

(1998) 03 NCDRC CK 0074

In the National Consumer Disputes Redressal Commission

DIRECTOR GENERAL OF INVESTIGATION And REGISTRATION	APPELLANT
Vs	
KHAITAN (INDIA) LTD.	RESPONDENT

Date of Decision : 02-03-1998

Acts Referred:

Citation : 1997 2 CPC 673 : 1998 1 CLT 326 : 1998 1 CPJ 58

Hon'ble Judges : Sardar Ali Khan , U.P.Singh J.

Final Decision : Enquiry discharged

Judgement

1. THIS Unfair Trade Practices Enquiry was initiated on receipt of an application from the Director General of Investigation & Registration (DG in brief) under Section 36B(c) of the Monopolies and Restrictive Trade Practices Act, 1969 (Act in brief) alleging therein that M/s. Khaitan (India) Ltd., (respondent in brief) have indulged in unfair trade practices within the meaning of Section 36A of the Act, 1969. The basis of DG's application was a complaint received on 22.2.1990 from one Shri Deepak Walia, 20-Ansari Road, Darya Ganj, New Delhi.

2. THE bone of contention in this matter is impugned advertisement published by the respondent in various leading newspapers with a view of promote the sale of the fans manufactured by Khaitan Group of Companies, which reads as under : "DID YOU KNOW ? MANY COMPANIES JUST PUT THEIR BRAND NAMES ON THE FANS THEY SELL. THEY DONT MAKE THEM ALL. But Every Khaitan fan is 100% Khaitan. It may be surprising, but true. Many renowned Companies get fans made from outside and just put their brand names. So you get a different quality from what you expect. But every Khaitan fan is made in Khaitan's own modern plants under expert supervision with a hawk eye on quality from start to finish. Every part is checked and re-checked and every little detail is fully scrutinised so that Khaitan is truly worth its names. That's why every Khaitan fan gives you full value for money. So when buying a fan do not take chances. Make sure you buy Khaitan. 100% Khaitan. Khaitan the name of eough."

According to the DC, the impugned advertisement comprises of the two claims namely : (i) Every Khaitan Fan in made is its own modern plant. (ii) Other

companies merely put their brand name on the fans they sell.

The DG while referring to above advertisement alleged that the claim of the respondent that most companies put their brand names and do not make the products which they sell whereas the Khaitan Fan is made in Khaitan's own plants is misleading and false. In order to substantiate his averments, the DG referred to the Balance Sheet of the respondent for the year 1988-89, which was enclosed by the complainant to its complaint. The aforesaid balance sheet shows that the respondent had purchased 7,50,179 fans in 1988-89 and 6,08,396 fans in 1987-88 from other concerns. It means that the respondent did not manufacture any fan during 1988-89 but had purchased from other concerns let it be group of companies. According to the DG, the complainant vide its letter dated 15.2.1990 sought information from the respondent about different types of fans manufactured and sold by them and other connected documents. The respondent vide its letter dated 20.2.1990 conveyed to the complainant that they are selling the fans manufactured by the Khaitan Group of Companies namely M/s. Khaitan Electricals Ltd., Khaitan Fans Ltd., Khaitan Industrial Complex Ltd. and M/s. Khaitan Tibrewala Electricals Ltd. The respondent has further stated that the name of "Khaitan" is a trade mark registered in the name of the respondent and in turn it has given licences to aforesaid companies to use the same. All the aforesaid companies are following the uniform designs, specifications, process of manufacturing and quality control systems at their plants.

3. THE DG alleged that the respondent has no installed capacity to manufacture fans, it gets fans manufactured from other companies which are separate in their legal entity, there is no justification that the names of all the aforesaid companies start with the word "Khaitan" and it has not disclosed that fact that fans are not manufactured in its plants. THE claim of the respondent that many renowned companies get fans from outside, put their brand name and sell it, is again inclined in disparage the products/ quality of other fan manufacturers. Since the above claim of the respondent is false and misleading it attracts the provisions of Section 36A of the MRTP Act, the DG prayed that the matter may be enquired into, cease & desist order against the respondent be passed and costs may be awarded to the applicant. The Commission on receipt of the aforesaid application of the DG was of the prima facie view that it is a fit case to be enquired into and directed to issue a Notice of Enquiry accordingly. Notice of Enquiry was issued on 19th April, 1990 under Sections 36A, 36B(c) and 36D of the MRTP Act, 1969 and Regulation 58 of MRTPC Regulation, 1974. A reply to the said Notice of Enquiry was filed by the respondent contradicting the allegations as listed in the DG application and NOE. However, liberty was given to the DG to file his rejoinder but it preferred not to file the same. After completion of the pleadings, following issues were framed on 25.8.1995 : 1. Whether the respondent is or has been indulging in the practices as indicated in the Notice of Enquiry ? 2. If the answer to Issue No. 1 is in affirmative, whether the said trade practices are prejudicial to the public interest, interest of the consumer or consumers generally ? 3. Relief. Our answers to the above issues are as under :

