

HC restrains Bajaj from ad disparaging TVS Excel 100

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In a major relief to TVS Motor Company, the Madras high court has restrained Bajaj Auto Ltd from continuing the advertisement which disparages TVS's product TVS Excel 100 by comparing the fuel efficiency of the Bajaj's product with the TVS product.

Justice Pushpa Sathanarayan gave the interim injunction for two weeks on an application arising out of a suit filed by TVS Motor Company and ordered notice, returnable by July 15 to Bajaj Auto Ltd (BAL).

According to TVS, in January 2016, it launched its Moped TVS XL 100, which is powered by 100 cc engine - a first of its kind in India, which received a warm welcome and elicited an excellent response from the customers. Recently, while promoting CT 100B motorbikes, BAL through its dealers in Tamil Nadu circulated disparaging leaflets, showroom arch, van displays, carrying mileage comparison and cost



saving between CT 100B and TVS XL100 mopeds. BAL claimed the mileage of CT 100B at 85km/L but falsely claimed and disparagingly advertised the mileage of TVS XL 100 mopeds at 40km/L when XL100 moped has ARAI certified average mileage of 69km/L. The advertisement campaign was made to influence the customer not to buy XL 100 mopeds but to prefer CT 100B bikes, TVS added.

The judge said it was the specific case of the applicant that Bajaj's products were claims to be more fuel efficient than the products of the applicant thereby luring the purchasers to go for the Bajaj's products in preference, to the applicant's products. Therefore, the advertisement was alleged to be an abuse of right of

advertisement in the market places and the same has to be interfered by this court.

It was further alleged that a false claim was made by Bajaj about the cost saving derived by purchase of Bajaj's product in comparison with the applicant's products. Though comparison was permissible in competition, it should be in the benefit of the public. According to the counsel, the advertisement of the Bajaj was only a false statement deliberately made to cause financial damage. The advertisements of Bajaj, who were rival traders, should be within the four corners of the reasonable restrictions in advertising.

"Though this court is not to decide as to whether the applicant's or the Bajaj's products is better, in the given circumstances, as an interim measure, an order of interim injunction has to be granted. The point of difference in the two products, according to the advertisement by the Bajaj is that the fuel efficiency of the applicant product is less than 50 per cent of the Bajaj's

product. The Bajaj cannot obviously disparage the product of the applicant.

The test would be whether the impugned advertisement made to disparage the applicant's product is one which would appeal to a mind of the common man. In this case, the Bajaj has specifically pointed out the specific demerit in the applicant's product. Though the statement by Bajaj puffing their own product is not questionable, disparaging statement of the applicant would be certainly actionable. However, the same can be dealt with in detail, after Bajaj filed their detailed counter. Therefore, a prima facie case is made out by the applicant.

Since it is only in the interest of public, the Bajaj should not be permitted to continue with such misleading claim. The balance of convenience also finds favour with the applicant. When the public interest is involved, at least temporarily, the action of Bajaj should not be allowed to continue", the judge added.

TVS drags Bajaj Auto to HC over 'disparaging' ads

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Chennai: A series of advertisements has led to a court faceoff between two-wheeler rivals TVS Motor and Bajaj Auto. The Madras high court has issued a two-week interim injunction on the ad campaign run by dealers of Bajaj Auto for "disparaging" the products of TVS Motor. The ads in contention were run in Tamil Nadu and compared the fuel efficiency of the TVS XL100 and the Bajaj CT100.

According to the court order, the ads compared the fuel efficiency of the two products "on the basis of false figures". In the interim injunction order — a copy of which is with **TOI** — the court restrains "the respondents from continuing the

advertisement which disparages the applicant's product TVS XL100 by comparing the fuel efficiency of the applicant's product with the respondent's product for a period of two weeks".

Around nine dealer ads were circulated in Tamil Nadu, and TVS filed a case in the high court around nine

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days ago. The court said that the decision is based on the fact that the respondents Bajaj Auto "specifically pointed out the specific demerit in the applicant's product. Though the statement by the respondents puffing up their own product is not questionable, disparaging statement of the applicant would

be certainly actionable. However, the same can be dealt with in detail after the respondent filed their detailed counter," said the court order.

The bone of contention is the fuel efficiency claims. "The point of difference in the two products, according to the advertisements issued by the respondents," said the court order, "is that fuel efficiency of the applicant product is less than 50% of the respondent product". The order went on to add that while "puffing" is "permissible" with a company's own products, "it cannot denigrate the rival manufacturers. It is also permissible to have comparative advertisement as long as it does not attain negative overtones". The order added that ads should be within "reasonable restrictions".