Summary Judge of Metn - Decision No 762/2003

Merck Sharp & DOHME B.V. v. BENTA Trading SARL

President Mohamed Wissam Al-Murtada - Decision No 762 issued on 15/09/2003 - Metn

Unfair Competition - Consumer protection - Imitation of a Mark.

Background Facts

Merck Sharp & CO INC owns the rights of production and industrialization of "SIMVASTATIN", an active and effective component used in the production of the medicament "ZOCOR". It is working as well to promote a medicament named "SIMGAL" marketed as having the same effect as "ZOCOR".

It granted Merck Sharp & DOHME B.V., the Plaintiff, a license allowing it to distribute and sell said component and medicament in Lebanon and other countries.

BENTA Trading SARL, the Defendant, is working to register, import and distribute a medicament named "SIMGAL" marketed as having the same effect as "ZOCOR" and is using in its promotion studies executed on "ZOCOR and results conducted thereby, falsely pretending that they are executed on its medicament "SIMGAL";

Proceedings

Merck Sharp & DOHME B.V. filed a claim against BENTA Trading SARL aiming to prevent unfair competition and stop the registration, import and distribution, in Lebanon, of "SIMGAL" by the Defendant.

MERCK & CO INC. submitted a request before the Summary judge to intervene in the original litigation in order to support the request of Merck Sharp & DOHME B.V.

Submissions

Said facts were corroborated:

* by the claim.
* by the entire documents.

Issues of Law

As per the Form

The request presented by MERCK & CO INC. fulfills all the formal conditions as per article 40

of the Civil Procedure Law.

Regarding the capacity of MERCK & CO INC to file the lawsuit, the Judge declared that the license grants it the said capacity.

,4s per the Law

The imitation does not exist in the present case, however, the unfair competition is proven by the promotion of the products through a comparison of its effects, specifications and components with those pertaining to another product.

Moreover, the fact of explaining about the common component between the two products by using studies and statistics pertaining to the competitor and not pertaining to the licensed product constitutes an illegal act and a violation to the rights of the other party as well as an unjustified exploitation of the reputation and success of the other product.

Disposition

First: to accept the intervention of the party requesting it in the present litigation;

Second: To dismiss the claim of non-capacity;

Third: to oblige the Defendant to cease all the violating actions under the penalty of a coercive fine amounting to 100.000 USD for violation of the content of the present clause;

Fourth: to impose upon the Defendant all the expenses and to dismiss all the additional and violating matters.

Decision issued in Metn on 15/09/2003

Source: SADER Rany, SADER Courts’ Series:

 Intellectual Property in Lebanon, SADER Legal Piblishing,2017, P 102.