

SHAASTRA 2021

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PRESENTS

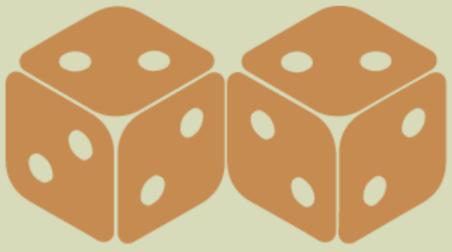
INTELLECTUAL-PROPERTY LAW

MOOT COURT

MEDIA PARTNER

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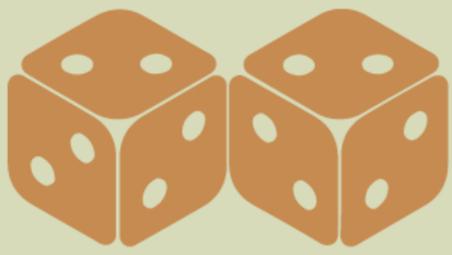




MOOT PROPOSITION

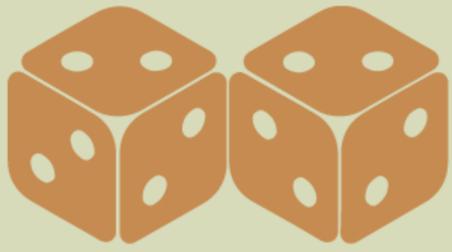
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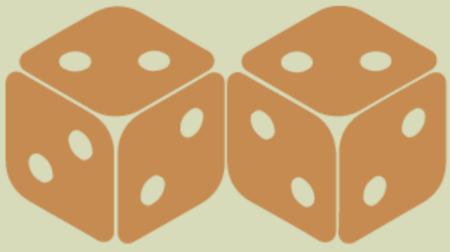
Facts of the case:

The health and wellness industry is a booming billion-dollar market on a global scale and India is no exception in contributing towards its growth. With the Covid-19 pandemic causing havoc across the globe, the drive to maintain good health through proper nutrition and exercise is the need of the hour. Livelong is an Indian company established in the year 2016, headquartered in New Delhi, that seeks to promote a healthy lifestyle through the supply of protein powders, collagen shots, health drinks, vitamin supplements, nutrition advice, dietary counselling and exercise programs. The drinks and supplements are plant-based, organic and prepared in accordance with Ayurvedic recipes under the proper guidance of practising Ayurvedic specialists and health counsellors. The brand has grown to be recognized as one of India's leading plant-based nutrition and wellness provider. Livelong categorizes its health products towards women, men, kids and nutrition for skin and hair. All the products are available for purchase on its website - www.livelong.in. Livelong further has a mobile application where it offers nutrition advice, recipes and workout videos. There is also a one-on-one health counselling session with a registered Nutritionist available on the app on payment of a prescribed fee. The mobile application is one of the highest-rated applications on the Playstore and Apple store. Apart from its website, the products are further sold through an established set of direct sellers and/ or dealers. These high-quality consumer products are sold on a principal-to-principal basis under a Direct Selling Contract. The Contract contains the terms and conditions of the distribution, marketing and sale of Livelong's products. The direct sellers are bound by a Code of Ethics and Livelong's products are marked with an express declaration that they are sold by Livelong's business owners. The Direct Selling business model is not only an assurance of quality products but also a source of employment to thousands of people especially during the pandemic which claimed a lot of jobs. Livelong maintains a list of all its Direct Sellers and its products bear a unique code on its packaging thereby making it easier for tracking accountability and feedback. Livelong further maintains an effective system for addressing grievances wherein dissatisfied consumers may choose to return the products along-with the sale invoice within 30 days of its purchase and a refund shall be directed based on the product's saleable condition. Since Livelong follows a Direct Selling system, its products are offered for sale only either through its authorized website or its registered Direct Sellers. Livelong is vigilant about its Intellectual Property Rights and is the registered proprietor of a word and device mark bearing the term 'Livelong' under the appropriate Classes under the Trade Marks Act, 1999.



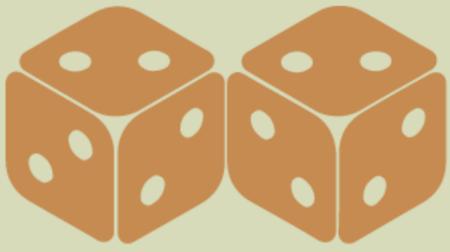
BuyNow, a Hyderabad-based company selling protein supplements and powders for muscle-building, has been advertising and selling 'Livelong' products through Fastgram, a photo & video sharing social networking platform, through its business profile, since May 2020. Fastgram possesses a paid-promotion feature for business profiles wherein businesses can subscribe to the advertisement of their products in the form of photos or videos appearing in Fastgram users' stories or feed, for a fee. The amount of fee charged varies on factors such as the target audience and also depends on the Cost Per Click (CPC) mechanism. Fastgram uses demographic data to channelize its ads towards appropriate parties and this tool is particularly valuable for advertisers who are on the lookout to garner a niche audience. BuyNow has subscribed to the said paid-promotion feature through which Ms Nina Talwar, a resident of Bengaluru city, had viewed BuyNow's ad for a Livelong product and placed an order dated 3.11.2020 for the said Livelong product. The transaction consisted of clicking the "Shop Now" option available on BuyNow's ad which then redirected Ms Talwar to BuyNow's online platform where Ms Talwar could choose the quantity, provide the shipping details such as her name, address and phone number, and pay the price and complete the purchase.

