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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
*Date of decision: 12<sup>th</sup> December, 2023*

+ **CS(OS) 737/2023 & I.A. 22579/2023**

**DABUR INDIA LIMITED** ..... Plaintiff

Through: Mr. Akhil Sibbal Sr. Adv. with Mr.  
R. Jawahar Lal, Mr. Anuj Garg &  
Ms. Asavari Jain Advs (M.  
9958996311)

versus

**THE ADVERTISING STANDARDS**

**COUNCIL OF INDIA & ANR.** ..... Defendants

Through: Ms. Avni Singh, Adv. for D-1 (M.  
9958018998)

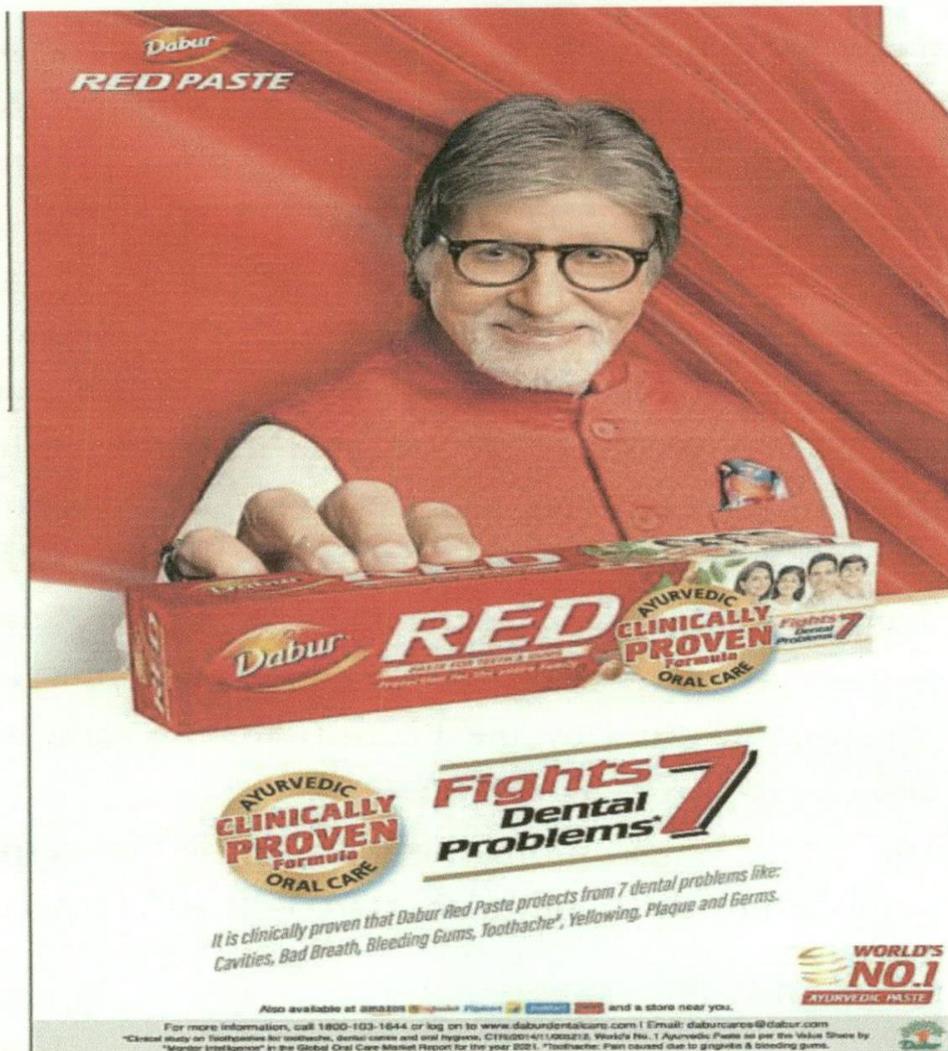
Mr. Vedansh Anand Govt. Pleader.  
and Mr. Karan Arora, Advs. for D -  
UOI (M. 8076802450)

