Division Bench of Delhi High Court allows Appeal of Hamdard Group of Companies

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The controversy relates to a word mark 'Sharbat DIL AFZA' registered by Sadar Laboratories which Hamdard claims infringes its trademark 'Sharbat ROOH AFZA'. In the well-known trademark ROOH AFZA case, the Division Bench of the Delhi High Court examined the scope of enhanced protection available to famous marks while deciding a dispute between Hamdard and Sadar Laboratories.

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The Division Bench of the Hon'ble Delhi High Court, *vide* Judgement dated 21st December, 2022 allowed the Appeal of the Hamdard Group of Companies. This Appeal had been filed by Hamdard challenging the impugned order passed by a learned Single Judge in the suit filed by Hamdard against Sadar Laboratories Pvt. Ltd. for Trademark Infringement and Passing Off.

The controversy in the present case relates to a word mark 'Sharbat DIL AFZA' registered by Sadar Laboratories under Classes 5 and 32, which Hamdard claims infringes its trademark 'Sharbat ROOH AFZA'.

In this well-reasoned judgement, which is bound to be lauded by trademark owners, the Division Bench comprising Hon'ble Mr. Justice Vibhu Bakhru and Hon'ble Mr. Justice Amit Mahajan delved into the various tests for determining similarity between competing marks and the resulting likelihood of confusion.

The Division Bench reiterated the well-known 'anti-dissection' rule as formulated for trademarks but also emphasized that it is not impermissible to examine the dominant portion of the mark for determining the overall commercial impression that a composite mark may carry.

Accordingly, holding the word 'AFZA' as forming a significant part of Hamdard's trademark, the Division Bench observed that the same was not in any manner descriptive of Sharbats or any of its any attributes. Further that this coupled with the fact that both the competing composite marks end with the 'AFZA' mark would lend an element of similarity to both the marks.

The Division Bench did not stop its analysis there but proceeded to determine whether the overall commercial impression of the impugned trademark would be confusingly similar. For this purpose, the Division Bench found it relevant to compare the trade dress of the competing products and held the two products to be similar in appearance. These similarities included the shape of the bottle, the

overall design of the bottle, the placement of the mark, the colorfully busy design of the label, all of which according to the Division Bench materially contributed to the overall commercial impression of the impugned trademark.

The most interesting aspect of the judgement was the Court's finding that the 'meaning' of a mark also leaves an impact in the mind of the public and the similarity in meaning may sometimes outweigh visual and phonetical differences. The Division Bench also stated that the mental impact of certain competing marks may be similar, despite their meaning not being identical. For instance, 'Blue Nun' as compared to 'Blue Angel' and 'Blue Chapel' for wines, all connote a similar mental impact.

Further, in the facts of the instant case, the learned Single Judge had held that there could be no confusion between the words 'ROOH' and 'DIL'. The Division Bench disagreed with this finding by holding that there was a close relationship between the meanings of the two words 'ROOH' and 'DIL' which translated into 'soul' and 'heart' in English. That the terms 'heart' and 'soul' are commonly used in conjunction and signify the 'essence' or 'core' of a matter.

The Division Bench therefore concluded that a person who looks at the Respondent's 'DIL AFZA' label mark may recall the label of the Appellant's 'ROOH AFZA' mark, especially since 'AFZA' is common to both of them and the words 'ROOH' and 'DIL' when translated in English are commonly used in conjunction.

Lastly, the Division Bench also held that the 'ROOH AFZA' trademark of the Appellant was a well-known trademark and that in cases involving a well-known trademark, the marks require higher protection. Also, since the product in question is a consumable item, available at a low price, the attention of the consumers to the said product and its get-up would at best be cursory.

The Division Bench also observed that the propensity for confusion on account of a similar meaning has to be understood in a wider sense. It is not essential that the competing brands be synonymous. Given that chords of memory are connected by association of ideas and subjects; a wider conceptual association between the meaning of the competing brands may be suffice to cause consumer confusion.

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