Disparagement issues in the world of advertising

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With the recent permissible limits of comparative advertising in the Horlicks case [***Horlicks Limited and Anr. v. Heinz India Private Limited CS (COMM) 808-2017***] putting the advertisers at ease, the Mumbai High Court has restrained Amul to run its original conflicting ice cream advertisement. This goes back to the long time ice cream war between Amul and Hindustan Unilever Ltd. (HUL) where HUL had contested that Amul is causing disparagement by putting across wrong information. The Court rejected Amul's contention that its commercial did not defame frozen desserts and has instructed for Amul to only release the advertisement by deleting the shots of vanaspati (vegetable oil) flowing in a cup with frozen dessert written on it..." With a quick review of cases such as ***Hamdard National Foundation & Anr. v. Divya Pharmacy order dated 13.10.2017*** and ***OLX India B.V & Anr. v. Cars24 Services Private Limited (unreported),*** a different outlook of the Courts may be looked into. While The Delhi High Court in the latter had restrained automotive e-commerce site Cars24 Services Limited from airing advertisements disparaging the services offered by OLX, it also granted an ex parte interim injunction in the former against Divya Pharmacy that was airing an advertisement for BADAM ROGAN SHIRIN which had an uncanny resemblance with ROGAN BADAM SHIRIN of Hamdard. The defendant and all associated parties were restrained from screening, posting and broadcasting the advertisement. Similarly, we have other examples of disparagement where certain advertisements were attributed to be removed/changed by the Indian courts such that in cases of ***Paras Pharmaceuticals Ltd. v. Ranbaxy Laboratories Ltd. AIR 2008* Guj 94** upholding Paras' rights in Moov and its color presentation and in ***Hindustan Unilever Limited v. Reckitt Benckiser India Limited RFA (OS) 50/2008*** for wrongful depiction of Vim in front of Dettol by degrading Vim as less than Dettol on unattended facts.

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