh, sometimes referred to as Manmohan Singh or J. (Verbal)

CASE FACTS-

The plaintiff, Humdard National Foundation, operates a highly renowned laboratory that specialises in the production of ayurveda remedies. They have been engaged in the business of ayurvedic preparations for over a century. The plaintiffs are said to have made significant contributions to society, which are well recognised both in India and globally. Included in the list of goods listed are popular brands such as ROOH AFZA and Rogan Badaam Shrin.

- The plaintiffs argue that ROOHAFZA is one of the most renowned trademarks for sharbats. The specified brand has been extensively used since 1907, and the ROOHAFZA trademark has been officially registered since 1945—before the independence of this country.
- The plaintiffs argue that ROOHAFZA has become a well-known brand in India and globally, thanks to its extensive use, popularity, and consumption. ROOHAFZA, a popular sharbat in India and its neighbouring countries, is well recognised and considered essential for anybody growing up in the region.

Based on this information, the plaintiffs claim that the defendants have recently premiered the film YEH JAWAANI HAIN DEEWANI, which is now being shown in cinemas. The plaintiffs allege that this movie includes speech that unintentionally portrays the well recognised product ROOHAFZA in a manner that is detrimental to their interests as the proprietors. The plaintiffs have replicated the obscene lines from the movie to bolster their argument. The reproduction of the items is as follows:

The son expressed his dissatisfaction with Roohafza, stating that it is quite mediocre. Mom reassured, "Everything will be fine!" Son: "This Roohafza is very unpleasant."³ The plaintiffs contend that the exchange depicted in the movie between the mother and son represents a specific type of household, where the mother attempts to reassure her son that everything will be fine despite the difficulties he encounters. In response, the son asserts that although circumstances may alter, ROOHAFZA will consistently be unfavourable. The plaintiffs contend that the verifiable reality of the product's popularity is markedly distinct, since it has achieved widespread recognition and is highly esteemed by a diverse spectrum of customers, spanning from affluent urban dwellers to rural residents. Therefore, the plaintiffs contend that the owner's stake would be negatively affected and that the plaintiffs' positive reputation and standing would unquestionably be injured by making such a statement against the widely recognised product that has acquired such a strong reputation in the Hindi film industry that almost all Indian viewers would see.

PROBLEMS IN THE CASE-

1. Has the reputation of the ayurvedic medicine Rooh-Afza been negatively affected by the film Yeh Jawani Hai Deewani?
2. Does The number the film come within the scope of Section 29(9) of the Trade Mark Act 1999?

PLAINTIFF'S ASSERTION

Mr. N.K Anand and Mr. Pravin Anand represented the plaintiffs and presented arguments. Mr. Anand argued that the movie's chats might be subject to legal action based on both common law and statute. He believed that included these conversations would certainly damage the plaintiffs' reputation and positive public perception. Mr. Anand has relied on the standards of commercial disparagement prevalent in the realms of business speech and advertising, which assert that no trader or merchant has the entitlement to assert that a competitor's products are inferior or awful. Mr. Anand said that since the movie is a commercial venture and attracts a large audience, there is no justification for not applying the aforementioned principles to the

³ <https://vlex.in/vid/hamdard-national-foundation-anr-546025546>

discourse. Mr. Anand further said that the actor in the film, who is also advertising PEPSI, is contradicting himself by delivering lines in the movie that are harmful to the product. ROOHAFZA beverage to the detriment of his client's best interests.

DEFENDANT'S ARGUMENTS

The defendants contended that Article 19 (1) guarantees freedom of speech and expression, affirming that every person have the right to express themselves. The presence of a desire to mislead is not a prerequisite for a successful passing off action, as has been established. Therefore, whether a passing off is done with fraudulent intent or without knowledge of wrongdoing is irrelevant as long as it meets the legal and factual criteria for infringement. The state has the authority to pass laws that fairly limit the exercise of the rights provided by the indicated subclause in relation to defamation and other issues, as specified in Article 19 (1)(a) and Article 19 (2) of the Act. The legislation that bans verbal trademark infringement is a business law that prohibits unfair or deceptive commercial communication that might hurt the owner. It comes within the ambit of infringement and aims to prevent derogatory statements. The Supreme Court, represented by Honourable The presiding judge is Kuldeep Singh. In the case of Tata Press Ltd. v. Mahanagar Telephone Nigam Ltd. & Ors., it was determined that commercial speech that is unfair, untruthful, and misleading may be prohibited under Article 19(2) and is not eligible for protection under Article 19(1). This decision was made by Lord Diplock. The year 1995. Subsequently, the Court proceeded to assess the allowable scope of the commercial speech in the latter portion of the ruling.