1. In the negative. 2. In the negative. 3. Does not arise. The reasons for our giving the above conclusions have been discussed in this order in the succeeding paragraphs.

4. THE DG tendered in evidence admitted documents which have been exhibited as A-1 to A-6. THE respondent chosen not to lead any evidence in rebuttal. Arguments were heard of Mr. S. Gupta, Attorney for the DG and Mr. N.R. Khaitan, Advocate for the respondent. In addition to the oral arguments, both the parties were given the liberty to file their written submissions. The respondent has filed a copy of its written synopsis filed in the other connected matter namely UTPE No. 75/90 whereas DG preferred not to file the same. On critical analysis of material on record and in view of the arguments advanced by both the parties, we find that the impugned advertisement of the respondent gave birth to the controversy. The DG contended that the impugned advertisement comprises of the two claims of the respondent that the every Khaitan fan is made in its own modern plants and other companies merely put their brand name on the fans they sell. According to DG, the advertisement is false and misleading since the respondent Company is not making the fans in its own plants but is selling the fans made by its sister companies as named above.

5. WE find that the impugned advertisement neither states that the Khaitan fans are manufactured by Khaitan India Ltd. nor it discloses the name of the respondent. However, we find from the documents on record, reply of the respondent and arguments advanced by the respondent that the Khaitan fans are manufactured by a group of Khaitan Companies namely Khaitan Electrical Ltd., Khaitan Fan (India) Ltd., Khaitan Tibrewala Co. Ltd. and Khaitan Industrial Complex Ltd. and each Khaitan fan is made in their modern plants. These fans are being sold by a fifth company namely Khaitan India Ltd. which is incorporated only for the purpose of trading the products manufactured by the manufacturing units. Shri S.K. Khaitan is the common Chairman of all the companies. The respondent is the owner of registered trade mark "Khaitan" and has entered into licensing agreements with the aforesaid companies of its group and each company is manufacturing fans confirming to the specification, design and quality set out in the licensing agreement. In addition to the above, no name of any company is specified in the impugned advertisement. In view of the above, the respondent is found not guilty of misleading the consumers that the Khaitan fans are made by Khaitan and the first contention of the DG is not proved.

6. IN respect of the second contention of the DG as aforesaid, the DG contended that the impugned advertisement has inclination to disparage the products/quality of other manufacturers and will thus cause loss and injury to the consumers which amounts to unfair trade practices within the purview of the Section 36A of the Act. The DG failed to place any documentary evidence in this regard. However, the respondent in its reply has mentioned the case of USHA Fans. "Usha" is the brand name of M/s. Jay Engineering Works Ltd., which gets

fans manufactured by various parties including Tushar Electrical Pvt. Ltd. and Minar Engineering Industries Ltd., Hyderabad. These companies have no connection with M/s. Jay Engineering Works Ltd. even then the fans manufactured by them are being sold under the Brand name "Usha". We further note that the respondent in its impugned advertisement has not mentioned the name of any particular company/companies. The DG has not rebutted the aforesaid contentions of the respondent. We will also like to mention here that in a similar matter, which was based on a private complaint, the case was ordered to be withdrawn as prayed by the complainant. Certain documents were considered as common evidence in both the cases for the convenience of justice. Since the DG failed to adduce any evidence on its own in support of its allegations, we hold that the DG could not substantiate its contentions.

In view of our foregoing discussions, we hold that the respondent cannot be held guilty of any unfair trade practice within the purview of Section 36A of the MRTP Act. The Notice of Enquiry against the respondent shall stand discharged. There is no order as to costs. A copy of this order may be sent to both the parties under R.P.A.D. Enquiry discharged. _____