

Hindustan Unilever vs Emami: Is Everything “Fair And Lovely” In Business?
written by Ragini Sharma | September 14, 2020



Hindustan Unilever vs Emami

The Black Lives Matter Movement

The recent death of George Floyd has sparked a movement that seeks justice and equality for all the dark-skin people around the globe. On 25th May 2020, a person by the name of George Floyd was arrested by the American Police when he was allegedly using a counterfeit note of 20 dollars. The officer who arrested George treated him in a merciless and brutal manner minutes after which he died. His last words 'I can't breathe', brings back the horror of colour discrimination that is prevalent not just in America but in almost all parts of the world.

The death of George Floyd is a rallying cry for justice that demands the end of the war on black people.

Indian Constitution: Discrimination On Basis Of Colour

The Constitution of India has strictly embodied that "The State shall not discriminate against any citizen on grounds of religion, race, caste, sex, place of birth or any of them."^[1] The Article only protects its citizen from discrimination against religion, caste, sex, place of birth and does not include discrimination on the basis of colour.

Colour based discrimination has been prevalent in our society since time immemorial and even today in the 21st century, a person is rejected for marriage solely on the ground that he has a darker skin tone and the lighter skin makes acceptance more likely, and even more so for women. Even though society is getting educated but still the discrimination exists on the basis of colour.

And hence, due to societal pressure, people are made to think that they are not beautiful and sadly, light skin is not just promoted by the "fairness" product market but also by the individuals

Almost 90% of all advertisements show lighter-skinned models. Consequently, lighter skin is depicted as the parameter of beauty by the media. Fairness is not just desired by women who can resort to Unilever's "Fair and Lovely" cream, but also by men who can now use Emami's "Fair and Handsome" cream, which comes with a skin tone measuring scale to check results.

Hindustan Unilever vs Emami: The Perennial Tiff Between HUL And Emami^[2]

The dispute in relation to trademark first arose when HUL applied for the trademark for 'Glow & Lovely' and 'Glow & Handsome' in September 2018, both

of which applications were rejected in 2019. However, the company re-applied for the same in June 2020, and the decision for the same is still pending. Keeping track of the social media outrage and the black lives matter movement, various cosmetic businesses turned towards making their brand less discriminatory. In wake of the above, Hindustan Unilever Limited ("HUL") decided to rename its renowned fairness cream brand "Fair and Lovely" to "Glow and Lovely" along with men's fairness cream brand "Fair and Handsome" to "Glow and Handsome." In July 2020, HUL made an official announcement for the same.

Days after this announcement, Emami issued a press statement threatening legal action against HUL for violating its alleged rights for its mark 'Emami Glow and Handsome'. HUL being aggrieved by the said statement moved an urgent application before the Bombay High Court asserting that HUL had made applications for trademark Glow & Lovely and Glow & Handsome as early in September 2018, before Emami is stated to have filed the trademark applications and therefore, praying of interim injunction order against Emami.

The Current Issue Over Filing Of Name "Glow And Handsome" As Trademark

The HUL after moving an urgent application before the Hon'ble Court submitted sales figures for marketing and advertising the trademark "Fair and Lovely" for its products and the same was backed by evidence and therefore, due to these propelling factors, HUL was entitled to an ad-interim injunction at this stage.

The Court after duly analyzing the facts and contentions made by both the parties held that on the outset, HUL appears to be a prior adopter and user of the mark "Glow & Handsome". HUL has already launched its goods in the market with that trademark, and so far as Emami is concerned, it is undoubtedly at the stage of adopting "a process of launching" its goods under the trademark "Glow & Handsome".

The Bombay High Court granted a temporary injunction to HUL against Emami Ltd, restraining them from using the mark "Glow and Handsome" noting that the plaintiff i.e., HUL was prima facie the prior adopter and user of the said trademark.

The bench referred to HUL's suit under Section 142 of the Trade Marks Act filed against Emami and directed Emami to give a minimum seven days prior notice to HUL in case any action was launched by it towards infringement or passing off in respect of the plaintiff's use of the trademark "Glow & Handsome".

Conclusion

The Constitution of India though protects its citizen from various forms of discrimination but overlooks one of the most prevailing discriminations i.e., colour-based discrimination. People have no say in it as no right is remedied by our constitution to protect its citizens from day to day humiliation and unfair treatment faced by them based on their skin tone. However, looking at the present prevailing situation, it is high time that the Government of India take stand for its people facing colour discrimination and stop the cosmetic companies from making people with darker skin tone feel less beautiful or handsome.

Resting to the present case between HUL and Emami, the final verdict is yet to come so as to ascertain who is the rightful owner of the trademark "Glow and Handsome".

[1] Article 15 (1) The Constitution of India

[2] The High Court of Judicature at Bombay Ordinary Original Civil Jurisdiction LD/VC/IA/203A/2020 in LD/VC/203/2020

Contributed by - Ragini Sharma & Raj Dev Singh

King Stubb & Kasiva,

Advocates & Attorneys

[Click Here to Get in Touch](#)

[New Delhi](#) | [Mumbai](#) | [Bangalore](#) | [Chennai](#) | [Hyderabad](#) | Kochi

Tel: [+91 11 41032969](tel:+911141032969) | Email: info@ksandk.com