**CORAM:**

**JUSTICE PRATHIBA M. SINGH**

**Prathiba M. Singh, J. (Oral)**

1. This hearing has been done through hybrid mode.
2. The present suit has been filed by the Plaintiff - Dabur India Limited seeking *inter alia* stay of the order dated 30th September, 2023 issued by Defendant No. I-Advertising Standards Council of India (*hereinafter*, ASCI).
3. The issue in the present suit is in respect of an advertisement published by the Plaintiff for 'DABUR RED PASTE', extracted below:



4. This advertisement was challenged by Defendant No.2 - Vi-John Healthcare India LLP, and a complaint was raised by it before the ASCI. The ASCI, vide email dated 13th July, 2023 intimated the Plaintiff regarding the complaint by Defendant No.2. Further, it sought clarifications regarding the Plaintiffs claim of '*World's No. 1 Ayurvedic paste*' along with documentary proofs.

5. In response to the said email, the Plaintiff *inter alia* submitted market research studies conducted by Mordor Intelligence Pvt Ltd, and disseminated the said documents to the ASCI's technical expert. Nevertheless, the CCC of



ASCI expressed its dissatisfaction, specifically concerning the authenticity of the data source supporting a claim such as ‘*World’s No.1 Ayurvedic paste*’ which purports to display global leadership for its ayurvedic toothpaste.

6. The ASCI, vide the impugned order dated 30th September, 2023, directed the Plaintiff to modify its advertisement and restrain itself from publishing it, on the grounds that the said advertisement is misleading and constitutes an unfair portrayal and exaggeration, contrary to Clauses 1.1, 1.4 and 1.5 of the ASCI Code.

7. Vide order dated 24<sup>th</sup> November, 2023, the Court directed ASCI to cite relevant case laws in respect of the preliminary objection of the jurisdiction. The Court also observed that since the Plaintiff has not republished the advertisement, ASCI shall not send the impugned recommendation dated 30th September 2023 to its members, if not already sent. This would ensure that the publications of other advertisements of the Plaintiff are not jeopardised in any manner

8. Ms. Avni Singh, Id. Counsel for the ASCI contests the jurisdiction of the Intellectual Property Division (*hereinafter IP Division*) of the Delhi High Court. She has handed over a short note on the issue of jurisdiction as per order dated 24<sup>th</sup> November, 2023.

9. Considering the grounds raised, this Court deems it appropriate to direct the ASCI to file a short reply to the application under Order XXXIX Rules 1 & 2 CPC and a written statement, if so advised raising the issue of jurisdiction.

10. It is her submission that under the IPD rules, as per rule 2 (i) ‘comparative advertising’ forms a part of Intellectual Property Rights subject matter. However, the present suit would not be a suit relating to comparative



advertising or even a commercial dispute as held in *Havells India Limited v. Advertising Standards Council of India, 227 (2016) DLT 719*. Accordingly, let a reply be filed within two weeks. Rejoinder thereto be filed within two weeks thereafter.

11. On behalf of the Defendant No.2- Vi-John Healthcare India LLP, ld. Counsel Mr. Neeraj Grover submits that Vi-John had merely raised a query in view of certain circumstances, which had existed at the relevant point of time when ASCI had sought to take action against Vi-John in respect of another advertisement of Vi-John. However, Vi-John no longer presses this as a complaint against Dabur before the ASCI. Let an affidavit to this extent be filed by the Vi-John.

12. In the meantime, the Court has also perused the report of Mordor Intelligence Pvt. Ltd., which according to the Plaintiff, was the basis of the advertisement, which was issued claiming to be the **‘World’s number 1 Ayurvedic Toothpaste’**.

