Commercial Disparagement: View of the Indian Judiciary

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Achuthan Sreekumar delves into Indian case law in his discussion on claims by right holders of commercial disparagement and tarnishment of brand equity in film and advertisements. There have been various instances before the Indian Courts where filmmakers have been hauled into courts by trademark right holders alleging commercial disparagement, infringement of registered trademarks, dilution and tarnishment of trademark, damage to reputation and tarnishment of brand equity, brand dilution, passing off etc. thereby seeking injunctive reliefs and damages. The case law discussed below illustrates how the Indian Courts have dealt with the aforesaid scenarios. This article is an attempt to examine the state of case law in India that addresses various aspects of trademark law such as commercial disparagement, infringement, passing off, dilution, tarnishment etc. and the affirmative defence of 'freedom of speech and expression' in the context of films and such other audiovisual works.

Commercial Disparagement and Advertisements

Reckitt & Colman of India Ltd v MP Ramchandran & Anr. – 1999 PTC (19) 741 The Court in this case laid down 5 principles which is the law in India pertaining to commercial disparagement. The essence of the principles are was that an advertiser can say that his goods are better than his competitors. However, he cannot say that his competitor's goods are bad as that shall amount to slandering or defaming the competitor and his goods. The Court in this case discussed the law pertaining to commercial disparagement and summarised this as under:

- A tradesman is entitled to declare his goods to be the best in the world, even though the declaration is untrue.
- He can also say that his goods are better than his competitors', even though such statement is untrue.
- For the purpose of saying that his goods are the best in the world or his goods are better than his competitors' he can even compare the advantages of his goods over the goods of others.
- He however, cannot, while saying that his goods are better than his competitors' say that his competitors' goods are bad. If he says so, he really slanders the goods of his competitors. In other words he defames his competitors and their goods, which is not permissible.

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