

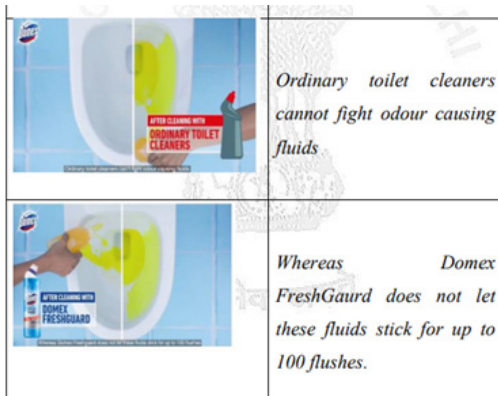
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Watch what you say: Free speech and disparagement in the digital age

By Lipi Parashar

In *Hindustan Unilever Ltd. v. Reckitt Benckiser (India) Pvt. Ltd.*, the issues of comparative advertisement were agitated in an appeal before a Division Bench (DB) of the Delhi High Court. In the appeal, the DB upheld a decision of the Single Judge Bench (SB). By the said decision, the SB had restricted Hindustan Unilever Limited (HUL), the defendant, from broadcasting its advertisements for the toilet cleaner under the trademark 'Domex' that contained references to the plaintiff, Reckitt Benckiser's (Reckitt), toilet cleaner 'Harpic'.

The dispute arose when HUL broadcasted a television commercial, aired three YouTube videos and issued a print advertisement to promote 'Domex'. These advertisements claimed that (i) Domex was better as its effect lasted longer than Harpic, (ii) Harpic is an ordinary toilet cleaner, effective only for one flush, (iii) Domex is effective for more than 100 flushes, and (iv) unlike Domex, ordinary toilet cleaners cannot combat bad odour. Reckitt claimed that the representation of the "ordinary toilet cleaner" in the advertisements was that of the Harpic bottle. Reckitt, therefore, argued that these commercials were misleading and disparaged its trademark Harpic.



The DB agreed with the SB and found that advertisements disparaged Reckitt's product by not only mentioning Harpic therein, but also depicting that a toilet bowl cleaned with Domex emanated fragrance while that cleaned with Harpic emanated a foul smell. It reiterated the well-established principle that, while an advertiser can indulge in puffery and hyperbole to reflect its product in a good light, it cannot claim that the product of its competitor is bad, substandard or its use would be detrimental to the interest or well-being of the customers.