

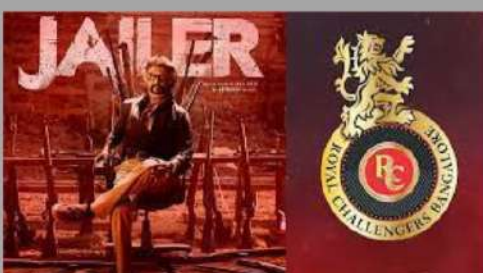
TRADE MARK

DISPARAGEMENT: A BATTLE BETWEEN RIVALRY & REPUTATION?

Pepsi vs. Coco Cola, Domex vs. Harpic, Daber vs. Colgate and so on, are some of the rival Corporate Company brands defeating each other in the Product market. Do these brands dishonour each other in the advertising media as well? Some claim it as Comparative Advertisement while others claim it as Product Disparagement. Disparagement is a marketing tactic used by businesses to promote their goods or services by contrasting them with competing goods of a similar nature on the market, by either taking a favourable or unfavourable stance against the other brands. Disparagement brings a detrimental effect on the rival brands.

Disparaging can be accomplished either directly or indirectly criticising competitor's products in the advertisement, in social media platforms and the vigilance of brand protection has penetrated to movies illustrating the brand logo or trademarks.

In a recent case between **Royal Challengers Sports Private Limited v Sun Pictures**, where the plaintiff discovered that the movie "JAILER," starring renowned Tamil actor **Mr. Rajnikanth**, contained a sequence in which a contract killer is seen donning the RCB jersey and making offensive and misogynistic remarks about a female character. The plaintiff's complaint is that the RCB jersey was used in the film both without the plaintiff's consent and in a derogatory manner, which is likely to damage the **RCB brand's reputation and brand equity** as well as the rights of the team's sponsors, the Muthoot Group, whose name is also featured on the jersey.



It was contended that in addition to constituting a breach of the plaintiff's statutory and common law rights, the same would amount to disparagement and result in the dilution and tarnishing of the plaintiff's brand image. The court directed the defendants to alter the disparaging content before 1st of September 2023 and to only release the altered version in OTT or Television channels.

The **Dabur India Limited v. Shree Baidyanath Ayurved Bhawan Pvt Ltd** centred on a dispute over five advertisements released by the defendant. As the right to freedom of speech and expression, which includes the right to advertise, is guaranteed under Article 19(1) (a) of the Indian Constitution, the court held in the plaintiff's favour that the advertisements disparaged the plaintiff's product and others by drawing attention to their defects and imposed an order prohibiting the use of offensive and deceptive content in advertisements.

The Trademarks Act, 1999 too outlines that any advertisement that does not follow honest business practices, or that it harms the Trademark's reputation or disparages, it constitutes Trademark infringement. Comparative advertising though is an exception to the acts that are considered infringement, the court has laid down a 3-step test to determine if the claim can succeed for disparagement claims in comparative advertising. First, there must be a misleading or false claim regarding a product; second, the claim must lead to the deception of the consumer; and third, it is likely to affect consumer behavior. Further, the balance of convenience should be found in favor of the claimant for granting relief.

So, to conclude, Comparative advertising though aims to highlight a product's value by comparing it to others, it must be done without misleading or degrading competitors' products. Misusing such ads can lead to disparagement, which is strictly prohibited by law.