13. After having perused the said report and the objections raised by ASCI, this Court is of the view that the advertisement cannot remain injuncted forever. It is the settled law by the Supreme Court in *Tata Press Vs. MTNL, 1995 (5) SCC 139* that advertising is part of commercial speech which forms an integral part of the freedom of speech and is protected under Article 19 (1) (a) of the Constitution. The relevant part of the judgement is set out below:

**“23. Advertising as a “commercial speech” has two facets. Advertising which is no more than a commercial transaction, is nonetheless dissemination of information regarding the product advertised. Public at large is benefited by the information made available through the advertisement. In a democratic economy free flow**



of commercial information is indispensable. There cannot be honest and economical marketing by the public at large without being educated by the information disseminated through advertisements. The economic system in a democracy would be handicapped without there being freedom of “commercial speech”. In relation to the publication and circulation of newspapers, this Court in *Indian Express Newspaper case [(1985) 1 SCC 641 : 1985 SCC (Tax) 121 : (1985) 2 SCR 287]*, *Sakal Paper case [AIR 1962 SC 305 : (1962) 3 SCR 842]* and *Bennett Coleman case [(1972) 2 SCC 788 : (1973) 2 SCR 757]* has authoritatively held that any restraint or curtailment of advertisements would affect the fundamental right under Article 19(1)(a) on the aspects of propagation, publication and circulation.

24. Examined from another angle, the public at large has a right to receive the “commercial speech”. Article 19(1)(a) not only guarantees freedom of speech and expression, it also protects the rights of an individual to listen, read and receive the said speech. So far as the economic needs of a citizen are concerned, their fulfilment has to be guided by the information disseminated through the advertisements. The protection of Article 19(1)(a) is available to the speaker as well as to the recipient of the speech. The recipient of “commercial speech” may be having much deeper interest in the advertisement than the businessman who is behind the publication. An advertisement giving information regarding a life-saving drug may be of much more importance to general public than to the advertiser who may be having purely a trade consideration.

25. We, therefore, hold that “commercial speech” is a part of the freedom of speech and



**expression guaranteed under Article 19(1)(a) of the Constitution.**

.....

28. Right to freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution can only be restricted under Article 19(2). The said right cannot be denied by creating a monopoly in favour of the Government or any other authority. **“Publication of advertisements” which is a “commercial speech” and protected under Article 19(1)(a) of the Constitution cannot be denied** to the appellants on the interpretation of Rules 458 and 459 of the Rules. The plain language of the Rules indicate that the prohibition under Rule 458 of the Rules is only in respect of publishing “any list of telephone subscribers”. By no stretch of imagination “publication of advertisement” can be equated with a “list of telephone subscribers”. A ‘list’ is a number of names having something in common written out systematically one beneath the other. “List of telephone subscribers” in terms of Rule 458 of the Rules would have to be compiled only on the criterion of the persons listed being telephone subscribers. No person who is not a telephone subscriber could be eligible for inclusion. The said list would necessarily be restricted to the area serviced by the Nigam. On the other hand “Tata Press Yellow Pages” is a buyers' guide comprising of advertisements given by traders, businessmen and professionals and the only basis/criterion applied for acceptance/publication of advertisements is that an advertiser should be a trader, businessman or professional.

14. The Id. Division Bench of this Court in ***Dabur India Ltd Vs. Colortek Meghalaya***, 2010 SCC OnLine Del 391 has also held that some amount of



'Puffing' and hyped-up advertisements are permissible but the same shall not extend beyond the grey areas. The relevant extract of the said judgement is set out below:

*"13. The Supreme Court recognized and applied in Colgate Palmolive (India) Ltd. the rule of civil law, "simplex commendatio non obligat" 'simple commendation can only be regarded as a mere invitation to a customer without any obligation as regards the quality of goods. It was observed that every seller would naturally try and affirm that his wares are good enough to be purchased (if not better than those of a rival).*

*14. On the basis of the law laid down by the Supreme Court, the guiding principles for us should be the following:—*

*(i) An advertisement is commercial speech and is protected by Article 19(1)(a) of the Constitution.*

