



Injunction against misleading TV Advert Granted within one of Commencing Proceedings

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In a quick action before the Delhi High Court, Hamdard obtains injunction against defendant airing disparaging television advertisement. Vast potential for harm from social media and TV airings averted by order within one week of commencing proceedings. Hamdard Group, a household name in India, has been engaged in the manufacture and sale of Unani and Ayurvedic products, medicines, oils and more for more than 100 years. A popular product of Hamdard – ROGHAN BADAM SHIRIN – is a pure almond oil known for its high quality. Its [packaging](#) bears a unique and distinctive trade dress comprising an attractive colour combination of yellow with brown borders, layout and get-up with a prominent pictorial backdrop of shelled almonds. Hamdard is the proprietor of all associated trademark rights in the brand. It also owns the copyright in the trade dress of ROGHAN BADAM SHIRIN. Hamdard became aware of the defendant when it was alerted to an advertisement on television promoting its almond oil product under the name BADAM ROGHAN SHIRIN, aired in the first week of October. In the advertisement, a lookalike product packaging was shown with a voice message, delivered in Hindi by a celebrity known for advocating his healthy lifestyle. The message translates to:

"Save yourself from the loot/theft/robbery in the name of Badam Roghan Shirin"

The defendant had merely changed the order of the words to BADAM ROGHAN SHIRIN but was still infringing Hamdard's trademark ROGHAN BADAM SHIRIN. In essence, the message conveyed by the defendant was that Hamdard's product was of an inferior quality and overpriced – a mis-statement of fact made with malice. Apprehending that the advertisement that was being aired widely and repeatedly on various TV channels, would soon find its way on to [social media](#) platforms like Twitter and Facebook and websites like YouTube, causing irreversible harm to Hamdard's reputation. Hamdard initiated a civil lawsuit before the Delhi High Court immediately. The principal contention of Hamdard was that the defendant's [claim in its advertisement](#) was false, defamatory and not a fair comment. Given such a defamatory claim, any person of ordinary prudence would be discouraged from trusting and purchasing Hamdard's product. In a swiftly passed order, the Delhi High Court granted an ex parte interim injunction, and the defendant and all associated parties were restrained from screening, posting and broadcasting the advertisement through any media. *Hamdard National Foundation & anr v Divya Pharmacy; Before the Delhi High Court; order dated 13.10.2017*

