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Case Comment on Amazon Seller Services Pvt. Ltd. & Ors. v. Amway India Enterprises Pvt. Ltd. & Ors. – Decoding the Direct Selling Guidelines and the Liability of E-Commerce Platforms

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ABSTRACT

The Hon'ble Single Judge of the Delhi High Court in July last year injuncted several e-commerce platforms such as Amazon and Snapdeal from selling the goods of the claimant on their websites.[1] The case of the claimants (Amway, Modicare, Oriflame) was such that they were Direct Selling Enterprises (DSEs) and selling of their goods as retail sales or e-commerce sales was a violation of the Direct Selling Guidelines (DSGs) of 2016. The learned Single Judge was of the opinion that the e-commerce platforms in addition to violating the DSGs, have also infringed the trademark of the claimants by selling their goods. The defendants were also held liable for tortious interference with the contractual relationships that the claimants had with their direct sellers. The present appeals are filed by the defendants - Amazon, Cloudtail and Snapdeal against the judgment passed by the Single Judge. This case comment gives a brief background by assessing the findings of the learned Single Judge followed by the issues in front of the Division Bench and the analysis of the upper Court's findings.

[1] Amway India Enterprises Pvt. Ltd. & Ors. vs. 1MG Technologies Pvt. Ltd. & Ors., MANU/DE/2146/2019

INTRODUCTION

This judgment[2] is of six clubbed appeals that lie against the judgment dated 8th July 2019 by the learned Single Judge of the Delhi High Court wherein the appellants/defendants (Amazon, Cloudtail & Snapdeal) had been injuncted from selling the products of the respondents/plaintiffs who claim to be Direct Selling Entities. Three of these appeals are filed by Amazon against Amway, Oriflame, and Modicare respectively. Two appeals are by Cloudtail against Amway and Oriflame. The last appeal is by Snapdeal against Amway.

A BRIEF BACKGROUND

The 8th July judgment returned an interim injunction ruling in favour of the plaintiffs (Amway, Oriflame, Modicare), injuncting the defendants from selling unauthorised items of the plaintiffs on their e-commerce platforms. The plaintiffs claimed that the selling of their products on the e-commerce platforms was done through a process that violates the Direct Selling Guidelines (DSGs) of 2016. They contended that the defendants were directly involved in the illegal selling of their goods through the e-commerce platforms which caused financial losses and reputational damage to them. The learned Single Judge found the defendants to be "massive facilitators" of the illegitimate business carried on in their websites and hence, barred them from availing the safe harbour provisions under Section 79(2)(c) of the IT Act. According to the Court, the DSGs were binding in law as it was issued and notified in terms of Article 77 of the Constitution and as it was the only document that regulated Direct Selling businesses. The Court also found the Defendants guilty of trademark dilution, passing off and misrepresentation. The Court also held that the continued sale of the products of the plaintiffs without their consent resulted in the breach of contract and tortious interference with contractual relationships of the Plaintiffs with their distributors.

ISSUES

1. Whether the DSGs were 'law' and whether suits could have been filed by the Plaintiffs for enforcing the DSGs?

[2] Amazon Seller Services Pvt. Ltd. & Ors. v Amway India Enterprises Pvt. Ltd. & Ors., http://164.100.69.66/jupload/dhc/SMD/judgement/31-01-2020/SMD31012020FAOOS1572019_122619.pdf

2. Whether the sale of Amway, Oriflame and Modicare products on e-commerce platforms amounted to infringement, passing off and misrepresentation of trademark?
3. Whether Amazon, Cloudtail and Snapdeal were in fact intermediaries within the meaning of Section 79 read with 2 (1) (w) of the IT Act?
4. Whether the platforms are guilty of tortious interference with a contractual relationship?

RULES

❖ Clause 7 (6) of the DSGs, which states :

"Any person who sells or offers for sale, including on an e-commerce platform/ marketplace, any product or service of a Direct Selling Entity must have prior written consent from the respective Direct Selling Entity in order to undertake or solicit such sale or offer."

❖ Section 79(2) of the IT Act, which reads:

"79. Exemption from liability of intermediary in certain cases:
(2) The provisions of sub-section (1) shall apply if—

(a) the function of the intermediary is limited to providing access to a communication system over which information made available by third parties is transmitted or temporarily stored or hosted; or
(b) the intermediary does not—
(i) initiate the transmission,
(ii) select the receiver of the transmission, and
(iii) select or modify the information contained in the transmission;
(c) the intermediary observes due diligence while discharging his duties under this Act and also observes such other guidelines as the Central Government may prescribe in this behalf.