On delivery of the product at her residence on 12.11.2020, she was disappointed to note that the product container was in bad condition and the safety seal was broken. When she raised a complaint regarding the same on 13.11.2020 with Livelong's grievance forum, she was asked for the details of the purchase including the mode of purchase, seller details, date of purchase, date of delivery, and the batch number and the Unique Product Code (UPC) specified on the product packaging. When Ms. Talwar got back with the relevant details, Livelong's grievance team was surprised to note that the impugned product was procured through Fastgram as to the company's knowledge, none of its Direct Sellers have been using the said platform for sale of its products. On further scrutiny, Livelong found that



BuyNow was not in its list of Direct Sellers and has been selling Livelong products on Fastgram without its knowledge and authorization. Livelong carried out its own investigation by purchasing Livelong products from BuyNow through Fastgram and found that the products are being sold at a highly discounted price, about 70% lesser than the MRP. On further inspection of the products, Livelong realized that although the products bore the batch code and UPC, there was something suspicious about the products such as the absence of safety seals, unlike in the case of Ms. Talwar wherein the safety seal was broken.

Livelong immediately issued a Cease and Desist Notice dated 5.12.2020 to BuyNow claiming product tampering, trade mark infringement and violation of the Direct Selling Guidelines 2016. The Notice further requisitioned BuyNow to immediately refrain from selling any of Livelong's products and to take down all posts relating to the said products from Fastgram and any other social media. BuyNow, in its reply dated 20.12.2020, denied Livelong's contentions and stated that it merely procured Livelong's products from one of its registered Direct Sellers in the open market and sold the said products vide Fastgram. BuyNow continued to sell the impugned products vide Fastgram. Livelong, in grave apprehension that BuyNow was selling spurious products in its packaging and under its trade mark, and that these spurious products when consumed, might have adverse implications on the consumer's health, issued a Legal Notice dated 2.1.2021 to Fastgram to immediately restrain BuyNow from selling the impugned products through its platform. However, Fastgram, in its reply dated 12.1.2021, stated that it is merely an online platform for social networking and therefore, it falls under the ambit of an intermediary as defined by the Information Technology Act, 2000. It further stated that it would not be able to monitor or control the transactions occurring on its platform and that it would restrain BuyNow's use of its platform for online sales and/ or block/ delete the said business profile only if Livelong could produce a Court Order to that effect.

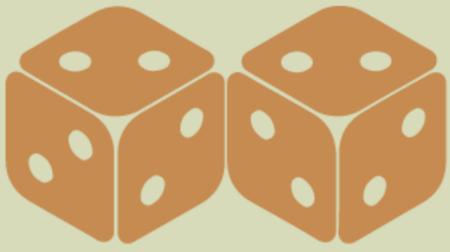


Furthermore, Fastgram has stated in its reply that its platform is merely an advertising medium for businesses and that it has no direct control over the sale of goods as it does not actively engage in the transactions between buyers and sellers and is therefore unaware of the nature of the products traded.

Being in the wellness industry for over four years, Livelong has garnered itself a significant amount of reputation and has accrued goodwill in terms of its trademark and products as it has become one of the preferred choices of the consumers in terms of wellness drinks and protein powders. In fact, Livelong's social media handles have thousands of subscribers. On the other hand, with over 120 million users of Fastgram in India alone, Fastgram sees over 500 million stories on a daily basis. Fastgram's captivating features is instrumental in spreading brand awareness in such a way that 80% of its users have completed a purchase based on viewing an ad on their stories or feed. Therefore, the presence of spurious products, that too on one of the most popular social media platforms which has a wide reach, will not only cause monetary loss to Livelong but will also have a prejudicial impact on its hard-earned reputation and goodwill. Livelong has filed a suit for trademark infringement before the Hon'ble High Court of Karnataka on 15.01.2021 bearing CS No. 31/2021 seeking appropriate reliefs, along-with an application seeking an ex parte ad interim injunction against BuyNow, and also making Fastgram as a party to the infringement suit.

Issues before the Karnataka High Court are as follows –

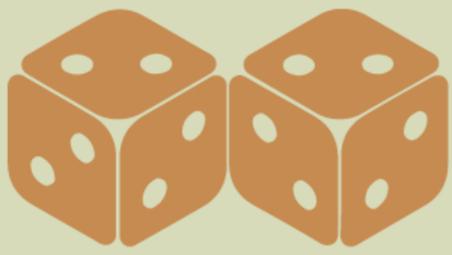
1. Whether the suit is maintainable before the High Court of Karnataka.
2. Whether the Direct Selling Guidelines, 2016 are valid and binding on BuyNow and if so, to what extent.
3. Whether BuyNow's sale of counterfeit products bearing the mark 'Livelong' using Fastgram amounts to an act of infringement under the Trade Marks Act, 1999.



4. Whether Fastgram is within the ambit of "Intermediaries" and is entitled to protection under the "safe harbor" provisions enumerated under the Information Technology Act, 2000 and the Intermediary Guidelines of 2011.

5. Whether BuyNow is guilty of tortious interference with the contractual relationship established with Livelong's direct sellers/distributors.

Note: The above mentioned five issues are mandatory. Apart from the above, participants are free to frame additional issues, if they deem fit. No further clarifications will be received therefore participants are requested to stick to the facts stated in the moot problem.



IN ASSOCIATION WITH

MEDIA PARTNER



International Attorneys

Chennai | New Delhi



for law students

CONTACT US:



mootcourt@shaastra.org
mootcourt@lawindia.com

Regards,

Aditya Balachander | Moot Court Head | +91 99405 18320

Srivatsan R | Moot Court Head | +91 94446 12812

Arvind Car | Moot Court Coord | +91 89390 31073

Hardhik Pinjala | Moot Court Coord | +91 99671 44215