Landmark decision on the question of damages involving Philips

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"A highest ever quantum of damages has been awarded in a copyright & design infringement case in one of our landmark judgments. The matters dealt with issues pertaining to infringement of copyright, violation of trade-dress and piracy of Philip's registered design as vested in the Philip's Advanced Trimmer 3000 series. Amongst other aspects, this judgment passed by Justice Manmohan dealt with the issue of awarding aggravated damages, wherein the Court has taken into consideration the degree of misconduct by the Defendants in a civil suit while determining the nature of relief which should be granted by the Court to the Plaintiffs. This decision marks a foray into the legal era where deliberate and knowing infringers are severally punished for their infringing activities. Some important bearings of the case are reproduced herein below:

- **The degree of misconduct was severally high:**
- The Court took into consideration that the parties identified in the present suits were the main culprits of sourcing the infringing products all over the territory of India;
- The Defendants were members of a systematic, international criminal syndicate and were reaping massive profits at every stage where the infringing products were commercialized. These profits would be negligible in comparison to the quantum of damages awarded that the Defendants expected to be awarded against them;
- Despite the orders passed by the Court, the Defendants were clandestinely changing the model numbers of the trimmers and continued to violate the rights of the Plaintiff. Such actions amount to wilful contempt of the injunction orders passed by the Court;
- These Defendants chose not to appear before Court despite duly served summons. In fact, one of the Defendants even refused to accept the service of summons.
- The Defendants have violated the rights vested in multiple aspects of the Plaintiffs' intellectual property. The Plaintiffs instituted two civil suits before this Court alleging infringement of such rights.
- **The Plaintiffs are entitled to an award of compensatory damages:**
- The Court concurred with the calculations provided by the Plaintiff to determine the actual damages, i.e. the amount of loss which would be likely to be suffered by the Plaintiff on account of the infringing activities of the Defendants. These calculations were on the basis of the evidence filed by the Plaintiff before Court.

- The Court imposed compensatory damages in the tune of INR 69, 96,000 payable by Omni Exim Private Limited (i.e. the importer) and INR 1, 45,75,000 which are jointly and severally payable by Nova Manufacturing Industries Limited and BESTCO LLC (i.e. the manufacturers).
- **The Plaintiffs are entitled to an award of aggravated damages:**
- The most unique aspect of this case was the Court's analysis and ruling on the issue of aggravated damages. The Court held that the degree of misconduct by the Defendants in a civil suit is determinative to the nature of relief to be granted by a Court to the Plaintiffs. The degree of *mala fide* conduct has a direct impact on the quantum and nature of damages, which should be awarded in addition to a claim of actual/compensatory damages.
- To support its finding, the Court interpreted the decisions of the House of Lords in Rookes v. Barnard, [1964] 1 All ER 367 and Cassell & Co. Ltd. v. Broome, 1972 AC 1027.
- While assessing the aggravated damages which the Defendants should pay, the Court took into consideration that the total figure awarded should be in substitution for and not in addition to the smaller figure, yet the rounded total sum shall have to be calculated by adding an additional amount to the compensatory damages.
- In this decision, the Court bifurcated the degree of misconduct of different infringers against their proportionate award. While analysing the chart, the Court concluded that the compensatory damage awarded would be inadequate to punish the Defendants for their outrageous conduct. Therefore, to deter them from repeating it, the Court awards some larger sum, i.e. aggravated/exemplary damages.
- The Court awarded total aggravated damages in the tune of INR 1 crore (i.e. USD 142,930) against the identified Defendants.

The total cumulative relied awarded to the Plaintiff amounts to about INR 3, 15,71,000 (USD 451,244) [i.e. INR 1,19,96,000 (i.e. about USD 171,458) against the importer & INR 1,45,75,000 (i.e. about USD 208,320) against the manufacturers of the infringing product]. We trust that this judgement will enable us to curb the menace of wilful infringers & their contumacious acts at the grass-root level."
Team Anand and Anand: Pravin Anand, Vaishali Mittal, Siddhant Chamola and Vrinda Gambhir.

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