❖ Sections 29 and 30 of the Trade Marks Act, 1999. (Not stated here for the sake of brevity.)

ANALYSIS

At the outset, the Court said that the plaints/suits filed by the respondents were not of a commercial nature as these suits were not of infringement or passing off. Also, none of the suits prayed a declaration that the DSGs were a binding law, neither was there any prayer to declare the defendants not to be "intermediaries" and beneficiaries of the "safe harbour provisions" under the IT Act. Thus, the Court observed at the first instance that the issues framed by the learned Single Judge "*traveled far beyond the pleadings in the suits*".

With respect to the first issue, the case of the Appellants is that they did not challenge the constitutional validity of the DSGs, their only submission was that these were mere guidelines which could not be characterized as law. To address this issue, the Court examined the formation and the character of these guidelines and held that these were not meant to be treated as law but were for the State Governments to adopt them into law. In the Court's opinion, they were only a model framework and were only "advisory" in nature. Hence, Clause 7(6) was held not to be binding on the parties. Since, the Court observed that the learned Single Judge erred in ruling the DSGs to be law, it did not find the issue of the DSGs to be violative of the fundamental rights guaranteed under Section 19(1)(g) to be pertinent.

To address the second issue, the Court looked into a lot of factors. The court looked into the interconnection between Amazon and Cloudtail, as the respondents argued that these two were a single business entity under a "corporate veil". The Court also looked into the applicability of the "Principle of Exhaustion" in this case and the conclusiveness of the LCs reports.

The Court was of the opinion that it was wrong to presume that Amazon & Cloudtail were the same entity and that the obligations of the latter would bind the former and vice versa. The Court held that the learned Single Judge erred in distinguishing the decisions in Kapil Wadhwa v Samsung by holding that the Principle of Exhaustion could not be invoked by the appellants. Hence, the Court was not able to concur with the view of the Single Judge that the appellants could not invoke the principle of exhaustion in terms of sub-sections (3) and (4) of Section 30 of the Trade Mark Act.

The Court also looked into the four LC reports that were relied on by the Single Judge. The Court was of the opinion that these reports were unhelpful in determining if any tampering of the products

of the respondents was done by the appellants. Therefore, it was held that the reports were insufficient to make specific conclusions regarding the impairment of the products by the appellants.

Thus, any possibility of trademark infringement or passing off was ruled out by the Court. It found the findings of the Single Judge with respect to trademark infringement outside the purview and scope of the pleadings and unsustainable in law.

The Court answered the question in the third issue in positive. Contrary to the learned Single Judge's finding, it held that the appellant/defendants fall under the category of "intermediaries" according to Section 79 read with Section 2(1)(w) of the IT Act. The Court held that the appellant, (i) do not initiate the transmission (ii) do not select the receiver of the transmission and (iii) do not select or modify the information contained in the transmission and hence, they meet the requirements of an "intermediary" and can avail the "safe harbour provisions".

With respect to the final issue, the court said that the tort of inducement to breach of contract necessitates a contract between the online platforms and the Direct Selling Entities in the first place. According to the Court, *"the mere fact that the online platforms may have knowledge of the Code of Ethics of the DSEs, and the contractual stipulation imposed by such DSEs on their distributors is insufficient to lay a claim of tortious interference."* Therefore, the Court did not concur with the finding of the Single Judge with respect to this issue as well.

The Court also held that the Learned Single Judge failed to establish the three elements to be considered for the grant of interim injunction. Since the DSGs could not be considered to be a binding law, there was no *prima facie* case against the appellants. Similarly, the Court held that the conclusion on the test of the *balance of inconvenience* was drawn upon by the Single Judge without proper examination. With respect to the *irreparable loss and injury*, the Court said that there was no empirical data placed before the Single Judge in support of their contention.

CONCLUSION

The Court was of the opinion that the learned Single Judge had unnecessarily gone beyond the pleadings of the suit to form the issues. The Court did not concur with any findings of the Single Judge either.

The judgment of the learned Single Judge was set aside. The application seeking interim injunction in the suits were dismissed. The appeals were allowed and the applications were disposed of with costs of Rs 50,000 in each of the six appeals to be paid by the respective respondents to the corresponding appellants.