RATIO DECIDENDI

The Honourable Bench stated that the Trademark Act of 1999 specifically addresses the infringement of trademarks. If said in public, it will be deemed an infraction. The Court cited Article 29 (9) and clarified that if the unique components of a registered trademark are words, then infringement may occur via either spoken use of those words or their graphic depiction. In this particular example, YEH JAWANI HAI DEEWANI is a film that uses cinematography to visually depict moving images accompanied by sound recordings and conversations. These elements are collectively given in the form of audio and video to a wide audience. The film is in violation of Section 29 (9) of the Trademarks Act 1999 as it infringes upon a registered trademark via the use of spoken words and their visual depiction.

The court cited the rulings in the case of Prakash Jha Productions v. Bata India Limited and Another, where the Supreme Court stated that the lyrics in question were derogatory and should have included a disclaimer clarifying that there was no intention to harm the reputation of individuals.

Regarding Tata Press Ltd. V. Mahanagar Telephone Nigam Ltd. is a telecommunications company. Abbreviation for "Orsini", a surname. The Supreme Court ruled that commercial communication that is misleading, unfair, and untruthful may be regulated under the limitations outlined in Article 19 (2), since Article 19 (1) guarantees the right to freedom of speech and expression, which is not absolute and is subject to some constraints. The Supreme Court has clarified that commercial communication that is deceptive, unfair, or misleading may be controlled or forbidden by the State under Article 19(2) of the Constitution. The court concurred that in the current instance, the cinematographic picture YEH JAWANI HAI DEEWANI contains lines and visual representations that are offensive, defamatory, and in bad taste. They were unnecessary and had the potential to cause injury and damage the character of the plaintiffs. At first glance, these objectionable talks are violating the rights of the complainant. However, because the picture has already been released in cinemas, the only protection that can be provided to the plaintiffs is the prevention of similar acts from occurring in the future. The court ruled that the ruling does not apply to the theatrical distribution of the picture, since it has already been made available to the public. However, the defendants are required to remove the objectionable phrases before releasing the home version or any other cable version of the film.

ANALYSIS OF THE CASE-

In this particular instance, the film YEH JAWANI HAI DEEWANI includes a conversation that damages the reputation of the plaintiff, who operates a well-known laboratory specialising in various ayurvedic remedies. The items are highly sought-after by Indian households. The film includes a disparaging comment about ROOH AFZA, which undermines the drink's reputation and appeal.

In this case, the court has ordered that it recognises the remark in question as derogatory and harmful to the drink's popularity on a large scale. The defendants should have included a disclaimer before making the remark. However, since the theatrical version of the drink has already been released in the country, the only protection that can be given to the plaintiffs is that the defendants will not commit such an act in the future. The defendants were instructed

to make the home version or any other television version available by removing the offensive and inappropriate dialogues.

In my opinion, the sentences in the film that criticised the use of alcoholic beverages were offensive, since cinematic films, which include both visual and auditory elements, have the potential to influence public opinion. Article 19 (1) of the Constitution of India guarantees the right to Freedom of Speech and Expression, although this right is not unlimited and may be restricted under specific circumstances. The producers and filmmakers should possess a comprehensive understanding of the limitations imposed on freedom of speech and expression. The Court's conclusion on the current issue was praiseworthy and positive. Given that the plaintiff's laboratory has been in operation for over a century and its products are well admired and valued by the general public. Hence, the comments expressed in the film on ROOH AFZA were damaging the drink's brand. The court used a broad and flexible interpretation to Section 2 (2) and Section 29(9). The court's ruling is commendable and positive.