

LEGALFOXES LAW TIMES

YET ANOTHER RECKITT CONTROVERSY: WAR BETWEEN DETTOL AND DEVTOL

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The cases on intellectual property are no less than a “war” being fought by various multinational corporate companies throughout the globe. So, *Reckitt Benckiser (India) Pvt. Ltd. vs. Mohit Petrochemicals Pvt. Ltd & Anr*¹. (DETTOL vs DEVTOL) can be considered to be one of the famous recent intellectual property law judgment been taken up by the Hon’ble Delhi High Court on 28th June 2020 by Hon’ble MR. Justice Rajiv Shakhder². This case deals with trademark infringement which is an important part of an intellectual property law violation. This case portrays that how the newly set up business of DEVTOL, a Hand Sanitizer Manufacturer Company, being unable to use their knowledge and principle of business skills for their success but hampering the reputation of others, goodwill, etc. in the market, by doing or portraying certain area of their business as per the other company runs which violated the trademark of DETTOL. Many new companies have come up in recent past with their motive of cheating that has been depicted with times and now in various recent judgments. The logic revolving the idea of such infringement and affecting the goodwill of Dettol revolves around the Doctrine of Dilution.

In this case, the plaintiff is a well known anti-septic liquid seller which does its business under the trademark of Dettol the most famous anti-septic liquid being trusted and recommended by the Indian Medical Association who approached the Court of law for infringement of their trademark. The plaintiff approached the Hon’ble Delhi High Court seeking various reliefs against the infringement done by Devtol on their logo. Devtol on the Second Part a Hand

¹CS(COMM)No.141/2020 & I.A.Nos.4034-37/2020.

²ParthThummar. (Editor: Ekta Joshi), Delhi HC Imposes Rs. 1 Lakh Costs On 'Devtol' Hand Sanitizer Manufacturer In Trademark Infringement Suit By Dettol Soap [READ ORDER], Law Street Journal, <https://lawstreet.co/judiciary/devtol-hand-sanitizer-trademark-infringement-suit-dettol-soap> (14th June 2020)

Sanitizer Manufacturing company claims to give protection against the deadly coronavirus and was alleged to infringe the trademark of DETTOL by their logo. The plaintiff also claims for a permanent restraint to the defendant from infringing their trademark³. The plaintiff seeks for compensation for the violation of such infringement, being done to them and as the result of such infringement the former has suffered the due loss in their market stake among its customers and its reputation being lowered by such act on behalf of the defendant. The primary issue being put up is that whether the logo or the trademark of Devtol is as similarly deceptive as that of Dettol which leads to the dilution of the former mark i.e DETTOL. Here when the defendant was called up in an advance notice they stated that they have already taken steps to withdraw the infringing mark on their part.⁴ They also claimed that the agents and the dealers of the Devtol have been asked to withdraw the products of the infringement mark bearing of the former. The Hon'ble Delhi High Court after recognizing Dettol to be a reputed anti-septic brand manufacturing since 1933 passed a decree of a permanent injunction of the use of such mark and logo that of Devtol and ordered them to put off their remaining stock from the market at the earliest. The court on the other hand imposed a cost of ₹1,00,000/- to be deposited at Juvenile Justice Fund which is maintained by the Registrar General High Court New Delhi⁵.

In recent times, development in intellectual property law has taken a surge and amendments are also brought up in the Trademark Act 1958 which was replaced by the Trademark Act 1999 where the doctrine of dilution was introduced for better protection to trademark violation and infringement of the same. Trademark dilution is a trademark law concept that gives power to any famous, well-known trademark owner to forbid other from using his/her trademark in their products or services⁶. In other words, trademark dilution is nothing but giving power or empowering a famous trademark to protect itself from getting infringed by the other. Here in the

³ParthThummar. (Editor: Ekta Joshi), Delhi HC Imposes Rs. 1 Lakh Costs On 'Devtol' Hand Sanitizer Manufacturer In Trademark Infringement Suit By Dettol Soap [READ ORDER], Law Street Journal, <https://lawstreet.co/judiciary/devtol-hand-sanitizer-trademark-infringement-suit-dettol-soap> (14th June 2020)

⁴ParthThummar. (Editor: Ekta Joshi), Delhi HC Imposes Rs. 1 Lakh Costs On 'Devtol' Hand Sanitizer Manufacturer In Trademark Infringement Suit By Dettol Soap [READ ORDER], Law Street Journal, <https://lawstreet.co/judiciary/devtol-hand-sanitizer-trademark-infringement-suit-dettol-soap>(15th June 2020)

⁵ParthThummar. (Editor: Ekta Joshi), Delhi HC Imposes Rs. 1 Lakh Costs On 'Devtol' Hand Sanitizer Manufacturer In Trademark Infringement Suit By Dettol Soap [READ ORDER], Law Street Journal, <https://lawstreet.co/judiciary/devtol-hand-sanitizer-trademark-infringement-suit-dettol-soap> (15th June 2020)

⁶Anubhav Pandey, Introduction, The Doctrine of Dilution of Trademarks, <https://blog.ipleaders.in/doctrine-dilution-trademarks/#:~:text=Trademark%20dilution%20is%20a%20trademark,marks%20of%20the%20famous%20trademarks>, (15th June 2020)

above-mentioned case, it was proved that the principle of dilution is being violated by the later that is clear from the name and in the pronunciation and front design of the two said companies to be deceptively similar and both the logo appeared to be the same. Some cases regarding the same nature of the violation are quite noticeable in a court. While discussing the doctrine of dilution in trademark infringement cases certain essentials has to be kept in mind while deciding the same. The high court in the case of *ITC vs. Philip Morris Products SA &Ors*⁷ while referring to Section 29(4) of Trade Mark Act 1999 laid down certain essentials based on which the judgment was passed. First, the disputed mark is either similar or identical to the well known mark. Secondly, it was observed that the well-known mark has its reputation in the market. Thirdly, it must be taken into account that the use of the disputed marks was done without any specific grounds or reasons or by way of granting permission from the former. Lastly, the disputed mark is on the verge of drawing some undue advantages over the original or well-known mark in the market.

