



# Indore Institute of Law

Affiliated to D.A.V.V. & Bar Council of India

## NIRMALA DEVI BAM MEMORIAL INTERNATIONAL MOOT COURT COMPETITION

### CHAPTER 5



19-21 MAY, 2023

## MOOT PROPOSITION

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1. India is one of many countries that contributes to the expansion of the global health and wellness sector, which is a burgeoning \$1 trillion business. With the Covid-19 virus outbreak the need of the hour is to preserve excellent health with a balanced diet and regular exercise because of the global health crisis that is wreaking havoc. With its headquarters in New Delhi, Fusion Natural Health is an Indian firm that was founded in 2016. It aims to promote a healthy lifestyle by offering protein powders, collagen shots, health drinks, vitamin supplements, nutrition guidance, food counselling, and exercise regimens. The beverages and supplements are made from plants, are organic, and are made in line with Ayurvedic recipes with the help of qualified health professionals and Ayurvedic practitioners.

2. The company has developed into one of India's top providers of plant-based nutrition and wellbeing. Fusion Natural Health divides its health offerings into categories for men, women, children, and nutrition for the skin and hair. The company's website, [www.FusionNaturalHealth.Co.in](http://www.FusionNaturalHealth.Co.in), offers for sale all of its items. Moreover, Fusion Natural Health includes a smartphone application that provides recipes, training videos, and nutrition guidance. Using the app, a trained nutritionist is also available for private health counselling sessions upon payment of a certain price. On the Playstore and Apple store, the mobile app has one of the top ratings. The products are also sold through a well-established network of direct sellers and/or dealers outside of its website.

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3. A Direct Selling Contract is used to sell these premium consumer goods principal to principal (B2B). The terms and conditions for the distribution, promotion, and sale of Fusion Natural Health's products are outlined in the Contract. The products sold by Fusion Natural Health's direct sellers are explicitly marked to indicate that they are being sold by Fusion Natural Health's business owners, and the direct sellers are subject to a Code of Ethics. The direct selling business model provides thousands of individuals with employment opportunities in addition to ensuring the quality of the items, particularly during the pandemic when many jobs were lost. Fusion Natural Health keeps track of all of its Direct Sellers, and each of its items has a distinctive identifier on the box, making it simpler to assess responsibility and customer satisfaction.

4. Fusion Natural Health also maintains an efficient mechanism for resolving complaints. Dissatisfied customers may choose to return the products along with the sale invoice within 30 days of their purchase, and a refund will be given based on the product's saleability. Fusion Natural Health uses a direct selling model, so its items are only available for purchase through either its official website or its registered direct sellers. Fusion Natural Health is a company that is conscientious about protecting its intellectual property rights. It is the registered owner of a word and device mark that contains the word "Fusion Natural Health" in accordance with the relevant classes under the Trade Marks Act, 1999.



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5. From May 2022, NatureCare, a business based in Hyderabad that sells protein powders and supplements for growing muscle, has advertised and sold "Fusion Natural Health" items through its business page on the social media site Instabook. Businesses can pay to advertise their products in the form of photographs or videos that show in Instabook users' stories or feeds by subscribing to the service's paid-promotion function for company profiles. The cost is dependent on the Cost Per Click (CPC) mechanism as well as variables like the target audience. Instabook employs demographic information to target the right people with its adverts, and this tool is very useful for marketers trying to target a certain audience.

6. Ms. Seema Singh, a resident of Delhi, viewed NatureCare's advertisement for a Fusion Natural Health product and placed an order for that Fusion Natural Health product on 3.11.2022. NatureCare has subscribed to the aforementioned paid-promotion service. The transaction involved selecting the "Shop Now" button on NatureCare's advertisement, which led Ms. Singh to NatureCare's web platform where she could select the amount, provide her name, address, and phone number for the shipping, pay the money, and finish the purchase.

