

SULTAN-UL-ULOOM COLLEGE OF LAW

**JANAB AMJAD ALI KHAN MEMORIAL NATIONAL MOOT COURT
COMPETITION**

On 28th and 29th MARCH, 2020

MOOT PROPOSITION

Telugunadu is a state in the Republic of Sindhiya in South Asia. Republic of Sindhiya is the seventh-largest country by area and second-most populated country in the world. The demand for cosmetic products has been on a rise globally and in Sindhiya the demand is increasing owing to factors such as high income, greater purchasing power and increasing influence of western culture. With the increasing image consciousness of the Sindhiyan clientele, many international brands started establishing footprints in Sindhiya. To protect the interest of the consumers, the cosmetic products in Sindhiya are regulated under the Drugs and Cosmetics Act 1940 and Rules 1945, Labelling Declarations by the Bureau of Sindhiyan Standards and Central Drugs Standard Control Organization.

P'Oréal is a personal care company having its registered office in Europe. It is the world's largest cosmetics company and has developed cosmetics in the field of skin care, sun protection, make-up, perfume, and hair care. P'Oréal Sindhiya Pvt. Ltd is wholly owned subsidiary of P'Oréal since 1994 with registered office in Sindhiya. P'Oreal products are sold and traded through a wide network of its associates, affiliates, subsidiary companies and licensees. The marketing network includes retail through internet and e-commerce. P'Oreal has been advertising its products worldwide through Television commercial as well as advertisements in print media. One such product is "*P'Oreal Paris White Perfect Magic Day Cream*" and the advertisements of this product was made on the front page of National and Regional newspapers and subsequently through Social media. These advertisements have been repeated on several occasions.

Charulatha is an upcoming singer, aged 16 years, born with dark complexion. Both her parents Saroja and Kumar are also dark skinned. Charulatha being their only child was pampered by her

parents. Saroja is a patient with heart ailment and Kumar is an employee in a private company. Charulatha was keen in singing since her childhood and won many awards for her performances. After her matriculation she discontinued her studies and practiced music. Since she is going to be a public figure and wants to make a name in Music Industry, she wanted to enhance her appearance.

Sunitha Devi is one of the most popular and influential celebrities in Sindhiya. She has acted in many movies in many languages. She was honoured with the 'Padma Shree', the fourth highest civilian award in the Republic of Sindhiya, by the Government of Sindhiya. She is often cited in the media as "the most beautiful woman in the world". Charulatha is a huge fan of Sunitha Devi. When Sunitha Devi endorsed Naggi noodles, Charulatha started having the same everyday for breakfast. Again when Sunitha Devi endorsed Dru Coffee, Charulatha started drinking the same. Thus, Charulatha started blindly following the products endorsed by Sunitha Devi. The day an advertisement for the *P'Oreal Paris White Perfect Magic Day Cream* was telecast, where Sunitha Devi promised the women that they will become fair with its usage in 4 weeks, Charulatha requested her dad to bring the same. Believing that her daughter would become fair on the promise given by Sunitha Devi, Kumar placed order for the *product P'Oreal Paris White Perfect Magic Day Cream* on 02-03-2019 through online retailer Amason. The said product was delivered to her home on 06-03-2019 from M/s H&G Fair Price Shop in Telugunadu.

The following description was given on its package:

1. *P'Oreal Paris White Perfect Magic Day cream* effectively penetrates deep in to skin, making it fairer in just 4 Weeks.
2. It protects skin from pigmentation caused by exposure to UVA/UVB rays, dirt and pollution.
3. It whitens skin, improves texture, reduces wrinkles and restores skin elasticity.
4. It has skin nourishing agents like Vitamin-E & A which will make the skin glow more than ever before.

Believing the advertisement presented by her favourite actor and the description on the product to be genuine, Charulatha started using the product and on 28-03-2019 after three weeks of using

the said product, she suffered with numbness in her hands and feet, and was unable either to talk or walk. Immediately, She was rushed to City Hospital Telugunadu, where the doctors reported that it was due to the presence of high amount of mercury i.e. 1,250 micrograms per litre in her blood that could have been induced by the use of *P'Oreal Paris White Perfect Magic Day*. Subsequently, Charulatha fell into a state of coma and is still in the same vegetative condition. After seeing the plight of her daughter Saroja developed heart stroke and passed away on 22-06-2019.

Kumar made a complaint on behalf of his daughter to the National Consumer Disputes Redressal Commission(NCDRC)against the retailer Amason, seller M/s H&G Fair Price Shop, manufacturer P'Oréal Sindhiya Pvt. Ltd, and endorser Actress Sunitha Devi alleging that they have adopted unfair trade practice for the purpose of manufacturing, promoting the sale, making false advertisements and induced Charulatha to use such harmful product. He claimed Rs 20 crores towards compensation for the injury Charulatha has suffered.

P'Oreal contended that the product in question has been manufactured after extensive scientific research. It claimed that it does not use mercury in any of its products in Sindhiya or overseas. Subsequently, a report was issued by Drugs Control Administration Telugunadu that they have conducted tests on five skin-lightening products of the cosmetic company P'Oréal Sindhiya and they have found amounts of mercury along with other ingredients in these cosmetics which can cause serious health problems. It is reported that P'Oréal Sindhiya Pvt. Ltd may face suspension, cancellation of license and prosecution if further violations are found during investigation of its products.

Taking this into consideration, the NCDRC directed Amason, M/s H&G Fair shop, P'oreal Sindhiya and Actress Sunitha Devi to pay collectively Rs 20crores to Charulatha and withdraw the advertisements representing their product *P'Oreal Paris White Perfect Magic White Day cream*. NCDRC also directed the government to ban the said product. Aggrieved by this order Amason, M/s H&G Fair shop, P'oreal Sindhiya and Actress Sunitha Devi filed an appeal in Supreme Court of Sindhiya. As the case of Charulatha was reported in media, many women complained that even they used similar products as per the directions mentioned on its packaging and it had failed to show any of the desired results. Several NGOs and Sindhiyan association of

Dermatologists have filed Public interest litigations before the Supreme Court requesting to ban the manufacture and sale of skin creams containing harmful steroids and heavy metals. Since the appeal and related PILs arise out of the same set of transactions, the Supreme Court has decided to hear them together.

The issues to be heard are:-

1. Whether the award of National Consumer Disputes Redressal Commission is justified?
2. Whether the manufacturer, seller, and retailer are collectively liable for spurious products under the Consumer Protection Act?
3. Whether Sunitha Devi who endorsed the product in the advertisement is liable under the Consumer Protection Act ?
4. Whether the National Consumer Disputes Redressal Commission has jurisdiction to ban the manufacture and sale of skin creams containing harmful steroids and heavy metals?

Note:

1. Laws of Sindhiya are Pari Materia to laws of India.
2. Laws of Telugunadu are Pari Materia to laws of Telangana.
3. Maintainability of appeal and Public Interest litigation is not in issue.