*(ii) An advertisement must not be false, misleading, unfair or deceptive.*

*(iii) Of course, there would be some grey areas but these need not necessarily be taken as serious representations of fact but only as glorifying one's product.*

*To this extent, in our opinion, the protection of Article 19(1)(a) of the Constitution is available. However, if an advertisement extends beyond the grey areas and becomes a false, misleading, unfair or deceptive advertisement, it would certainly not have the benefit of any protection.*

*15. There is one other decision that we think would give some guidance and that is Pepsi Co. Inc. v. Hindustan Coca Cola Ltd., 2003 (27) PTC 305 (Del.) (DB). In this decision, a Division Bench of this Court held that while boasting about one's product is permissible, disparaging a rival product is not. The fourth guiding principle for us, therefore, is: (iv) While glorifying its*



*product, an advertiser may not denigrate or disparage a rival product. Similarly, in Halsbury's Laws of England (Fourth Edition Reissue, Volume 28) it is stated in paragraph 278 that "[It] is actionable when the words go beyond a mere puff and constitute untrue statements of fact about a rival's product." This view was followed, amongst others, in Dabur India Ltd. v. Wipro Limited, Bangalore, 2006 (32) PTC 677 (Del). "[It] is one thing to say that the defendant's product is better than that of the plaintiff and it is another thing to say that the plaintiff's product is inferior to that of the defendant.*

.....

*23. Finally, we may mention that Reckitt & Colman of India Ltd. v. M.P. Ramchandran, 1999 (19) PTC 741 was referred to for the following propositions relating to comparative advertising:*

- (a) A tradesman is entitled to declare his goods to be best in the world, even though the declaration is untrue.*
- (b) He can also say that his goods are better than his competitors', even though such statement is untrue.*
- (c) For the purpose of saying that his goods are the best in the world or his goods are better than his competitors' he can even compare the advantages of his goods over the goods of others.*
- (d) He however, cannot, while saying that his goods are better than his competitors', say that his competitors' goods are bad. If he says so, he really slanders the goods of his competitors. In other words, he defames his competitors and their goods, which is not permissible.*
- (e) If there is no defamation to the goods or to the manufacturer of such goods no action lies, but if there is such defamation an action lies and if an action lies for recovery of damages for defamation, then the Court is also competent to grant an order of injunction restraining repetition of such defamation.*



*These propositions have been accepted by learned Single Judges of this Court in several cases, but in view of the law laid down by the Supreme Court in Tata Press that false, misleading, unfair or deceptive advertising is not protected commercial speech, we are of the opinion that propositions (a) and (b) above and the first part of proposition (c) are not good law. **While hyped-up advertising may be permissible, it cannot transgress the grey areas of permissible assertion, and if does so, the advertiser must have some reasonable factual basis for the assertion made.** It is not possible, therefore, for anybody to make an off-the-cuff or unsubstantiated claim that his goods are the best in the world or falsely state that his goods are better than that of a rival.”*

15. The impugned advertisement needs to be viewed in the context of the above cited law. It is clear that advertising is part of commercial speech and some puffery is allowed as long as the same does not go beyond the grey areas and the assertions made are reasonable. In this context, the above advertisement cannot be said to be without any basis. Moreover, the report relied upon by the Plaintiff also cannot be completely ignored and some credence can be given to the fact that as per the report, the Plaintiff is selling one of the major toothpaste brands. In the opinion of this court, in business, some amount of freedom ought to be given to the advertiser.

16. In these background facts, the Plaintiff is, permitted to publish the said advertisement, however, with a slight modification to the following effect that the Plaintiff may use the phrase

**‘World’s leading Ayurvedic paste’**

instead of

**‘World’s number 1 Ayurvedic paste’.**



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The same would be without prejudice to the rights and contentions of the parties.

17. List on 19<sup>th</sup> January, 2024.

**PRATHIBA M. SINGH**  
**JUDGE**

**DECEMBER 12, 2023/dk/ks**