HERMES INTERNATIONAL & ANR. VS. RIYAAZ NASRUDDIN AMLANI & ORS.

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The Hon'ble High Court of Delhi has passed a public-spirited order in a contempt action instituted by Hermes International which concerns an Intellectual Property dispute, for the larger public good, in preference to the general practice of granting compensation. The contempt stems from a suit for permanent injunction filed by Anand and Anand on behalf of Hermes International, restraining infringement of trademark and copyright, passing off, disparagement, dilution, tarnishment, etc. in relation to its trademarks "HERMES", "duc-carriage with horse logo", copyright in the photographs of its advertising campaigns and trade dress in its "Evelyne Bag". The Defendant restaurant i.e. Social Goregaon in Mumbai, was found to be using and advertising the offending mark "HERPES" along with the identical "duc-carriage with horse logo" of Hermes, along with the photographs from Hermes's advertising campaigns and the Evelyne Bag as part of its restaurant decor. The said suit was decreed vide order dated February 28, 2019 in terms of the undertaking of Social that it is willing to remove the offending marks, photographs and bags, without prejudice to its rights and contentions. The undertaking was accepted by the Court and the parties were held bound by the same. Social was later found to be in breach of its undertaking by displaying in its show-window a red colored watch box with an identical "duc-carriage with horse logo" along with the offending mark "HERPES" in the same font size and style as HERMES, as a result of which, the contempt action was initiated against Social. It was the contention of Social that the display of the watch box with the offending marks was inadvertent and unintentional. The Hon'ble Delhi High Court has observed that visitors who have seen the offending mark "HERPES" with the duc-carriage with horse logo would recall the word "HERPES", perhaps with a distaste or degree of aversion because of the link with the skin disease. The Court has noted that "*The power of seemingly naughty or irresponsible suggestion can sinister to the well-cultivated image of quality and class; it can be ruinous to the brand itself. Therefore, the petitioners' discomfort, anguish and grievance must be remedied to some extent by the imposition of punitive costs.*" The Court has thus imposed a cost of INR 20 lacs on the Contemnors. These costs, with the consent of the parties, have been directed by the Court to be used towards benefits of adolescent girls. The Court has directed Social to:

1. Supply for 2 years, wholesome mid-day meals to 10 government schools and an NGO called "Bachhiyon Ka Ghar", in order to emphasize on the need for good nutrition for the development of healthy children;
2. Supply for 1 year, sanitary napkins for girls students in the aforementioned institutions on the 5th day each month, in order to assist and aid in the maintenance of health and hygiene of adolescent girls;
3. Install a Reverse Osmosis Water Purifier at the NGO "Bachhiyon Ka Ghar", in order to instil and emphasize the need for potable water;

4. Provide 20 tournament size footballs to each of the aforesaid institutions and to 20 more government schools, as Social chooses, in order to promote the spirit and fun of sports and to foster friendship and team-spirit on the playfield.

The order is highly admirable as it addresses the needs of young underprivileged girls in the country to foster their health, hygiene, nutrition, safety and overall development, by utilizing the costs granted to the Petitioner due to the acts of the Contemnors. Team Anand and Anand: Pravin Anand, Tusha Malhotra and Rashi Punia.

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