After considering such essentials the court observed that ITC has never used the mark on their cigarettes and ITC cannot be dragged to mid high priced cigarettes and hence the claim of trademark dilution cannot be entertained by the court of law and was dismissed⁸.

Nevertheless keeping in mind the requirements to prove the doctrine of dilution, the case of *Polaroid Corporation vs. Polarad Electronics Corporation* 287 F.2d 492 (1961) and *National Sewing Thread Co. Ltd. vs. James Chadwick and Bros* AIR 1953 SC 357 where it was held that the deceptively similarity can be well understood while stepping into the grounds of a purchaser, who is being an ordinary man with ordinary intelligence if gets confused between the two products of similar nature and is unable to distinguish between the two due to its similarity either in its logo or in its name and that can be called as deceptively similar⁹.

In the case of *Cadila Health Care Ltd. vs. Cadila Pharmaceuticals Limited* (2001) 5 SCC 73 the apex court of the country held a view that it is immaterial whether the parties to the case trade in

⁷ ITC LIMITED VS. PHILIP MORRIS PRODUCTS SA & ORS.2010 (42) PTC 572 (Del.)

⁸ Anubhav Pandey, , Introduction, The Doctrine of Dilution of Trademarks, <https://blog.ipleaders.in/doctrine-dilution-trademarks/#:~:text=Trademark%20dilution%20is%20a%20trademark,marks%20of%20the%20famous%20trademarks>, (16th June 2020)

⁹ Abhi Bansal, Concept of 'Deceptively Similar' in Indian trademark law: Starbucks v Sardarbuksh, <https://blog.ipleaders.in/concept-deceptively-similar-indian-trademark-law-starbucks-v-sardarbuksh/>, (16th June 2020)

a similar field or similar product or similar services but the main violation of trademark which arises in such situation is the word, labels, the extent to their similarity, similarity in their logo, etc.

In the case of *Apex Laboratories Ltd. vs. Zuventus Health Care Ltd. 2006 (33) PTC 492 (Mad.)*, the Madras High court passed a decree that the mark “Zinconia” is phonetically as well as visually not similar to that of “Zincovit” therefore there exist no grounds of confusion between the two and purchasers being a layman would not face any confusion in distinguishing between the same and hence no trademark has been infringed or violated on their part.

There exists a thin line of distinction between the Indian Court Judgement and US Court Judgement in respect of this doctrine. According to the Indian Court, the original mark or the injured mark must have a reputation in the market but according to the US Courts, the mark must be famous in the market. The Indian Courts have observed very lenient views regarding the matter of dilution of a trademark as compared to the US Courts. The degree of the rate of dilution of any mark is very high as per the US laws. The US Courts have given greater significance to the reputation of a particular mark. As a result of which the trademark dilution can take place only for those marks which are very “famous” and not only with the “reputation” in the market. For the same, the US Laws follow a specific legislation Trademark Dilution Revision Act of 2006 which clears about the concept of trademark dilution¹⁰. Whereas in the Indian laws a trademark gets diluted at a blow as it considers only the reputation of a mark in the market and not the degree of its popularity. There draws a thin line of distinction between a mark with “reputation” and a “famous” mark.

After all such controversy in the war that started between Dettol and Devtol comes to an end with the final verdict that was passed via video conference that the Devtol has to put off all its product from the market with the infringing mark and was also made liable for a fine of Rs. 1.00.000/- for the infringement of the trademark of Dettol which was proved after considering the facts and the rate of similarity based on the Doctrine of Dilution as per requirement. Thus, to

¹⁰Raja Selvam, Trademark Dilution in India, Types of Trademark Dilution, Trademark Dilution in India - Yes or No!, <https://selvams.com/blog/trademark-dilution-india/#:~:text=The%20Court%2C%20while%20referring%20to,essentials%20for%20dilution%20as%20under%3A&text=The%20judgment%20merely%20states%20that,mark%20must%20necessarily%20be%20famous.,> (18th June 2020)

conclude regarding the case of *Dettol vs. Devtol* it can be well inferred that trademark is utmost importance to a business and its protection is equally on the same foot of importance towards the corporate world. Doing business without any trademark is of great risk for the firm as there exists a clear notion of the newly grown-up business sectors to base its foundation of business policy and logo or name on any reputed business sector available in the market. Nowadays putting light on the objectives of the business sectors or companies already in the market is undoubtedly great corporate pressure which they face in the verge of their growth. It would be highly recommended on the part of the author that the local entrepreneurs should also be aware of the trademark registration and put an eye towards its protection while getting established in this highly competitive market. Hence the time has come to raise voice to be aware of Intellectual Property Rights available to an individual to reach the local entrepreneurs which will go along the path and would avoid the practices of such litigation and promote fair trade practices in the market as a whole.