7. On 12.11.2022, when the product was delivered to her house, she was dismayed to see that the product container was damaged and the safety seal was broken. When she complained about it to Fusion Natural Health's grievance forum on November 13, 2022, she was prompted to provide information about the purchase,

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including the mode of payment, the seller's information, the date of purchase, the date of delivery, the batch number, and the Unique Product Code (UPC) printed on the product packaging. The grievance team at Fusion Natural Health was taken aback when Ms. Singh returned with the pertinent information because, to their knowledge, none of their Direct Sellers have been using the aforementioned platform for the selling of their goods.

8. Without its knowledge or approval, NatureCare has been selling Fusion Natural Health products on Instabook even though it was not included in its list of Direct Sellers. Fusion Natural Health conducted their own research by acquiring Fusion Natural Health goods from NatureCare via Instabook revealed that the products are being offered at a significant discount, roughly 70% below the MSRP. After giving the products a closer look, Fusion Natural Health saw that even though they had the batch code and UPC, there was something odd about them, including the lack of safety seals (as opposed to Ms. Singh's, who had a broken safety seal).

9. A Cease and Desist Letter dated 5.12.2022 was promptly sent by Fusion Natural Health to NatureCare, alleging product tampering, trademark infringement, and contravention of the Direct Selling Guidelines 2016. The Notice also demanded that NatureCare stop offering any of Fusion Natural Health's items for sale right away and remove all posts about them from Instabook and other social media. In its response dated 20.12.2022, NatureCare refuted Fusion Natural Health's claims and explained that it had simply

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purchased the products from Fusion Natural Health through one of its authorised Direct Sellers in the free market and sold them via Instabook. The contested products were still being sold by NatureCare via Instabook.

10. Fusion Natural Health, who had serious concerns that NatureCare was selling counterfeit goods in its packaging and using its trademark, and that these counterfeit goods might have negative health effects on consumers if consumed, sent a legal notice to Instabook on February 2, 2023, ordering it to stop NatureCare from doing so. However, Instabook claimed in its response dated 12.2.2023, that it is only an online social networking platform and as such, is an intermediate as that term is used in the Information Technology Act, 2000.

11. It said that it would not be able to keep an eye on or regulate the transactions taking place on its platform and that it would only stop NatureCare from using it for online sales and/or block or delete the aforementioned company profile if Fusion Natural Health could show a court order to that effect. Additionally, Instabook claimed in its response that its platform is just a tool for businesses to advertise, and it has no direct control over the sale of goods because it doesn't actively participate in business dealings between buyers and sellers and is therefore ignorant of the types of goods traded.

12. Fusion Natural Health has been in the wellness sector for more than four years and has established a solid reputation and built up goodwill for its products and brand as one of the top options



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among customers for protein powders and wellness drinks. In reality, Fusion Natural Health has thousands of followers on its social media accounts. On the other hand, Instabook views more than 500 million stories daily thanks to its over 120 million users in India alone. Instabook's appealing features are essential in boosting brand recognition to the extent that 80% of its customers have made a purchase after viewing an advertisement in their feed or stories.

13. Therefore, the existence of fake goods, especially on one of the most widely used social media platforms, would not only result in financial loss for Fusion Natural Health but will also negatively affect its well-deserved reputation and goodwill. On February 15, 2023, Fusion Natural Health filed a trademark infringement lawsuit in the District Court of Delhi with the case number CS 31/2023, asking for the appropriate relief. They also requested an ex parte ad interim injunction against NatureCare and added Instabook as a defendant.

## **ISSUES:**

1. Whether the suit is maintainable before the District Court of Delhi.
2. Whether and to what extent the Direct Selling Guidelines, 2016 are enforceable and applicable to NatureCare.
3. Whether NatureCare's use of Instabook to sell fake goods with the mark " Fusion Natural Health " constitutes an infraction of the Trade Marks Act, 1999.

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4. Whether Instabook is under the definition of "Intermediaries" and qualifies for protection under the "safe harbour" clauses listed in the Information Technology Act of 2000 and the Intermediary Guidelines of 2011.
5. Whether NatureCare is guilty of tortious interference with the contractual relationship established with Fusion Natural Health's direct sellers/distributors.