Delhi High Court passes summary judgment exercising its inherent powers

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Delhi High Court exercising its inherent powers passes summary judgment under the Commercial Courts Act in a trademark infringement suit. And in the process paves way for novel evidentiary proof to facilitate justice. Galderma (Plaintiff) has used the CETAPHIL trade mark internationally since 1950 in relation to a range of skin care products, which were introduced in India in 2001. In addition to this mark, its products bear a unique trade dress with a distinct layout, get up *et al*. In conjunction, the plaintiff also employs the 'Ellipses Device', a very distinctive feature in and of itself. It filed a suit in the Delhi High Court to restrain the defendant's use of the mark CETAVEL for skin care products . The mark had been objected to by the Registrar of Trade Marks for its similarity to the plaintiff's CETAPHIL mark. Moreover, the defendant's products were sold in a similar packaging and displayed a virtually identical trade dress which even included a reproduction of the 'Ellipses Device'. The court was of the view that the plaintiff was entitled to a decree under Order XIII-A of the Commercial Courts, Commercial Division and Commercial Appellate Division of the High Courts Act, 2015. The provision empowers the court to pass a summary judgment, without recording evidence, if it appears that the defendant has no real prospect of defending the claim.



Pictures of third party skin care products submitted by the plaintiff demonstrated their packaging, get up, layout and more were distinct from CETAPHIL, unlike defendant's bottle and mark. And the court noted that the defendant had not filed a written defence. It concluded the defendant to have "slavishly imitated the plaintiff's trade dress which demonstrates its mala fides." A permanent injunction was granted against the defendant's illegal use of Galderma's CETAPHIL trade mark and the distinctive trade dress and elements. The summary judgment under the Commercial Courts Act is a step in the right direction and demonstrates the Court's inclination to speedy and expeditious disposal of cases, in particular those where there is no contest. *Galderma S.A. v Velite Healthcare; before the Delhi High Court; summary judgment dated 31.7.2017*

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